
The Parliament of the Commonwealth of Australia

Report on the 2007 Federal Election - Events in the Division of Lindsay

**Review of penalty provisions in the
*Commonwealth Electoral Act 1918***

Joint Standing Committee on Electoral Matters

March 2010
Canberra

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Chair's Foreword

Section 328 of the *Commonwealth Electoral Act 1918* (CEA) provides guidelines for the printing and publication of electoral advertisements, notices and other material. If a person or organisation wishes to print or publish electoral advertisements then they must include on the advertisement the name and address of the person authorising the advertisement, and the name and place of the printer.

The penalty for not complying with these requirements is \$1 000 for an individual and \$5 000 for a body corporate. On 20 November 2007 then members of the Liberal Party were involved in the distribution of unauthorised election material. The persons involved in the events in the division of Lindsay were in breach of section 328. Mr Gary Clark was fined the maximum amount. Three other persons were convicted of the crime. Mr Jeff Egan was not convicted because he claimed that he did not know that the electoral pamphlet did not contain the name and address of the person who authorised it and the name and address of the business of the printer.

While the election pamphlet was unauthorised, it was the content matter that caused distress and disgust. The pamphlet sought to turn voters away from the Labor candidate and incite racial tensions. The then Prime Minister, the Hon John Howard, MP, commented that the action was 'tasteless and offensive.'

All members of the committee agreed that the actions that occurred in Lindsay were appalling and needed to be stamped out with the introduction of more significant penalties. The committee has recommended that section 328 of the CEA be redrafted as a strict liability offence and the maximum penalties be 60 penalty units (\$6 600) for an individual and 300 penalty units (\$33 000) for a body corporate. Strict liability will make it more difficult for people to claim that they did not know that a pamphlet was not authorised.

In reviewing the wider penalties in the CEA, the committee was advised that the penalties have not been updated since 1983. It should be noted that the committee in 1989 and again in 1996 recommended that the penalty framework in the CEA be updated. Unfortunately these recommendations were not progressed. The committee has now recommended that the Special Minister of State, with assistance from the Attorney-General, introduce amending legislation to update the penalty provisions in the CEA. When the amending legislation is introduced to the parliament it should be referred to the committee for a bills inquiry so the proposed changes can be publicly debated.

The committee believes that these recommendations will help to strengthen the CEA by increasing penalties to help deter electoral crimes. In conclusion, and on behalf of the committee, I would like to thank all those who have contributed to this inquiry.

Daryl Melham MP

Chair



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Membership of the Committee

Chair Mr Daryl Melham MP

Deputy Chair Hon Andrew Robb AO MP (from 22/02/10)

Mr Scott Morrison MP (to 3/02/10)

Members Mr Michael Danby MP

Senator Simon Birmingham

Hon Andrew Robb AO MP (from 3/02/10)

Senator Bob Brown

Hon Bruce Scott MP

Senator Carol Brown

Mr Jon Sullivan MP

Senator David Feeney

Senator Scott Ryan

Committee Secretariat

Secretary Stephen Boyd

Research Officer Margaret Atkin

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Natasha Petrovic



Terms of reference

On 27 February 2008, the Special Minister of State requested the Committee to conduct an inquiry with the following terms of reference:

That the Joint Standing Committee on Electoral Matters inquire into and report on the conduct of the 2007 election and matters related thereto.



List of abbreviations

AEC	Australian Electoral Commission
AFP	Australian Federal Police
AG's	Attorney-General's Department
CEA	<i>Commonwealth Electoral Act 1918</i>
DRO	Divisional Returning Officer
JSCEM	Joint Standing Committee on Electoral Matters



Recommendations

Recommendation 1 (para 2.20)

The committee recommends that the Special Minister of State, with assistance from the Attorney-General, introduce amending legislation to update the penalty provisions in the *Commonwealth Electoral Act 1918* using the schedule provided by the Australian Electoral Commission which is reproduced at Appendix K as a guide.

The penalty provisions in the *Referendum (Machinery Provisions) Act 1984* should be updated in accordance with changes to the *Commonwealth Electoral Act 1918*.

The Special Minister of State is requested to refer the relevant amending legislation to the committee so that it can conduct a bills inquiry into the proposed changes to the penalties in the Commonwealth Electoral Act.

Recommendation 2 (para 2.62)

The committee recommends that section 328 of the *Commonwealth Electoral Act 1918* be redrafted as a strict liability offence, and the maximum penalties be 60 penalty units for an individual and 300 penalty units for a body corporate.

Recommendation 3 (para 3.18)

The committee recommends that the Australian Electoral Commission should, at the next federal election, record all polling booth offences that are reported, the actions that were taken and provide an appraisal of the adequacy of the powers under the *Commonwealth Electoral Act 1918* to deal with polling place offences.

