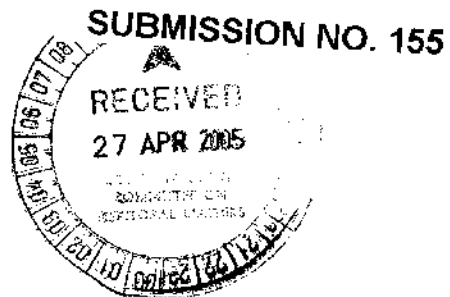


Joint Standing Committee on Electoral Matters
Submission No. 155
Date Received 27-4-05
Secretary *[Signature]*



Mr Tony Smith MP
Chair, Joint Standing Committee on Electoral Matters
Parliament House
CANBERRA 2600 ACT

20 April 2005

Dear Mr Smith

We are writing to advise you that we wish to appear before your committee when it holds hearings in Melbourne as part of its inquiry into the conduct of the October 2004 federal election. We wish to give evidence on the production and distribution of misleading how-to-vote cards, a matter to which we believe your committee should be giving urgent attention.

This practice was extensively documented in the Division of Melbourne Ports, where green-coloured cards clearly designed to mislead voters intending to vote for the Australian Greens were distributed by the Liberal Party. The practice was also seen in other electorates, and is spreading to state elections, as was seen recently in Western Australia.

We believe this practice brings the Australian electoral system into disrepute, encourages retaliatory action by other parties, and has the potential to distort the outcome of federal elections.

Following complaints from voters in Melbourne Ports, the Australian Electoral Commission advised that the distribution of these cards did not, in its opinion, breach the existing provisions of the Electoral Act. We disagree with that opinion, but since that is the view of the AEC we believe that the federal Parliament should now take a stand and legislate to ban the distribution of misleading how-to-vote cards. Consideration of this matter by your committee should be the first step towards this.

I would be grateful if you would advise us of the details of your committee's Melbourne hearing as soon as these are available. We would be happy to provide more information on this issue to the members of your committee.

Yours sincerely

HENRY PINSKIAR

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SUMMARY OF SUBMISSION

On election day, 9 October 2004, a green-coloured how-to-vote card was distributed to voters at most polling places in the seat of Melbourne Ports. The card was distributed by young women wearing green tee-shirts and green baseball caps, and wearing no party identification.

The card's green colouring and lack of a party logo make it look very different from the standard Liberal Party how-to-vote card, which was being distributed at the same polling places by a team of Liberal workers in blue tee-shirts. The word 'Liberal' is used on the leaflet, but not in a way which suggests it is actually a Liberal Party how to vote card.

On handing this card to voters, the young women wearing green shirts said things such as 'Vote for a green Australia' and 'Vote for a green environment.' In some places they approached voters and asked them 'Green?' or 'Voting Green?' before handing them the card. The young women had clearly been coached to use the word 'green' when handing the card to voters.

Both Australian Labor Party and Greens polling place workers saw repeated instances of voters, particularly young voters, taking the green-coloured card in the belief that it was the Greens how to vote card, a mistake which they realised only when Greens workers pointed it out to them. In several places voters became very angry when they realised they had been deceived in this way.

Some of the young women who took part in this exercise are known to be members of the Liberal Party. This was clearly a co-ordinated election-day tactic organised by the Liberal Party. We believe it was devised either by Mr Julian Sheezel, State Director of the Liberal Party, or by Mr Jason Aldworth, campaign manager for Mr David Southwick, the Liberal candidate for Melbourne Ports.

Section 329 of the Electoral Act makes it an offence for a person to print, publish or distribute, or permit or authorise to be printed, published or distributed during an election campaign 'any matter or thing that is likely to mislead or deceive an elector in relation to the casting of a vote'. It is clear that the purpose of these cards was to mislead or deceive an elector in the casting of their vote. The Act, however, does not require an *intention* to deceive. The distribution of anything likely to deceive a voter is sufficient to constitute a breach of the Act.

We can present evidence that the card and the way in which it was distributed did mislead and deceive electors in many cases. It deprived the Greens of votes, and also deprived the Labor Party of the preferences of those voters. Had the result in Melbourne Ports been close, this tactic might have produced a result contrary to that intended by the majority of voters.

On 20 October 2004 Mr Michael Danby, the Member for Melbourne Ports, wrote to the Australian Electoral Commission, asking the AEC to rule on whether the green how-to-vote card constituted a breach of Section 329 of the Electoral Act, and if so what action the AEC would take.

On 2 November Mr Tim Pickering of the AEC wrote to Mr Danby, advising him that the AEC did not consider that the cards constituted a breach of Section 329. His reasons were:

- That the AEC understood the phrase “likely to mislead or deceive an elector in relation to the casting of a vote” applied only to something likely to mislead or deceive an elector about the actual process of casting their vote (for example a card advising voters that it was only necessary to number one square on the ballot paper to cast a valid vote), and not to material likely to mislead or deceive an elector about *which candidate* they were voting for.
- That the reference on the card to Mr Southwick as the Liberal Party candidate and the advice on the card to “simply place number 1 in the Liberal/The Nationals box above the line” meant that the card could not be seen as an attempt to deceive voters as to which candidate or party the card supported.
- That the “mere use of a green colour and the promotion of the Liberal Party environmental policy is not enough to consider the card misleading.”

We do not dispute that Mr Pickering came to this conclusion on the basis of his understanding of the Act. But it seems to us that if Mr Pickering has correctly interpreted the Act, then the Act is deficient, particularly with regard to the first point Mr Pickering makes. If the Act does not currently prohibit the distribution of a how-to-vote card which has the effect, intentional or inadvertent, of leading voters to vote for one party’s candidate in the belief that they are voting for another party’s candidate, this is a serious deficiency, because this is a far more likely occurrence than the distribution of a card which leads voters to cast an informal vote.

We therefore submit that Electoral Act needs to be amended to prohibit the distribution at a polling place of “any matter or thing that is likely to mislead or deceive an elector in relation to the casting of a vote *or in relation to the party affiliation of any candidate*”

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