

Our ref: AD001417

Your ref:

18 July 2018

Ms Kathrine Morgan-Wicks
Secretary
Department of Justice
GPO Box 825
HOBART TAS 7001

By email – haveyoursay@justice.tas.gov.au

Dear Ms Morgan-Wicks,

Review of the *Electoral Act 2004*

Thank you for the opportunity to make a submission to this review. I note that its Terms of Reference are:

- modernising the current Tasmanian *Electoral Act 2004* with specific examination of sections including 191(1)(b); 196(1) and 198(1)(b);
- whether state-based disclosure rules should be introduced, and, if so, what they should include; and
- the level of regulation of third parties, including unions, during Election campaigns.

This submission addresses Term of Reference 2, in which the Integrity Commission has a particular interest.

Political donations and public confidence in government

Political donations can give rise to conflicts of interest, which if not properly disclosed and managed can diminish public confidence in government. In the report of the Queensland Crime and Corruption Commission (CCC) investigation into the 2016 local government elections in that State (Operation Belcarra),¹ the following extract appears:

¹ Crime and Corruption Commission Queensland, *Operation Belcarra: A blueprint for integrity and addressing corruption risk in local government* (December 2017) <www.ccc.qld.gov.au/corruption/operation-belcarra> (Operation Belcarra report).

Some other councillors the CCC spoke to during Operation Belcarra were of the view that even direct donations do not necessarily give rise to conflicts of interest. This is contrary to the view of the former Queensland Integrity Commissioner that donations “certainly can” lead to real or perceived conflicts of interests for councillors:

It seems self-evident that a reasonable person would expect that electoral donations are made for a purpose, and that donors will expect that their donations achieve that purpose. Those personal or sectional interests can clearly conflict with the public interest which should be the basis for all public decision-making. (Submission from Richard Bingham, pp. 2–3)

The CCC concurs with this position. It seems to the CCC that some councillors are particularly failing to recognise perceived conflicts of interest arising from donations, having little or no regard for how the donations they receive may be seen by members of the public to compromise the performance of their duties.

I maintain the personal views expressed in that extract. Further, in the Commission's view, the passage encapsulates the reasons why state-based political donation disclosure rules should be introduced in Tasmania, at both State and local government level.

Tasmania – and in particular the Tasmanian House of Assembly – has the least regulated election funding and disclosure laws in Australia.² In discussing the Victorian situation, which is not dissimilar to Tasmania, the Victorian Ombudsman has aptly summarised why transparency should be increased:

There can be little doubt that the lack of transparency in political donations and the lack of limitations on who can make those donations in Victoria creates an environment in which allegations of improper conduct can flourish. Whether they are substantiated or not, whether such allegations are legitimately made or are made for political mischief-making as is often claimed, is not the point. Ultimately, they create a perception that politicians can be bought, which reduces public trust in government.

Equally, this lack of transparency can leave political candidates exposed to unfair allegations that they have received donations for improper purposes. Shielding the state election process from a mire of allegations and hearsay is in everyone's interests – voters, candidates and parties.³

² On the basis of comments made by a committee of the Victorian Parliament in 2009, this would appear to make Tasmania 'amongst the least regulated jurisdictions in the western world in terms of political finance law'; see Electoral Matters Committee of the Victorian Parliament, *Inquiry into Political Donations and Disclosure* (2009) vii.

A useful comparison of disclosure laws across Australia can be found in Appendix A of Dr Damon Muller, *Election funding and disclosure in Australian states and territories: a quick guide* (9 November 2017)

<[www.aph.gov.au/About Parliament/Parliamentary Departments/Parliamentary Library/pubs/rp/rp1718/Quick Guides/ElectionFundingStates](http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1718/Quick_Guides/ElectionFundingStates)>.

³ Victorian Ombudsman, *Investigation of a protected disclosure complaint regarding allegations of improper conduct by councillors associated with political donations* (November 2015) 3.