

Joint Standing Committee on Electoral Matters
Submission No. 133
Date Received 16/5/08
Secretary



SUBMISSION TO THE FEDERAL INQUIRY BY THE JOINT STANDING COMMITTEE ON STANDING MATTERS INTO THE CONDUCT OF THE 2007 FEDERAL ELECTION

Submitted by Darrell Main 15 Gibson Street, Beachmere, Queensland, 4150

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This submission seeks to raise a number of issues that I became aware of during my candidacy for the Federal seat of Fisher during the 2007 Federal election.

Specifically I wish to raise four issues:

- 1) The negative impact of the operation of Local and State Government laws regarding election signage.
- 2) The operations of the provisions of Section 226 of Part XVI of the *Commonwealth Electoral Act* in so far as they relate to the provision of Electoral material to nursing home residents.
- 3) The operation of Section 327 Part XXI and the ability to use those provisions to prevent interference with political liberty.
- 4) The operation of Section of 328 of Part XXI specifically in relation to the size, location of authorisation of printed political material.

A summary of these issues is provided below which is then followed by a more detailed discussion under individual headings.

I thank you for the opportunity for making this submission.

SUMMARY

1) **Operation of local laws in relation to election signage.**

The issue surrounding this matter has been canvassed a number of times previously. I refer specifically to the comments in the report of the Committee into the conduct of the 2004 election. Specifically paragraphs 12.120 to 12.124 and Recommendation 47 at 12.125.

I support recommendation 47 which, even though the then Government's response had also supported it, it appears that no further action has been taken.

It would be my assertion that a specific provision should be made in the *Commonwealth Electoral Act* that would set out uniform provisions in regard to election signage which would then supersede any other State or Local Government legislation in so far as to the conduct of Federal Elections.

2) **Provision of electoral material to nursing home residents.**

I understand and accept the need to ensure vulnerable people are not subject to undue harassment and or intimidation. However, the current provisions appear to fail quite dismally in this regard, those who choose to ignore or subvert the current provisions seem to be able to do so with immunity while those who seek to comply place themselves at a distinct disadvantage.

It is my belief that the operation of these provisions should be subject to review to ensure that they operate in a fashion that meets the underlying intention and that does not provide an artificial barrier to a full and open electoral process. Further specific protection provision should exist for staff or other people who may provide information in relation to possible breaches of the Act

3) Political interference with Political Liberty

The provisions of this Section, particularly sub-paragraph (1), I believe are extremely important to ensure that people in positions of power and control do not use their power to curtail an individuals full and free participation in the electoral process.

I have been advised and experienced first-hand that the ability to use these provisions in a timely and cost effective way, particularly during an election campaign are extremely limited.

It is my belief that the provisions have value, however, consideration should be given to improving their operation, particularly in regards to getting a speedy resolution of complaints during an election campaign.

4) Size, design and location of authorisation of election material

Increasingly it appears that during an election campaign, some political material is being distributed with the authorisation, discretely masked, either by the nature of its size, colour or location on that material.

I believe that for the provisions of authorisation to continue to have any real value, it is important to consider setting a defined font size, colour and location for that authorisation so as that it is clearly and readily visible.

1) Operation of local laws in relation to election signage.

1.1 The issue surrounding this matter has been canvassed a number of times previously. I refer specifically to the comments in the report of the Committee into the conduct of the 2004 election. Specifically paragraphs 12.120 to 12.124 and Recommendation 47 at 12.125.

1.2 In the 2007 election I became acutely aware of the difficulties during my campaign for Fisher (Qld). That electorate then straddled 5 Local government areas all with different by-laws covering electoral signage. Most provided a blanket ban on election signage except for the set period out therein, and in at least one case (Caloundra City Council) that period was 28 days before the day of the election, less than the minimum, set for a Federal election (ie 33 days) while Federal election campaign may well accede the minimum as it did at the last election. A copy of (the old Caloundra Council- that council being amalgamated with others recently) the relevant local laws are attached at appendix 1

1.3 The difference between the council rules meant that in some areas of the electorate you could have signs on one side of the street but not on the other. Although I did have an incident when one particularly eager local-laws officer tried to issue me with a fine and a notice to remove signs because they were visible from his (Caloundra's) side of the street and therefore breach the local laws.

1.4 The other major issue was the variable interpretation of what constituted an 'election sign'. That definition varied not only between councils but also within a council area depending on the local laws officer who made the call. It was reduced down to any photo, candidate name, party name, use of the word vote etc in some cases. This seriously restricted the right to go out and visibly campaign both before and during the campaign period.

1.5 Any campaign activities be they held in a private property, a public place or park a shopping centre, where we exhibited a corflute or some other 'signage' that carried my photo and/or, name, electorate, party name or logo was frequently subjected to a visit from the local-laws officers. This seriously restricted my ability to campaign effectively consuming time and resources from the task at hand. The other side of the issue is that the sitting member's 'mobile office' appeared to be exempted from the operation of the laws as did roadside billboards. Plainly this did not provide a level playing field for all candidates.

1.6 Some further comments on this issue have been provided by Senator John Hogg. These are attached as appendix 2.

1.7 Conclusion

I support the remarks made by the Committee in its report 'The 2004 Federal Election: Report of the Inquiry into the Conduct of the 2004 Federal Election and Matters Related Thereto', Joint Standing Committee on Electoral Matters, September 2005, Canberra.

1.8 On pages 299-300 the Committee noted;

12.120 However, other more localised concerns about advertising bans emerged during the 2004 election. The Committee understands that a number of local governments have introduced by-laws to limit or ban electoral advertising, in particular election signage.

12.121 Aside from obvious practical difficulties arising from inconsistent requirements being imposed by different councils, often located within a single Federal electorate's boundaries, the Committee is concerned that these developments undermine an important principle for candidates.

12.122 In particular, the Committee believes that candidates for a Federal Election should enjoy uniform entitlements to advertise, and should not be subject to additional and inconsistent regulation imposed by other jurisdictions.

12.123 Furthermore, the Committee considers that these by-laws are possibly in breach of section 327 of the CEA, which provides for political liberty of expression,⁹⁸ and determines that State and Territory laws have no effect if they discriminate against and between electoral candidates.⁹⁹

12.124 The Committee therefore concludes that the AEC should assess concerns about the jurisdiction of local and State laws governing electoral signage, and determine whether Commonwealth legislation safeguards equal advertising rights for all candidates, especially where signage is erected on private property.

Recommendation 47

12.125

The Committee recommends that the AEC assess local and state legislation governing electoral signage and determine whether the Commonwealth Electoral Act should be amended to preserve candidates' equivalent rights to display electoral advertising during an election period."

1.8 Even though the, then Government's response to that report had also supported it, it appears that no further action has been taken.

1.9 It would be my assertion that a specific provision should be made in the *Commonwealth Electoral Act* that would set out uniform provisions in regard to election signage which would then supersede any other State or Local Government legislation in so far as to the conduct of Federal Elections.

2 Provision of electoral material to nursing home residents.

- 2.1 I understand and accept the need to ensure vulnerable people are not subject to undue harassment and or intimidation. However, the current provisions appear to fail quite dismally in this regard, those who choose to ignore or subvert the current provisions seem to be able to do so with immunity while those who seek to comply place themselves at a distinct disadvantage.
- 2.2 Of specific note is Section 226 (2) and (2A) of Part XVI of the Commonwealth electoral act. This Section relates to the the provision of literature relating to an election or political parties including How to Vote material.
- 2.3 In accordance with these provisions and the advice provided by the AEC by way of the Candidates Handbook and various other materials my campaign provided how to vote material to the general office of those centres that where designated as mobile booths clearly advising the recipient of the nature of that material and the provisions of the Act.
- 2.4 On attending the centres as scrutineers with the mobile voting teams my workers found that residents had been advised no material was available for my campaign, that they had to chase up the location of my material, which in some cases they were told had not been provided, although on pushing the issue it was later found.
- 2.5 Further, in some centres, how to vote material for another candidate had been plastered through out the centre including on the bedside tables of residents, and in all public areas as well.
- 2.6 Members of my campaign team had also been approached by at least three (3) staff from two different centres who had related their concerns about the distribution of Election material (HTV) and pressure on patients and staff in relation to their vote.
- 2.7 Despite every effort by the team to encourage them to make a formal statement about these matters the people concerned expressed genuine fear about doing so.

2.8 Conclusion

It is my belief that the operation of these provisions should be subject to review to ensure that they operate in a fashion that meets the underlying intention and that does not provide an artificial barrier to a full and open electoral process. Further specific protection provision should exist for staff or other people who may provide information in relation to possible breaches of the Act

3 Political interference with Political Liberty

3.1 The provisions of this Section, particularly sub-paragraph (1), I believe are extremely important to ensure that people in positions of power and control do not use their power to curtail an individuals full and free participation in the electoral process.

3.2 I have been advised and experienced first-hand that the ability to use these provisions in a timely and cost effective way, particularly during an election campaign are extremely limited.

3.3 Conclusion

It is my belief that the provisions have value, however, consideration should be given to improving their operation, particularly in regards to getting a speedy resolution of complaints during an election campaign.

4) Size, design and location of authorisation of election material

4.1 Increasingly it appears that during an election campaign, some political material is being distributed with the authorisation, discretely masked, either by the nature of its size, colour or location on that material.

4.2 Conclusion

I believe that for the provisions of authorisation to continue to have any real value, it is important to consider setting a defined font size, colour and location for that authorisation so as that it is clearly and readily visible.

End
15May 2008

CERTIFICATION

Appendix 1

It is hereby certified that this is a true and correct copy of Subordinate Local Law No. 6.10 (Election Signs) made, in accordance with the *Local Government Act 1993*, by the Council of the City of Caloundra.

G Storch
Chief Executive Officer

CALOUNDRA CITY COUNCIL
SUBORDINATE LOCAL LAW NO. 6.10

Appendix 1

(ELECTION SIGNS) 2003

SUMMARY OF PROVISIONS

PART 1 - PRELIMINARY

- 1 Short title
- 2 Authorising local law
- 3 Object
- 4 Definitions

PART 2 - LICENSING

- 5 Definition of terms in the local law
- 6 Prescribed activity
- 7 Application for a licence
- 8 Term of a licence

PART 1 - PRELIMINARY

1 Short title

This subordinate local law may be cited as Subordinate Local Law No. 6 (Election Signs) 2003.

2 Authorising local law

This subordinate local law is made pursuant to *Local Law No.6 (Licensing)*.

3 Object

The object of this subordinate local law is to assist in the implementation of *Local Law No.6 (Licensing)* by ensuring that election signs are exhibited in a manner that does not detract from the natural and built environment and essential standards of public safety.

4 Definitions

In this subordinate local law:

“**candidate**” means the person who is seeking to be elected.

“**Commonwealth government election**” means an election of a member of the Commonwealth Government, the House of Representatives or the Senate.

“**election**” means an election of:

- (a) a member of the local government; or
- (b) a member of the Legislative Assembly; or
- (c) a member of the House of Representatives or the Senate; or
- (d) a person to a position in accordance with the provisions of an Act; or

“**election sign**” means a device that:

- (a) publicises an election; or

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- (a) a member of the local government; or
- (b) a member of the Legislative Assembly; or
- (c) a member of the House of Representatives or the Senate; or
- (d) a person to a position in accordance with the provisions of an Act; or

“**election sign**” means a device that:

- (a) publicises an election; or

- (b) a candidate for an election; or
- (c) a referendum; or
- (d) a matter the subject of a referendum.

“electorate” means in relation to:

- (a) a Commonwealth government election, an electoral division as provided for under the *Commonwealth Electoral Act 1918*; and
- (b) a State government election, an electoral district as provided for under the *Electoral Act 1992*.

“exempted election sign” means:

- (a) an election sign that is:
 - (i) not on a public place; and
 - (ii) not on premises so as to be visible from a public place; or
- (b) an election sign on clothing for human wear; or
- (c) an election sign on a vehicle which is:
 - (i) being driven on a road; or
 - (ii) being towed on a road; or
 - (iii) parked for a period of time not exceeding 3 hours; and
 - (iv) parked on premises of which the owner or lessee of the vehicle is the owner or occupier.

“exhibit” includes in relation to an election sign the painting, writing, drawing, depiction, making, erection, affixing, putting up, operation or transport of an election sign and **“exhibition”** has the corresponding meaning.

“local government election” means an election of a member of the local government.

“public place” means:

- (a) a road; or
- (b) trust land; or
- (c) a reserve; or
- (d) premises of which the local government is the owner or occupier.

“referendum” means a referendum as defined under the *Referendums Act 1997* or the *Referendum (Machinery Provisions) Act 1984 (Cth)*.

“reserve” has the meaning given in *Local Law No. 10 (Parks and Reserves)*.

“site” means premises or part thereof the subject of a licence application.

“State government election” means an election of a member of the Legislative Assembly.

“trust land” has the meaning given in *Local Law No. 2 (Council Facilities and Other Public Places)*.

PART 2 - LICENSING

5 Definition of terms in the local law

For the purposes of section 3(1)(Administrative Definitions) of the Schedule of *Local Law No. 6 (Licensing)*:

“temporary display or advertisement” in relation to an advertisement which is an election sign, means the temporary display of an election sign during any period other than the 28 day period immediately preceding an election or a referendum.

6 Prescribed activity

For the purpose of section 3 (Definitions) of *Local Law No. 6 (Licensing)*, the exhibition of an election sign, which is not an exempted election sign, within the 28 day period immediately preceding an election or a referendum is a prescribed activity.

7 Application for a licence

For the purposes of section 6(1)(c)(iv) (Application for a Licence) of *Local Law No. 6 (Licensing)*, an application for a licence for the exhibition of an election sign must (unless otherwise required by the local government) be accompanied by:

- (a) the name, street address, telephone number, facsimile number and email address of the candidate exhibiting the election sign; and
- (b) full details of the election sign including its dimensions, construction and the subject matter to be publicised; and
- (c) full details of when and how the election sign is to be exhibited; and
- (d) full details of the street address where the election sign is to be exhibited.

8 Term of a licence

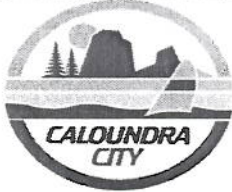
For the purposes of section 8(1) (Term of a Licence) of *Local Law No. 6 (Licensing)*, the term of a licence for the exhibition of an election sign shall be from the date of issue until seven (7) days after the election to which the election sign relates.

PART 4 – EXHIBITION OF ELECTION SIGNS

10 EXHIBITION OF PARTICULAR ELECTION SIGNS

For the purposes of section 11(2) (Exhibition of an election sign) of *Local Law No. 2 (Council Facilities and Other Public Places)*, section 11(1) (Exhibition of an election sign) of *Local Law No. 2 (Council Facilities and Other Public Places)* does not apply to the exhibition of an election sign where:

- (a) the election sign is exhibited on clothing for human wear; or
- (b) the election sign is exhibited on a vehicle which is:
 - (i) being driven on a road; or
 - (ii) being towed on a road; or
 - (iii) parked for a period of time not exceeding three (3) hours; or
 - (iv) parked on premises of which the owner or lessee of the vehicle is the owner or occupier.

	Caloundra City Council	Activity	2006 / 2007
	Postal Address: PO Box 117, Caloundra Qld 4551 Council Offices: 1 Omrah Ave, Caloundra Qld Telephone: 07 5420 8200 Fax: 07 5420 8752 ABN: 98 477 318 507	Erect Election Signs on Premises other than Public Place	

Part 1 Applicant Details

Name of Applicant(s) in Full: _____

Company Name: _____

Trading Name: _____ Contact Name: _____

Postal Address: _____

Business Phone: _____ Home Phone: _____ Mobile: _____

Email: _____ Fax: _____

NOTE: Where the application for the licence is being made by a person (other than a candidate) written authorisation from the candidate must be provided at the time of the applications lodgement.

Part 2 Candidate Details

Name of Candidate in Full (if not the applicant): _____

Company Name: _____

Trading Name: _____ Contact Name: _____

Postal Address: _____

Business Phone: _____ Home Phone: _____ Mobile: _____

Email: _____ Fax: _____

Part 3 Election Details

Type of Election: Local State Federal

Date of Election: _____

Part 4 Supporting Documentation
SUPPORTING DOCUMENTATION TO BE LODGED WITH THIS APPLICATION:

An Election Sign Management Plan must be forwarded with this application. The criteria for the Management Plan is detailed in the publication *Candidates Guide to Election Signage*.

Note: No bond or application fee is required for this election.

Part 5 Declaration of Applicant

I/We hereby make application for a licence to erect election signs as set out in this application form and attached documentation as requested by Caloundra City Council.

Applicant's Name: _____ Signature: _____ Date: _____

Part 6 Office Use Only

Authorised Officer:		Approval Date:	
Recommendation:		Date:	

Part 7 *Terms of this Licence*

From the approved date until midnight on Saturday 9th September 2006 (7 days after the election to which the election sign relates).

This approval is for the erection of electoral signs on privately owned land. No election signs can be located on a public place or attached to any infrastructure within any public place.

Part 8 *Conditions of this Licence*

- (a) The electoral signs shall be installed in the locations defined within the Electoral Sign Management Plan submitted with the Licence Application.
- (b) The total number of sites on which election signs may be exhibited must not exceed 40 within the candidate's electorate within Caloundra City.
- (c) No more than two (2) election signs may be located on each site.
- (d) The election sign must not be exhibited on a structure (other than a fence or a post) on the premises.
- (e) The election sign must be kept in good order and repair.
- (f) The election sign must not be exhibited so as to cause a nuisance under *Local Law No. 7 (Public Health) 1999*.
- (g) The election sign must be positioned on the premises so as to not result in a loss of amenity or constitute a risk to road safety.
- (h) The election sign must not exceed an area of 2.0m².
- (i) The election sign must not be erected prior to twenty-eight (28) days before the day of the election.
- (j) The election sign must be removed within seven (7) days after the day of the election.
- (k) An election sign relating to more than one candidate shall be considered to be an election sign for each candidate.
- (l) The election sign must be exhibited in the location, manner and form specified in the licence.

This is a document to supplement that document prepared by Darrell Main to be presented to the Joint Standing Committee on Electoral Matters.

It became obvious during the most recent Federal election that there were major inconsistencies between various local government areas on the signage allowed to be displayed by candidates for the Federal election

In the seat of the Fisher, candidates were not allowed to display A-frames until 28 days before the actual ballot took place on the 24th of November.

This was in spite of the fact that the election campaign period was for at least 42 days.

This severely curtailed the democratic rights of candidates in the election to become known to the public as candidates for public office for the most senior level of government in Australia.

I would contend that this situation should not be tolerated.

Candidates for office for Federal Parliament must be allowed reasonable freedom to present themselves to the community for election without the hindrance of the by-laws of local government authority areas

This does not try to give a full analysis of these by-laws but merely highlights the need for a full investigation to be done by the Joint Standing Committee on Electoral Matters on the effects of different local government by-laws on an individual Federal electorate by a number of local government areas or on the conditions that prevail across a range of local government areas.

Whilst, not wanting to disturb the peace and tranquillity of local suburbia, there is a real need to ensure that the processes of a democratic society are not stifled by overly zealous local government authorities.

An extension of this is the right of either sitting members of Parliament or the likely alternative member or in the broadest sense a Senator or prospective Senator setting up what is commonly called "a mobile office" during a non-election period so as to engage constituents in political dialogue. Provided this is done within reasonable constraints, there should be no obstacles applying to the pursuance of basic democratic rights.

I trust that the committee will look closely at this problem as it must extend across all electorates in Australia are not simply just electorates in the State of Queensland.

John J Hogg
Senator for Queensland
PO Box 615 Carina Q 4152
(07) 38434066