

Ms Katherine Morgan-Wicks
Secretary
Department of Justice
Email: secretary@justice.tas.gov.au

Electoral Act Review – Interim Report

Thank you for providing the Tasmanian Electoral Commission (TEC) with the opportunity to make a submission in relation to the Electoral Act Review – Interim Report. As stated in its submission on the Terms of Reference for the Review of the *Electoral Act 2004* (“the Act”) dated 20 July 2018 the TEC supports and values the importance of the Review.

The TEC is of the opinion that 18 of the 19 Consultation Issues are either matters of policy for the Government or Parliament, or have already been addressed in the TEC’s earlier submission.

In relation to Consultation Issue 10, the TEC would like to offer the following comments.

Consultation Issue 10 – *Whether further consideration should be given to possible changes that would allow otherwise ‘informal’ votes to be treated as formal votes.*

The TEC is of the view that any changes to the formality provisions would need to be carefully considered, on the basis that there is the potential to reduce the effectiveness and accuracy of the Hare-Clark counting process.

The Interim Report refers to current formality rules excluding some ballot papers that contain innocent errors. The Report raises the possibility of reducing a formal vote to a single “1” preference, similarly to ACT Hare-Clark elections.

Informality due to duplication or omission of numbers between numbers 2 and 5 accounted for less than 1% of ballot papers cast at the 2018 State election.

Further, as identified by the informal ballot paper surveys published for each Tasmanian Parliamentary election, in general:

- around two thirds of Legislative Council informal ballot papers are classified as apparent intentional informal voting, and
- just under half of House of Assembly informal ballot papers are classified as apparent intentional informal voting.

As published in the 2007-08 TEC Annual report, a ballot paper analysis of 2006 House of Assembly ballot papers for the divisions of Bass and Lyons showed that under the current directions and formality rules:

- 43.3% of ballot papers examined showed the minimum (five) preferences
- 45.2% showed a preference for all candidates
- 11.5% showed an in-between number of preferences.

A reduction in the formality rules for House of Assembly elections is likely to increase the likelihood that a greater number of candidates will be elected with greater shortfalls of the quota.

The fewer the number of preferences provided on a ballot paper, the greater the likelihood that the ballot paper may end up being lost to the count (as an 'exhausted' vote).

The Hare-Clark counting system uses later preferences on the ballot papers to transfer full and partial votes following the exclusion of a candidate or the transfer of an elected candidate's surplus. If every ballot paper included only a single preference, the election could not continue past count one, with the top five candidates elected regardless of the number of votes they received, creating a *de facto* 'first-past-the-post' result. If every ballot paper included a preference for every candidate, all elected candidates would reach the quota.

At the end of the 2018 elections, 22,324 votes were 'exhausted' across the five divisions. Lyons had 7,224 exhausted votes which equates to 62% of the Lyons quota. At the end of the Lyons count, the last elected candidate (Jen Butler) had received 8,069 votes - 3,469 votes short of the quota.

A reduction in the formality requirements may also have implications for filling vacancies within the House of Assembly.

Major parties traditionally nominate the same number of candidates as the minimum required number of preferences, to encourage electors to vote only for their party. Currently having five or more candidates on the ballot paper provides additional party candidates who then become eligible to contest a recount in the event of a casual vacancy, assisting a party to maintain its numbers within the Parliament.

Recent High Court decision

The TEC notes the decision to extend the consultation period so that submissions can take into account a recent decision of the High Court that is relevant to several aspects of the review. The TEC suggests it may be appropriate to consider whether this decision has an impact on the current provisions in Part 6 of the Act, regarding limits on election expenditure for Legislative Council candidates.

The TEC would be happy to provide technical advice, if required, in relation to preparation of any accompanying documentation.

Mike Blake

CHAIRPERSON



Andrew Hawkey

ELECTORAL COMMISSIONER



Karen Frost

MEMBER



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