



19<sup>th</sup> February, 2010

Bruce Taylor  
Tasmanian Electoral Commissioner  
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## **Electoral Act 2004, Section 191 – Electoral matter on the Internet**

Dear Bruce,

The enacting and subsequent promise to repeal a section of electoral law in South Australia this year has brought attention to the fact that Tasmania has a similar regulation regarding **electoral matter on the Internet**. As you are aware, section 191 of the Electoral Act 2004 requires that any electoral content be authorised with name and address information.

We the undersigned request that this section of law **not to be enforced** in relation to this election and for a review to be undertaken by the new parliament at its earliest convenience. No public interest would be served by enforcement of this law.

Whilst section 191 has been in force during a previous state election, new social networking tools such as Blogs, Facebook and Twitter to name a few have risen to prominence and are used on a daily basis by thousands in Tasmania including political parties. These technologies present new challenges to compliance and enforcement.

The definition of electoral matter is so broad that any mention of the election could be construed to fall under this definition.

If you are unable to assure the public that this section will not be enforced, we believe that the public will:

- Refuse to post about the election on the Internet, stifling legitimate debate,
- Follow the letter of the law and proceed to publish their name with electoral matter which opens them up to a range of privacy infringements including physical or employment threats as well as identity fraud, or
- Simply disregard the law requiring them to put their name and address to any "electoral matter" online.

Most people expect a level of privacy on the Internet even if using their real names, however they do not post their residential or work address for all to find via search engines which may archive that information indefinitely.

The recent TEC advice regarding electoral matter on the Internet is impractical for many technical and privacy reasons. It does not provide for how Twitter posts should be authorised, which is an almost impossibility due to the brief nature and wide variety of readers which can be used to receive tweets. Would tagging of a candidate in a Facebook photo be construed as electoral matter? How can Wikipedia coverage of the election be authorised within their global publishing guidelines?

The sheer impracticality of enforcing this law on thousands of people in Tasmania and elsewhere commenting on this election is overwhelming. Very few Tasmanians are aware of the requirement, there are literally hundreds of comments being posted all over the internet on a daily basis, and even some candidates for office are failing from a matter of practicality to comply with the legislation. We believe most of the thousands of people commenting about the election would comply if they knew about the requirement and did not feel it would violate their privacy or security. However, none of those thousands of people wishes to be made an example of through prosecution should they choose to comment without full authorisation.

Several extensive blog posts have been written explaining the impracticality of enforcing Section 191 as it currently stands:

<http://bit.ly/bjUsdd>

<http://bit.ly/bk3b6x>

A copy of this letter has been sent to the leaders of the Tasmanian parliamentary parties. We ask that they publicly pledge their support of you to not enforce this unworkable law and for a review of it as soon as parliament reconvenes.

Digital Tasmania and others undersigned are willing to participate in any review and offer advice on application of the law to the Internet.

Yours truly,

Andrew Connor  
Spokesperson, Digital Tasmania

Co-Signed

- Electronic Frontiers Australia
- Civil Liberties Australia
- Australian Privacy Foundation
  
- Jon Kudelka – Cartoonist
- Stephen Estcourt QC
- TasmanianTimes.com
- John Dalton – IT Industry Specialist

CC:

- David Bartlett MP
- Will Hodgman MP
- Nick McKim MP
- Media outlets