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Review of the *Electoral Act 2004*

Thank you for providing the Tasmanian Electoral Commission (TEC) with the opportunity to participate in the consultation on a Review of the *Electoral Act 2004* (the Act).

The TEC has prepared a submission taking into account the Terms of Reference for the Review and in accordance with the guiding principles of the Review: protecting freedom of speech (with note to constitutional implications) and minimal cost to the taxpayer.

The TEC agrees for this submission to be a public document as part of the consultation process, given the broad range of matters covered in the submission, and looks forward to the interim report due to be released by the end of 2018.

Mike Blake

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ELECTORAL COMMISSIONER



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20 July 2018

Electoral Act 2004 Review
Tasmanian Electoral Commission (TEC or the Commission) submission

Introduction

The commencement of the *Electoral Act 2004* (the Act) saw a new era in the electoral sphere in Tasmania. The Act established the TEC, and streamlined electoral administration and processes resulting in one of the most progressive pieces of electoral legislation in Australia.

The TEC supports and values the importance of the current Review into the Act given the rapid changes in and around the electoral environment over the last 15 years. These changes have had an impact on the conduct and regulation of elections as well as the public's expectations.

The Terms of Reference for the Review are:

- Modernising the current Tasmanian *Electoral Act* 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 discusses three areas of significant change since 2004 that should be considered when modernising the Act:

- Australia post delivery times,
- modern election campaigning, and
- issues identified during Tasmanian elections or in preparation for this Review.

The submission has been drafted in accordance with the guiding principles of the Review: protecting freedom of speech (with note to constitutional implications) and minimal cost to the taxpayer.

Given the policy nature of the second and third Terms of Reference, the TEC will not provide comment on these terms but has collated some background information into these topics under Appendices A and B. Appendix A includes information on the current disclosure rules across the jurisdictions in Australia and New Zealand. Appendix B provides information into the level of regulation of third parties within other jurisdictions of Australia, the United States of America and Canada.

Australia Post Delivery Times

Changes since 2004

The rapid shift into the digital age has led to a change in the use and demand for Australia Post's mail services, to which Australia Post has adapted and evolved. In 2016, Australia Post introduced a two-speed mail service, offering regular and priority mail services. Australia Post estimates regular deliveries across Tasmania take between 3 – 6 business days and priority mail services take between 1 – 4 business days, subject to destinations. However, at the 2018 House of Assembly and Legislative Council elections, there were incidents where the TEC experienced longer timeframes than these estimates in the delivery of postal vote applications and postal votes, giving rise to a challenge in meeting the time frames set out in Part 5 Division 9 of the Act.

The use of the priority mail service also has an impact on the costing for an election. As at 19 March 2018 the cost to post a small letter with Australia Post's regular mail service was \$1.00 per letter and \$1.50 per small letter with the priority service. When this price difference is considered in terms of 29,675 postal votes issued and 26,329 postal votes returned across the 2018 State and Legislative Council elections, the use of priority mail for the postal vote processes clearly creates a substantial financial impact to the taxpayer. Australia Post has announced a further cost increase commencing on 1 October 2018.

Suggested amendments to postal voting under the Act

Postal vote applications (PVAs):

Section 126 of the Act currently provides that the TEC is to send out a postal vote to an eligible elector if his/her PVA is received by:

- (i) 6pm on the Thursday before polling day if the postal vote is to be sent to an Australian address; or
- (ii) 6pm on the Tuesday before polling day if the postal vote is to be sent to an overseas address.

For those PVAs lodged on the final Thursday, even using the priority mail delivery service, a postal vote sent to anywhere outside the Hobart area is unlikely to be delivered before polling day, effectively disenfranchising the elector.

The TEC requests that the Act be amended by moving back the deadline for receipt of all PVAs to 4pm on the 8th day before polling day. This would enable the TEC to utilise regular mail services for state-wide delivery, reducing the cost to the taxpayer and improving the franchise of electors wishing to vote by post.

Electors who do not lodge a PVA in time will still be able to vote in the week prior to polling day at pre-poll centres and mobile polling centres within Tasmania, or by applying for an express vote if he/she is in a remote area of Tasmania, interstate or overseas.

Replacement postal votes

Section 129 of the Act enables electors to request a replacement or supplementary postal vote pack. Similar to the requested lodgement timetable of PVA's under section 126, the TEC requests that section 129(1) be amended to include the "requested before 4pm on the 8th day before polling day" timeframe.

Other electoral process with set correspondence periods

While the TEC is increasingly communicating with electors and candidates via email and text message, there is still a need to mail electoral correspondence. The following are other electoral processes established under the Act, that have set timeframes for the issue and return of mailed correspondence.

10 days for the return of postal votes

Section 139(1)(c)(ii) provides that the postal vote declaration envelope is received by the returning officer by post or other approved method no later than 10.00am on the second Tuesday after polling day, allowing ten days for the return of postal votes. The TEC does not suggest any amendments to this section, as it considers this to be a reasonable period and believes an extension of this period would unduly delay the counting of votes at State elections.

Consent to contest a by-election

Section 228 of the Act currently provides that a nomination of a person to contest a recount to fill a House of Assembly vacancy is invalid unless it complies with the requirements of this section. Under subsection 228(2), such nomination must:

- (d) be lodged, posted or sent by facsimile so as to be received by the Commissioner before noon on the tenth day after the day on which the notice of the vacancy was published under s226(3).

The TEC suggests that the ten days be extended to fourteen, to overcome the difficulty of new Australia Post delivery times. Using the priority service, the delivery of the notification of the recount to a candidate living in areas such as Smithton, Scottsdale or St Helens will take at least four days, as will the mailed return of the consent form. As not all eligible candidates have up to date electronic contact details, the extension of time for lodging would allow for all eligible candidates to consent to the election process by mail.

Compulsory voting – division 14 of Part 5

The Act sets out a process of up to three mailed notifications when contacting electors who appear to have failed to vote. The first two notices have set periods for the elector to respond (21 days and 14 days respectively). The Act states the Commissioner is to send the next notice if a response is not received within these set timeframes.

The TEC suggests that this division be amended to provide the Electoral Commissioner with the discretion to wait an additional period, such as a week, before issuing the next notice in order to compensate for the extended Australia Post delivery times and the likely cross-over of mail.

*Further flow on consequences for electoral timeframes***Increasing the minimum time for early voting**

The Act sets out the following periods for key stages of a Tasmanian parliamentary election:

Time between key election events	Min days	Max days
Dissolving the Assembly to the issue of the writ (s63)	5	10
Issue of the writ to close of nominations – all elections (s69)	7	21
Nomination day to polling day — HoA or LC by-election (s70(1))	15	30
Writs to polling day – LC periodic election (s65)	14	51

While the Act does not set minimum or maximum periods between the close of nominations and polling day for Legislative Council periodic elections, the convention is that the writ sets out three weeks. The three-week early voting period provides a greater period for postal votes to be mailed to electors across the world and enables other early voting services and pre-polling day administrative tasks to be conducted over a longer period.

With these suggested changes to the postal voting service, the TEC holds the view that Tasmanian Parliamentary elections should have a minimum 22-day period between the announcement of candidates and polling day.

The TEC suggests the minimum period between nomination day and polling day set under section 70(1) be extended to 22 days to provide better election services and increase the likelihood that postal votes will be received by those outside Tasmania, in time for them to be completed and returned for counting.

Consultation for setting issue of writ and close of nomination dates for state elections

The convention for setting the key dates for Legislative Council periodic elections is undertaken by the Electoral Commissioner in consultation with the Minister for Justice, the President of the Legislative Council and the Governor.

While the dissolving of the House of Assembly and the determination of polling day are fully the prerogative of the Premier in consultation with the Governor, due to the complexities of establishing election processes during the election period around Tasmanian holidays or part of Tasmania holidays, the involvement of the Commission (in consultation with the Government and the Governor) for setting the dates for the issue of writs and close of nominations may provide a more suitable outcome for the smooth and less complex administration of these elections.

Modern election campaigning

Changes since 2004

Since the establishment of the Act, election campaigning has changed rapidly due to the introduction of social media and other online communications such as digital news sites. These forms of online communication have altered the way the public consume news, communicate and access information. The relevant provisions require review to ensure continued regulation of campaigning, as different forms of online communications continue to develop and change.

In addition to the specific provisions identified in the scope of the Review, the TEC has identified a number of other related issues that merit consideration.

While the definition of 'publish' was amended to include "includes published on the internet" there are significant issues and notions of fairness that now exist when administering campaigning rules that were originally written only for physical campaigning and at a time when the printed newspaper was the main source of news information.

Section 198(1) of the Act states: "A person must not on the polling day fixed for an election, or on a day to which polling for an election has been adjourned –

- a) distribute any advertisement, "how to vote" card, handbill, pamphlet, poster or notice containing any electoral matter; or;
- b) publish or caused to be published in a newspaper –
 - i. an advertisement for or on behalf of, or relating in any way to a candidate or party; or
 - ii. a matter or comment relating to a candidate or a question arising from, or an issue of the election campaign."

Section 198(1) essentially covers two types of influence on polling day: election advertising/campaigning and election reportage/commentary. This section has remained largely unchanged as an election restriction under from the *Electoral Act 1985*.

Election reportage and commentary

Prior to 2000, the newspaper was the most significant medium for delivering news and commentary within Tasmania. If an article or political comment regarding a candidate was printed in the newspaper on polling day, a correction or alternate opinion could not be easily communicated to the public before the vast majority of electors voted.

The current restriction on newspaper election reporting on polling day does not take into account the shift to online information from a range of sources provided at any time during the day or night. This subsection also places additional restrictions on newspaper online sites that are not present for other news services such as the Australian Broadcasting Corporation's website. It could also be argued that the impact of campaigning on polling day is reducing as Australia sees a steady increase in early voting. Therefore, the TEC supports the removal of 198(1)(b)(ii).

Election campaigning

Section 177 and subsections 198(1)(a) and (1)(b)(i) of the Act all relate to election campaigning.

Section 177 of the Act states: "A person must not, within 100 metres of, or within, a polling place which is open for polling –

- a) canvass for votes; or
- b) solicit the vote of an elector; or
- c) induce or attempt to induce an elector not to vote for a particular candidate or particular candidates."

These restrictions are in place for all early and polling day polling places and enable electors to have a campaign free-experience when they enter a polling place to vote.

The TEC would argue that both 198(1)(a) and 198(1)(b)(i) refer to the similar forms of election campaigning that use different forms of communication. Therefore, it would be inconsistent for the Review to recommend the removal of subsection 198(1)(b)(i) without also recommending the removal of 198(1)(a). To do otherwise would produce an electoral and financial advantage to newspapers as this would give them a monopoly of election campaigning on polling day.

It is the view of the TEC that Tasmanian electors like to have a campaign-free experience when voting. Therefore, when reconsidering the special Tasmanian arrangements regarding section 198(1)(b), the TEC suggests the appropriate question for the Review to consider is:

Do Tasmanian electors prefer to have a campaign-free polling day or just a campaign-free experience when voting at a polling place?

Option 1: Polling day without election campaigning

The current arrangements under section 198 were designed to stop the distribution of election campaigning material on polling day. Further, under section 177, no one can canvass for votes in any other form at a polling place. If the Review finds that this is the preferred position for Tasmanians, then section 177 and subsections 198(1)(a) and 198(1)(b)(i) should remain.

The Review might also consider going further because modern election campaigning within the online and digital environments enable text messages and other online posts or commentary to be sent to targeted electors that may fall outside the current sections.

A counter consideration to this option is that the growing increase in early voting at Australian Parliamentary elections means that this option establishes significantly different campaigning rules for electors who vote early, compared to those who vote on polling day.

Option 2: Maintaining a campaign-free experience at the polling place

If the Review finds that this is the preferred option for Tasmanians, it might consider deleting all of section 198. If the activities prescribed under subsection 198(1)(a) are considered as a subset of "canvassing for votes", then the practical elements of a campaign-free experience at the polling place may be fully captured by section 177.

Unauthorised use of a candidate name, photograph or likeness

Section 196 prohibits the use of a candidate's name, photograph or likeness without authority, between the issue of the writ and close of poll for an election. The section specifies "print, publish or distribute any advertisement". As the definition of 'publish' under section 3 of the Act includes anything published on the internet, the authorisation requirements extend to the multitude of matter published online during the election period. However, there is uncertainty whether the section includes material published online prior to the election period, but accessible during that period.

In order to remove this uncertainty, the TEC suggests the inclusion of the words "keep on display" (as used under section 191), to account for online material posted prior to the issue of the writ.

There is some conjecture that this provision was included in earlier versions of the Electoral Act primarily to address concerns with the use of "how to vote" cards at House of Assembly elections. While the Commission acknowledges the difficulties and possible conflict this current section has with the right to free speech and political comment, the Review could look to either abolish this section fully or limit this section to specific items.

Authorisation of online electoral matter

Along with election advertising, the dominance of the online sphere has seen online sites become the main form of communication by candidates, the media and the public to share their political views and commentary. This has raised a number of authorisation issues under the Act.

The Terms of Reference make special mention of section 191(1)(b). Subsection 191(1) states: Subject to section 192, 193 and 194, a person must not between the issue of the writ for an election and the close of poll at that election—

- a) print, publish, keep on display or distribute, any printed electoral matter without the name and address of the responsible person being printed, in legible characters, at the end of the electoral matter; or
- b) publish, or permit or authorise another person to publish, any electoral matter on the internet without the name and address of the responsible person appearing at the end of the electoral matter.

Section 193 provides an exemption of the section 191 authorisation requirements for electoral matter contained in newspaper and periodical reportage or commentary. This section includes the definition 'in relation to newspaper or periodical, means everything in the newspaper or periodical except advertisements and letters to the editor'.

The application of section 191(1)(b) can easily be applied to candidate online election campaign sites as candidates can include authorisation in the footer of their website or in the "about" section of their Facebook pages. Application of this section to members of the public, where their online comments or sharing of other posts could be considered electoral matter, has raised some difficulty and gives rise to the need for amendment of this section.

While historically election campaigning and dialogue was reasonably contained to those within the geographical boundaries of Tasmania, the online sphere means that significant resources and influence can now be made by participants outside Tasmania and even Australia.

The difficulties in regulating authorisation of online electoral matter is an area of growing concern for all electoral authorities. The Australian Electoral Commission (AEC) has taken a new approach to authorisation in order to extend the existing requirements to modern means of communication such as online platforms, bulk text messages and robo-calls. This has been achieved through the Commonwealth Electoral (Authorisation of Voter Communication) Determination 2018 amendment of the *Commonwealth Electoral Act 1918*. Section 321D *Commonwealth Electoral Act 1918* prescribes that authorisation is required in three circumstances outlined in s321D(1)(a)-(c) and provides specific particulars of authorisation which vary dependent on the type of communication and the entity or person responsible for that communication.

The establishment of these broader rules and different authorisation requirements allows the AEC to implement and regulate the different forms of communication used for electoral campaigning. This is further achieved through the inclusion of exceptions to section 321D, one of which includes "communication communicated for personal purposes" which may assist with one of the difficulties faced in recent elections with "comments" by members of the public on social media or websites. However, these reforms do not provide an administrative solution for regulating those who do not comply with authorisation requirements online. As many online platforms provide users with anonymity, contacting individuals to implement authorisation requirements poses a challenge. At the recent State election there were alleged cases of the use of false online identities and Facebook pages clearly posting electoral matter that operated anonymously.

The TEC suggests that, to create consistency in the regulation of print and online, the definition of reportage or commentary in section 193(2) be amended to include online communications where these newspapers or periodical are now found.

Issues identified during elections or in preparation for this Review

Partial return of the writ

At the 2014 state election, 163 Denison postal ballot papers were accidentally destroyed. While the winning margin of the fifth candidate was greater than 163, a closer result would have left the fifth seat in unresolvable doubt. Section 74 of the Act requires the Governor to issue a fresh writ where an Assembly election “fails or partially fails”. It could be argued that an unresolvable fifth seat is precisely a “partial failure”, but the TEC is not certain that the Act would allow a partial declaration of the poll. Because the election was counted using the Hare Clark system of proportional representation any new election ordered by a Court may very well have involved all five Denison seats, as occurred in the 1980 Denison by-election, and similar to the fresh election for Western Australian senators in April 2014.

If the partial failure of a House of Assembly division election occurs and a fresh election is required, the Parliament may not be able to resume until the completion of the fresh election. Section 12(4) of the *Constitution Act 1934* provides that:

If any delay occurs in the return of any writ issued for the election of members of either House, and, in consequence of the non-return thereof, the number of Members of such House is not complete on the day for which Parliament is called together as aforesaid, such House may nevertheless proceed to business if duly summoned for that purpose so long as the deficiency in the number of Members thereby occasioned does not exceed 2 in the case of the Council or four in the case of the Assembly.

In other words, if the final seat at the 2014 Denison election had been in unresolvable doubt, and the TEC made an application to the Supreme Court under section 209, the Assembly would have been unable to proceed to business until the Supreme Court had determined the application and any consequential orders had been fulfilled.

The Review may wish to consider amending the Act to put beyond doubt that a returning officer, as directed by the TEC, may return a writ certifying the election of a part of the number of members required to be elected for a division: in the thankfully averted Denison scenario, four of the five members. Whereas this might not avoid the need for those members subsequently to face a by-election, it would enable them to take their places in the Assembly and assume ministerial or parliamentary office, and for the Assembly itself to proceed to business.

Use of Newspapers

Examination of the Act in reflection of the drastic developments in technology has raised the question whether the requirements for the TEC to publish some electoral information in newspapers is appropriate given the declining readership of printed newspapers and the high associated costs. The Act prescribes the use of newspapers in the following processes:

- announcement of candidates,
- registration of political parties,
- declarations of elections with and without poll,
- acceptance of election writs.

In many cases the information provided in the newspaper is released by the media or the TEC online days earlier than the publication in the newspaper. The formal record of important electoral information is still captured by publishing in the *Tasmanian Gazette* and formal TEC reports.

The cost for the placement and production of newspaper advertisements in the Tasmanian daily newspapers for 2017 and 2018 Tasmanian elections and party registration notifications was over

\$170,000. With the well-documented worldwide decline of readership in printed daily newspapers, the Review of the Act could look to prepare for the future where printed daily newspapers are no longer available, or it is not cost-effective to publish in a newspaper.

To future-proof the Act, sections referring to “published in a daily newspaper” could be extended to “published in a daily newspaper or published by a means determined by the Commission.”

Commission / Commissioners investigative powers

At the recent budget estimates process, questions were raised regarding the powers of the Electoral Commission. Section 9 of the Act outlines the functions and powers of the Commission:

- a) to advise the Minister on matters relating to elections;
- b) to consider and report to the Minister on matters referred to it by the Minister;
- c) to promote public awareness of electoral and parliamentary topics by means of educational and information programs and by other means;
- d) to provide information and advice on electoral issues to the Parliaments, the Government, Government departments and State authorities, within the meaning of the *State Service Act 2000*;
- e) to publish material on matters relating to its functions;
- f) to investigate and prosecute illegal practices under this Act.

Under the Act, the Commission has a number of responsibilities including those related to maintenance of details on the roll; Legislative Council expenditure returns provided under section 161; and responsibility for responding to queries and complaints about possible breaches of the Act regarding illegal or corrupt practices.

The Commission has powers of demand under the Act in relation to electoral roll information and Legislative Council candidate expenditure information. However, the Commission has no powers of demand for the investigation of illegal or corrupt practices.

The TEC suggests:

- amending section 9(f) to include the words “corrupt practices”; and
- to provide the Commission with the power to conduct investigation into all the offences under this Act in order to comprehensively administer the functions of the Commission under the Act.

The recent Legislative Council Redistribution was conducted under the *Legislative Council Electoral Boundaries Act 1995*. While members of the Commission are, under the Act, required to sit on the Redistribution Committee and Tribunal, along with the Surveyor-General and a representative from the Bureau of Statistics, the Commission itself has no powers in relation to this process under the *Electoral Act 2004*.

Further consideration of postal voting provisions within the Act

A consideration of the postal voting provisions drew the TEC's attention to the following possible amendments to reflect more modern procedural practices regarding the management and processing of postal voting, namely sections 127 and 128 of the Act.

Publicly available information regarding postal voting services

Section 127 requires that the name and addresses of electors issued with a postal vote be available for public inspection at the office of the returning officer for a period from the third day after polling day until (usually) 90 days after the return of the election writ. In recent years, returning officers are situated in premises with short term leases that are vacated soon after the election. All election materials and records are then safely transported to the office of the TEC for storage. A simple alternative, which would offer procedural efficiency and cost saving, is to amend the section to allow this information to be available for public inspection at the TEC office.

Delivery of postal votes

Section 128(1)(a) provides an election official is to "issue a ballot paper to the applicant by posting, or delivering by an approved method, to the address specified for this purpose on the application".

Each election, there are family members that may provide a PVA to the returning officer or the TEC who can personally deliver the postal vote to the elector. The inclusion of the words "to the address specified for this purpose on the application" does not allow the postal vote to be provided to a person other than to the address specified.

The TEC suggests s128(1)(a) be amended by deleting the words "to the address specified for this purpose on the application". This will save time, offers the procedural advantage of electoral officers being able to issue postal votes in person to eligible electors, and will save the cost of posting these documents unnecessarily.

Definition of electoral matter

It is recommended that consideration be given to amending the definition of electoral matter contained under section 4 of the Act. The current definition is extremely broad, as it captures matter which refers to a current or previous government, opposition or member of the Commonwealth or another state and territory. There is potential for confusion and difficulties with compliance and enforcement, particularly when election periods in other jurisdictions overlap with a Tasmanian election and in the modern realm of digital advertising where advertisements are published online.

Possible approaches

While the New South Wales and Victorian Electoral Acts contain similar definitions of electoral matter to Tasmania, some other jurisdictions have narrower definitions, limiting the matter to elections for the particular jurisdiction.

The Commonwealth Electoral Act defines electoral matter to be communications of the following kinds:

- (a) Matter that is intended or likely to affect voting in a federal election; or
- (b) Matter that contains an express or implicit comment on the election, a political party or candidates, or an issue that is before the electors in connection with the election.

The Queensland Electoral Act defines electoral matter simply to be matter relating to elections.

In the ACT Electoral Act, electoral matter is defined as matter that is intended to affect or is likely to affect voting in an election for the ACT Legislative Assembly. It is taken to be intended or likely to affect voting if it contains an express or implicit reference to, or comment on:

- The election;
- The performance of the Government, the Opposition, a previous Government or Previous Opposition of the ACT Legislative Assembly;
- The performance of an MLA or former MLA, the performance of a political party, candidate or a group of candidates in an election; or
- An issue submitted to, or otherwise before, the electors in connection with an election.

One approach could be to simply delete subsection 4(2). Electoral matter would therefore mean “matter which is intended to or likely to or has the capacity to affect voting in an election.”

Alternatively, a similar provision to that contained in the Commonwealth or ACT Electoral Acts could be adopted. It would be a matter of policy whether the current subsection (2)(b), which specifically mentions a photograph, drawing or likeness of a candidate, was retained.

Party registration process

An examination of Part 4 of the Act was undertaken which raised a few points that may be worth considering:

- The length of the ballot paper name as set out in 44(1)(c)(iii) be changed from 6 words to a character limit.
- That the statutory declaration required under 44(3) be made within the 12 months period of the lodging of the application.
- While the TEC is happy that the party register be made available for public inspection under section 52(6)(a), there are privacy concerns that a member of the public can request a copy of all or part of the party register under 52(6)(b).
- That the Act require that, under the process to apply to register a party, a copy of the party’s constitution be submitted as part of the application, to verify the existence of the party.

Other general administrative amendments

Replacing the term “facsimile”

A number of sections within the Act refer to the term “facsimile” as a way an elector or candidate can lodge a form. Fifteen years ago, this was one of the main methods for the electronic transfer of documents. The TEC suggests that the term “facsimile” be replaced by “electronic means” wherever it occurs within the Act.

Changes to ordinary voting outside division

The Act allows for ordinary voting at any polling place in Tasmania which is open (section 115). This, and the introduction of netbooks with the electoral roll, have meant greater flexibility for electors who are travelling within the State on polling day.

However, there are potential problems in the event that an individual polling place has to close and polling suspended (due to storm or wind damage, or sudden flood or bushfire threatening the building in which polling is taking place).

Under section 92 of the Act, the Commission appoints all polling places for an election. Section 124 provides for the adjournment of polling at a polling place if for any reason it is not practical to proceed.

As electors can vote for any division at any polling place, the adjournment of polling at one polling place has implications for the election process for all divisions that are up for election on polling day. Some clarity on this issue needs to be included in the Act, either through the Commission approving procedures for the adjournment of polling in one polling place under section 124, or by redefining out of division voting in the Act.

Delegation powers for returning officers in Part 5 – Conduct of elections

Divisions 10, 11 & 12 of Part 5 of the Act contain a number of process based administrative duties for the returning officers. It would be desirable to enable the returning officer to formally delegate, in writing, these duties to election officials (appointed under section 26 of the Act) to streamline the processing and initial counting of ordinary, declaration and postal votes. The returning officer retains overall responsibility and supervision of the count.

Express and interstate pre-poll classified as ordinary ballot papers

Under section 143 any votes collected after polling day are to be counted with returned postal votes. Currently this includes Express votes and interstate pre-poll votes (taken in offices of other electoral authorities). At present Express and interstate pre-poll ballot papers are more easily identified as different from postal votes when being counted.

The TEC suggests that the ballot papers issued for all votes counted with the postal votes under section 134 be classified under the Act as postal ballot papers, and therefore can be printed with the word “postal” on them as required under section 96.

Modernisation of processes for out-of-session Commission meetings

Under clause 6(1) of Schedule 2, confirmation of agreement currently requires the members to sign the document containing the resolution to be passed. The TEC suggests that this be updated to “by written notice” which allows for an email confirmation rather than an image of the signed document.

Fixed date for polling

A significant cost saving for conducting state elections would be to have a fixed polling day. Currently all other states and territories have a fixed polling day for their state/territory election (Queensland is transitioning to four year fixed-terms following the successful 2016 referendum on this issue).

A fixed polling day would enable the TEC to organise polling places and venues for other major processes such as returning officer offices and a tally room venue well in advance of an election. The recruitment of election staff and the finalisation of other election procurement would be far easier and more efficient with a fixed polling day. Booking in advance may also achieve cost efficiencies.

Modernisation for cyber security attack

To modernise the Act and meet the evolving needs of cyber security a new section could be included in Division 3 – Disputed elections to the effect that an election fails as a result of a significant breach to the system.

APPENDIX A

Term of Reference No 2:

Whether state-based disclosure rules should be introduced, and, if so, what they should include.

The table below is an adaption from Dr Damon Muller, 'Election funding and disclosure in Australian states and territories: a quick guide',¹ which provides a comparison of disclosure rules between the jurisdictions of Australia.

	Federal	NSW	SA (a)	Qld	Tas (b)	WA	ACT	NT	Vic (i)	Vic (proposed)
Gift disclosure threshold	\$13 500	\$1 000	\$5 000	\$1 000	×	\$2 300	\$1 000	\$1 500	×	\$1 000
Loan disclosure threshold	\$13 500	\$1 000	\$5 000	\$1 000	×	–	\$1 000	\$1 500	×	\$1 000
Threshold indexed	✓	×	✓	×	–	✓	×	×	–	✓
Donation cap (to party)	×	\$6 100	×	×	×	×	×	×	×	\$4 000
Donation cap period	–	Yearly	–	–	–	–	–	–	–	Between elections
Donor returns required	✓	✓	✓	✓	×	×	×	✓	×	✓
Expenditure cap (max for party)	×	-\$1.1m	-\$4m	×	×	×	\$1m	×	×	×
Expenditure cap indexed	–	✓	✓	–	–	–	✓	–	–	×
Per seat expenditure cap	×	\$61 500	\$100 000	×	×	×	×	×	×	×
Expenditure cap for third parties	×	-\$1.3m	×	×	×	×	\$40 000	×	×	×
Expenditure caps for associated entities	×	–	×	×	×	×	\$40 000	×	×	×
Third party campaigner returns	✓	✓	✓	✓	×	✓	✓	×	×	✓
Anonymous donations threshold	\$13 500	\$1 000	\$200	\$1 000	×	\$2 300	\$1 000	\$1 000	×	\$1 000
Banned donor industries	×	✓(c)	×	×	×	×	×	×	✓(d)	✓(d)
Foreign donation restrictions	×	✓	×	✓	×	×	×	×	×	✓Ban
Expenditure reporting	×	✓	✓	✓	×	✓	✓	✓	✓	✓
Campaign account	×	✓	✓	×	×	×	×	×	×	×
Per vote public funding	\$2.68	Sliding scale	\$3.00	\$3.14	×	\$1.97	\$8.00	×	\$1.67	\$6 LA \$3 LC
Public funding vote threshold	4%	4%	4%	6%	–	4%	4%	–	4%	4%
Public funding capped to expenditure	×	✓	✓	✓	–	✓	×	–	✓	×
Administrative funding (max)	×	-\$3m	\$12 000	\$3m(e)	×	×	-\$533k(f)	×	×	\$10 000 per member per quarter
Other public funding sources	×	✓	×	×	×	×	×	×	×	×
Election Reporting	×	×	Weekly	✓	×	✓(g)	Weekly	✓		✓
Other reporting cycle	Annual	Annual	Half-yearly	Half-yearly (h)	×	Annual	Annual	Annual	×	Annual

Notes: as applicable to political parties. Rules for candidates or upper-house non-party groups may vary.²

¹ Muller, 9 November 2017, *Election funding and disclosure in Australian states and territories: a quick guide*, Parliament of Australia, https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1718/Quick_Guides/ElectionFundingStates

- a) For parties that have opted into the SA public funding scheme.
- b) Tasmanian House of Assembly elections only. Different rules apply for Legislative Council elections.
- c) Property developers, gambling, tobacco, liquor industries or persons closely associated.
- d) Gambling industry donations over \$50,000 banned.
- e) Divided between eligible parties.
- f) An amount of \$21,322.64 per candidate.
- g) Gifts over the disclosure threshold at any time must be reported within seven days.
- h) Expenditure only.
- i) Amendments to the Victorian *Electoral Act 2002* currently before the Victorian Parliament.

Disclosure in New Zealand

The New Zealand Electoral Commission requires all registered political parties to provide the Commission with an annual return accompanied by an auditor's report, even where no donations are declared.

Parties are also required to provide returns to the Commission when they receive donations or enter loans for more than \$30,000. In the instance of a loan over \$30,000 or when the total donations from an individual donor from the preceding 12 months exceed \$30,000 the party secretary is required to file a return within 10 working days.³ Similarly, when a political party enters a loan exceeding \$30,000 or when a total loan amount from a single lender in the preceding 12-months is great than \$30,000, the party must provide the Commission with a return within 10 working days.⁴

The Commission offers a mechanism to protect donations from disclosure for individuals who wish to make a donation of more than \$1,500 to a registered political party and do not want their identity to be disclosed.⁵ The Commission manages this process by combining the donation with other donations for the political party and distributing it to the political party in regular intervals without identifying the total value of the donation or the number of donors and their identities.⁶

The process of donations without disclosure is subject to limitations, with individuals and bodies subject to a total maximum donation of \$45,627 between two successive elections without donations. Political parties are also limited to a maximum of \$304,180 in donations using this process between two successive elections.⁷

Individuals or groups (other than candidates and parties or persons involved in the affairs of a candidate or party) whom engage in the electoral process, such as promoting political events, parties or candidates are considered third parties.⁸ Third parties whom spend or intend to spend more than \$12,600 during the election period are required to register with the Commission as

² Muller, 9 November 2017, *Election funding and disclosure in Australian states and territories: a quick guide*, Parliament of Australia, https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1718/Quick_Guides/ElectionFundingStates.

³ Electoral Commission of New Zealand, 2017, *Donations Exceeding \$30,000*, <http://www.elections.org.nz/parties-candidates/registered-political-parties/party-donations-and-loans>.

⁴ Electoral Commission of New Zealand, 2017, *Donations Exceeding \$30,000*, <http://www.elections.org.nz/parties-candidates/registered-political-parties/party-donations-and-loans>.

⁵ Electoral Commission of New Zealand, 2018, *Donations Protected from Disclosure*, <https://www.elections.org.nz/parties-candidates/registered-political-parties/party-donations-and-loans/donations-protected>.

⁶ Electoral Commission of New Zealand, 2018, *Donations Protected from Disclosure*, <https://www.elections.org.nz/parties-candidates/registered-political-parties/party-donations-and-loans/donations-protected>.

⁷ Electoral Commission of New Zealand, 2018, *Donations Protected from Disclosure*, <https://www.elections.org.nz/parties-candidates/registered-political-parties/party-donations-and-loans/donations-protected>.

⁸ Electoral Commission of New Zealand, 29 March 2017, *Third Party Handbook – Part 1: Third Party Promoters*, <https://www.elections.org.nz/third-party-handbook/part-1-third-party-promoters>.

'promoters'. The register requires the promoters name and address, this name and address is to be used on any election advertisements published by that promoter.⁹

The Commission places a limit on registered promoters' election expenses during the regulated period for each election, for which it is an offence to exceed the prescribed limited. The 2017 General Election limit was \$315,000 (including GST).¹⁰

⁹ Electoral Commission of New Zealand, 29 March 2017, *Third Party Handbook* – Part 1: Third Party Promoters <https://www.elections.org.nz/third-party-handbook/part-1-third-party-promoters>.

¹⁰ Electoral Commission of New Zealand, 29 March 2017, *Third Party Handbook* – Part 1: Third Party Promoters <https://www.elections.org.nz/third-party-handbook/part-1-third-party-promoters>.

APPENDIX B

Term of Reference No 3:

The level of regulation of third parties, including unions, during Election campaigns.

1. Regulation of Third Parties in other Australian jurisdictions

The majority of the jurisdictions in Australia regulate third parties through registration, spending limits and reporting or return obligations.

Australian Capital Territory

The Australian Capital Territory (ACT) Electoral Commission considers third-party campaigners 'a person or entity that incurs \$1,000 or more in electoral expenditure during the disclosure period for an ACT election who is not involved with a political party a MLA, an associated entity, a candidate, a broadcaster, a publisher, an Australian government body or the ACT Legislative Assembly'.¹¹

Third-party campaigners are regulated through the legal requirements and restrictions placed upon them, namely an electoral expenditure cap, reporting obligations and authorisation of electoral matter.

Third-party campaigners are subject to an expenditure cap for spending for an ACT Legislative Assembly election by political participants in an election year. In 2016 the electoral expenditure cap for third-party campaigners was \$40,000. Breach of this electoral expenditure cap results in the entity being liable to pay a penalty to the ACT equal to twice the amount by which the electoral cap has been exceeded.¹²

Third-party campaigners are also required to complete and lodge an election return demonstrating the details of electoral expenditure incurred during the election period with the Electoral Commissioner.¹³ Third-party campaigners may also be required to detail gifts received if the gifts received based on the value if the gifts enabled electoral expenditure during the period and if the gifts were reimbursement for incurring electoral expenditure during the disclosure period.¹⁴

New South Wales

In NSW third-party campaigners are subject to legal obligations regarding election campaign finances, political donations and disclosures, for which penalties apply for non-compliance.

"A third-party campaigner is an individual or organisation that incurs more than \$2000 in electoral communication expenditure for a State or local government election in NSW but does not stand as a candidate and is not a political party or an elected member."¹⁵

¹¹ Australian Capital Territory Electoral Commission, 2016, *Third-party campaigners*

https://www.elections.act.gov.au/publications/act_electoral_commission_fact_sheets/fact_sheets_-_general_html/third-party_campaigners.

¹² Australian Capital Territory Electoral Commission, 2016, *Third-party campaigners*

https://www.elections.act.gov.au/publications/act_electoral_commission_fact_sheets/fact_sheets_-_general_html/third-party_campaigners.

¹³ Australian Capital Territory Electoral Commission, 2016, *Third-party campaigners*

https://www.elections.act.gov.au/publications/act_electoral_commission_fact_sheets/fact_sheets_-_general_html/third-party_campaigners.

¹⁴ Australian Capital Territory Electoral Commission, 2016, *Third-party campaigners*

https://www.elections.act.gov.au/publications/act_electoral_commission_fact_sheets/fact_sheets_-_general_html/third-party_campaigners.

¹⁵ Electoral Commission NSW, 2017, *Third-party Campaigners* http://www.elections.nsw.gov.au/fd/campaigners/third-party_campaigners

The NSW Electoral Commission (NSWEC) requires third-party campaigners register with the Commission for an election and appoint an Official Agent before incurring more than \$2,000 in certain electoral expenditure for both a State or Local Government Election. Third-party campaigners must also disclose political donations to the NSWEC.¹⁶

Northern Territory

The Northern Territory Electoral Commission consider third parties, “a person or organisation, other than a registered political party, candidate, associated entity, broadcaster or publisher, who is under an obligation to lodge a disclosure return”.¹⁷ Providing the example of a donor contributing \$200 or more to a candidate and/or lobby group during an election campaign.

Queensland

In accordance with the Queensland *Electoral Act 1992* third parties are required to complete a return, including all gifts equal to the gift threshold (\$1,000) made to candidates during the prescribed period for an election.¹⁸

South Australia

The South Australian *Electoral Act 1985* distinguishes between associated entities and third parties, for which different levels of regulation are required. Third parties are permitted to appoint an election agent, only required to maintain State campaign accounts in certain instances and have the additional requirement of lodged returns.

Third parties are only required to maintain a State campaign account when they receive a gift, ‘unless the third party does not intend to use the gift for political expenditure, or the gift was made or received in contravention of Part 13A’ of the *Electoral Act 1985*.¹⁹ Where third parties have a State campaign account, all political expenditure is required to come from that account.²⁰

Third parties are required to lodge a donor return, if they have gifted or loaned a candidate or member of a group during the disclosure period.²¹ Third parties are also required to lodge a capped expenditure period return if the total amount of political expenditure during this period exceeded \$5,000.²²

Victoria

Amendments to the *Victorian Electoral Act 2002* are currently before the Victorian Parliament the Bill proposes a number of changes, some of which would impact the regulation of third parties. The proposed new section 217F would limit donations (of any amount) to ‘third-party

¹⁶ Electoral Commission NSW, 2017, *Third-party Campaigners* http://www.elections.nsw.gov.au/fd/campaigners/third-party_campaigners

¹⁷ Northern Territory Electoral Commission, 2017, *Financial Disclosure* <http://www.ntec.nt.gov.au/FinancialDisclosure/Pages/Financial-Disclosure-Glossary.aspx>

¹⁸ *Electoral Act 1992* (Qld) s263.

¹⁹ Electoral Commission South Australia, *Obligations of associated entities and third parties* <https://ecsa.sa.gov.au/parties-and-candidates/funding-and-disclosure-for-state-elections/third-parties?view=article&id=338:obligations-of-associated-entities-and-third-parties>

²⁰ Electoral Commission South Australia, *Obligations of associated entities and third parties* <https://ecsa.sa.gov.au/parties-and-candidates/funding-and-disclosure-for-state-elections/third-parties?view=article&id=338:obligations-of-associated-entities-and-third-parties>

²¹ Electoral Commission South Australia, *Obligations of associated entities and third parties* <https://ecsa.sa.gov.au/parties-and-candidates/funding-and-disclosure-for-state-elections/third-parties?view=article&id=338:obligations-of-associated-entities-and-third-parties>

²² Electoral Commission South Australia, *Obligations of associated entities and third parties* <https://ecsa.sa.gov.au/parties-and-candidates/funding-and-disclosure-for-state-elections/third-parties?view=article&id=338:obligations-of-associated-entities-and-third-parties>

campaigners', organisations unrelated to political parties that incur a particular amount of money on "political expenditure" defined in the Bill as money spent recommending how an elector should cast their vote".²³

Western Australia

The Western Australian *Electoral Act 1907* does not provide regulations for third-party campaigners, as highlighted in the "2017 WA State Election" report, published by the Community Development and Justice Standing Committee in February 2018.²⁴ The report highlighted 'unlike some Australian jurisdictions, WA restricts neither the sources nor amount of political funding'.²⁵ The Committee attributed the majority of the evidence they received centring around the absence of regulations for third-party campaigners, as a result of 'a well-resourced campaign run by the Chamber of Minerals and Energy of Western Australia (CME)' in the 2017 state election.²⁶ The committee received divided positions from inquiry participants on how to approach this issue, but concluded in the absence of third party regulation measures "WA relies heavily on its disclosure scheme to provide transparency to the electoral process".²⁷ Resulting in recommendation 21 "that the Premier seek to put the issue of a nationally consistent system of election funding and disclosure laws on the Council of Australian Governments' agenda".²⁸

2. Regulation of Third Parties in the United States of America

The United States of America is often regarded as having limited regulation of third parties. Whilst there is a limitation of the direct donation amounts from individuals and corporations can give to candidates,²⁹ third parties – nonconnected committees play a substantial role in the election process.

There are several types of nonconnected committees, including political action committees (PACs) and third party political action committees (Super PACs) which are subject to different regulations.³⁰ The main differences between PACs and Super PACs, are that PACs have limitations on their expenditure but it can be donated directly to candidates and political parties. Whereas

²³ Rozner, 2018, *The Victorian Electoral Legislation Amendment Bill 2018*, Institute of Public Affairs <https://ipa.org.au/wp-content/uploads/2018/06/IPA-Research-Brief-The-Victorian-Electoral-Legislation-Amendment-Bill-2018.pdf>

²⁴ Legislative Assembly Parliament of Western Australia - Community Development and Justice Standing Committee, 2018, *2017 WA State Election, Maintaining confidence in our electoral process*, p 55
[http://www.parliament.wa.gov.au/Parliament/commit.nsf/\(Report+Lookup+by+Com+ID\)/AF9E28D58010F9FD482582330018A9DC/\\$file/20180201%20-%20RPT%20-%20Full%20Report%20-%20FINALISED%20-%20Online%20version.pdf](http://www.parliament.wa.gov.au/Parliament/commit.nsf/(Report+Lookup+by+Com+ID)/AF9E28D58010F9FD482582330018A9DC/$file/20180201%20-%20RPT%20-%20Full%20Report%20-%20FINALISED%20-%20Online%20version.pdf)

²⁵ Legislative Assembly Parliament of Western Australia - Community Development and Justice Standing Committee, 2018, *2017 WA State Election, Maintaining confidence in our electoral process*, p 55
[http://www.parliament.wa.gov.au/Parliament/commit.nsf/\(Report+Lookup+by+Com+ID\)/AF9E28D58010F9FD482582330018A9DC/\\$file/20180201%20-%20RPT%20-%20Full%20Report%20-%20FINALISED%20-%20Online%20version.pdf](http://www.parliament.wa.gov.au/Parliament/commit.nsf/(Report+Lookup+by+Com+ID)/AF9E28D58010F9FD482582330018A9DC/$file/20180201%20-%20RPT%20-%20Full%20Report%20-%20FINALISED%20-%20Online%20version.pdf)

²⁶ Legislative Assembly Parliament of Western Australia - Community Development and Justice Standing Committee, 2018, *2017 WA State Election, Maintaining confidence in our electoral process*, p 55-56
[http://www.parliament.wa.gov.au/Parliament/commit.nsf/\(Report+Lookup+by+Com+ID\)/AF9E28D58010F9FD482582330018A9DC/\\$file/20180201%20-%20RPT%20-%20Full%20Report%20-%20FINALISED%20-%20Online%20version.pdf](http://www.parliament.wa.gov.au/Parliament/commit.nsf/(Report+Lookup+by+Com+ID)/AF9E28D58010F9FD482582330018A9DC/$file/20180201%20-%20RPT%20-%20Full%20Report%20-%20FINALISED%20-%20Online%20version.pdf)

²⁷ Legislative Assembly Parliament of Western Australia - Community Development and Justice Standing Committee, 2018, *2017 WA State Election, Maintaining confidence in our electoral process*, p 56-57
[http://www.parliament.wa.gov.au/Parliament/commit.nsf/\(Report+Lookup+by+Com+ID\)/AF9E28D58010F9FD482582330018A9DC/\\$file/20180201%20-%20RPT%20-%20Full%20Report%20-%20FINALISED%20-%20Online%20version.pdf](http://www.parliament.wa.gov.au/Parliament/commit.nsf/(Report+Lookup+by+Com+ID)/AF9E28D58010F9FD482582330018A9DC/$file/20180201%20-%20RPT%20-%20Full%20Report%20-%20FINALISED%20-%20Online%20version.pdf)

²⁸ Legislative Assembly Parliament of Western Australia - Community Development and Justice Standing Committee, 2018, *2017 WA State Election, Maintaining confidence in our electoral process*, p 61
[http://www.parliament.wa.gov.au/Parliament/commit.nsf/\(Report+Lookup+by+Com+ID\)/AF9E28D58010F9FD482582330018A9DC/\\$file/20180201%20-%20RPT%20-%20Full%20Report%20-%20FINALISED%20-%20Online%20version.pdf](http://www.parliament.wa.gov.au/Parliament/commit.nsf/(Report+Lookup+by+Com+ID)/AF9E28D58010F9FD482582330018A9DC/$file/20180201%20-%20RPT%20-%20Full%20Report%20-%20FINALISED%20-%20Online%20version.pdf)

²⁹ Centre for Law and Democracy, 2012, *Regulation of Paid Political Advertising: A Survey*, p1 <http://www.law-democracy.org/wp-content/uploads/2012/03/Elections-and-Broadcasting-Final.pdf>

³⁰ Centre for Law and Democracy, 2012, *Regulation of Paid Political Advertising: A Survey*, p1 <http://www.law-democracy.org/wp-content/uploads/2012/03/Elections-and-Broadcasting-Final.pdf>

Super PACs can raise unlimited funds, but it cannot be donated directly to candidates or political parties rather spent advertising for or against a given candidate.

There are also some similarities in the regulation of PACs, with all nonconnected committees are required to register with the Federal Election Commission of the United State of America within 10 days of raising or spending more than \$1,000 in contributions or expenditure in a year.³¹ In addition nonconnected committees are subject to the same regulation as candidates and political parties under the political advertising laws.

3. Regulation of Third Parties in Canada

Elections Canada regulate third parties through registration, limits on election advertising and the requirement of a Third Party Advertising Report filed with Elections Canada. Further regulation of third parties was proposed by the Canadian Government with the tabling of Bill C-76 in April 2018.

Elections Canada define a third party as ‘a person or group that conducts election advertising, other than a candidate, registered party or electoral district association’.³² Following the 2014 reforms, based on the Chief Electoral Officer’s recommendation, only the following can register as a third party (i) individuals who are Canadian citizens, permanent residents or reside in Canada (ii) corporations that carry on business in Canada and (ii) other groups, including groups abroad, if the person responsible for the group is a Canadian, permanent resident or resides in Canada.³³

Third parties are required to register with Elections Canada immediately after incurring \$500 in election advertising expenses. The current limit for third party election advertising is \$211,200 of which no more than \$4,224 can be spent in a particular electoral district for the 37 day election period.

Third parties are required to file a Third Party Advertising Report, which includes details on the contributions given and loans obtained for election advertising purposes, the amount of its own funds that the third party used and details on election advertising.³⁴

On 30 April 2018 the Canadian Government tabled Bill C-76, *An Act to amend the Canada Elections Act and other Acts and to make certain consequential amendments*.³⁵ Although bill C-76 failed at the 2nd reading on May 23rd 2018, 85 to 196 votes,³⁶ the proposed amendments offer insight to possible measures for regulating third parties.

The bill included two proposed categories of amendments “(1) revised limits on expenditures by third parties, including by private and not-for-profit entities; and (2) tighter restrictions on political activates by foreign individuals and organisations”.³⁷

In regard to the first category of amendments, bill C-76 proposed the introduction of a pre-election spending limit of approximately \$1,000,000 in the pre-election period, (approx. three-and-a-half months leading up to the 2019 election) for third parties.³⁸ The proposed spending limit applies to

³¹ Federal Election Commission United States of America, *Registering as a nonconnected PAC* <https://www.fec.gov/help-candidates-and-committees/registering-pac/registering-nonconnected-committee/>

³² Elections Canada, 2018 *Information on Third Parties and Election Advertising* <http://www.elections.ca/content.aspx?section=pol&document=info&dir=thi&lang=e>

³³ Elections Canada, 2018 *Information on Third Parties and Election Advertising* <http://www.elections.ca/content.aspx?section=pol&document=info&dir=thi&lang=e>

³⁴ Elections Canada, 2018 *Information on Third Parties and Election Advertising* <http://www.elections.ca/content.aspx?section=pol&document=info&dir=thi&lang=e>

³⁵ Bill C-76, *An Act to amend the Canada Elections Act and other Acts and to make certain consequential amendments*, 1st Sess., 42nd Parl., 2018 (first reading April 30, 2018) at s222(3) (‘partisan activity’ and partisan activity expense”).

³⁶ Open Parliament, *Vote #670 on May 23rd, 2018*, <https://openparliament.ca/votes/42-1/670/>

³⁷ McCarthy Tetrault, 2018, *Canada’s elections laws are changing – here’s what you need to know* <https://www.mccarthy.ca/en/insights/articles/canadas-election-laws-are-changing-heres-what-you-need-know>

³⁸ ³⁸ McCarthy Tetrault, 2018, *Canada’s elections laws are changing – here’s what you need to know* <https://www.mccarthy.ca/en/insights/articles/canadas-election-laws-are-changing-heres-what-you-need-know>

three categories of expenses, “partisan activity expenses”; “partisan advertising expenses”; and “election survey expenses”.³⁹

Bill C-76 defined the categories as follows:

- “Partisan activity expenses” would mean expenses incurred in carrying out activities — such as door-to-door canvassing, phone-banking, and organizing events — that promote or oppose a political party or candidate. Expenses that would not be included are: (i) those incurred with respect to activities that merely take a position on an issue with which a party or candidate is associated; (ii) advertising expenses; and (iii) expenses incurred in organizing fundraisers”.⁴⁰
- “Partisan advertising expenses” would mean expenses incurred in producing or transmitting advertising messages that promote or oppose a party or candidate, not including expenses with respect to advertising that merely takes a position on an issue with which a party or candidate is associated”.⁴¹
- “Election survey expenses” would mean expenses incurred in conducting opinion research that is used either to decide whether or not to carry out partisan activities or partisan advertising, or in carrying out partisan activities or partisan advertising”.⁴²

In regard to the second category of amendments, Bill C-76 proposed further limitation on the election-related activities by foreign individuals and entities, such as foreign political parties, trade unions, governments, and political parties.⁴³ These limitations include the prohibition of ‘foreign third parties’ for the following:

- (i) “incurring any expenses whatsoever for partisan activities, partisan advertising, or election surveys, during the pre-election period;
- (ii) (incurring any expenses whatsoever for partisan activities, election advertising, or election surveys, during the election period;
- (iii) knowingly making or publishing false statements about a party or candidate; or
- (iv) doing anything to influence a voter that is prohibited by federal law or regulation”.⁴⁴

³⁹ McCarthy Tetrault, 2018, *Canada's elections laws are changing – here's what you need to know*

<https://www.mccarthy.ca/en/insights/articles/canadas-election-laws-are-changing-heres-what-you-need-know>

⁴⁰ Bill C-76, *An Act to amend the Canada Elections Act and other Acts and to make certain consequential amendments*, 1st Sess., 42nd Parl., 2018 (first reading April 30, 2018) at s222(3) (‘partisan activity’ and partisan activity expense”).

⁴¹ Bill C-76, *An Act to amend the Canada Elections Act and other Acts and to make certain consequential amendments*, 1st Sess., 42nd Parl., 2018 (first reading April 30, 2018) at s2(7) (‘partisan activity’ and partisan activity expense”).

⁴² Bill C-76, *An Act to amend the Canada Elections Act and other Acts and to make certain consequential amendments*, 1st Sess., 42nd Parl., 2018 (first reading April 30, 2018) at s222(3) (‘partisan activity’ and partisan activity expense”).

⁴³ McCarthy Tetrault, 2018, *Canada's elections laws are changing – here's what you need to know*

<https://www.mccarthy.ca/en/insights/articles/canadas-election-laws-are-changing-heres-what-you-need-know>

⁴⁴ McCarthy Tetrault, 2018, *Canada's elections laws are changing – here's what you need to know*
<https://www.mccarthy.ca/en/insights/articles/canadas-election-laws-are-changing-heres-what-you-need-know>