



PARLIAMENT OF WESTERN AUSTRALIA

**JOINT STANDING COMMITTEE  
ON  
DELEGATED LEGISLATION**

**TWENTY-FIRST REPORT:**

*Control of Election Signs*

Presented by the Hon Robert Laurence Wiese MLA (Chairman)

**21  
August 1997**

## **Joint Standing Committee on Delegated Legislation**

### **Members**

Hon Bob Wiese MLA (Chairman)  
Hon Nick Griffiths MLC (Deputy Chairman)  
Hon Ed Dermer MLC (up to 26 June 1997)  
Hon Bruce Donaldson MLC (up to 26 June 1997)  
Mr Bob Bloffwitch MLA (up to 26 June 1997)  
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Mr Mark McGowan MLA  
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Hon Jim Scott MLC (as from 26 June 1997)  
Mr Iain MacLean MLA (as from 26 June 1997)

### **Advisory/Research Officer**

Andrew Mason

### **Committee Clerk**

Jan Paniperis

### **Terms of Reference**

*It is the function of the Committee to consider and report on any regulation that:*

- (a) appears not to be within power or not to be in accord with the objects of the Act pursuant to which it purports to be made;*
- (b) unduly trespasses on established rights, freedoms or liberties;*
- (c) contains matter which ought properly to be dealt with by an Act of Parliament;*
- (d) unduly makes rights dependent upon administrative, and not judicial, decisions.*

*If the Committee is of the opinion that any other matter relating to any regulation should be brought to the notice of the House, it may report that opinion and matter to the House.*

**ISBN No 0 7309 88422**

## Report of the Joint Standing Committee on Delegated Legislation

### in relation to

### Control of Election Signs

#### 1 Introduction

1.1 The Committee recently reviewed the *City of Rockingham - By-laws Relating to Signs, Hoardings and Billposting* which were gazetted on 8 November 1996.

1.2 These By-laws amend the existing By-laws to prohibit “election signs” within the district. The relevant By-law reads:

*“Election Signs shall not be displayed anywhere within the district of the Municipality”.*

1.3 “Election Signs” are defined by the By-laws as:

*“.....a sign advertising, promoting or commenting on any particular candidate, party, group or policy; but does not include a sign erected by a Local Government, State or Federal Government Agency”.*

This is an extensive definition that includes and therefore restricts signs in Local, State and Federal elections within the district. It also extends to signs that promote or comment on a policy. The Committee has not explored what this may mean, though it is clear that it gives the definition a wide ambit.

1.4 The Committee expressed initial concern in relation to such a total prohibition on election signs in view of a recent High Court decision which held that there is an implied constitutional guarantee of freedom of communication. A majority of the High Court held this freedom to be implied from the constitutional system of representative government in the decision of *Australian Capital Television Pty Ltd and Others -v- Commonwealth of Australia (No.2)* and the *State of New South Wales -v- Commonwealth of Australia and Another (No.2)* (1992) 108 ALR 577 (“the Australian Capital Television case”).

1.5 Members of this House are aware that it is the function of the Joint Standing Committee on Delegated Legislation to scrutinise, within the Committee’s Terms of Reference, all “regulations” made in this State. Sub-section 42(8) of the *Interpretation Act 1984* states that “regulations” include “rules, by-laws and **local laws**”<sup>1</sup>. One of the reasons the

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<sup>1</sup> Local laws were added to sub-section 42(8) by the *Local Government (Consequential Amendments) Act 1996*.

Committee has been given this important scrutiny role is to ensure that regulations and local laws drafted under instructions from government agencies and local governments comply with the constitutional laws of this State. Those laws extend to and include those provisions of the Federal Constitution which apply to the States. Where regulations do not comply with the constitutional laws of this State then arguably those regulations are not within power<sup>2</sup>. On initial perusal the Committee was concerned that the *City of Rockingham By-laws Relating to Signs, Hoardings and Billposting* were inconsistent with the entrenched provisions of the Federal Constitution concerning the implied constitutional guarantee of freedom of communication. As a result the Committee resolved to look further into this matter.

## 2 The Legal Issue

- 2.1 The Australian Capital Television case concerned a Commonwealth law which attempted to prohibit the broadcasting by radio or television of certain categories of matter during election periods for Commonwealth, State, Territory and Local Government elections. There were sweeping prohibitions on the broadcasting of news and current affairs items and talk back radio programs, and the broadcasting during an election period of relevant material in relation to a Commonwealth Parliamentary election or referendum or an election to a Legislature or Local Government Authority of a Territory or a State. The restrictions that were proposed by this law were of course far more wide sweeping than those proposed by the City of Rockingham in its By-law.
- 2.2 Except Dawson J who dissented, each member of the High Court in the Australian Capital Television case recognised that the system of representative government embodied in and prescribed by the Constitution implied some form of freedom of communication. Mason CJ characterised it as a freedom extending “to all matters of public affairs and political discussion notwithstanding that a particular matter at a given time might appear to have a primary or immediate connection with the affairs of a State, local authority or a Territory and little or no connection with Commonwealth affairs”<sup>3</sup>. Deane and Toohey JJ saw the freedom as relating to all matters connected with the Government of the Commonwealth<sup>4</sup>, whilst Gaudron J limited it to freedom of political discourse<sup>5</sup>. Brennan J saw it as a freedom of discussion of political and economic matters<sup>6</sup>, whilst McHugh J did not recognise a general right to freedom of communication but stated there is a constitutional right to convey and receive opinion, arguments and information concerning matter intended or likely to affect voting in an election for the Senate or the House of Representatives<sup>7</sup>.

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<sup>2</sup> See, Rule 5(a), Joint Rules of the Standing Committee on Delegated Legislation.

<sup>3</sup> at p597

<sup>4</sup> at p617

<sup>5</sup> at p652

<sup>6</sup> at p603

<sup>7</sup> at p667

Although there are clearly divergent views in the High Court as to the ambit of the implied freedom of communication it can be said that at least in the political field it has application and particularly so in relation to elections. The Committee has not looked deeper into the question of the extent of the constitutional guarantee other than to recognise that it is applicable to the City of Rockingham By-laws which concern elections at all levels.

- 2.3 Mason CJ in his judgment made a distinction between restrictions on communications which target ideas or information and those which restrict an activity or mode of communication by which ideas or information are transmitted<sup>8</sup>. He characterised the sweeping restrictions proposed in the Commonwealth law by reference to the subject matter of the law, namely political advertising, and was of the view that the law targeted ideas or information. Although the City of Rockingham By-law does impose a restriction by reference to a mode of advertising (signs, hoardings, bill postings), it does so also by reference to a particular form of advertising, namely political advertising. The Committee's view is that such a restriction is targeted towards ideas or information rather than a particular activity or mode of communication. On this basis there is an argument that this By-law infringes the implied constitutional guarantee of freedom of communication.
- 2.4 Mason CJ indicated that scrupulous care is to be taken over restrictions which affect free communication in the conduct of an election for political office, for it is in that area that the guarantee fulfills its primary purpose<sup>9</sup>. Although there may be a public interest in the prevention of the proliferation of such advertisements throughout the City at election time, that is to be weighed against the fact that the restriction is affecting free communication in the conduct of elections for political office.
- 2.5 Although the decision in the Australian Capital Television case is not a unanimous one and nor did the majority judges reach their decision for the same reasons, there are various statements by all the judges that the constitutional guarantee of freedom of communication is not an absolute one and that it must be weighed against competing public interests. **In this balancing process it is to be remembered that where the restriction imposed on the freedom of communication is by reference to the character of the idea or information and it is in respect of the conduct of elections for political office, the paramount weight is given to the public interest in freedom of communication. Accordingly there must be compelling reasons for this By-law which appears to restrict the freedom of communication in respect of elections.**

### 3 Where does the balance lie?

- 3.1 The Committee wrote to the City of Rockingham requesting reasons for the introduction of the By-law to ascertain whether there are any compelling matters of public interest that are supportive of such a By-law. In response the City advised that, apart from the **proliferation of such signs** in the City, there are other reasons for the By-law. These include:

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<sup>8</sup> at pp597-8

<sup>9</sup> at p598

visual pollution;  
may be contrary to the provisions of the *Litter Act*;  
difficulty in controlling where signs are placed;  
the authorisation of the signs is difficult to control;  
the signs may contain offensive language; and  
the signs may contain discriminatory material.

- 3.2 Some of these matters relate to content. In many respects the question of content is addressed by other laws of the State (both Statute and common law<sup>10</sup>). As there are existing laws relating to issues of content there cannot be seen to be great public interest in the City of Rockingham further attempting to regulate content. However, the prevention of the proliferation of signs and visual pollution are not matters that are already addressed. If these are genuinely matters of public interest and the City of Rockingham is attempting to address them in its By-law, then they must be balanced against the implied constitutional guarantee of freedom of communication. Where the balance lies is a difficult question. Members of the Committee had divergent views on this question. There was a consensus that where there is a proliferation of signs some form of control is required in the public interest. However, whether the absolute ban proposed by the City of Rockingham By-law is the appropriate method is another question and this requires a consideration of the alternative control measures available. Accordingly, the Committee resolved not to deliberate any further upon where the balance lies between an absolute ban and freedom of communication, and for the present this is a matter that the Committee makes no comment upon. The Committee resolved to direct its attention towards the alternative methods of control available.

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#### Methods of Control

- 4.1 While the Committee has not made a determination on the validity or otherwise of the Rockingham City By-law it has taken the opportunity to explore the options available in relation to control of election signs. Whilst members of the Committee held doubts as to the legality of an absolute ban on election signs there were expressions of support for some form of control in view of the public interest in preventing proliferation of signs and associated visual pollution. The Committee believed it appropriate to explore the options available and determined to call in the Electoral Commissioner to give evidence before the Committee and discuss the control options that could be used.
- 4.2 The Acting Electoral Commissioner, Ms Lyn Auld, appeared before the Committee on 5 June 1997. At the outset Ms Auld stated that the proliferation of signs during elections is not a matter that has been brought to her attention. The Committee accepts that election signs may not be a matter that has been raised previously on a State level. The Committee does note however that there are a number of local governments throughout the State which have regulated in some manner with respect to election signs<sup>11</sup>. Whether this has been by way of absolute ban or other regulatory controls, the point to be taken from the existence

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<sup>10</sup> For example, the common law in relation to defamation and libel, provisions of the *Equal Opportunity Act 1984* and provisions of the *Criminal Code*.

<sup>11</sup> For example, the City of Rockingham and the City of Stirling.

of such laws is that proliferation of election signs is perceived by some to be a problem, at least at a community level.

- 4.3 The Committee was interested to hear Ms Auld's views on whether the proliferation of election signs, if it is perceived to be a problem, was a matter that should be addressed on a statewide level by primary legislation or at a community level by subordinate legislation through local laws made under the *Local Government Act 1995*. In response to this query Ms Auld stated:

*"Having said that no problem has been brought to my attention, if others see there is a problem, the question to be answered is: What is it specific to a locality that makes a local by-law the way to go and why is it not a wider problem? There is an issue of uniformity around the State. If there is truly a problem there, one could argue for a uniform solution."*

- 4.4 The Committee and Ms Auld expressed the view that it would be desirable to have consistency in any solution that is addressing the same problem. Dealing with a perceived problem at a local government level presents the possibility of there being 142 different standards established to deal with the same problem. On the other hand some members of the Committee expressed the view that the issue of election signs was very much a community one and that the *Local Government Act 1995* had been structured to give control of these matters to local governments. The control of the amenity of an area is a matter that has been left to local governments. The *Local Government Act 1995* gave local governments autonomy in this regard subject to a greater degree of accountability. Some members were of the opinion that this autonomy should not be subverted.

- 4.5 Ultimately whether or not controls on election signs should be dealt with at a statewide level or on a localised community level was a matter that the Committee did not deliberate upon. The Committee merely notes that there are divergent views on the subject. The Committee next considered what specific control options are available to deal with any perceived problem. Three options were canvassed with Ms Auld: an absolute ban; a partial ban restricting election signs on all public lands; and a licensing or registration system.

#### Absolute Ban

- 4.6 The first option considered was a total ban as proposed by the City of Rockingham. Ms Auld was of the view that such a proposal presents enforcement problems. In her evidence she stated:

*"I suppose more from a state election perspective, my consideration is more along the line of how practical is it to have an absolute ban. A council may ban signs. What happens if someone puts them up if they are not supposed to be there? There is the issue of who is to control it effectively in a way that is not seen to be partisan....."*

*A lot of political party signage will be seen on billboards and other things. The Electoral Commission's perspective is that people are allowed to place material as they see fit; they are responsible for it. If we start trying to ban, control or license things, although it is possible, it would set up a new process of*

*administration in controlling mechanisms such as employing rangers or other people to deal with transgressions. At one level it can simply serve to advertise in a stronger way the candidate whose signs have been pulled down. That is the cycle you may get into."*

- 4.7 Apart from these practical difficulties the Committee has already noted the legal difficulties that an absolute ban may pose in terms of the implied constitutional guarantee of freedom of communication. The enforcement problem extends into the investigative process. Where a sign has been erected in contravention of a ban an investigation would have to establish who erected the sign. This investigative cycle may take some months. This delay poses a problem where you are trying to solve a problem prior to an election.

#### Partial Ban

- 4.8 The Committee next looked at a partial ban as a possible solution. The suggestion was made that controls could provide an absolute ban on all public lands but allow election signs on private residences or residential blocks or business premises. In response to this suggestion Ms Auld stated:

*"If a sign pops up, how is one to know who owns the property? You would have to find out matters such as that to see whether an offence has occurred. A limited prohibition may be as troublesome as total prohibition; it may be even more so, because of the difficulty of not knowing who owns or controls the land and whether such signage is allowed or permissible"*

- 4.9 A partial ban of the type suggested may well address the legal problem with freedom of communication. It would allow an individual to express his or her political opinion through a sign located on a private residence or business property. However, although a partial ban may be a solution as regards some of the legal difficulties it has its own practical problems which again are associated with enforcement. The Committee takes note of the difficulties that Ms Auld envisaged with such a solution.

#### Licensing or Registration

- 4.10 The third solution offered is that of a licensing system similar to that in place for commercial signs in some local government jurisdictions. On this suggestion Ms Auld was of the view that there would not only be practical problems but administrative and cost issues would become involved. In her evidence she stated:

*"Certainly a fairly high administrative load is involved in controlling the licensing and dealing with complaints against it. A total ban would be easier from the perspective that nothing should be there. If we must check whether something is on private land or if, for example, the person holds the licence, those would be equally onerous to investigate and police. A total ban would be simpler. Whether you could trace or link a person to that offence would be a different matter. You may know that a sign is there promoting something but whether you can say a person or organisation is legally responsible for it might be a different question."*



- 4.11 When asked how the Electoral Commission would feel about enforcing a licensing system, Ms Auld responded that if Parliament determined that the Electoral Commission should do it they would do it professionally but that she suspected it would be a “resource intensive exercise”.

## 5 Overview of Acting Electoral Commissioner’s Evidence

- 5.1 In summary, the Acting Electoral Commissioner indicated that there are potential problems with each of the three proposals suggested for controlling and regulating election signs. There are very clear enforcement and administrative cost issues that would have to be addressed. These issues would require a great deal more investigation before any of the proposals could be advanced any further. The Committee has not itself investigated the proposals any further and does not intend to undertake this task. However, the Committee does view the investigation of appropriate control measures for election signs as a worthwhile task in light of the fact that local governments are taking up the issue at least on a community level. Some effort to determine whether it is a matter which should be dealt with uniformly across the State and how it should be dealt with would, in the Committee’s opinion, be appropriate. Such an inquiry would not only look at what controls can be used but the initial question of whether any controls are necessary at all.

- 5.2 Ms Auld did in fact highlight one of the advantages of an uncontrolled framework for election signs. She indicated that election signs at polling places serve to advertise an election on election day. It informs people of the requirement to vote. Further on she states:

*“In local government elections, an argument can be made that, particularly with low turnout, a range of measures that advertise both that an election is to be held and a candidate at least draws attention to the election. It would be unfortunate if, in trying to control signage for local government elections, that potential turnout were damaged, which is already at a fairly low level for many councils.*

*It can be argued that it is very useful for elections to be advertised whether it be that the election is being held or that it is promoting the candidate. It draws to the people’s attention that they have the option of voting.”*

- 5.3 These views reinforce the Committee’s opinion that there are divergent arguments for the control of election signs. There is clearly perceived to be a problem in some localities as local governments have taken steps to control and regulate signs within their district. However, the regulation of the problem at a local government level can cause confusion for candidates and members of the public. A more co-ordinated effort to deal with any perceived problem would seem appropriate. However, in turning to the possible controls that are available there are clear problems associated with enforcement and administrative cost that weigh against the use of such controls. In addition, the practical advantages of election signs in promoting electoral participation and informing the public as well as the legal questions surrounding freedom of communication weigh in favour of limited control of election signs. With these divergent arguments in mind, it is the Committee’s view that deeper consideration of the issues involved is required. The Committee understands that the Electoral Commission is to shortly conduct a review of the electoral legislation within this State.

**The Committee draws the attention of the Parliament to its view that the local law passed by the City of Rockingham may transgress rights, liberties and freedoms and may be beyond power and recommends that in any review of the State's electoral legislation the question of whether the proliferation of election signs is a problem within the State and if so what controls are appropriate to regulate election signs be considered.**

- 5.4 The Committee advises that it has briefly considered what controls, if any, exist in other Australian jurisdictions. The Acting Electoral Commissioner supplied the Committee with some information in this regard that had been gathered from each of the State and Territory electoral offices. Correspondence from each of the other State and Territory electoral offices to the Acting Electoral Commissioner is attached as Annexure A. In general most other jurisdictions are similar to WA and have no uniform approach to electoral signs, leaving it to be dealt with by local governments. Some jurisdictions have in place legislation which restricts the size of election signs (eg. SA restricts electoral advertisements to 1 square metre), and others restrict election signs to a certain distance from a polling place (eg Tasmania restricts advertising signs from being within 100 metres of a polling place on polling day). These are matters that might be considered in any review of election signs and their control undertaken by the Electoral Commission.

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# **ANNEXURE A**

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Level 2, Telstra Centre  
70 Collins Street, Hobart  
Phone 03 - 6233 3746



GPO Box 275 C  
Hobart TAS 7001  
Fax 03 - 6224 0217

Ms Lyn Auld  
Acting Chief Electoral Officer  
Western Australian Electoral Commission  
480 Hay Street  
PERTH WA 600

**FAXED**  
4/6/97

Dear Lyn

**Controls on electoral advertising signs and posters**

This letter is in response to your fax of 30 May on the above matter.

Regulations 23(1) - (4) (copy attached) of the Tasmanian *Local Government Regulations 1994* contain a number of restrictions in relation to posters and signs at local government elections, but there is nothing in the Act or Regulations regulating the placement of such signs.

However, many councils have their own by-laws and planning schemes which limit the placement and size of signage, including electoral advertising signs. The responsibility for enforcement these by-laws and planning schemes lies with the relevant Council, and not this office.

Relevant pages from our Local Government Candidate's Information Booklet, in which most Councils provided information on their requirements, are attached.

Under the *Electoral Act 1985* (Tas) any advertising signs must be properly authorised, and must not be erected on, or be within 100 metres of a polling place on polling day. There are no further restrictions on placement of signs within the Electoral Act.

I understand that various other bodies, such as the Departments of Transport and Police, and the Hydro Electric Commission have regulations which restrict the placement of signs, including electoral advertising, in various situations. However, again, these are not the domain of this office.

The possibility of a more coordinated approach to electoral advertising signs has been raised by the Local Government Association of Tasmania, as the variety of restrictions from council to council can be confusing to candidates and members of the public. Discussions are yet to be held on this issue.

I hope that the above information has been of assistance.

Yours sincerely

David Farrell  
CHIEF ELECTORAL OFFICER  
4 June 1997

(3) The provisions of Part 15 of the Act apply, as far as practicable, to the conduct of a poll as if it were an election for councillors.

### **Electoral advertising**

23. (1) A person must not publicly display a poster or sign in relation to the election of a candidate without the written authority of that candidate.

(2) A person must not publicly display a poster or sign or a group of posters or signs containing electoral advertising relating to the election of a candidate if –

- (a) the poster or sign exceeds 3 square metres; or
- (b) the group of posters or signs in total exceed 3 square metres.

(3) A poster or sign forms part of a group of posters or signs if it is located within 10 metres of another poster or sign.

(4) A candidate must not display or permit to be displayed posters or signs containing electoral advertising relating to the election of that candidate exceeding a total number of 50, whether or not the posters or signs contain electoral advertising relating to the election of another candidate.

(5) A person must not purchase advertising time on television or radio in relation to the election of a candidate without the written authority of that candidate.

(6) A candidate must not purchase or permit to be purchased advertising time on television or radio in relation to the election of the candidate if the advertising time during the relevant period is likely to exceed –

- (a) 10 minutes on television; or

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## Attachment Electoral Signs - Council Requirements

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The following information has been provided by various Councils in the State to assist candidates in complying with the relevant requirements for electoral signs and posters in their municipalities. Contact officers are also listed, should any matters require clarification.

Candidates should note that the information has been provided by Councils as a guide only. It should not be substituted for the original by-laws and planning Schemes. Candidates with any queries are strongly advised to contact the relevant Council to ensure their electoral advertising signs are in order.

### Circular Head Council

Circular Head S 46 Planning Scheme No 1, 1995, provides that a planning permit is not required for political advertising signs provided they are not displayed for more than 2 months. Such signs are subject to the following conditions:

- All signs shall not exceed 3 metres square in area;
- No more than one such sign shall be constructed or exhibited at or upon the land or building;
- No such sign shall be an animated or an illuminated sign; and
- All signs are to be removed by the candidate no later than 14 days after Polling Day.

Further, advertising signs must not:

- create a traffic hazard;
- create loss of sunlight;
- cause a reduction of visual amenity within the area; or
- diminish in any way the visibility or effectiveness of any information, direction, safety, warning, traffic control or other like sign of Council or other statutory authority.

Enquiries: Mr Mark Goldstone, Manager Development Services

### Central Coast Council

Council's policy on the erection of political advertising signs is:

- Signs to be erected only on private property;
- Signs not to be erected prior to writs being issued for an election for which the candidate has elected to stand and to be taken down and removed no later than two days following the holding of the poll;
- Signs not to create an obstruction to the vision of persons using any highway;
- Signs to be maintained in good and substantial repair, order and condition; and

- Signs to comply with the requirements of any Federal and State legislation so far as it affects the conduct of Federal, State and Local Government elections.

Enquiries: Ms Rosanne Brown, Senior Administrative Officer

### Clarence City Council

Candidates may for the two months prior to the date of polling erect signs in accordance with the following guidelines:

- All signs are to be located wholly within the boundaries of private property;
- No sign shall be sited so as to obscure or interfere with a person's line of sight at intersection of roads;
- No sign is to be sited so as to obscure or interfere with views from neighbouring properties;
- All signs are to be removed by the candidate no later than 14 days after Polling Day;
- Signs are to be limited to a maximum size of one (1) square metre; and
- All signs shall display only information relating to the election and the candidate.

Candidates should also be advised that in the policing of the By-Law provisions, Council officers will be instructed to respond to complaints received, and should any signs be found to be in breach of the provisions, then those signs will be removed.

If the cost of such removal proves prohibitive, then those costs may be recovered from the candidate concerned.

Enquiries: Mr Alex Van Der Hek, Corporate Secretary

### Central Highlands Council

Hamilton S46 Planning Scheme No 4 of 1993 - Signs advertising elections are permitted as of right (no application) providing:

- Display no longer than 60 days
  - Area of sign no less than 1 square metre
  - Sign not illuminated
  - Not on road reserves
- (old Hamilton Municipal area)

Bothwell S46 Planning Scheme No 3 of 1990 - A sign advertising an election without Council consent may be displayed:

- Not longer than 60 days
  - On an allotment to which the sign does not relate
  - Area of sign less than 1 square metre
  - Sign not illuminated
- (old Bothwell Municipal area)

Enquiries: Mr David Gudde, Manager - DES

## Derwent Valley Council

Provisions of the New Norfolk Planning Scheme 1993 apply to electoral signs.

Enquiries: Anyone considering erecting electoral signs is advised to contact the Derwent Valley Council to discuss the requirements contained in the Planning Scheme.

## Devonport City Council

The Devonport Planning Scheme provides for the erection or display of advertisements on site, provided that not more than one free-standing advertising sign nor more than 3 advertisements having a maximum aggregate area of 4 square metres and a maximum height above ground level of 3.4 metres can be displayed on a site for any local political event not promoted or carried on for commercial purposes provided that the period of display is limited to 60 days. In the abovementioned situations, no planning approval is required however, the property owner's permission is required.

Enquiries: Ms Louise Didenko, Planning Officer

## Dorset Council

Basically, Council's By-Law and Planning Scheme exempts electoral advertising subject to the sign being no greater than 1 square metre in area and provided the sign is *not* on display before 2 months prior to the day of polling and is removed within 14 days of declaration of the poll.

Enquiries: Mr C W Bridges, Executive Officer

## Flinders Council

Election advertising signs are exempt from planning approval in this Council area subject to the following conditions as per Municipality of Flinders S46 Planning Scheme No.1 of 1990.

- 3.13.1(g)(vi) The display of signs relating specifically to a pending election, provided such signs or notices are removed within 14 days following declaration of a poll, and the period of display is not more than 60 days.

Enquiries: Mr Lee Connors, General Manager

## Glenorchy City Council

Policy on electoral advertising is as follows:

- No planning approvals are required for election signs provided that they are on private property and have been erected with the permission of the owner;
- Signs are not permitted on any Council land, on road reserves or on any public utility such as power poles;
- Signs can only be erected for a period of 3 months and must not create any traffic hazard.

Enquiries: Planning Services Program on 74 0798



## Huon Valley Council

In accordance with the Esperance Planning Scheme 1989, Port Cygnet Planning Scheme 1988 and the Huon Planning Scheme 1979 and a resolution of Council of 13 June 1995 the following conditions apply to the erection of electoral signs in any part of the municipal area.

An electoral sign:

- Shall not create a traffic hazard;
- Shall not intrude in terms of its size, colour, movement, illumination, position shape or standard of design or construction, into the appearance of any area, so as to cause a reduction of visual amenity within the area;
- Shall only be erected on privately owned land;
- Shall only be erected with the prior approval of the landowner;

All signs must be removed within 14 days after the day of polling; and

No sign is to be displayed on a trailer or car parked specifically for the purpose of displaying that sign.

In addition the following requirements will apply to the areas specified:

In the district covered by the Port Cygnet Planning Scheme 1988, an electoral sign is not to be greater than 1 square metre in area and is not to be displayed before 2 months prior to the day of polling.

In the district covered by the Huon Planning Scheme 1979, an electoral sign is not to be greater than 2 square metres in area and is not to be remain in place for longer than a month.

In the district covered by the Esperance Planning Scheme 1988, an electoral sign is not to be greater than 1 square metre in area.

Any breach of the above may lead upon conviction to the imposition of a fine not exceeding \$50,000 under the provisions of the *Land Use Planning and Approvals Act 1993*.

Enquiries: Mr Geoff Jamieson

## Kingborough Council

Council has issued the following guidelines:

- No signs to erected within road reserves, Council reserves, or other public land;
- The signs must not cause any obstruction to vehicular and pedestrian movement, or create a traffic hazard;
- All signs are to be removed within 7 days of the election; and
- If the sign is on private land, the owner's consent must be obtained.

Enquiries: Mr Brian Stewart, Manager - Development Services

### Meander Valley Council

The matter of signs is covered under Part 6 of the Meander Valley Planning Scheme.

However, election signs are exempt and require no approval provided they are no greater than 1 square metre in surface area and are only displayed for the period between the issue of a writ for an election and 14 days after the election date.

Enquiries: Mr G A Fellows, General Manager

### Sorell Council

No Candidate for a Federal, State or Municipal Election shall erect an election sign unless it is in accordance with Council's By-Law No. 51 Signs, Clause 20, subclauses

(a) - (g).

Penalties for non-compliance - up to \$160 and in the case of a continuing offence a further penalty not exceeding \$40 per day (Clause 22)

Enquiries: Mr Steve Mars, Manager Planning Services

### Waratah-Wynyard Council

No objection is raised to the erection of electoral advertising signs providing relevant land owner permission is obtained, the person responsible for their placement maintains them in an adequate state of repair and free from defacement and removes them no later than 7 days after polling day

Enquiries: Mr John Stretton, Director of Administration

### West Tamar Council

No moving or movable billboards on cars, trailers, trucks and the like are permitted.

Standard size election posters only which are:

- located on private land with the consent of the owner; and
- do not interfere with sight lines.

No signs are to be located on any public land, including HEC poles.

Signs are not to be erected more than 2 months prior to an election and are to be removed within 14 days of the date of the election.

Enquiries: Mr Mike Sluce, ph (003) 27 3748

## VICTORIAN ELECTORAL COMMISSION

**Level 8**  
**505 Little Collins Street**  
**MELBOURNE. VIC. 3000**

**Fax Cover Sheet**

**To:** Ms L. Auld  
Acting Electoral Commissioner, Western Australia

**Fax No.:** 09 221 3205

**From:** Dr G.P. Lyons  
Electoral Commissioner

**Tel. No:** 03 9287 7401  
**Fax No:** 03 9629 8624

**Date:** 4 June 1997

**Subject:** Electoral Advertisements in the Form of Billboards and Posters

**No. of pages**  
**including this page:** 9

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Lyn,

Further to your fax of 30 May, our controls on electoral billboards and posters are confined to ensuring that they are properly authorised, and are not defamatory, obscene or offensive etc.

So far as State Parliamentary elections are concerned, relevant provisions are:

- sections 254AA, 267A and 267F of The Constitution Act Amendment Act 1958 (copies attached);
- provisions in the Summary Offences Act and/or Crimes Act regarding offensive or obscene material; and
- local government by-laws regarding the placement of such items as sandwich-boards on footpaths where they may cause obstruction.

So far as local government elections are concerned, relevant provisions are:

- sections 55 and 57 of the Local Government Act 1989 (copies attached);
- provisions in the Summary Offences Act and/or Crimes Act regarding offensive or obscene material; and

- 2 -

- local by-laws regarding the placement of such items as sandwich-boards on footpaths where they may cause obstruction.

I trust this of assistance.

If you have any queries, please give me a call (Ph: 03 9287 7401).

Regards,  
Greg Lyons.

*The Constitution Act Amendment Act 1958*  
*Act No. 6224/1958*

**s. 254AA**

**s. 254 (2)**  
**amended by**  
**No. 7510**  
**s. 14 (b), 8385**  
**s. 7 (2) (a) (i),**  
**9575 s. 11 (i).**

- (2) Every such returning officer postal voting officer assistant substitute deputy poll clerk or scrutineer who knowingly offends against the provisions of this section shall be guilty of an indictable offence.

**s. 254AA**  
**inserted by**  
**No. 10148**  
**s. 95 (1).**

**254AA. Offence to publish false and defamatory statements about candidates**

- (1) Subject to sub-section (2), a person shall not make or publish any false and defamatory statement in relation to the personal character or conduct of a candidate.

Penalty:

- (a) If the offender is a natural person—\$1000 or imprisonment for 6 months, or both; or
- (b) If the offender is a body corporate—\$5000.
- (2) It is a defence to a prosecution for an offence against sub-section (1) if the defendant proves that the defendant had reasonable grounds for believing and did in fact believe the statement made or published by the defendant to be true.
- (3) Any person who makes a false and defamatory statement in relation to the personal character or conduct of a candidate in contravention of this section may be restrained by injunction at the suit of the candidate aggrieved, from repeating the statement or any similar false and defamatory statement.

**Division 19—Limitation of Election Expenses.**  
**Illegal Practices**

**No. 8006**  
**s. 255.**

**255. Application of this Division**

This Division shall apply to all elections of members for the Council or the Assembly.

*The Constitution Act Amendment Act 1958*  
*Act No. 6224/1958*

**s. 266**

No. 6006  
 s. 266.

**266. Exemption of payments for breach of contract**

Any payments by way of damage for breach of contract shall be exempted from the limitation of expenses imposed by this Division.

**Division 20—Publication of Electoral Matter**

No. 8006  
 s. 267.  
 S. 267  
 amended by  
 Nos 8840 s. 3  
 (2), 9211 s. 50  
 (1) (a)–(c) (2),  
 substituted  
 by No. 10146  
 s. 96 (1).

**267. Definition**

In this Division, “relevant period”, in relation to an election under this Act, means the period commencing on the issue of the writ for the election and expiring at the latest time on polling day at which an elector in Victoria could enter a polling place for the purpose of casting a vote in the election.

S. 267A  
 inserted by  
 No. 10146  
 s. 96 (1).

**267A. Printing and publication of electoral advertisements, handbills, pamphlets or notices**

- (1) A person shall not print, publish or distribute or cause, permit or authorize to be printed, published or distributed, an electoral advertisement, handbill, pamphlet or notice unless—
  - (a) the name and address (not being a post-office box) of the person who authorized the advertisement, handbill, pamphlet or notice appears at the end thereof; and
  - (b) in the case of an electoral advertisement, handbill, pamphlet or notice that is printed otherwise than in a newspaper—the name and place of business of the printer appears at the end thereof.
- (2) A person who contravenes sub-section (1) is guilty of an offence punishable on conviction—
  - (a) if the offender is a natural person—by a fine not exceeding \$1000; or
  - (b) if the offender is a body corporate—by a fine not exceeding \$5000.

*The Constitution Act Amendment Act 1958*  
*Act No. 6224/1958*

**s. 267B**

- (3) Sub-section (1) does not apply in relation to—
  - (a) a car sticker, T-shirt, lapel button, lapel badge, pen, pencil or balloon; or
  - (b) an article included in a prescribed class of articles.
- (4) Nothing in sub-section (3) (a) shall be taken, by implication, to limit the generality of regulations that may be made by virtue of sub-section (3) (b).
- (5) In this section, “electoral advertisement, handbill, pamphlet or notice”, means an advertisement, handbill, pamphlet or notice that contains electoral matter, but does not include an advertisement in a newspaper announcing the holding of a meeting.

**S. 267A (5)**  
 amended by  
 No. 31/1988  
 s. 24 (a).

**267B. Misleading or deceptive matter**

**S. 267B**  
 inserted by  
 No. 10/148  
 s. 96 (1).

- (1) A person shall not, during the relevant period in relation to an election under this Act, print, publish or distribute, or cause, permit or authorize to be printed, published or distributed, any matter or thing that is likely to mislead or deceive an elector in relation to the casting of the vote of the elector.
- (2) A person shall not, during the relevant period in relation to an election under this Act, print, publish or distribute, or cause, permit or authorize to be printed, published or distributed, an advertisement, handbill, pamphlet or notice that contains a representation or purported representation of a ballot-paper for use in that election that is likely to induce an elector to mark the vote of the elector otherwise than in accordance with the directions on the ballot-paper.
- (3) A person who contravenes sub-section (1) or (2) is guilty of an offence punishable on conviction—
  - (a) if the offender is a natural person—by a fine not exceeding \$1000 or imprisonment for a period not exceeding 6 months, or both; or
  - (b) if the offender is a body corporate—by a fine not exceeding \$5000.

*The Constitution Act Amendment Act 1958*  
Act No. 6224/1958

s. 267E

**267E. Authors to be identified**

s. 267E  
inserted by  
No. 10148  
s. 96 (1).  
s. 267E (1)  
amended by  
No. 31/1988  
s. 24 (c).

- (1) A person shall not, during the relevant period in relation to an election under this Act, print, publish or distribute, or cause, permit or authorize to be printed, published or distributed, a newspaper, circular, pamphlet or "dodger" containing an article, report, letter or other matter containing electoral matter unless the author's name and address, or the authors' names and addresses, as the case may be, are set out at the end of the article, report, letter or other matter, or where part only of the article, report, letter or matter appears in any issue of a newspaper, circular, pamphlet or "dodger", at the end of that part.

Penalty:

- (a) If the offender is a natural person—\$500; or  
(b) If the offender is a body corporate—\$2500.
- (2) This section shall not apply to the publication in a newspaper of—
- (a) a leading article; or  
(b) an article that consists solely of a report of a meeting and does not contain electoral matter, other than comment made by a speaker at the meeting.
- (3) In this section, "address" does not include a post-office box.

s. 267E (2) (b)  
substituted  
by No. 31/1988  
s. 24 (d).

**267F. Depiction of certain electoral matter**

s. 267F  
inserted by  
No. 10148  
s. 96 (1).

- (1) A person shall not without lawful excuse write, draw, or depict any electoral matter directly on any roadway, footpath, building, vehicle, vessel, hoarding or place (whether it is or is not a public place and whether on land or water or in the air).

Penalty: \$1000.



*The Constitution Act Amendment Act 1958*  
*Act No. 6224/1958*

**s. 267C**

- (2) It is hereby declared that the application of sub-section (1) extends in relation to an election although the writ for that election has not been issued.
- (3) Nothing in this section shall prohibit—
- (a) the writing, drawing or depicting of a sign on or at the office or committee room of a candidate or political party indicating only that the office or room is the office or committee room of the candidate or party, and specifying the name of the candidate, or the names of the candidates, or the name of the party, concerned; or
  - (b) the projection, by means of a cinematograph or other similar apparatus, of electoral matter on to a screen in a public theatre, hall or premises used for public entertainment.
- (4) In this section, “electoral matter” means any matter intended or calculated to affect the result of an election under any law of Victoria.

**s. 267G**  
 inserted by  
 No. 31/1988  
 s. 25.

**267G. Matter broadcast or televised**

**s. 267G (1)**  
 amended by  
 No. 21/1991  
 s. 10 (a).

- (1) A person must not, during the relevant period in relation to an election under this Act, broadcast or televise, or cause, permit or authorise to be broadcast or televised, from a broadcasting station or a television station any announcement, statement or other matter commenting upon any candidate, political party or the issues presented to the electors unless that announcement, statement or other matter includes an announcement in compliance with section 117 of the Broadcasting Act 1942 of the Commonwealth.

**Penalty:**

- (a) If the offender is a natural person—\$500; or
- (b) If the offender is a body corporate—\$2500.

*Local Government Act 1989*  
*Act No. 11/1989*

s. 55

(5) A scrutineer must not—

- (a) interfere with or attempt to influence any voter within the polling booth; or
- (b) communicate with any person in the polling booth except so far as is necessary to act as a scrutineer.

Penalty: 1 penalty unit.

**55. *Printing and publication of electoral material***

- (1) In this section “electoral material” means any advertisement, handbill, pamphlet or notice that is intended or calculated to affect the result of an election but does not include an advertisement in a newspaper announcing the holding of a meeting.
- (2) A person must not print, publish or distribute or cause to be printed, published or distributed any electoral material unless—
  - (a) the name and address (not being a post-office box) of the person who authorised the electoral material appears at the end of the electoral material; and
  - (b) in the case of electoral material which is printed otherwise than in a newspaper, the name and business address of the printer appears at the end of the electoral material.

S. 55 (2) (a)  
amended by  
No. 15/1992  
s. 11 (a).

Penalty: 10 penalty units if the offender is a natural person or 20 penalty units if the offender is a corporation.

(3) Sub-section (2) does not apply to—

- (a) a car-sticker, T-shirt, lapel badge, pen, pencil or balloon; or
- (b) an article included in a prescribed class of articles.

*Local Government Act 1989*  
*Act No. 11/1989*

s. 56

s. 56 (4)  
inserted by  
No. 15/1992  
s. 11 (b).

- (4) Sub-section (2) applies in respect of how-to-vote cards as if for the words "appears at the end of" in paragraphs (a) and (b) there were substituted the words "are displayed prominently in".

s. 56 (5)  
inserted by  
No. 15/1992  
s. 11 (b).

- (5) A person must not print, publish or distribute or cause to be printed, published or distributed any electoral material that is likely to mislead or deceive a voter in relation to the casting of the vote of the voter.

Penalty: 10 penalty units if the offender is a natural person or 20 penalty units if the offender is a corporation.

s. 56 (6)  
inserted by  
No. 15/1992  
s. 11 (b).

- (6) It is a defence in a prosecution for an offence against sub-section (5) if the person proves that the person did not know, and could not reasonably be expected to have known, that the electoral material was likely to mislead or deceive in relation to the casting of the vote of the voter.

**56. How-to-vote cards**

Schedule 5 has effect with respect to how-to-vote cards.

**57. False or defamatory statements**

- (1) A person must not make or publish any false or defamatory statement in relation to the personal character or conduct of a candidate.

Penalty: 10 penalty units if the offender is a natural person or 50 penalty units if the offender is a corporation.

- (2) It is a defence if the defendant proves that he or she had reasonable grounds for believing and did in fact believe the statement made or published to be true.



2 of 4

**ELECTORAL FAX**  
**from the**  
**A.C.T. ELECTORAL COMMISSION**

<i>TO</i>	
Name:	Lyn Auld WA Electoral Commission
Fax No:	08 9221 3205
Phone No:	

<i>FROM</i>	
Name:	Phillip Green Electoral Commissioner
Phone No:	(06) 205 0236
Fax No:	(06) 205 0382
Pages following:	3
Date:	3 June 1997



ACT Electoral Commission  
Allara House, 50 Allara Street  
Canberra City ACT 2601  
PO Box 272 Civic Square ACT 2608  
Ph: 06 205 0033 Fax: 06 205 0382

AST Governmental Institutions: New Orleans, LA and ...

Lyn Auld  
Acting Electoral Commissioner  
Western Australian Electoral Commission  
Perth WA 6000

Dear Lyn

Thank you for your fax of 30 May 1997 about controls on electoral advertisements on billboards and posters.

The following extracts from our *Candidates Information* booklet spell out the controls that apply to electoral advertisements on billboards and posters as set out in the *Electoral Act 1992*:

### *Definition of “electoral matter”*

*Several offences relate to the treatment of published "electoral matter". "Electoral matter" is defined as matter that is intended or likely to affect voting in an election. Matter is taken to be intended or likely to affect voting in an election if it contains an express or implicit reference to, or comment on:*

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

*During the pre-election period (from 16 January to 21 February 1998), matter shall also be taken to be intended or likely to affect voting in an election if it contains an express or implicit reference to, or comment on:*

- the Government or Opposition, or a previous Government or Opposition, of the Commonwealth, a State or another Territory; or
- a member or former member of the legislature of the Commonwealth, a State or another Territory.

### *Campaigning offences*

*For the purposes of the following campaigning offences—*

*"address", in relation to a person, means—*

- (a) *if the person is acting for or on behalf of a political party—an address of the party, not being a post office box; or*
- (b) *in any case—*
  - (i) *the address of the person's principal place of residence; or*
  - (ii) *an address of the person's place of business;*

*“disseminate”, in relation to electoral matter, means—*

- (a) *in the case of printed matter—print, publish or distribute; or*
- (b) *in the case of electoral matter in an electronic medium—produce, broadcast or distribute;*

#### ***Dissemination of electoral matter—authorisers and authors***

*A person shall not disseminate printed electoral matter unless the name and address of the person who authorised the electoral matter, or its author, appear—*

- (a) *at the end; and*
- (b) *in the case of an item containing electoral matter taking up the whole or part of each of 2 opposing pages of a newspaper or periodical—at the foot of the item on the first page.*

*Penalty: \$1,000.*

#### ***Graffiti***

*A person shall not, without reasonable excuse, mark any electoral matter directly on any building, footpath, hoarding, roadway, vehicle, vessel or any public or private place (whether on land or water or in the air) without the consent of—*

- (a) *in the case of a place—the lessee or lawful occupier of the place; or*
- (b) *in the case of an object—the owner or lawful possessor of the object.*

*Penalty: \$1,000.*

#### ***Prohibition of canvassing near polling places***

*A person shall not, within a polling place, or within 100 metres of the building or enclosure containing a polling place—*

- (a) *do anything for the purpose of influencing the vote of an elector as the elector is approaching, or while the elector is at, the polling place;*
- (b) *do anything for the purpose of inducing an elector not to vote as the elector is approaching, or while the elector is at, the polling place; or*
- (c) *exhibit an electoral notice other than a notice authorised by the Commissioner for display there.*

*Penalty: \$500.*

*Where a building used as a polling place is situated on grounds within an enclosure, the Commissioner may by notice in the Gazette specify that those grounds are part of the polling place for the purposes of defining the 100 metre limit.*

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*For the purposes of this offence, "polling place" means—*

- (a) a place where declaration voting is taking place;*
- (b) a polling place on polling day; or*
- (c) a place where mobile polling is taking place.*

*An officer may, if directed by the Commissioner, remove or obliterate a notice which is exhibited in breach of this offence. A person shall not obstruct an officer exercising or attempting to exercise this function.*

*Penalty: \$5,000 or imprisonment for 6 months, or both.*

***How-to-vote material in polling places***

*A person shall not, except for the purposes of lawfully assisting another person to vote, exhibit or leave in a polling place any printed electoral matter.*

*Penalty: \$500.*

*For the purposes of this offence—*

*"polling place" means—*

- (a) a place where declaration voting is taking place;*
- (b) a polling place on polling day; or*
- (c) a place where mobile polling is taking place.*

*Penalty: \$5,000 or imprisonment for 6 months, or both.*

I am not aware of any other ACT laws specifically relating to display of electoral matter on posters or billboards.

I hope this information is useful. If I can be of further help, please ring me on 06 205 0236.

Yours sincerely



Phillip Green  
Electoral Commissioner

3 June 1997



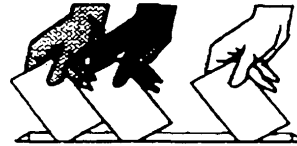
Levels 6 & 7  
Forestry House  
160 Mary Street  
(GPO Box 1393)  
BRISBANE Q 4000

# F A C S I M I L E TRANSMISSION

27

**ECQ**

*An independent organisation  
responsible for administering and  
overseeing the conduct of electoral  
events!*

**TO:**

Name: *LYN AULD - ACTING ELECTORAL COMMISSIONER*

Agency: *WESTERN AUSTRALIAN ELECTORAL COMMISSION*

Fax Number: *(08) 9221-3205*

No. of Pages including coversheet *1*

**FROM: Des O'Shea**  
**Electoral Commissioner**  
Telephone: (07) 3227-7249 Fax: (07) 3225-2601  
Date Sent: 2 June 1997

## MESSAGE

**Re: Electoral Billboards and Posters**

*The Electoral Act 1992 has limited control over the use of billboards and signs, etc used by political parties and candidates at State electoral events.*

*Section 161 of the Act requires that signs, etc must, during the election period (beginning the day after the issue of the Writ for election and ending at 6.00 p.m. on polling day), state the name and address (other than a post office box) of the person who authorised the advertisement.*

*There are no State legislative requirements on such issues as to the size and location of the signs. Generally, this is controlled by the relevant Local Authorities by way of local council by-laws. These by-laws differ according to each local authority throughout the State.*

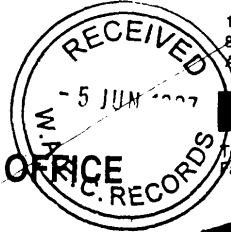
*The information contained in this facsimile message is confidential and may be legally privileged. If the reader of this message is not the intended recipient you are hereby notified that any use, dissemination, distribution or reproduction of this message is prohibited. If you have received this message in error please notify the sender immediately and return the original.*



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SOUTH AUSTRALIA



1st Floor  
83-89 Currie Street  
Adelaide 5000

Telephone: (08) 8237 6555  
Fax: (08) 8231 9643

## STATE ELECTORAL OFFICE

2 June, 1997

Ms. L. Auld,  
Acting Electoral Commissioner,  
West Australian Electoral Commission,  
Box F316 GPO,  
PERTH 6001

**FAXED**

Date 3/6/97

Dear Lyn,

I refer to your recent faxed enquiry concerning restrictions on electoral advertisements in the form of billboards and posters in this State.

South Australian Provisions

Under the State Electoral Act and during an election period, an electoral advertisement, notice etc:-

- Must contain the name and address of the author or the person who authorised its publication
- Must contain the name and place of business of the printer; and
- Cannot be exhibited on a vehicle, vessel, building or hoarding or other structure if it occupies an area in excess of 1 square metre (if two advertisements by the same candidate or political party are within 1 metre of each other they are considered to be the one advertisement).

~~However an opinion from the Crown Solicitor in 1995 indicates that such restrictions may not apply outside an election period.~~

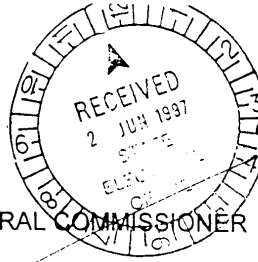
A copy of information relating to restrictions contained in the Development Act and the Local Government Act (including a summary of restrictions prepared by a legal firm on behalf of the Local Government Association of South Australia) is forwarded, in strict confidence for your perusal.

I hope this information is of assistance.

Yours sincerely,

Steve Tully  
DEPUTY ELECTORAL COMMISSIONER  
Enc.

*MINUTES forming ENCLOSURE to*



TO: STEVE TULLY, ACTING ELECTORAL COMMISSIONER

FROM: JOE HASLAM, SENIOR POLICY OFFICER  
OFFICE OF LOCAL GOVERNMENT

SUBJECT: ELECTORAL SIGNS - REQUEST FROM WESTERN AUSTRALIA

I set out below some brief comments on the South Australian legislation regarding the placing of electoral signs, and recent experiences in the Local Government elections here on 3 May 1997. I also attach advice provided to the Local Government Association by their solicitors early this year. This was handed out to the public at an information forum, so is not privileged material.

The legislative scene is a little complicated, as controls reside in several Acts. Provisions relevant to SA Local Government elections.

The Development Act (<sup>SA</sup> ~~our~~ equivalent of the Planning Act elsewhere) controls land use and building matters. Amongst these are signs of all kinds - from massive illuminated signs for soft drinks to signs identifying business premises to real estate "for sale" signs. Under the Development Regs, a sign relating to "an event of a political character" (i.e. an election at local state or federal level) is **exempt from controls** under that Act provided the total area of such signs on a site is less than 2 square metres. Thus a householder, for example, can place an electoral sign in their front garden facing the street saying "Vote Smith for West Adelaide" without the need for approval. Of course it must relate to an event - a forthcoming election - it would **not** be exempt if it stayed there for months saying "Vote Democrats".

The Local Government Act deals with signs in different sections. S 370 deals with moveable signs - like the things which a shopkeeper puts in front of their premises in the morning advertising a bread or ice cream company, and which they bring back inside at night. Under the LG Act, the Council can make by laws setting standards for such signs, and can even prohibit them - except that a Council by-law cannot prohibit the placement of moveable signs relating to a State or Federal election. ~~These controls are a bit of a non-event, because few moveable electoral signs are used - it is too easy for opponents or souvenir hunters to steal them, and in order to be stable, they are rather expensively built.~~

S 781 of the LG Act prohibits the placing of bills, posters, advertisements etc on walls, trees, lamp posts etc in a public place under the control of the Council unless Council approval has been given, and 781(3) empowers the Council to remove or destroy illegal material. Any approval under this section must also comply with the Development Act. Also, under s 133 of the Act, signs and posters must bear the name and address of the person authorising them, and of the printer.

There are also controls over the size and authorisation of electoral signs in the Electoral Act, but I leave those matters in your hands.



NORTHERN TERRITORY OF AUSTRALIA  
Northern Territory Electoral Office

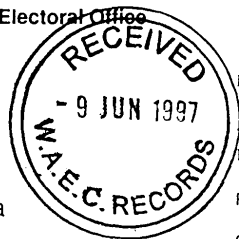
Location: Second Floor  
AANT Building  
79 Smith Street  
Darwin

Postal: GPO BOX 2419  
DARWIN NT 0801

Telephone: 8999 5617  
Facsimile: 8999 5845

Ref: EO20

3 June 1997



Ms L Auld  
Electoral Commissioner of Western Australia  
GPO Box F316  
PERTH WA 6001

Dear Lyn

**ELECTION BILLBOARDS AND POSTERS**

In reply to your enquiry regarding election billboards and posters I would advise the following:

1. The Northern Territory Electoral Act provides certain requirements in relation to printing/authorising of election signs. No provision is made in the Act for size of signs or where they can be displayed other than providing no candidates posters etc shall be displayed within a polling place.
2. Municipal Councils have By-Laws which generally control where and how signs can be displayed. However, in discussing this matter with the Darwin City Council they take the view at election time that providing the election sign is a reasonable size and not causing a hazard or inconvenience, and is removed after the election, then they take no action.

I understand a similar situation occurs in other municipalities.

I have enclosed copies of relevant legislation and trust this assists you.

Yours sincerely

BARRIE HAMILTON  
CHIEF ELECTORAL OFFICER

- (b) extend the time for the return of the writ,

for the purpose of obviating a difficulty that may arise in the election.

(2) A polling day shall not be postponed under subsection (1) at any time later than 7 days before the time originally appointed.

(3) The Chief Electoral Officer shall give public notice of any extension of time under subsection (1) in the division to which the extension relates.

#### PART 11 - OFFENCES

##### 95. Exemption of public policy statements

Notwithstanding anything in this Act, a declaration of public policy or promise of public action shall not be construed as an offence.

##### 96. Printing of advertisements

(1) On or after the date of issue and before the return of a writ for the election of a member of the Legislative Assembly, a person shall not -

- (a) print or publish a printed electoral advertisement, handbill or pamphlet, other than an advertisement in a newspaper, without the name and place of business (if any) of the printer or other person producing the matter being printed at the foot of the matter;
- (b) publish an electoral advertisement, handbill or pamphlet or issue an electoral notice, other than the announcement by advertisement in a newspaper of the holding of a meeting, without the name and address of the person authorising the advertisement, handbill, pamphlet or electoral notice appearing at the end of the document;
- (c) print, publish or distribute an electoral advertisement, notice, handbill, pamphlet or card containing a representation of a ballot-paper or a representation apparently intended to represent a ballot-paper, having on it directions intended to or likely to mislead or improperly interfere with an elector in or in relation to the casting of his or her vote;
- (d) print, publish or distribute an electoral advertisement, notice, handbill, pamphlet or card containing an untrue or incorrect statement intended to or likely to mislead or improperly interfere with an elector in or in relation to the casting of the elector's vote; or

*Northern Territory Electoral*

- (e) wilfully inform an elector that the elector is not enrolled, or that the elector is not enrolled for a particular division, where he or she is enrolled, or is enrolled for that division, as the case may be.

Penalty: \$1,000 or imprisonment for 6 months.

- (2) In subsection (1) "publish" and "distribute" includes publish and/or distribute by electronic means and that subsection applies whether or not the electronic means results in the production of printed matter.

**97. Heading of advertisements**

On and after the date of issue and before the return of a writ for the election of a member of the Legislative Assembly, the proprietor of every newspaper published or distributed in the Territory shall cause the word "advertisement" to be printed as a headline in letters not smaller than 10 point, to each article or paragraph in his or her newspaper containing -

- (a) matter intended or calculated to affect the result of an election; or
- (b) a report of a speech of a candidate,

the insertion of which is or is to be paid for or for which any reward or compensation or promise is or is to be made.

Penalty: \$1,000 or imprisonment for 6 months.

**98. Articles to be signed**

- (1) Subject to subsection (3), on and after the date of issue and before the return of a writ for the election of a member of the Legislative Assembly, every article, report, letter or other matter commenting on a candidate, political party or the issues being submitted to the electors at the election, published in any newspaper, circular, pamphlet or handbill shall -

- (a) be signed by the author; or
- (b) state the true name and address of the author at the end of the article, report, letter or other matter, or that part of it which is published.

Penalty: \$1,000 or imprisonment for 6 months.

- (2) Subject to subsection (3), a newspaper editor or proprietor who permits, in a newspaper which he or she edits or owns, the contravention or failure to comply with subsection (1) is guilty of an offence.

Penalty: \$1,000 or imprisonment for 6 months.

- (3) This section does not apply to the publication in a newspaper of -
  - (a) a leading article; or
  - (b) an article which consists solely of a report of a meeting and does not contain any comment, other than comment made by a speaker at the meeting, on a candidate, or political party, or the issues being submitted to the electors.

**99. Untrue statements**

A person shall not make an untrue statement or supply false information -

- (a) to an officer for the purposes of or in connection with -
  - (i) the preparation, maintenance or revision of the rolls; or
  - (ii) obtaining a ballot-paper; or
- (b) in a document required by or under this Act to be signed by the person.

Penalty: \$2,000 or imprisonment for 2 years.

**100. Signature to papers**

(1) Where a person who is required by this Act to sign a document is unable to sign his or her name in writing and instead makes his or her mark as his or her signature, the mark is deemed to be his personal signature, if, subject to subsection (2), it is made in the presence of a witness who signs the document as witness.

(2) Where a person of a description referred to in subsection (1) makes an application for a postal ballot-paper or completes a postal vote certificate, a reference in subsection (1) to a witness who signs the document as witness shall be read as a reference to 2 witnesses who sign the application or postal vote certificate, as the case may be, as witnesses.

(3) A person shall not make the signature of another person on a document required by this Act to be signed by the other person.

Penalty: \$2,000 or imprisonment for 2 years.

**101. Witnesses to papers**

- (1) A person shall not -
  - (a) sign his or her name as witness on a blank document which is required by this Act to be witnessed;

95. OVERHANGING TREES AND SHRUBS

The council may, where it considers that a tree, shrub or plant growing on land is causing inconvenience or an obstruction to persons using a public street or footpath or is causing or likely to cause damage to an adjacent public place, serve a notice under by-law 10 on the owner or occupier of the land to trim or remove the tree, shrub, or plant.

*Division 3 - Signs Hoardings and Advertising*

96. SIGNS, HOARDINGS AND ADVERTISING

(1) In this by-law, "signs code" means the document of that name approved by resolution of the council on 11 October 1995 and amended by resolutions of the council on 30 January 1996, 27 February 1996 and 21 May 1996 which prohibits, regulates or exempts matters relating or incidental to the placing, size, shape, content and colour of signs, hoardings and advertising on premises adjoining or in view of a public place, being a document which is available to the public at the council offices.

(2) The occupier or, where there is no occupier, the owner of premises adjoining or in view of a public place commits an offence if there is on those premises a sign, hoarding or advertisement which is not in accordance with the signs code or with a permit granted under it.

(3) An offence under clause (2) is a regulatory offence.

(4) A sign, hoarding or advertisement shall be constructed or installed and maintained in a condition of security, good repair and rigidity to the satisfaction of the council.

(5) Where an authorised person is of the opinion that a sign, hoarding or advertisement is not secure, in good repair or rigid, the authorised person may, whether or not a permit has been granted, give notice to -

- (a) the owner or occupier of the land where the sign, hoarding or advertisement is erected or being used; or
- (b) the person responsible for authorising the erection of the sign, hoarding or advertisement

requiring remedial action or the removal of the sign, hoarding or advertisement within the period specified in the notice and the person to whom the notice is given shall comply with the notice.

(6) Nothing in this by-law derogates from the requirements of any other law of the Territory relating to the construction or installation of buildings or structures.

*Division 4 - Handbills*

97. HANDBILLS

(1) It is an offence committed by a person for that person, without a permit, in or on a public place -

- (a) to give out or distribute a handbill; or
- (b) to affix or cause to be affixed a handbill to a power pole, signpost or fixture in a street.

(2) It is a condition of a permit to affix a handbill that the holder shall -

- (a) ensure that the handbill is preserved in a clean and tidy condition;
- (b) remove the handbill if it becomes worn, torn or detached; and
- (c) remove any waste or litter from the area.

(3) It is an offence committed by a person for that person, without a permit and the consent of the owner or occupier of land adjoining a public place, to affix or cause to be affixed a handbill to or against a structure on the land.

(4) Where an authorised person is of the opinion that a handbill is dirty, untidy, worn, torn or detached, the authorised person may, whether or not a permit has been granted or the consent of the owner or occupier of the land obtained in relation to affixing the handbill, give notice in accordance with by-law 10 to -

- (a) the owner or occupier of the building where the handbill is posted; or
- (b) the person responsible for authorising the production of the handbill,

requiring remedial action or the removal of the handbill.

*Division 5 - General*

98. WRITING, DEFACING, &c.

A person who, without a permit, writes on, defaces or marks a power pole, sign, post, fixture, wall or pavement in a public place with writing or pictorial representation commits a regulatory offence.



Ms Lyn Auld  
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Western Australia Electoral Commission  
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Sydney 2001

Telephone (02) 9209 5999

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Our reference: 96/569

Your reference:

4 June, 1997



Dear Lyn

## **NSW ELECTORAL ADVERTISEMENTS - BILLBOARDS AND POSTERS**

The Parliamentary Electorates & Elections Act sets out the provisions for the exhibition of posters for State and Local Government elections. The Local Government Act makes provision to indicate that certain sections of the Parliamentary Electorates & Elections Act apply to Local Government elections.

~~I attach a copy of these provisions and mention that~~ The Local Government Act excludes those provisions dealing with the distribution of electoral material on polling day and the registration of electoral matter.

~~I attach some notes with regards to our experiences with billboards and posters and some supporting documentation which may be of interest to you.~~

Local Government Ordinances require applications and approval by Council for the erection of billboards, whether they are erected on public or private property or buildings. ~~As a consequence we do not have a great deal of problems with the use of billboards during election times.~~

~~Because of our size restrictions on posters, this prevents the use of the plastic sheeting type displays that I saw during your elections. Such displays are starting to enter the Federal arena in New South Wales but are illegal under the State legislation.~~

~~As regards issues of freedom of speech, I have not heard of any such complaints to Councils about their ordinance powers which are probably designed around environmental as well as safety provisions.~~

Please let me know if I can be of any further assistance to you.

Yours sincerely

*E I. Dickson*  
*Per R. Dickson*

E I Dickson  
Electoral Commissioner

## ELECTORAL ADVERTISEMENTS - BILLBOARDS/POSTERS

### ~~BILLBOARDS~~

~~However~~  
~~Virtually~~ the only use that can be made of a billboard is:

1. Outside the election period
2. When erected at the office or committee room of the candidate or political party.

Outside the election period is the period preceding the issue of the writ in case of State elections and the calling of nominations for Local Government elections

The Crown Solicitor's advice indicates that what is electoral material and the size restrictions do not ~~come~~ into play until you are in the election period.

It is also held by the Crown Solicitor that using a billboard and placing a series of posters (of the prescribed size) within that billboard would be an offence as a billboard could be considered to be specifically provided for the signs and the size of the billboard should be taken into account. The same would not apply if posters (left marginally apart) were affixed say to an existing fence.

A determination of what is the "office" or "committee room" of a candidate has been queried and again Crown Solicitor's advisings indicate that this can extend to a caravan, bus or car used by the candidate. In such signs however under the provisions of the Act they can only contain the candidate's name and party affiliation. The use of expressions such as "Vote 1" would be an offence under the legislation.

### ~~POSTERS~~

Legislation concerning posters relates to the description of what is electoral matter, the prescribed size and the necessity for appropriate authorisation.

The definitions of electoral matter is set out in the legislation and the prescribed size is 8000 sq cm. The authorisation refers to the name and address of the person authorising the material and the name and address of the printer.

~~Most concerns with posters now relate more to the contents and the wording that might be contained therein where particularly it refers to other candidates or parties. The other concerns are where they are affixed to properties of the Crown such as telegraph poles and to trees generally inside school grounds. In the latter cases they can be easily remedied on polling day and generally candidates comply.~~

The placing of posters onto telegraph poles is a problem as the legislation basically provides that the only offence is the person who is putting them up. Returning Officers and local Councils are permitted to take down such posters but the cost and time of doing so in the lead up to the election generally frustrates this concept. In any event as all candidates generally participate in that exercise it is usually only the Independents who can't afford the posters who are likely to complain. Returning Officers are instructed to take down what they can.

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**151B Exhibition of posters**

- (1) Any person who posts up or exhibits or permits or causes to be posted up or exhibited, any poster of any size exceeding the prescribed size, shall be liable to a penalty not exceeding 3 penalty units.
- (2) For the purpose of subsection (1), a poster shall be deemed to be posted up or exhibited if it is posted up or exhibited in or on any building, vehicle, vessel, hoarding or fence, or in or on any movable or immovable object in any place (whether it is or is not a public place and whether on land or water or in the air).
- (2A) A person shall not post up, or permit or cause to be posted up, a poster:
  - (a) on or within any premises occupied or used by, or under the control or management of:
    - (i) the Crown, any instrumentality or agency of the Crown, or any statutory body representing the Crown or any other body prescribed by the regulations as a statutory body representing the Crown, or
    - (ii) any local authority, or
  - (b) in the case of premises which have no one in occupation, on or within those premises, unless that person has obtained:
    - (i) in the case of premises owned by one person alone, the permission in writing of that person, or
    - (ii) in the case of premises owned by two or more persons, whether as joint tenants or as tenants in common or otherwise, the permission in writing of at least one of those persons.
- (3) Nothing in this section shall prohibit:
  - (a) the posting up, exhibiting, writing, drawing or depicting of a sign on or at the office or committee room of a candidate or political party indicating only that the office or room is the office or committee room of the candidate or party, and specifying the name of the candidate, or the names of the candidates, or the name of the party concerned,

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Section 151B Parliamentary Electorates and Elections Act 1912 No 41

Part 5 Conduct of elections  
Division 17

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- (b) the projection by means of any cinematograph or other similar apparatus of any electoral matter on to any screen in any theatre or public hall the subject of an approval in force under Part 1 of Chapter 7 of the *Local Government Act 1993* in relation to its use as a place of public entertainment,
  - (c) the posting up, exhibiting, writing, drawing or depicting of any poster within a hall or room that is being or is about to be used for a meeting held by or on behalf of a candidate in connection with an election, or
  - (d) the posting up or exhibition of any poster on or at the electoral office of any member.
- (4) (Repealed)
- (5) Any person who writes, draws or depicts any electoral matter directly on any roadway, footpath, building, vehicle, vessel, hoarding or place (whether it is or is not a public place and whether on land or water) shall be liable to a penalty not exceeding 3 penalty units.
- (6) In this section:

*electoral matter* means any matter which is intended or calculated or likely to affect or is capable of affecting the result of any election held or to be held under this Act or of any referendum of the electors held or to be held in accordance with the provisions of any Act or which is intended or calculated or likely to influence or is capable of influencing an elector in relation to the casting of his vote at any such election or referendum.

*Electoral matter* also includes the name of a candidate at any election, the name of the party of any such candidate, the name or address of the committee rooms of any such candidate or party, the photograph of any such candidate, and any drawing or printed matter which purports to depict any such candidate or to be a likeness or representation of any such candidate.

*local authority* means a council or a county council within the meaning of the *Local Government Act 1993*.

*poster* means any electoral matter printed, drawn or depicted on any material whatsoever and where any electoral matter is printed, drawn or depicted in sections, such sections, both severally and collectively, shall be deemed to be a poster.

*premises* includes any structure, building, vehicle or vessel or any place, whether built on or not, and any part thereof.

*the prescribed size* means an area which is not more than 8000 square centimetres.

- (7) Where premises referred to in paragraph (b) of subsection (2A) are subject to a lease for a term of six months or more, the reference in that paragraph to the owner of the premises shall be read as a reference to the lessee of the premises.

#### 151C (Repealed)

#### 151D Removal of illegal posters

The returning officer, any deputy returning officer, any officer appointed by the returning officer for the purpose or any member of the police force may remove or cause to be removed any poster exhibited or posted up in contravention of this Act, and such poster when so removed shall be confiscated and shall be forthwith destroyed

#### 151E Name and address of author and printer to be printed on advertisements etc

- (1) Any person who prints, publishes or distributes any matter, being an advertisement, "how to vote" card, handbill, pamphlet, poster, or notice, containing any electoral matter as defined in section 151B (other than the announcement in a newspaper of the holding of a meeting), without:
- (a) the name and address of the person on whose instructions the matter was printed, and
  - (b) the name of the printer and address at which it was printed,
- being printed in legible characters thereon, shall be guilty of an offence and liable to a penalty not exceeding 5 penalty units or to imprisonment for a term not exceeding six months.

- (2) Where a newspaper contains an advertisement referred to in subsection (1) and the name of the printer of the newspaper and the address at which it was printed appear on the newspaper in accordance with any Act, subsection (1) does not apply so as to require that name and address to be printed on the advertisement.

#### 151F Distribution of electoral matter on polling-day

- (1) A person shall not, in a public place, distribute any electoral material on the polling-day for an election unless the material has been registered under section 151G.

Maximum penalty: 10 penalty units or imprisonment for 6 months.

- (2) For the purposes of this section and without limiting its operation, material shall be taken to be distributed if it is left in such a position and in such circumstances as to indicate that it is intended to be available for collection by members of the public who are in a public place.
- (3) In this section, *electoral material* means any "how to vote" card, handbill, pamphlet or card:
- (a) containing any representation of a ballot-paper or portion of a ballot-paper,
  - (b) containing any representation apparently intended to represent a ballot-paper or portion of a ballot-paper, or
  - (c) having on it any directions or suggestions (whether express or implied) in relation to the casting of votes.

#### 151G Registration of electoral matter

- (1) For the purposes of section 151F, an application may be made, in accordance with the regulations, to the Electoral Commissioner for the registration of electoral material for a particular election.
- (2) An application must be made during the period commencing on the day of nomination for the election and ending on the day that is 8 days before the polling day for the election, or during such other period as is fixed by the writ for the election.

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- (2A) However, an application may be made to the Electoral Commissioner (after the issue of the writ and before the day of nomination) for preliminary advice on whether electoral material may be registered, even though the material is incomplete.
- (3) An application must contain a draft or sample of the electoral material.
- (4) The Electoral Commissioner may allow the draft or sample to be altered or replaced before agreeing to registration.
- (5) Registration of the electoral material is effected by the issue of a certificate of registration (in a form approved by the Electoral Commissioner) in respect of a draft or sample of the electoral material.
- (6) The Electoral Commissioner shall register the electoral material if satisfied that registration is not prohibited by this section.
- (7) The Electoral Commissioner may however refuse to register the electoral material if the application for registration was not made in accordance with this section.
- (8) The Electoral Commissioner shall not register the electoral material if it appears to the Commissioner:
- (a) in the case of material that contains directions or suggestions (whether express or implied) as to how to vote in accordance with the ticket of a political party, group of candidates or candidate, that:
    - (i) the party is not registered under Part 4A or the group or candidate is not registered under the *Election Funding Act 1981*, or
    - (ii) the application was not made by the registered officer, by the candidates in the group or their official agent or by the candidate or the candidate's official agent (respectively),
  - (b) in the case of material that contains any representation or indication (whether express or implied) that any candidate is a member of, or pursues or supports any or all of the objects or platform (whether with or without modification) of, a particular political party or group of candidates, that:

- (i) the party is not registered under Part 4A or the group is not registered under the *Election Funding Act 1981*,
  - (ii) the candidate's affiliation with the party or group is not included in the Register of Candidates under that Act, or
  - (iii) the application was not endorsed in writing by the registered officer or by the other candidates in the group or their official agent,
- (c) in the case of material that contains directions or suggestions (whether express or implied) as to how to vote in accordance with the ticket of a political party or group of candidates in respect of an electoral district, that:
  - (i) the party or group has not endorsed a candidate for the district, or
  - (ii) the material directs or suggests that a candidate not endorsed by it should be given the first preference vote,
- (d) in the case of material that contains directions or suggestions (whether express or implied) as to how to vote in accordance with the ticket of a political party or group of candidates in respect of a periodic Council election, that:
  - (i) the party or group has not endorsed a candidate for the election, or
  - (ii) the material directs or suggests that a candidate or candidates not endorsed by it should be given the first or highest preference or preferences,
- (e) in the case of material that contains directions or suggestions (whether express or implied) as to how to vote in accordance with the ticket of a candidate in respect of an electoral district or periodic Council election, that:
  - (i) the candidate is not a candidate for that district, or
  - (ii) the candidate is not a candidate in that election,



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- (f) that the material is intended or likely to mislead or improperly interfere with any elector in or in relation to the casting of his or her vote, because of the use, in the material, of any matter suggesting or indicating party or group affiliation (whether or not that matter is the same as or similar to matter included in a register under the *Election Funding Act 1981*), or
  - (g) that the material contains words that are obscene or offensive.
- (9) Registration may be unconditional or subject to conditions specified in the certificate of registration.
  - (10) A certificate signed by the Electoral Commissioner and certifying that specified material was or was not registered on a specified day or during a specified period is admissible in proceedings for an offence under section 151F and is prima facie evidence of the matters certified.
  - (11) Electoral material shall be taken to be registered in accordance with this section even though the material contains some differences from the draft or sample in respect of which the certificate of registration was issued, so long as the material is substantially the same as the draft or sample.
  - (12) Registration of electoral material is not a defence to a prosecution for an offence under section 151A.
  - (13) In this section:
    - electoral material* has the same meaning as in section 151F.
    - official agent* has the same meaning as in the *Election Funding Act 1981*.

#### 152 Persons incurring electoral expense without authority

Any person incurring or authorising any electoral expense on behalf of a candidate without the written authority of the candidate shall be guilty of a contravention of this Act and shall be liable to a penalty not exceeding 1 penalty unit.

#### 153 (Repealed)