

JOINT STANDING COMMITTEE ON ELECTORAL MATTERS
INQUIRY INTO THE 2007 FEDERAL ELECTION
SUBMISSION BY PETER LINDSAY MP

(1) Wearing of political slogans within a polling place.

Currently Section 341(1) of the Commonwealth Electoral Act 1918 prohibits *scrutineers and officials* of the Australian Electoral Commission (AEC) from wearing or displaying a badge or emblem of a candidate or political party in a polling place. This is an offence under the Act, liable to a \$1000 fine.

The Act *does not* specifically preclude party workers or members of the public from entering polling place wearing or displaying a badge or emblem of a candidate or political party when voting

The Act *does* preclude anyone appointed as a scrutineer by the candidate from displaying a badge or emblem of a candidate or political party in a polling place.

I believe that the *intention* of the Act was to disallow the wearing or display of political material by any person in a polling place.

It has become practice for candidates and political parties to use political slogans and messages to identify a political party or to send a political message on behalf of a political party, eg, "Kevin 07", "Your Rights At Work", "Go for Growth, Vote Liberal" or "Wall to Wall Labor".

Under the Act there is nothing to prevent a scrutineer or official of the Australian Electoral Commission from wearing or displaying a badge or emblem *portraying a slogan and/or message that is identified with a political party*.

Recommendation: That the Commonwealth Electoral Act 1918 be amended to prohibit the wearing or displaying by any person of a badge, emblem, slogan or message promoting a candidate or political party in a polling place.

(2) Truth in Political Advertising

In February 1984 the Electoral Act contained a section (Section 329(2)) prohibiting untrue political advertising.

This was repealed in October 1984, following detailed examination by the Joint Select Committee on Electoral Reform, which recommended in its August 1984 Second Report ('the Report') that it is not possible to control political advertising by legislation.

The AEC believes *there is little point in regulating the factual content of political advertising if remedies are not available when the damage is actually occurring; stating the most obvious immediate remedy during the election period is the use of court-ordered injunctions to stop any apparently illegal activity from arising or continuing.* (Submission pS1967)

Political advertising should be truthful in its content, and it is noted that any legislation introduced to enforce this principle would be difficult to enforce and could be open to challenge.

In the past recommendations have been made to the government to amend legislation to prohibit misleading statements of fact, but these recommendations have been rejected on the basis that any legislation introduced to enforce this principle would be difficult to enforce and could be open to challenge.

However, as the Report also noted, a practical form of sanction against misleading advertising is provided for in Section 113 of South Australia's Electoral Act.

As noted by the AEC *Section 113 of the South Australian Electoral Act does not ban "untruths" in political advertising, which would require complex and subjective assessments of ideas, images and intangibles*

in political debate. Instead, the South Australia Electoral Act bans “inaccurate statements of fact”, which is a much more practical basis for regulation”.

When tested in the South Australian Supreme Court (Cameron v Becker 1995) the case established that the offence created by section 113 requires the prosecution to prove that the alleged statement is inaccurate and misleading to a substantial or significant extent.

Also, section 113 is directed to electoral advertisements containing statements of fact, not expressions of opinion, and the common law defence of an honest and reasonable mistake of fact is available.

The Supreme Court further decided that the implied constitutional freedom of political discussion does not confer a right to disseminate false or misleading information and section 113 is therefore valid.

Therefore, it is recommended that legislation be amended to prohibit untrue political advertising, but through court-ordered injunctions during the election period rather than through legislative enforcement.

Recommendation: That the Electoral Act and the Broadcasting Act be amended to allow court-ordered injunctions to stop any apparent misleading political advertising containing inaccurate statements of fact from arising or continuing during election periods.

(3) Standardisation of Voting Systems

After the 2001 and 2004 elections, the Australian Electoral Commission (AEC) looked at the question of what causes voting informality. The main findings from the analysis were as follows:

- in recent years the informal vote (as a percentage of the total votes cast) has been continuing to increase at each election
- the largest category of informal votes have been informal because the elector marked only a number ‘1’ on the ballot paper
- the ‘No. 1 only’ informal vote was quite common in the OPV state of Queensland and rather less so in New South Wales.

However, it is acknowledged that there may be other influences of state-level OPV voting at Commonwealth elections, e.g., informal votes increase with the number of candidates on the ballot paper, and education levels and voting by recent immigrants with less English skills may also be relevant.

There seems little doubt that differences between voting procedures at the Commonwealth and state levels, and between the voting systems for the Senate and the House of Representatives, may also contribute to voting informality:

- in the ‘full preferential’ system used in elections for the House of Representatives, the elector must number every square on the ballot paper to cast a formal vote, but not all elections in Australia use a full preferential system
- New South Wales and Queensland both practice ‘optional preferential’ voting at the state level
- Senate above-the-line option can confuse House of Representatives voters

The following table details:

- the informal vote level in all Commonwealth elections since 1980
- the informal vote in the five states with compulsory preferential voting for the elections between 1980 and 1990 (NSW introduced OPV in 1978)
- the informal vote in the four states with compulsory preferential voting for the elections since 1993 (Queensland introduced OPV in 1992).

The following points can be made:

- on five occasions OPV state(s) had fewer informals than the others
- on five occasions OPV state(s) had more informals than the others

- on seven occasions OPV state(s) had fewer informals than the national average

In addition to the factors mentioned above, several studies indicate that compulsory voting may be one of many factors contributing to informality, and that blank ballots may in some cases be the 'functional equivalent of abstention'.

These studies show that while the link between compulsory voting and informal voting is difficult to prove, some informal votes could be protest votes from voters who would have otherwise abstained under a non-compulsory system. For example, informal ballots with either protest slogans or marks making the numbering illegible made up about 6.6 per cent of informal votes in 2001.

The 'number of candidates' variable is a strong predictor of informality. In 2004, Greenway (NSW) was the seat with the highest number of candidates (14) and the largest increase in the number of candidates from 2001 (six). Perhaps unsurprisingly, Greenway had the highest percentage of informal votes (11.8 per cent).

Generally, the more candidates an elector has to preference, the more likely it is that the elector will make an error in numbering the boxes on the ballot paper. This may be due to numbering an insufficient number of boxes, or it may be due to errors in the allocation of numbers.

Table : Informal voting Commonwealth elections 1980–2007

na = not applicable

| Election | 1980 | 1983 | 1984 | 1987 | 1990 | 1993 | 1996 | 1998 | 2001 | 2004 | 2007 |
|----------------|------|------|------|------|------|------|------|------|------|------|------|
| NSW | 2.3 | 2.2 | 6.2 | 4.6 | 3.1 | 3.1 | 3.6 | 4.0 | 5.4 | 6.1 | 5.0 |
| Qld | na | na | na | na | na | 2.6 | 2.6 | 3.3 | 4.8 | 5.2 | 3.6 |
| Ave | 2.3 | 2.2 | 6.2 | 4.6 | 3.1 | 2.9 | 3.1 | 3.7 | 5.1 | 5.7 | 4.3 |
| Vic | 2.8 | 2.2 | 8.2 | 5.2 | 3.5 | 2.8 | 2.9 | 3.5 | 4.0 | 4.1 | 3.3 |
| Qld | 1.5 | 1.3 | 4.7 | 3.4 | 2.2 | na | na | na | na | na | na |
| WA | 3.3 | 2.0 | 7.4 | 6.6 | 3.7 | 2.5 | 3.2 | 4.2 | 4.9 | 5.3 | 3.9 |
| SA | 3.4 | 2.7 | 8.7 | 6.8 | 3.7 | 4.1 | 4.1 | 4.5 | 5.5 | 5.6 | 3.8 |
| Tas | 2.6 | 2.3 | 6.1 | 4.9 | 3.3 | 2.7 | 2.3 | 3.1 | 3.4 | 3.6 | 2.9 |
| Ave | 2.7 | 2.1 | 7.0 | 5.4 | 3.3 | 3.0 | 3.1 | 3.8 | 4.5 | 4.7 | 3.5 |
| Nat.Ave | 2.5 | 2.1 | 6.8 | 4.9 | 3.2 | 3.0 | 3.2 | 3.8 | 4.8 | 5.2 | 4.0 |

Source: Australian Electoral Commission

Recommendation: That voting procedures be standardized across Australia to reduce voting informality.

(4) Voting practices in indigenous communities.

As the Federal Member for Herbert, my electorate includes the indigenous community of Palm Island.

There have been consistent reports from administrators and scrutineers of irregularities on polling day of multiple voting papers being completed by single individuals, and harassment of persons entering the polling places.

I have also received evidence that inducements were offered to voters and that the presiding officer initially would not take any action to stop the practice within the polling place.

I am concerned that if these irregularities are occurring within the Herbert electorate, there must be similar problems in more remote indigenous communities.

Recommendation: That the ongoing unsatisfactory election practices in indigenous communities be addressed.

(5) Unauthorised electoral material.

The Commonwealth Electoral Act 1918 section 328 does not allow the printing, publishing or distribution of electoral material *unless the name and address of the person who authorised the advertisement, handbill, pamphlet, poster or notice appears at the end thereof.*

It has been noted that there has been a steady erosion of the old political adage “If in doubt, authorize” by political parties, and some electoral material has been distributed without proper authorization.

New candidates tend not to be aware (or choose not to be aware) of the need for electoral material set out in the Act to carry an authorization.

Recommendation : That the AEC be asked to ensure that the law relating to the authorization of electoral material be more rigidly monitored and enforced.