
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

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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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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.

Introduction

Background to the review

- 1.1 On 22 June 2009 the committee tabled its report on the conduct of the 2007 federal election.¹ The report provides a comprehensive examination of the administration of the election and, among other issues, proposes reforms to enhance the franchise, improve management of the electoral roll, and proposes measures to address demand for early voting.
- 1.2 In relation to the administration of the election, feedback received from inquiry participants recognised the professional work of the Australian Electoral Commission (AEC) in administering a reliable and effective election.
- 1.3 The 2007 federal election, however, was tarnished by the events in the division of Lindsay. On 20 November 2007 then members of the Liberal Party were involved in the distribution of unauthorised election material. The unauthorised election pamphlet stated that the fictitious Islamic Australian Federation ‘strongly support the ALP as our preferred party to govern this country and urge all other Muslims to do the same.’ The pamphlet further stated that ‘we gratefully acknowledge Labors [sic] support to forgive our Muslim brothers who have been unjustly sentenced to death for the Bali bombings.’ A copy of the offending pamphlet is reproduced at **Appendix C**.

1 Joint Standing Committee on Electoral Matters, *Report on the conduct of the 2007 federal election and matters related thereto*, June 2009.

- 1.4 While the pamphlet was unauthorised, it was also the content matter that caused concern. The Lindsay Federal Electorate Council Australian Labor Party stated:

Our concern is that the pamphlet was a fraudulent pamphlet, indicating that it was from another political party, and it was malicious and it vilified people. I think it was meant to incite racial tensions as well. What we are concerned about is the actual content of the pamphlet.²

- 1.5 During the 2007 Federal Election the then Prime Minister the Hon John Howard, MP, was asked questions about the events in the division of Lindsay. The question and the Prime Minister's answer are reproduced in full below:

JOURNALIST:

Jim Middleton, ABC Television. Good afternoon Prime Minister. I wonder whether, can you guarantee that no taxpayers' funds or public resources were used in the production or distribution of the leaflet in Lindsay that you have yourself described as offensive. Secondly, are you sure that there are no other instances of this type of thing happening in any other electorate and thirdly, given, why wouldn't the perpetrators of this think this is standard operating procedure given that when a similar incident occurred in Greenway in the last election, as far as I can recall no one got expelled from the Liberal Party, there was no investigation and no apology.

PRIME MINISTER:

Well Jim, I do not believe, and I would be perfectly astonished, if any public funds had been used. I condemn what happened. It was an unauthorised document, it does not represent my views, it was tasteless and offensive. There are many, there are myriad legitimate criticisms that can be made of the Australian Labor Party, but I do not believe that the Australian Labor Party has ever had any sympathy for the Bali bombers and I thought it was an outrageous thing to say. That's my view, I think the party organisation has dealt with it with lightning speed and great effectiveness.³

2 Mr John Thain, President, Lindsay, Federal Electorate Council, Australian Labor Party, *Transcript T1*, p. 10.

3 Prime Minister – *Transcript of the Prime Minister the Hon John Howard MP Address to the National Press Club, Barton, Canberra, 22 November 2007*, p. 6.

- 1.6 The events in the division of Lindsay were examined briefly by the committee in its report on the 2007 federal election. The committee noted public facts about the incident but concluded that it ‘intends to examine in detail the events in the division of Lindsay once court proceedings are concluded’. This report fulfils the committee’s commitment to reviewing in detail the matters that occurred in the division of Lindsay.

Events in the Division of Lindsay

- 1.7 The events that occurred on the evening of 20 November 2007 led to five people being charged. The events are documented in the Court judgments relating to Mr Gary Clark and Mr Jeff Egan. Mr Clark was the husband of the then sitting member for Lindsay, Ms Jackie Kelly, and Mr Egan was a member of the New South Wales State Executive of the Liberal Party. Mr Clark was found guilty while Mr Egan was found not guilty. Mr Clark’s judgment is reproduced in full at **Appendix D**. Mr Egan’s judgment is reproduced in full at **Appendix E**.
- 1.8 The Egan judgment states that ‘persons connected with the Australian Labor Party became aware of the possibility that certain persons connected with the Liberal Party were going to distribute unauthorised electoral matter within the Federal Electorate of Lindsay.’⁴ The relevant members of the ALP went to an area of Penrith where they witnessed and took photos of then members of the Liberal Party distributing the unauthorised pamphlets. Senator Steve Hutchins, in evidence to the committee, advised that ‘it was a Liberal Party member who tipped us off on the Lindsay incident.’⁵
- 1.9 The Clark judgment reports that Mr Jaeschke, the State Director of the Liberal Party for New South Wales received a letter of apology from Mr Clark. A similar letter of apology from Mr Greg Chijoff, the then husband of the Liberal candidate for Lindsay, Ms Karen Chijoff, was also sent to Mr Jaeschke. Mr Clark’s letter of apology is reproduced in full at **Appendix F**. Mr Chijoff’s letter of apology is reproduced in full at **Appendix G**.
- 1.10 Mr Clark in his letter of apology states that ‘I can confirm that neither the candidate for Lindsay nor Jackie, nor you had any advance knowledge of

4 Local Court, New South Wales, *Commonwealth Director of Public Prosecutions V Egan*, para. 4, p. 2.

5 Senator Steve Hutchins, *Transcript T1*, p. 22.

this matter.’ Mr Clark further stated that ‘I also take this opportunity to apologise to other members of the community, particularly the Muslim community to whom I bear no malice, for the offence caused by my actions and authorise you to make this letter public.’ Mr Chijoff in his letter of apology indicated that he had resigned his membership of the Liberal Party.

- 1.11 Media reporting of the event, and subsequent court proceedings are set out in Table 1.1.

Table 1.1 Media reporting and the events in the division of Lindsay

Date	Media comments
20 November 2007	Pamphlet claiming to be from ‘The Islamic Australia Federation’ and carrying the ALP logo are alleged to have been distributed in the division of Lindsay.
22 November 2007	Australian Electoral Commission refers complaints by the Australian Labor Party and the State Director of the NSW Liberal Party of Australia to the Australian Federal Police.
22 March 2008	NSW police confirm that they had commenced legal proceedings over the incident against five men. After consulting the Commonwealth Director of Public Prosecutions, the NSW Police charged the men under Section 328 of the Commonwealth Electoral Act, which deals with the printing and publication of election material.
29 April 2008	Mr Troy Craig pleads guilty to one count of distributing unauthorised electoral material. The magistrate agreed with Mr Craig's barrister that his client's prior good character and minor role in the incident made it appropriate for the charge to be dismissed.
7 May 2008	Mr Greg Chijoff is convicted and fined \$750 for distributing unauthorised electoral material.
20 May 2008	Mr Mathew Holstein pleads guilty to distributing unauthorised election material and is fined \$500.
29 April 2009	Mr Gary Clark is convicted of distributing unauthorised electoral material. Mr Jeff Egan is acquitted of distributing unauthorised electoral material. The court found that he did not know the leaflet failed to contain the necessary authorisation and printing details.
19 May 2009	Mr Gary Clark is fined \$1,100 and was ordered to pay court costs of more than \$2,000.

Source *Joint Standing Committee on Electoral Matters, Report on the conduct of the 2007 federal election and matters related thereto, June 2009, p. 291.*

The adequacy of penalty provisions

- 1.12 The distribution of unauthorised election material is a breach of provisions in the *Commonwealth Electoral Act 1918* (CEA). Section 328 of the CEA provides that the maximum penalty for printing and publication of electoral advertisements or notices that do not include the name and address of the person who authorised it and the name and place of

business of the printer, is \$1 000 if the offender is a natural person and \$5 000 if the offender is a body corporate. Under the Crimes Act, dollar amounts are converted to penalty units which adds about 10 per cent.⁶ This explains why Mr Gary Clark, for example, was fined \$1 100 for breaching this provision.

- 1.13 The events in the division of Lindsay gave rise to some comment from inquiry participants about the appropriateness of penalties and other provisions of the CEA regarding misleading statements. The ALP National Secretariat told the committee that:

The ALP remains concerned about the events which occurred in the final week of the election campaign in Lindsay. The Committee will be familiar with these events, which do not need to be recounted here.

The ALP does, however, believe that the events, the investigation process and the penalties finally issued fall well below a standard that would be acceptable to the general community.

We believe that JSCEM should now review the provisions of the Commonwealth Electoral Act 1918 relating to misleading statements, specifically s.329, with a view to providing further legislative definition to an offence under this part of the Act, and with a view to strengthening the penalties.⁷

- 1.14 The committee in its report on the 2007 federal election concluded that 'the court judgments in several of the cases relating to the events in the division Lindsay, where fines of less than \$1 000 were imposed, have clearly demonstrated that the penalties imposed under the CEA for the distribution of unauthorised material are inadequate.'⁸ Table 1.1 indicates that Mr Chijoff and Mr Holstein were fined \$750 and \$500 respectively.

Committee objectives and scope

- 1.15 In this chapter, the committee has provided an overview of the key issues surrounding the events in the division of Lindsay. This background information is necessary to understand the serious nature of the activities

6 Ms Sarah Chidgey, Attorney-General's Department, *Transcript T2*, p. 7.

7 Australian Labor Party National Secretariat, submission 159, p 4.

8 Joint Standing Committee on Electoral Matters, *Report on the conduct of the 2007 federal election and matters related thereto*, June 2009, p. 291.

that occurred. In addition, the appendices help to complete the picture by providing key documents relating to the incident.

- 1.16 The committee noted the Clark and Egan judgments and accepted the facts, and consequently did not examine the events in further detail. The purpose is to review the adequacy of the penalties relating to the distribution of unauthorised election material and determine whether the current penalty framework provides sufficient deterrence to prevent these types of activities in the future.
- 1.17 Second, the examination of the penalties under section 328 of the CEA have brought attention to the adequacy of penalties in the Act more generally. For example, the committee was advised that penalties in the CEA have not been updated since 1983.
- 1.18 Third, the committee examined the current operation of polling booth offences as set in the CEA.

Conduct of the inquiry

- 1.19 On 27 February 2008 the then Special Minister of State, Senator the Hon John Faulkner, wrote to the committee requesting it to conduct an inquiry into the 2007 federal election and matters related thereto. This reference was later supplemented by two Senate resolutions.⁹
- 1.20 The committee's report on the 2007 federal election was tabled on 22 June 2009. As part of that report, the committee gave a commitment to review the events in the division of Lindsay when court processes have been finalised.¹⁰ This review of penalty provisions arises from the committee's original reference that it received from the Minister on 27 February 2008.
- 1.21 The committee received evidence on the events in the division of Lindsay through its first request for submissions beginning in April 2008. In September 2009 the committee wrote to registered major political parties seeking any further information on the issue. In addition, the committee wrote to those persons involved in the incident but there was no response from this group.

⁹ Senate, Journals of the Senate, No 12, 14 May 2008, p. 390; and No 5, 12 March 2008, pp. 210-211.

¹⁰ Joint Standing Committee on Electoral Matters, *Report on the conduct of the 2007 federal election and matters related thereto*, June 2009, p. 2 and p. 291.

- 1.22 Submissions received as part of this review are listed at **Appendix A**. Those persons and organisations appearing at public hearings are listed at **Appendix B**.
- 1.23 Public hearings were conducted in Sydney on 14 October 2009 and in Canberra on 17 November 2009. In the footnotes, T1 and T2 refer to the transcripts of evidence taken on 14 October 2009 and 17 November 2009 respectively. The submissions and transcripts of evidence from these public hearings are available from the committee's website at www.aph.gov.au/house/committee/em/index.htm

Structure of the report

- 1.24 Chapter two examines the adequacy of penalty provisions under section 328 of the CEA. At the same time, the committee makes some observations about the adequacy of the penalty framework in the CEA because it has not been updated since 1983.
- 1.25 The final chapter of the report examines polling booth offences and considers the application of an infringement notice scheme. This type of approach could help to enhance administrative processes and improve deterrence.

Penalties under section 328

Introduction

- 2.1 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.
- 2.2 The penalty for not complying with these requirements is \$1 000 for an individual and \$5 000 for a body corporate. 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. 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.
- 2.3 This chapter will examine whether the current penalties under section 328, which have not been updated since 1983, provide suitable deterrence. The committee also examines whether the offence should be changed to a strict liability offence to help act as an increased deterrence in the future.
- 2.4 In addition, the committee uses this review as an opportunity to examine more broadly the adequacy of the suite of penalties in the CEA which have not been updated since 1983.

Penalties in the CEA and the need for reform

- 2.5 During the hearings, the committee sought information on the penalty levels in the CEA, and the process by which they are updated. The AEC stated:

The penal sanctions in the act and the levels were set in 1983. They have not been changed since the major amendments that were done to the act in 1983. So the \$1 000 has not changed.¹

- 2.6 The age of the penalties in the CEA is also reflected by the fact that the older sections refer to dollar amounts rather than the modern approach of penalty units. The AEC stated:

...there was mention about why the offence in section 328A is punishable by penalty units. That reflects, again, the age of the penalties that are here. The 328 provision dealing with electoral advertising on the internet was only put in to the act in 2006. So that is why the reference there is the modern reference to penalty units while the remainder of the provisions in part 21 of the act are expressed in fixed dollar amounts.²

- 2.7 Section 4AA of the *Crimes Act 1914* currently sets one penalty unit at \$110. The Attorney-General's Department (AG's) noted that 'expressing a penalty in penalty units assists in adjusting penalties upwards in line with inflation.'³

- 2.8 The fact that the penalty units in the CEA have not been updated since 1983 was conclusive grounds for their review. The AEC stated:

...the AEC would support a view and recommendations that the level of the penalties should be reviewed and should be increased to make them up to date and to reflect modern circumstances.⁴

- 2.9 It should be noted that the committee has a long history in examining the adequacy of penalty provisions in the CEA. In 1989 the then committee as part of its review of the 1987 federal election made the following recommendations:

- Recommendation 54: The penalties for election offences under the *Commonwealth Electoral Act 1918* be substantially increased with those
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1 Mr Paul Pirani, Chief Legal Officer, Australian Electoral Commission, *Transcript T1*, p. 5.

2 Mr Paul Pirani, Chief Legal Officer, Australian Electoral Commission, *Transcript T1*, p. 5.

3 Attorney-General's Department, *A Guide to Framing Commonwealth Offences, Civil Penalties and Enforcement Powers*, December 2007, p. 44.

4 Mr Paul Pirani, Chief Legal Officer, Australian Electoral Commission, *Transcript T1*, p. 5.

penalties currently set at \$1 000 or 6 months imprisonment being increased to \$12 000 or imprisonment for not more than two years; and

- Recommendation 55: All election penalties be subject to regular review.⁵

2.10 In 1997 the then committee as part of its review of the 1996 federal election made the following recommendation:

- Recommendation 51: that a review of the level of penalties for offences under the Electoral Act and the Referendum Act be undertaken by the AEC with the assistance of the Attorney-General's Department, with a view to bringing the penalties into line with penalty rates for comparable offences under the other Commonwealth statutes.⁶

2.11 In 1999, as part of the review of the 1998 federal election, the AEC in a submission, made the following response to recommendation 51 as quoted above:

This recommendation of the 1996 JSCEM has not been progressed,...for the following reasons. Firstly, the penalty units system is gradually being inserted into the Electoral Act to replace the old penalty system specifying actual dollar amounts for pecuniary penalties and in some cases, term of imprisonment, as individual sections of the Act are amended (see for example section 91A(1AA))...

Finally, the AEC has been informally advised by the Criminal Law Branch of the Attorney-General's Department that any review of the level of penalty levels in the Electoral Act would have to be conducted within given policy guidelines concerning desirable and specified penalty levels. The AEC is now of the view that such policy guidelines should more appropriately come from the JSCEM rather than the AEC, and should be evaluated by the JSCEM for each particular offence in question.⁷

2.12 The AEC in its submission to the current inquiry notes that the policy responsibility for framing Commonwealth offences falls within the AG's portfolio. The AEC stated that 'any legislation to implement JSCEM

5 Joint Standing Committee on Electoral Matters, *The 1987 Federal Election, Inquiry into the conduct of the 1987 Federal Election and 1988 Referendums*, May 1989, p. xxi.

6 Joint Standing Committee on Electoral Matters, *The 1996 Federal Election, Report of the Inquiry into the conduct of the 1996 Federal Election and matters related thereto*, June 1997, p. 90.

7 Australian Electoral Commission, *Supplementary Submission 239 to the JSCEM Inquiry into the conduct of the 1998 Federal Election and matters related thereto*, paras 8.3 to 8.5.

recommendations on penalties could only be progressed with the approval of that Department and its Minister.’⁸

- 2.13 The AEC, as part of its submission, has provided a table which lists all provisions contained in the Electoral Act which contain a penalty offence. This list is reproduced in full at **Appendix K**. The AEC commented that ‘the proposed penalties for the offences contained in Part XX of the Act reflects the revised disclosure regime that was contained in the Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2009.’⁹ Therefore, the penalties proposed for sections 315 to 316 have been publicly available through the political donations and other measures bill. The proposed changes to offences under Part XXI which includes sections 323 to 351 have not been previously circulated.
- 2.14 In examining the AEC’s proposed changes to penalty provisions monetary penalties, in many cases, have been raised to a higher level and then converted to penalty units. For example the penalty for section 315(2) which relates to lodging an incomplete return or failing to retain relevant records is currently \$1 000 and a strict liability offence. The AEC has proposed that this be no longer a strict liability offence but the fine be increased to 120 penalty units.
- 2.15 A further aspect about the proposed changes to penalties is the introduction of terms of imprisonment where previously there were none and in cases where there are currently penalties of imprisonment, the proposal in some cases is to increase these significantly. For example, section 327(1) relates to interference with any political right or duty. The current penalty is \$1000 or imprisonment for 6 months, or both. The AEC has proposed that this be revised to a maximum penalty of 240 penalty units or imprisonment for 4 years or both. The increased monetary penalty and increased term of imprisonment reflects the serious nature of the offence and the need to underpin Australia’s electoral laws.
- 2.16 The AEC advised that many of the penal offences in the Electoral Act are mirrored in the *Referendum (Machinery Provisions) Act 1984* and, accordingly, any changes proposed to the Electoral Act should also be recommended to the *Referendum (Machinery Provisions) Act*.

8 Australian Electoral Commission, *Submission 3A*, p. 1.

9 Australian Electoral Commission, *Submission 3A*, p. 7.

Conclusions

- 2.17 The penalty provisions in the *Commonwealth Electoral Act 1918* have not been updated since 1983. The deterrent value of the penalties have been decreasing over time and it is now essential that the penalties be updated. It should be noted that since 1989 the committee has been recommending that the penalties be updated but unfortunately this has not occurred. The Australian Electoral Commission has provided a submission to the current inquiry which identifies all provisions in the CEA which contain a penalty offence and proposes possible changes. This list is reproduced at **Appendix K**.
- 2.18 The committee appreciates the information provided by the AEC as it now provides a guide for proceeding with legislative amendments to update the penalty provisions in the CEA. It is noted that the offences under Part XX of the CEA have previously been circulated as they reflect the disclosure regime that was contained in the Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2009. The proposed changes to Part XXI which includes sections 323 to 351 of the CEA have not been previously circulated. The committee notes that in some cases the monetary fines and length of imprisonment have been significantly increased.
- 2.19 The committee recommends that the Special Minister of State with assistance from the Attorney-General should seek to update the penalties as soon as possible using the AEC's proposed changes to penalties as a guide. As some of the proposed changes have not been subject to public debate the committee requests that the Special Minister of State refer amending legislation to the committee so that the committee can conduct a bills inquiry into the proposed reforms to penalties in the CEA. A future bills inquiry will help to highlight the proposed changes to penalties and ensure that the new penalties adequately reflect community values.

Recommendation 1

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*.

Section 328 penalties

2.21 The circulation of unauthorised electoral material is a very serious matter and all participants in the inquiry were in agreement that it is a practice that must be stamped out. The level of the current penalties, however, did not support this goal as there was not sufficient deterrence to prevent people or organisations from undertaking this illegal practice. Mr Luke Foley, Assistant General Secretary of the Australian Labor Party (ALP), NSW Branch, stated:

So we would submit that there is an unfortunate trend in Australian politics exhibited at the last two federal elections concerning bogus material seeking to push the buttons of religion and race and seeking to divide the community on that basis. When that sort of material has been distributed on both occasions the aim has been to hurt the Labor candidate in a highly marginal seat. We are concerned to ensure that these tactics are drummed right out of Australian politics. We think that a \$1,000 fine, the current maximum penalty that exists, is clearly inadequate for offences of this degree of seriousness.¹⁰

2.22 The Australian Democrats stated:

10 Mr Luke Foley, Assistant General Secretary, Australian Labor Party, NSW Branch, *Transcript T1*, p. 26.

There can of course be serious electoral consequences in the practice of distributing misleading and/or unauthorised material, especially if it isn't picked up until after the election and the fines or other penalties should act as a sufficient deterrent.¹¹

- 2.23 Senator Steven Hutchins, Labor Senator for New South Wales, was part of a group of Labor party members who confronted members of the Liberal Party responsible for distributing unauthorised election material in the division of Lindsay. Senator Hutchins stated:

This is not the first time that the NSW Liberals have been caught doing something like this, but it is the first time that they have been properly brought to justice. In doing so, the Commonwealth Electoral Act has proven to be lacking when it comes to ensuring the integrity of electoral material.¹²

- 2.24 The full text of section 328 of the CEA is reproduced in full at **Appendix H**.

The application of section 328

- 2.25 The distribution of unauthorised election material, as occurred in Lindsay, is not unique. The events that occurred in Lindsay, however, were unusual because it was one of the few occasions where evidence was available to convict those guilty of distributing unauthorised material.

- 2.26 During the 2007 election, three incidents were reported that involved anonymous pamphlets. The AEC stated:

In this particular incident in Lindsay, we were sent photographs of the persons involved in the publication and distribution of the documents. That made it rather easier to refer it to the Australian Federal Police....

In the two other matters we had extreme difficulties, as did the Australian Federal Police, in attempting to identify the persons involved in the publication of those pamphlets.¹³

- 2.27 The advice of the AEC was that if there was no evidence to identify the persons involved then little or no action can be taken. The AEC stated:

The matter in Tasmania involved an extremely offensive and highly defamatory sticker that was placed on a candidate's

11 Australian Democrats, *Submission 2A*, p. 1.

12 Senator Steve Hutchins, *Submission 1A*, p. 1.

13 Mr Paul Pirani, Chief Legal Officer, Australian Electoral Commission, *Transcript T1*, p. 2.

election posters around Hobart in particular. The AFP investigated that matter and could not find the persons involved in the distribution and publication of that defamatory material. As far as the Electoral Commission is concerned, this particular pamphlet shows one of the problems that we have with the operation of the legislation – that if we and the Australian Federal Police are unable to identify the person who caused the publication then little action can be taken.¹⁴

2.28 Other witnesses reported cases involving the distribution of anonymous pamphlets. Senator Steve Hutchins stated:

In the Greenway Campaign during the 2004 election, the ALP Candidate Ed Husic was subjected to a similar spate of letterboxing fake, unauthorised, and misleading material. While this cannot be traced to the Liberal Party, they were the direct beneficiary.¹⁵

2.29 Mr Foley presented the committee with a copy of the anonymous pamphlet referred to by Senator Hutchins. Mr Foley stated:

So we have had our candidates in marginal seats, in Greenway in 2004 and in Lindsay in 2007, subject to this sort of bogus material being distributed at night in the final few days of an election campaign. We want to ensure it never happens again. The only difference between Greenway in 2004 and Lindsay in 2007 is that the perpetrators were caught in Lindsay. They got away with it in Greenway. Louise Markus was elected narrowly over Ed Husic.¹⁶

2.30 The pamphlet referred to by Mr Foley is reproduced at **Appendix I**.

Liability options to enhance deterrence

2.31 While the Lindsay incident was significant for the fact that the persons responsible for distributing unauthorised election were convicted, the incident also revealed key features about the operation of the penalty provisions.

14 Mr Paul Pirani, Chief Legal Officer, Australian Electoral Commission, *Transcript T1*, p. 2.

15 Senator Steve Hutchins, *Submission 1A*, p. 1.

16 Mr Luke Foley, Assistant General Secretary, Australian Labor Party, NSW Branch, *Transcript T1*, p. 26.

2.32 The NSW Police commenced legal proceedings against five persons who were involved in distributing unauthorised election material. Three of these pleaded guilty while Mr Clark and Mr Egan pleaded not guilty. Mr Egan was found not guilty after arguing that he did not know that the pamphlet was not authorised. The Court judgment states:

Mr Egan agrees that he distributed the pamphlet, but says that he did not know that the pamphlet did not contain the name and address of the person who authorised the electoral pamphlet and the name and place of business of the printer of the electoral material.¹⁷

2.33 The Court judgment, in relation to Mr Egan, concluded:

There is insufficient evidence to conclude that Egan was aware of a substantial risk the pamphlet was not authorised when he distributed the pamphlet. The evidence tends to show that for Mr Egan it was just a routine 'letterbox drop', similar to many others he had done for the Liberal Party.¹⁸

2.34 Senator Hutchins, in evidence to the committee, commented that 'the trial judge found that Mr Egan was not acting with intent or recklessness, but rather on the reasonable belief that the material he was distributing was authorised.'¹⁹ Consequently, Senator Hutchins proposed that section 328 be amended to be a strict liability offence. Senator Hutchins stated that 'this would mean that no evidence of intent or recklessness would be necessary and the mere fact of publication and distribution without authorisation would be sufficient for a finding of guilt.'²⁰

Strict liability and absolute liability

2.35 AG's has issued guidelines for the application of strict and absolute liability offences.²¹ In addition, the Senate Standing Committee for the Scrutiny of Bills has reported on the application of absolute and strict liability offences in Commonwealth Legislation and has identified basic

17 Local Court, New South Wales, Commonwealth DPP V Egan, para. 6, p. 2.

18 Local Court, New South Wales, Commonwealth DPP V Egan, para. 51, p. 13.

19 Senator Steve Hutchins, *Submission 1A*, p. 4.

20 Senator Steve Hutchins, *Submission 1A*, p. 4.

21 Attorney-General's Department, *A Guide to Framing Commonwealth Offences, Civil Penalties and Enforcement Powers*, December 2007.

principles that should be complied with if an agency is intending to introduce strict or absolute liability offences.²²

- 2.36 Strict liability offences are ‘those which do not require guilty intent for their commission, but for which there is a defence if the wrongful action was based on a reasonable mistake of fact. Absolute liability offences are ‘those which do not require a guilty intent, but for which there is no defence of a reasonable mistake of fact.’²³
- 2.37 If it is intended that no fault element apply then the element must be expressly provided as one of strict liability (section 6.1 of the Criminal Code) or absolute liability (section 6.2 of the Code).
- 2.38 AG’s states that the application of either strict or absolute liability negates the requirement to prove fault. Strict and absolute liability are expressed in 6.1 and 6.2 of the Criminal Code.

Strict liability

Section 6.1 of the Criminal Code provides:

- (1) If a law that creates an offence provides that the offence is an offence of strict liability:
 - (a) there are no fault elements for any of the physical elements of the offence; and
 - (b) the defence of mistake of fact under section 9.2 is available.
- (2) If a law that creates an offence provides that strict liability applies to a particular physical element of the offence:
 - (a) there are no fault elements for that physical element; and
 - (b) the defence of mistake of fact under section 9.2 is available in relation to that physical element.
- (3) The existence of strict liability does not make any other defence unavailable.

Absolute liability

Section 6.2 of the Criminal Code provides:

22 Senate Standing Committee for the Scrutiny of Bills, *Sixth Report of 2002, Application of Absolute and Strict Liability Offences in Commonwealth Legislation*, June 2002.

23 Senate Standing Committee for the Scrutiny of Bills, *Sixth Report of 2002, Application of Absolute and Strict Liability Offences in Commonwealth Legislation*, June 2002, p. 258.

- (1) If a law that creates an offence provides that the offence is an offence of absolute liability:
 - (a) there are no fault elements for any of the physical elements of the offence; and
 - (b) the defence of mistake of fact under section 9.2 is unavailable.
- (2) If a law that creates an offence provides that absolute liability applies to a particular physical element of the offence:
 - (a) there are no fault elements for that physical element; and
 - (b) the defence of mistake of fact under section 9.2 is unavailable in relation to that physical element.
- (3) The existence of absolute liability does not make any other defence unavailable.

2.39 In relation to the application of strict and absolute liability, AG's stated:

The application of strict liability allows a defence of honest and reasonable mistake of fact to be raised. The application of absolute liability does not. The defence does not apply to circumstances where a mistake results from a lack of awareness of relevant facts.²⁴

2.40 The Senate Standing Committee for the Scrutiny of Bills has set out a list of principles that it believes should apply to the framing and administration of strict and absolute liability. In particular, the Senate committee states:

...strict liability should be introduced only after careful consideration on a case-by-case basis of all available options; it would not be proper to base strict liability on mere administrative convenience or on a rigid formula.²⁵

2.41 AG's noted that, in considering strict liability, agencies should also look to the deterrent value arising from the application of strict liability. AG's stated:

We also suggest that agencies who are considering that look at whether the punishment of offences not involving fault – that is, strict liability offences – is likely to significantly enhance the effectiveness of an enforcement regime in deterrence value and

24 Attorney-General's Department, *A Guide to Framing Commonwealth Offences, Civil Penalties and Enforcement Powers*, December 2007, p. 24.

25 Senate Standing Committee for the Scrutiny of Bills, *Sixth Report of 2002, Application of Absolute and Strict Liability Offences in Commonwealth Legislation*, June 2002, p. 283.

whether there are legitimate grounds for penalising individuals even though they lack fault as a relevant mental element.²⁶

2.42 The AEC, in evidence to the committee, agreed that strict liability is an easier offence to prove in relation to unauthorised distribution of electoral material. The AEC stated:

That is true and that is why we suggest in relation to section 328 that it may well be an appropriate offence to have as a strict liability offence.²⁷

2.43 AG's, during the hearing, was asked the pivotal question as to whether strict liability would be an appropriate offence applying to section 328. AG's advised that strict liability would be applicable and stated:

...on the deterrent effect and the policy considerations in this instance we defer to the Australian Electoral Commission. But from the perspective of the department we do not see any of these factors as ruling out strict liability in this instance.²⁸

Maximum penalty under strict liability

2.44 AG's states that 'different considerations apply to the use of strict and absolute liability depending on how it applies to an offence.'²⁹ AG's notes that the application of strict or absolute liability to all physical elements of an offence has generally only been considered appropriate where each of the following considerations is applicable:

- The offence is not punishable by imprisonment and is punishable by a fine of up to 60 penalty units for an individual (300 for a body corporate) in the case of strict liability or 10 penalty units for an individual (50 for a body corporate) in the case of absolute liability. A higher maximum fine has been considered appropriate where the commission of the offence will pose a serious and immediate threat to public health, safety or the environment.
- The punishment of offences not involving fault is likely to significantly enhance the effectiveness of the enforcement regime in deterring offences.

26 Ms Sarah Chidgey, Attorney-General's Department, *Transcript T2*, p. 5.

27 Mr Paul Pirani, Chief Legal Officer, Australian Electoral Commission, *Transcript T2*, p. 8.

28 Ms Sarah Chidgey, Attorney-General's Department, *Transcript T2*, p. 5.

29 Attorney-General's Department, *A Guide to Framing Commonwealth Offences, Civil Penalties and Enforcement Powers*, December 2007, p. 25.

- There are legitimate grounds for penalising persons lacking ‘fault’, for example because they will be placed on notice to guard against the possibility of any contravention. In the case of absolute liability, there should also be legitimate grounds for penalising a person who made an honest and reasonable mistake of fact.³⁰

2.45 In evidence to the committee, Senator Hutchins proposed that section 328 be amended to be a strict liability offence, and the ‘the maximum fine payable for a breach of section 328 should be raised to \$10 000 for an individual and \$50 000 for a corporate body and a table outlining the various levels of severity should be included to ensure that more minor breaches are not unduly punished.’³¹

2.46 Senator Hutchins further commented that ‘I do firmly believe that incarceration would be a significant deterrent to people putting out these sorts of leaflets again.’³² Senator Hutchins stated:

If we legislated to make the deterrent stronger, you would not get Liberal or even Labor Party activists putting out, if I can use the term, shit sheets before an election. They would not do it if they knew that they could be fined \$10,000, that they could be put in jail and that it would not matter whether they said, ‘I did not know what I was doing, Governor’ – that it would not wash with the local courts.³³

2.47 Mr Luke Foley supported the need to increase the penalties applying to section 328. He advised that the Labor party ‘calls for reform to impose a maximum penalty of \$10 000 or imprisonment for five years, or both.’³⁴ Mr Foley stated:

What is important for us is that there be a significantly greater deterrent than there is now. I think officials in all political parties would welcome that to ensure that maverick elements cannot peddle, or would think twice before peddling, this sort of material in the future. We do not have a particularly strong view on whether it should be five years or three years. We believe that a maximum penalty of imprisonment would send a clear signal to

30 Attorney-General’s Department, *A Guide to Framing Commonwealth Offences, Civil Penalties and Enforcement Powers*, December 2007, p. 25.

31 Senator Steve Hutchins, *Transcript T1*, p. 14.

32 Senator Steve Hutchins, *Transcript T1*, p. 15.

33 Senator Steve Hutchins, *Transcript T1*, p. 16.

34 Mr Luke Foley, Assistant General Secretary, Australian Labor Party, NSW Branch, *Transcript T1*, p. 25.

political activists that they cannot peddle this sort of material in Australian politics.³⁵

2.48 AG's, in evidence to the committee, advised that if an agency was considering making an offence strict liability then imprisonment would not be appropriate and the maximum penalty should be up to 60 penalty units for an individual and 300 penalty units for a body corporate.³⁶ Currently that equates to \$6 600 for an individual and \$33 000 for a body corporate.

2.49 The AEC in its submission to the inquiry noted that their main concern about section 328 relates to the totally anonymous electoral advertisements where there is no person who is readily identifiable. The AEC stated that in these cases:

...criminal forensic investigation skills and resources would need to be obtained (e.g. the use of services from the Australian Federal Police (AFP)) in an attempt to locate the persons responsible for the publication of the anonymous advertisement. Changing the fault elements on their own would not appear to provide a solution for the AEC to deal with these anonymous electoral advertisements. However increasing the penalty for a breach of section 328 (and also 328A) to include a term of imprisonment may well have an effect as any increase in the quantum of the penalty appears to increase the likelihood that the AFP may be in a position to accept a referral and to devote their scarce investigation resources to dealing with these types of offences.³⁷

2.50 The AEC advised that through the illegal practice specified under section 328, the ultimate sanction could be the voiding of the election. The AEC stated:

So if one is able to show that as a result of the illegal practice – in that the result of the election was likely to be affected – then that has the ultimate sanction which is that the particular candidate, if they were successful, would potentially lose being declared the winner and a new election could be called by the Court of Disputed Returns. So there is another potential sanction that is

35 Mr Luke Foley, Assistant General Secretary, Australian Labor Party, NSW Branch, *Transcript T1*, p. 26.

36 Ms Sarah Chidgey, Attorney-General's Department, *Transcript T2*, p. 5.

37 Australian Electoral Commission, *Submission 3A*, p. 6.

there in relation to illegal practice which includes a breach of section 328.³⁸

- 2.51 Section 320 of the *Canada Election Act 2000* requires electoral material to be authorised. The AEC advised that it is a strict liability offence with a penalty of not more than \$1 000 or imprisonment for a term of not more than three months or both.³⁹

Defence under strict liability

- 2.52 It was noted during the hearing that strict liability is preferential to absolute liability because there is a defence under strict liability. AG's stated:

That is right. You have a defence of mistake of fact that is available. If an individual can show that they turned their mind to it and, for whatever reason, had an honest and reasonable belief that the material was appropriately authorised and marked then they would be able to avail themselves of that defence.⁴⁰

Conclusions

- 2.53 Section 328 of the *Commonwealth Electoral Act 1918* (CEA) provides guidelines for the printing and publishing of electoral advertisements. It is an offence to distribute electoral advertisements such as pamphlets if they do not contain the name and address of the person who authorised the material and the name and place of business of the printer.
- 2.54 During the 2007 federal election then members of the Liberal party were involved in the distribution of unauthorised election pamphlets in the division of Lindsay. The contents of the pamphlet sought to turn voters away from the Labor candidate and incite racial tensions. A copy of the pamphlet is reproduced at Appendix C.
- 2.55 Persons connected with the Labor party were tipped off by a Liberal Party member that unauthorised pamphlets were going to be distributed in Lindsay on 20 November 2007. The committee commends the decision of the anonymous Liberal Party member who took the action to report on the

38 Mr Paul Pirani, Chief Legal Officer, Australian Electoral Commission, *Transcript T1*, p. 5.

39 Mr Paul Pirani, Chief Legal Officer, Australian Electoral Commission, *Transcript T1*, p. 4.

40 Ms Sarah Chidgey, Attorney-General's Department, *Transcript T2*, p. 6.

illegal activities of fellow Liberal members. This course of action is not easy and it takes courage and conviction.

- 2.56 All witnesses and committee members are in agreement that the distribution of unauthorised election material like that circulated in Lindsay is a disturbing crime and the practice needs to be stamped out through the introduction of more significant penalties.
- 2.57 The penalties under section 328 are \$1 000 for an individual and \$5 000 for a body corporate. The penalties have not been updated since 1983 and are clearly inadequate as a deterrence. In addition, the penalty is not framed as a strict liability offence. This aspect allowed Mr Jeff Egan to be found not guilty because he claimed that he did not know that the pamphlets were not authorised.
- 2.58 The evidence is overwhelming in its support for overhauling and modernising section 328 of the CEA. First, the committee is recommending that section 328 be re-drafted to make it a strict liability offence. The Australian Electoral Commission agrees with this course of action and believes it would make the offence easier to prove and add to the deterrence value. The Attorney-General's Department confirmed that there did not appear to be any factors ruling out section 328 being framed as a strict liability offence. The committee is confident that the proposal complies with the guidance set out in the Attorney-General's *A Guide to Framing Commonwealth Offences, Civil Penalties and Enforcement Powers*, and the basic principles outlined by the Senate Standing Committee for the Scrutiny of Bills.⁴¹
- 2.59 Second, the committee is recommending that the penalties under section 328 be increased. Some groups in evidence to the committee proposed that the fines be increased to \$10 000 for an individual and \$50 000 for a body corporate. It was also proposed that individuals be subject to an imprisonment term of up to five years. The Australian Electoral Commission noted that its main concern is a 'truly anonymous electoral advertisement where no person is readily identifiable.' The AEC commented further that 'changing the fault element on their own would not appear to provide a solution for the AEC to deal with these anonymous electoral advertisements. The AEC suggested that increasing the penalty for a breach of section 328 to include a term of imprisonment may well have an effect as any increase in the quantum of the penalty
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41 Attorney-General's Department, *A Guide to Framing Commonwealth Offences, Civil Penalties and Enforcement Powers*, December 2007.; Senate Standing Committee for the Scrutiny of Bills, *Sixth Report of 2002, Application of Absolute and Strict Liability Offences in Commonwealth Legislation*, June 2002.

appears to increase the likelihood that the Australian Federal Police may be in a position to accept a referral and to devote their scarce investigation resources to dealing with these types of offences. While the AEC has discussed this point it has not recommended that there be a penalty of imprisonment.

2.60 The committee notes the views regarding imprisonment but believes that they would be excessive in the context of a strict liability offence and would go against the advice provided by the Attorney-General's Department and the Senate Standing Committee for the Scrutiny of Bills. The AEC proposed that section 328 penalties be increased to a maximum penalty of 50 penalty units for a natural person or a maximum penalty of 250 penalty units for a body corporate.

2.61 The committee notes the AEC's proposal but supports introducing the highest possible fine provided for under the Attorney-General's guide relating to strict liability offences. The committee, therefore, supports raising the penalty for an individual to 60 penalty units and 300 penalty units for a body corporate. Currently that equates to \$6 600 for an individual and \$33 000 for a body corporate. These increased level of penalties together with the fact that the committee is proposing that the offence be redrafted as a strict liability offence will significantly increase the level of deterrence associated with this unacceptable practice. In the future, party member or non-aligned persons should think very carefully about the ramifications of undertaking the illegal practice of distributing unauthorised election material.

Recommendation 2

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.**

Polling place offences

Introduction

- 3.1 During the examination of the events in the division of Lindsay, questions were raised about the powers of the Australian Electoral Commission (AEC) to deal with polling booth offences.
- 3.2 During hearings the committee canvassed the possibility of the AEC being given powers to issue on-the-spot fines for certain polling booth offences. This chapter outlines the current arrangements covering polling place offences, and discusses the adequacy of the AEC's existing powers to deal with these offences. In the light of this information, the committee examines the need and merits of introducing an infringement notice scheme.

Polling place offences – types and current penalties

- 3.3 The AEC provides guidance on polling place offences in its reference publication, *Electoral backgrounder No. 20* (EB No. 20).¹ Electoral backgrounders are published by the AEC to provide a basic introduction to electoral law, policy and procedures. All persons performing political functions at polling places should be aware of the information covered in EB No. 20 which is reproduced in full at **Appendix J**.
- 3.4 The range of polling place offences discussed in EB No. 20 include:

1 Australian Electoral Commission, *Electoral Backgrounder No. 20*, October 2007, www.aec.gov.au/About_AEC/Publications/Backgrounders/index.htm.

- Compulsory voting
- Influencing the votes of hospital patients or residents of nursing homes
- Bribery
- Interference with political liberty
- Printing and publication of electoral handbills, pamphlets or posters
- Misleading or deceptive publications
- Depiction of certain electoral matter
- General offences in relation to ballot papers
- Canvassing near polling booths
- Displaying badges or emblems of candidates in polling booths
- Leaving how-to-vote cards in polling booths
- Making false statements to voters about enrolment
- Unlawfully marking ballot papers
- Disobeying lawful directions of the person in charge of the premises
- Officers and scrutineers to observe secrecy
- Scrutineers influencing or communicating with voters in polling booths

3.5 If a person is in breach of the provision in the Act then any or all of the following actions may be taken:

- **Removal from the premises** – Section 348 provides that where a person commits misconduct in a polling booth, counting centre or a early voting centre, the person in charge of the premises may direct that person to leave the premises or have the person removed from the premises.
- **Injunctions** – Section 383 of the Act provides that the Federal Court may grant an injunction to (amongst other things) prohibit a person from engaging in conduct that constitutes a contravention of the law in relation to elections.
- The AEC and candidates in the election may make an application for an injunction to the Federal Court. If the AEC is informed or becomes aware that a person may have committed an offence, the AEC determines whether it is appropriate in the circumstances to apply for an injunction. The Federal Court is able to order injunctions at short notice on election day.

- If an injunction is granted against a person, failure to comply with the injunction order may constitute contempt of court, for which the Federal Court can order arrest and detention.
- **Prosecutions** - When the AEC becomes aware of a person engaging in activity that may constitute a breach of an offence provision, the AEC may refer the matter to the Australian Federal Police (AFP) for investigation. The AFP may then refer the matter to the Commonwealth Director of Public Prosecutions for consideration, in accordance with the *Commonwealth Prosecution Policy*, as to whether a prosecution is initiated.²

3.6 During the hearing, the type of polling place offence which was the focus of attention was ‘canvassing near polling booths’. Section 340 of the CEA provides that the following acts are, on polling day, and on all days to which the polling is adjourned, prohibited at an entrance of or within a polling booth, or in an public or private place within 6 metres of an entrance of a polling booth:

- Canvassing for votes
- Soliciting the vote of any elector
- Inducing any elector not to vote for any particular candidate
- Inducing any elector not to vote at the election
- Exhibiting any notice or sign (other than an official notice) relating to the election.

3.7 A person found guilty of these offences may be fined up to \$500.

3.8 EB No. 20 states that ‘if a person is engaging in any of the activities listed above and is using a loudspeaker, broadcasting equipment or other sound amplifier-type equipment, then if the activity is audible within a polling booth or within six metres from the entrance to the polling booth, the person is guilty of an offence.’³ A person found guilty of this offence may be fined up to \$550. It should be noted that the AEC, in its submission to the inquiry, stated:

The effectiveness of the existing offence provisions in the Electoral Act is difficult to assess. One of the reasons for this is that the AEC does not have any systems in place to capture or record all alleged breaches of the requirements of the Electoral Act. This is

2 Australian Electoral Commission, *Electoral backgrounder No. 20*, p. 5.

3 Australian Electoral Commission, *Electoral backgrounder No. 20*, p. 3.

particularly the case on polling day when the AEC staff (which includes both Public Service Act employees and temporary staff engaged under section 35 of the Electoral Act) are primarily engaged in the conduct of the election at polling places and then undertaking the count. These AEC staff complete incident reports forms which are forwarded to the Divisional offices of the AEC after the completion of the count. However, the AEC does not have any systemic approach to capturing all of the reported incidents.⁴

- 3.9 The AEC advised that it does have a document entitled A Protocol for Escalating/Issues/Complaints 'which is based on the AEC's experience that **most complaints involving the conduct at polling places are handled promptly and effectively by the Officers in Charge of the Polling Place and then the Divisional Returning Officers (DRO)**'.⁵ The AEC explained what occurs after the level of the DRO:

If a complaint is not resolved at this level, it is then referred to the Australian Electoral Officer for the particular State or Territory. If the complaint cannot be resolved at this level, it is then referred to the AEC's Chief Legal Officer and the Deputy Electoral Commissioner for action. The AEC has previously published information about the numbers of complaints that were escalated under this Protocol in the lead up to an election.⁶

The case for an infringement notice scheme

- 3.10 No evidence has been provided to the committee that there is an increasing trend in polling booth offences or that the current powers available to the AEC need to be enhanced. The committee raised this matter unilaterally and has sought information from witnesses as to the merits of modifying the current arrangements.
- 3.11 The AEC has not identified any problems with the current arrangements. The AEC, however, notes that there are administrative issues relating to training and delegation that would need to be carefully thought out if new arrangements were introduced.

4 Australian Electoral Commission, *Submission 3A*, p. 3.

5 Australian Electoral Commission, *Submission 3A*, p. 3.

6 Australian Electoral Commission, *Submission 3A*, p. 3.

- 3.12 The AEC advised that for a federal election, there are almost 7 700 polling stations around Australia. Almost 60 000 temporary staff are employed, 'and many of them are engaged with only a short period of training prior to being polling place officials.'⁷
- 3.13 If an infringement notice scheme was introduced, the examination focused on what level the AEC official would need to be to issue the fine. Mr Luke Foley noted that 'we would have no objection to an on-the-spot fine, but I would contend that the DRO would be the appropriate person.'⁸
- 3.14 There is a permanent DRO in each division who is responsible for electoral administration – including maintenance of the electoral roll and preparations for the conduct of the next electoral event – in that division. The AEC stated:
- Clearly, if an infringement notice scheme were to be introduced in relation to polling place offences, we would have to restrict it somehow to either the divisional returning officer or the officer in charge of the polling place. They have lots of other duties to do. We would not want it to be exercised by any officer who was exercising powers and duties on behalf of the Electoral Commission at a polling place.⁹
- 3.15 One of the key points in relation to the debate about the possible introduction of on-the-spot fines for polling booth offences is whether there is the need. The AEC has not identified significant problems with the current arrangements. The AEC in its submission to the inquiry commented that while it would have no objections to giving senior AEC officers the power to issue penalty notices, the 'AEC would not support this power being given to all AEC staff (including polling place officials). The AEC set out the following reasons for this position:
- On polling day DROs and other AEC staff are primarily focussed on the conduct the conduct of the poll and to add this additional task would be an have the potential to divert them from that primary task and to become embroiled in party political disputes;
 - On polling day the AEC staff include over 60 000 polling place officials who have received limited training. To confer such a significant power on those AEC staff could result in a lack of consistent decision-making

7 Mr Paul Pirani, Chief Legal Officer, Australian Electoral Commission, *Transcript T2*, p. 4.

8 Mr Luke Foley, Assistant General Secretary, Australian Labor Party, NSW Branch, *Transcript T1*, p. 27.

9 Mr Paul Pirani, Chief Legal Officer, Australian Electoral Commission, *Transcript T2*, p. 4.

and would undermine the existing Escalation Protocol which has proven to be successful in handling polling place disputes.

- While some polling place offences merely involve clear questions of fact (e.g. whether or not an “electoral advertisement” contains the necessary authorisation details as required by section 328 of the Electoral Act) some other offences involve more complex issues and the application of case law (e.g. matter that is likely to mislead or deceive an elector in relation to the casting of a vote in breach of section 329). To have such judgements made by DROs or temporary AEC staff would be of concern and would have the potential to create administrative difficulties (including additional costs for training and the creation of systems to record and recover any fines imposed); and
- The main task faced by the AEC is to ensure a breach of the Electoral Act is resolved quickly and effectively. If a person fails to take the appropriate action to remedy any action that is in breach of the Act, then the issuing of an on-the-spot fine or penalty notice does not ensure that the unlawful action ceases and resort would need to be had to the injunction power contained in section 383 of the Electoral Act. Decisions on section 383 matters are made by the Chief Legal Officer and the Deputy Electoral Commissioner as they involve the expenditure of significant amounts of public moneys on legal representation.¹⁰

Conclusions

- 3.16 The matter of the Australian Electoral Commission being given the power to issue on-the-spot fines for polling place offences was raised as a side issue to the larger debate about the adequacy of penalties in the Electoral Act and the abuses under section 328. The AEC advised that **most complaints involving the conduct at polling places are handled promptly and effectively by the Officers in Charge of the Polling Place and then the Divisional Returning Officers**. In addition, the AEC has set out a range of persuasive administrative reasons for not providing all AEC officers with the power to issue on-the-spot fines and penalty notices.
- 3.17 The committee has not been provided with any persuasive reasons for changing the current AEC practices for dealing with polling place offences. However, the committee does support the need for the AEC at the next federal election to record all polling booth offences that are reported, the actions that were taken and provide an appraisal of the
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¹⁰ Australian Electoral Commission, *Submission 3A*, pp. 3-4.

adequacy of their powers under the Electoral Act to deal with polling place offences. The AEC should provide this report as part of its submission to the committee's inquiry into the next federal election which is likely to be in 2010.

Recommendation 3

- 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.**

Daryl Melham
Chair
15 March 2010



Dissenting Report—Senator Bob Brown

The Electoral Matters Committee has yet again failed to tackle the problem of truth in advertising during election campaigns, as I outlined in my dissenting comments in the committee's June 2009 report.

The crux of the problem with the distribution of a bogus flyer in the Lindsay electorate was not that it was unauthorised, but that it was false and deceptive and designed to mislead voters just days before the election.

The lack of contemporaneous regulation and penalties for parties, groups or individuals who knowingly lie or distort the truth in advertisements and publications about candidates and their policies during election campaigns creates an unfair playing ground for all political parties.

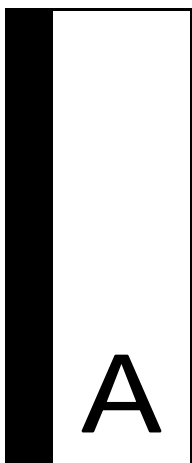
The Greens have also borne the brunt of attempts by political parties and third parties to unfairly smear their policies and candidates but there is little recourse for action against the parties before or after the election.

As the Australian Greens point out in its submission to the government's green paper on electoral reform:

Legislation to impose controls on political advertising and penalties for breaches would enforce higher standards, improve accountability and promote fairness in political campaigning and the political system generally.

The Greens advocate amendment to the Commonwealth Electoral Act to make it an offence to authorise or publish an advertisement purporting to be a statement of fact when the statement is inaccurate and misleading to a material extent.

Senator Bob Brown

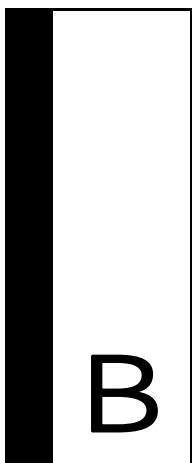


Appendix A – Submissions

- 1A Senator Steve Hutchins
- 2A Australian Democrats
- 3A Australian Electoral Commission

Also see submissions from the *Inquiry into the 2007 Federal Elections*:

- 56 Australian Democrats
- 64 The Greens NSW
- 99 Lindsay Federal Electorate Council, Australian Labor Party
- 106 Mr William Bowe
- 159 Australian Labor Party, National Secretariat
- 169 Australian Electoral Commission
- 169.6 Australian Electoral Commission



Appendix B – Public Hearings

Wednesday 14 October 2009 – Sydney [*Transcript 1 - T1*]

Australian Electoral Commission

Mr Paul Pirani, Chief Legal Officer

Australian Labor Party NSW Branch

Mr Luke Foley, Assistant General Secretary

Lindsay Federal Electoral Council of the Australian Labor Party

Mr John Thain, President

Individuals

Senator Steve Hutchins, Senator for NSW (ALP)

Tuesday 17 November 2009 – Canberra [*Transcript 2 - T2*]

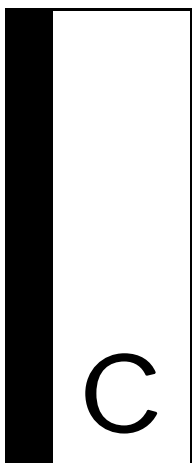
Attorney-General's Department

Ms Catherine Barker, Acting Senior Policy Officer,
Criminal Law Reform Section

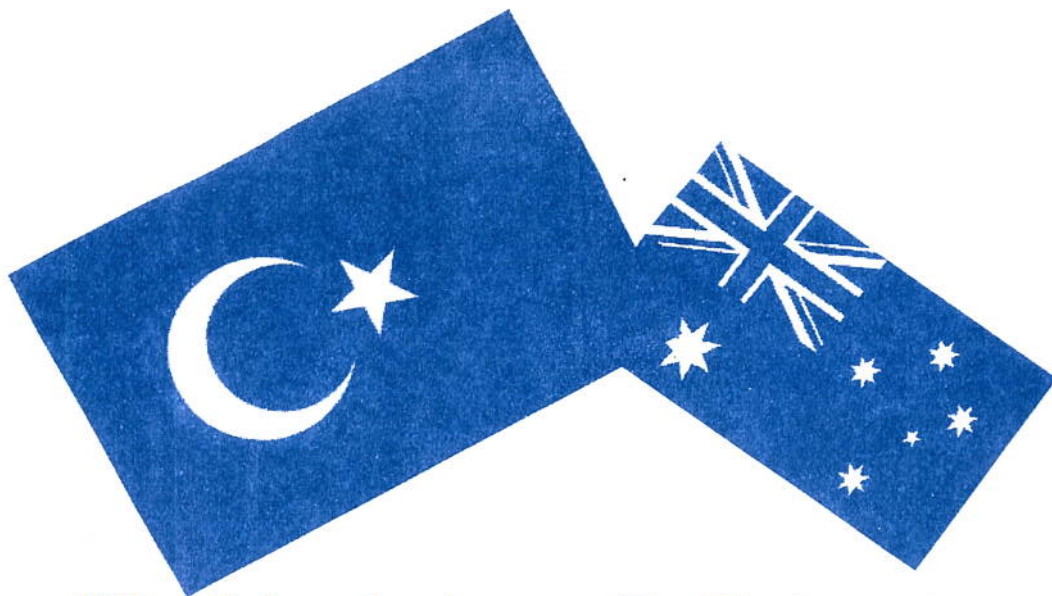
Ms Sarah Chidgey, Assistant Secretary, Criminal Law and
Law Enforcement Branch

Australian Electoral Commission

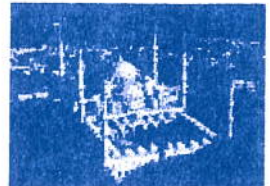
Mr Paul Pirani, Chief Legal Officer



Appendix C – Lindsay Unauthorised
Pamphlet



The Islamic Australia Federation



The role of the Islamic Australia Federation is to support Islamic Australians by providing a strong network within Islamic Australia. Muslims supporting Muslims within the community and assisting and showing christian Australians the glorious path to Islam.

In the upcoming **Federal election** we strongly **support the ALP** as our preferred party to govern this country and **urge all other Muslims to do the same.**

The leading role of the ALP in supporting our faith at both State and Local government levels has been exceptional and we look forward to further support when Kevin Rudd leads this country.

We gratefully acknowledge Labors support to forgive our Muslim brothers who have been unjustly sentenced to death for the Bali bombings.



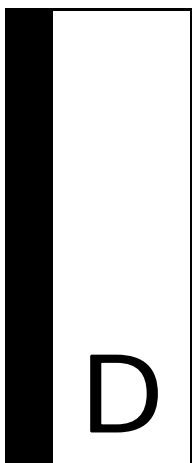
Labor supports our new Mosque construction and we hope, with the support and funding by Local and State governments, to open our new Mosque in **St Marys soon.**

Labor was the **only** political party to support the entry to this country of our Grand Mufti reverend **Sheik al-Hilaly** and we thank Hon. Paul Keating for over-turning the objections of ASIO to allow our Grand Mufti to enter this country.



Ala Akba





Appendix D – Mr Gary Clark Court
Judgement



LOCAL COURT New South Wales

Citation: Commonwealth Director of Public Prosecutions
v
Clark

Hearing dates: 31/10/2008, 03/11/2008, 25/03/2009, 26/03/2009

Date of Decision: 29/04/2009

Jurisdiction: Criminal

Place of Decision: Downing Centre

Judgment of: Magistrate G Bradd

Decision: Mr Clark is convicted of the offence

Catchwords: Distribution of unauthorised electoral matter –
circumstantial evidence

Legislation Cited: Commonwealth Electoral Act 1918; Criminal Code Act
1995; Evidence Act 1995

Cases Cited: Trudgett v R (2008) 70 NSWLR 696; R v Turnbull
[1977] QB 224 at 228; Shepherd v R (1990) 170 CLR
555

File number: H 34331508

Representation: Mr O'Donnell and Mr Crowley representing
Commonwealth Director of Public Prosecutions

Mr Ryan representing Mr Clarke

**IN THE LOCAL COURT
OF NEW SOUTH WALES**

Background

- 1 Mr Clark has been charged with distributing an electoral pamphlet, which did not contain the name and address of the person who authorised the electoral pamphlet and the name and place of business of the printer of the electoral pamphlet. The offence is charged under the Commonwealth Electoral Act.
- 2 The offence is alleged to have occurred between 9:30 pm and 10:30 pm on 20/11/2007 at St Mary's.
- 3 St Mary's is within the Federal Electorate of Lindsay. A General Election had been called for the following Saturday, 24/11/2007. At the time of the alleged offence Mr Clark was the husband of the then sitting member for Lindsay, Ms Kelly, who was retiring as the Federal member.
- 4 Persons became aware of the possibility that certain persons were going to distribute unauthorised electoral matter within the Federal Electorate of Lindsay.

Evidence

- 5 Mr Gilchrist was a volunteer for the Australian Labour Party for the electorate of Lindsay. At about 6:00 pm, he went to the office of the Campaign Manager for the Australian Labour Party for the electorate of Lindsay, where he met Senator Hutchins, Mr Foley, Mr W. Forno, Mr S. Forno, Mr Latham, Mr Carney, and Mr Bell. He then went to Ladbury Avenue, Penrith. He saw a utility vehicle leave 3 Ladbury Avenue and return about 15 minutes later. He then saw three vehicles arrive. Six people got out of the vehicles and went into 6 Ladbury Avenue. After about fifteen minutes the group went into 3 Ladbury Avenue for about five minutes. They then returned to their vehicles, congregated around the vehicles, and after a short time the vehicles were driven away. Mr Gilchrist followed the vehicles to the corner of Boronia and Debrincat streets, St Mary's where he saw persons divide into groups of two. He saw persons putting "flyers" into post-boxes. He took a "flyer" out of a post-box. He then drove along Debrincat Street and saw a person with a bag over his shoulders. From the open window of the vehicle, he said to the person, "What are you doing?" The person ran off into another street. Mr Gilchrist ran after the person, and when he arrived at the other street he saw

**IN THE LOCAL COURT
OF NEW SOUTH WALES**

two persons walking one after another, one being the person he saw run into the street and the other being taller, with darker hair. The taller person with darker hair was covering his face with a flyer. He was carrying a bag. Mr Latham was also in the street taking photographs. Mr Gilchrist left the area and went to the office of Senator Hutchins.

6 The pamphlet taken from a post box by Mr Gilchrist does not contain the name and address of the person who authorised the electoral pamphlet and the name and place of business of the printer of the electoral pamphlet.

7 It is alleged that the person covering his face with a flyer was Mr Clark.

8 Mr Latham was with Mr Gilchrist and Mr Carney when he took photographs in Maple Road. He saw two men in the road. He describes the man with darker hair as being Caucasian, 176 centimetres tall, with brown hair; wearing a blue shirt and shorts; carrying a bag and talking on a mobile telephone. He took eight photographs of the men. He followed the men to a vehicle parked at the corner of Boronia Street. The men got into the vehicle and drove off. He took a photograph of the registration plate of the vehicle.

9 Senator Hutchins says that he has known Mr Clark for between eight and nine years. He says that Mr Clark is an orthodontist with a clinic in Penrith, and he has been to the clinic five times. He has also met Mr Clark at functions where Mr Clark accompanied his wife. He says that he can identify the man covering his face with a pamphlet as Mr Clark.

10 Senator Hutchins says when he was at his office after the events in St Mary's he saw the photographs taken by Mr Latham. He says that he went to the clinic of Mr Clark in 2008 with his daughter and says the photograph looks like Mr Clark, and he is certain it is him.

11 Mr Bell says he was in Maple Road when a person dropped a bag and a bundle of documents fell out. He picked up the bag and the bundle of documents. The bundle of pamphlets taken by Mr Bell do not contain the name and address of the person who authorised the electoral pamphlet and the name and place of business of the printer of the electoral pamphlet.

**IN THE LOCAL COURT
OF NEW SOUTH WALES**

- 12 On 21/11/2007, Mr Nutt, the then Chief of Staff to the Prime Minister, spoke to Mr Jaeschke about the incident at Lindsay. At the time, Mr Jaeschke was the State Director of the New South Wales Liberal Party and Campaign Director for the Liberal Party in New South Wales. The next day he received a document by facsimile bearing the facsimile number of the Prime Minister's Office. The document is a letter purportedly signed by Mr Clark. The letter contains an apology for the involvement of Mr Clark in preparing and distributing the pamphlet. When Mr Nutt received the document he spoke to Mr Jaeschke. After doing so he distributed the document to the Press Gallery. He says the signature on the document appears to be the signature of Mr Clark, and the contents of the document are consistent with what he was told by Mr Jaeschke. He further says that he has not subsequently been informed that the signature is not the signature of Mr Clark.
- 13 Mr Nutt says that he has seen the signature of Mr Clark on a couple of occasions over the years prior to 2006, when he was the Principal Private Secretary to the Prime Minister. The first time in relation to RAAF service, the second in relation to the pecuniary interest statement of his wife, and a third, the circumstances of which cannot be recalled. He says the earlier signatures were neither checked nor disputed. At the time of seeing the facsimile document he believed the signature to be that of Mr Clark, and can say that the signature is in the style of the signature of Mr Clark.
14. Mr Clark instructed his solicitors to plead guilty to the charge, however the instructions were withdrawn before the plea was entered. The instructions given by Mr Clark indicate that at the time of giving the instructions Mr Clark acknowledged that each of the elements of the charge were proved.

Recognition Evidence

- 15 The photographs taken by Mr Latham depict a man wearing a blue t-shirt. He is holding some of the pamphlets to his face. One can see the colour of the hair, part of the hairline, the right side of the neck, the right cheek, part of the lips, the ear, four fingers of the left

**IN THE LOCAL COURT
OF NEW SOUTH WALES**

hand, the left forearm, the rear of the head from the left side, part of the left ear, part of the left side of the face, and the front of the body from a distance.

16 On 31/10/2008, Senator Hutchins was asked to look at the first photograph, which depicts the hair, part of the hairline, the right side of the neck, the right cheek, part of the lips, the ear, four fingers of the left hand. He said, "it looks like Gary Clark to me". On 25/03/2009, Senator Hutchins was shown all of the photographs and said, "It's Gary Clark".

17 Recognition evidence is evidence that may be unreliable,¹ and there is a need for caution in determining whether to accept the evidence and the weight to be given to it.²

18 The recognition of Mr Clark is based on Senator Hutchins meeting Mr Clark over a period of eight to nine years, both in Mr Clark's capacity as the spouse of the then sitting member for the seat of Lindsay, and in his capacity as an orthodontist. There is no doubt that Senator Hutchins is well acquainted with Mr Clark, and is able to recognise him. The photographs do not depict the full face of Mr Clark, and it is not possible from the features depicted to accept the evidence that it is a photograph of Mr Clark, however it is possible to accept that the features shown by the photographs are features that are consistent with the features of Mr Clark.

19 Counsel for Mr Clark has submitted that no weight should be given to the evidence of Senator Hutchins because of his political affiliations, his affiliations with the seat of Lindsay, and his bias against the Liberal Party. I reject the submission because Senator Hutchins displayed no such bias when he gave evidence.

20 Counsel for Mr Clark submitted that there is a possibility of mistake, particularly as a photograph of Mr Clark was published in newspapers, and Senator Hutchins had a photograph of Mr Clark attached to a wall in his office. There is always the possibility of mistake when persons give evidence of recognition.³ Senator Hutchins formed the view that the photographs depicted Mr Clark when he saw the digital images on the

¹ Trudgett v R (2008) 70 NSWLR 696

² Evidence Act s 165

³ R v Turnbull [1977] QB 224 at 228

**IN THE LOCAL COURT
OF NEW SOUTH WALES**

came of Mr Latham on the night of the alleged offence, so there is no displacement effect.

Letter of Apology

- 21 Counsel for Mr Clark submits that the letter could be fabricated; it has no address; and Mr Nutt is the only person to give evidence about it.
- 22 It is true that the letter bears no address of the author, and Mr Nutt is the only person to give evidence of it. When Mr Nutt received the letter he distributed it to the National Press Gallery. Once distributed, the letter became public information. Mr Nutt has said that he has not subsequently been informed that the signature on the letter is not that of Mr Clark. One would expect that if Mr Clark was not the author he would have refuted the authenticity of the letter, but he has not done so to the knowledge of Mr Nutt. There has been no evidence of Mr Clark having refuted the authenticity of the letter.
- 23 I accept the evidence of Mr Nutt that the signature is in the style of the signature known to Mr Nutt as the signature of Mr Clark. I accept the evidence of Mr Nutt that the contents of the letter are consistent with what Mr Nutt was told by Mr Jaeschke. The fact that there is no evidence of Mr Clark having refuted the authenticity of the letter is significant. Taking all the relevant evidence into consideration I find as a fact that the author of the letter is Mr Clark.

Instructions to Plead Guilty

- 24 Counsel for Mr Clark submits that persons can plead guilty for a variety of reasons; such as the cost of defending the charge; and personal reasons, so the instructions should not be construed as an admission of facts.
- 25 What Counsel for Mr Clark submits is true, however when Mr Clark gave the instructions it is presumed that he was advised that a plea of guilty would be construed by the court as an admission of the essential elements of the offence, and on being so advised he confirmed the instructions.

**IN THE LOCAL COURT
OF NEW SOUTH WALES**

Did Mr Clark go to St Mary's to distribute the pamphlets?

26 While the recognition evidence and the instructions to plead guilty are not by themselves sufficient, when the evidence is combined with the fact of the letter of apology, and the fact that at the time Mr Clark resided at 6 Ladbury Avenue, Penrith, the combination of all the evidence is sufficient.⁴ There is no reasonable hypothesis consistent with Mr Clark not going to St Mary's to distribute the pamphlets.

Did Mr Clark distribute the pamphlet?

27 Counsel for Mr Clark submits that there is no evidence of Mr Clark distributing pamphlets. The offence carries two fault elements; first, the intention to distribute the pamphlets; and secondly, recklessness as to whether the pamphlets were authorised.

28 In so far as intention to distribute is a necessary element of the offence. The test is whether Mr Clark meant to engage in that conduct.⁵

29 The facts going to prove intention are as follows:

- The rendezvous of the group of six persons was at the residence of Mr Clark.
- When Mr Clark arrived at the corner of Boronia and Debrincat Streets with the other five persons, they split into pairs, and moved off in different directions. Mr Clark moved off with another person.
- He was photographed carrying a bag over his shoulder with some of the pamphlets covering his face.
- The pamphlet was found in post-boxes
- He made a letter of apology after the incident, which stated inter alia: "Please accept my sincere apology for the damage done by my actions in preparing and distributing a pamphlet in St Mary's on Tuesday night."

⁴ *Shepherd v R* (1990) 170 CLR 555

⁵ Criminal Code Act 1995 s 5.2 (1)

**IN THE LOCAL COURT
OF NEW SOUTH WALES**

30 I find that the evidence when considered as a whole is sufficient for the tribunal of fact to be satisfied beyond a reasonable doubt that Mr Clark meant to distribute the pamphlet. There is no reasonable hypothesis consistent with Mr Clark not engaging in the distribution of the pamphlet.

Was Mr Clark reckless as to whether the pamphlet was authorised?

31 The letter of apology tends to prove that Mr Clark knew that the pamphlet was not authorised because it states in part that he prepared it. In addition, Mr Clark hid his face when he was being photographed.

32 As recklessness is a fault element for a physical element of conduct, proof of intention, knowledge or recklessness will satisfy the fault element.⁶

33 The evidence of Mr Clark preparing the pamphlet, and the fact of him covering his face when photographed is sufficient evidence when taken as a whole for a tribunal of fact to be satisfied beyond a reasonable doubt that Mr Clark knew that the pamphlet he meant to distribute was not authorised. There is no reasonable hypothesis consistent with Mr Clark not knowing that the pamphlet he meant to distribute was unauthorised.

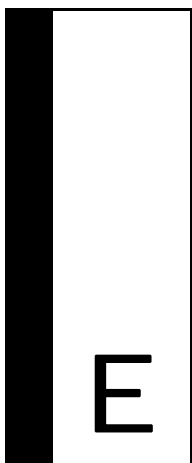
Conclusion

34 I am satisfied when considering the evidence as a whole that there is no reasonable hypothesis consistent with innocence.

35 I am satisfied beyond a reasonable doubt when considering the evidence as a whole that Mr Clark committed the offence.

36 Mr Clark is convicted of the offence of distributing an electoral pamphlet, which did not contain the name and address of the person who authorised the electoral pamphlet and the name and place of business of the printer of the electoral pamphlet.

⁶ Ibid s 5.4 (4)



Appendix E – Mr Jeff Egan Court Judgement



LOCAL COURT
New South Wales

Citation: Commonwealth Director of Public Prosecutions
v
Egan

Hearing dates: 31/10/2008, 03/11/2008, 25/03/2009, 26/03/2009

Date of Decision: 29/04/2009

Jurisdiction: Criminal

Place of Decision: Downing Centre

Judgment of: Magistrate G Bradd

Decision: Not Guilty

Catchwords: Distribution of unauthorised electoral matter –

Legislation Cited: Commonwealth Electoral Act 1918; Criminal Code Act
1995.

Representation:

Mr O'Donnell and Mr Crowley representing
Commonwealth Director of Public Prosecutions

Mr Levitt representing Mr Egan

**IN THE LOCAL COURT
OF NEW SOUTH WALES**

Background

- 1 Mr Egan has been charged with distributing an electoral pamphlet, which did not contain the name and address of the person who authorised the electoral pamphlet and the name and place of business of the printer of the electoral pamphlet. The offence is charged under the Commonwealth Electoral Act.
- 2 The offence is alleged to have occurred between 9:30 pm and 10:30 pm on 20/11/2007 at St Mary's.
- 3 St Mary's is within the Federal Electorate of Lindsay. A General Election had been called for Saturday the 24/11/2007. At the time of the alleged offence Mr Egan was a member of the New South Wales State Executive of the Liberal Party.
- 4 Persons connected with the Australian Labour Party became aware of the possibility that certain persons connected with the Liberal Party were going to distribute unauthorised electoral matter within the Federal Electorate of Lindsay.
- 5 The persons connected with the Australian Labour Party followed six persons connected with the Liberal Party to St Mary's. The six persons were seen to split into three groups of two. Mr Egan was seen to be distributing a pamphlet. One of the pamphlet's distributed by Mr Egan has been tendered in court. The pamphlet does not contain the name and address of the person who authorised the electoral pamphlet and the name and place of business of the printer of the electoral pamphlet.
- 6 Mr Egan agrees that he distributed the pamphlet, but says that he did not know that the pamphlet did not contain the name and address of the person who authorised the electoral pamphlet and the name and place of business of the printer of the electoral pamphlet.
- 7 Mr Egan is a person of good character, which evidence is used to prove that he is unlikely to lie about his involvement in this incident, and is unlikely to have committed the offence.
- 8 *Mr Egan gave evidence. His evidence was consistent. He presented the evidence as a person telling the truth. His emotions were consistent with his testimony, particularly*

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when he testified of his anger about the persons involved in distributing the pamphlet, whom he says did not tell him that the pamphlet was not authorised; and about Mr Jaeschke and Mr Hall, whom he says have told lies to the court about what he said to them after the incident.

Evidence

The Events of 20 November 2007

- 9 Mr Egan met the other persons involved in the distribution of the pamphlet at the residence of Mr Clark. Mr Gilchrist saw three vehicles arrive. Six people got out of the vehicles and went into 6 Ladbury Avenue. After about fifteen minutes the group went into 3 Ladbury Avenue for about five minutes. They then returned to their vehicles, congregated around the vehicles, when Mr Egan appeared to address the others. After a short time the vehicles were driven away.
- 10 Mr Foley says he saw a man, later identified as Mr Egan, walking in Magnolia Street distributing pamphlets. He says Mr Egan was carrying a bag with folded pamphlets protruding from it, he could see that the pamphlet was coloured blue and white and had "Australian Islamic Federation Australia" writing on it. He later retrieved a bundle of pamphlets from the bag being carried by Mr Egan, and says the pamphlets were folded ready for distribution and the words "Australian Islamic Federation Australia" were visible.
- 11 A photograph was taken of Mr Egan about ten minutes after an alleged altercation with some of the persons connected with the Australian Labour Party. On 24/03/2008, the photograph was published in a newspaper. The relevant page of the newspaper is exhibit 2. The image is of the right side of a person, who is walking with a mobile phone to his right ear. He is holding a bag in his left hand by gripping the cloth material of the bag below the handles. The manner in which Mr Egan is holding the bag would not be possible if the bag was full, with pamphlets protruding from it.
- 12 Mr Wayne Forno says that he saw a person, who it is agreed was Mr Egan. Mr Forno says that the bag had a flap and he could not see the contents. Mr Forno says that he asked Mr Egan to give him a leaflet, and Mr Egan said "No". After the exchange, Mr

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OF NEW SOUTH WALES**

Foley arrived within 30-60 seconds, and Senator Hutchins arrived within seconds of Mr Foley arriving. Mr Forno says that Mr Foley asked for the bag, but Mr Egan would not give it up. He then tried to take the bag from Mr Egan.

- 13 Mr Shane Forno, the son of Wayne was with his father, and said to Mr Egan; "We've got you, you've been caught." Then Senator Hutchins and Mr Foley arrived. His father and Mr Egan then became involved in a tug-of-war with the bag. Mr Forno then saw leaflets folded with writing on them. Mr Forno says he tried to take a photograph of Mr Egan, but Mr Egan buried his head, and his face was not visible. He was later travelling in a vehicle and saw Mr Egan walking beside the road, so he stopped the vehicle adjacent to the position of Mr Egan and took a photograph. The photograph has been tendered as an image published in a newspaper.
- 14 Mr Shane Forno says his father did not get the bag from Mr Egan, but the bag was open and he saw that it was full, with leaflets visible.
- 15 Mr Egan says that Mr Chijoff asked him to assist with a letterbox drop. He agreed to meet him at 6 Ladbury Avenue, the residence of Mr Clark. He went into the residence where Mr Clark and Mr Chijoff conducted a briefing. He did not know the designated place, so he followed the others. When he arrived at St Mary's he was given a hessian bag containing pamphlets. By this time it was dark, and he did not look inside the bag. When he proceeded to distribute the pamphlets he found that they had already been folded, and he did not look at them. After he had distributed two or three pamphlets, a vehicle stopped near him, someone from the vehicle approached him and said: "Give me a copy of what you're handing out", and grabbed him by the right wrist. Mr Egan said something, but the person did not let go. Then two other persons arrived, one being Senator Hutchins. Mr Egan said to the Senator; "Tell him to let me go, I did nothing." Mr Egan then said to the person holding his wrist; "This is assault please let me go." Mr Egan says another vehicle arrived and two persons got out of the vehicle. Someone grabbed his left arm. Someone said; "We're going to call the Police." Someone then tried to take the bag. Mr Egan says he resisted because he was concerned about his arm. Mr Egan said; "Go ahead call them." A struggle then ensued, but he was able to break free. He walked towards his vehicle, holding the bag. *He says no pamphlets were taken from his bag and he had not seen the pamphlets. He met the other person he was paired*

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with, and then a vehicle drove passed, with someone taking photographs. He called Mr Chijoff by telephone and others asking for assistance. He then called triple "0", but did not complete the call, because he was almost hit by another vehicle. His partner arranged for someone to pick them up, and that person took him to his vehicle. He left the bag in the person's vehicle. He drove to his office and took photographs of his injuries. He then spoke to Mr Chijoff on the telephone, and Mr Chijoff told him about the general content of the pamphlet. He says he was "bloody annoyed."

16 Mr Egan says he then called Mr Hall by telephone, because Mr Chijoff had asked him to do so. He says that he explained to Mr Hall that persons got out of vehicles, and one person grabbed him by the arm, and then continued to re-count the assault upon him.

17 Mr Hall, who was at the relevant time the Liberal Party Campaign Manager for the Federal seat of Lindsay, says that he received a telephone call from Mr Egan on the night of the incident. He says that Mr Egan said:

I was letterboxing with the other guys, and was astonished how quickly we got caught. I had only done a few letterboxes when they came out of cars with cameras rolling. I've been assaulted and pushed against a telephone pole. They tried twice to get the material from me. Should I go back and distribute anti-union material?

The Next Day

18 Mr Egan says he spoke to Mr Jaeschke the next morning, and responded to his questions. Mr Egan says he wanted to talk about the assault and Mr Jaeschke wanted to ask him questions regarding the incident of the previous evening being linked to the Liberal Party. He wanted to know whether any photographs were taken of Mr Egan distributing the pamphlet, and whether there was anything to tie me to the incident. Mr Egan says he told Mr Jaeschke that he was not photographed distributing a pamphlet, but a photograph was taken of him against a telegraph pole.

19 Mr Jaeschke, who at the relevant time was the State Director of the Liberal Party and the Liberal Party Campaign Director for New South Wales called Mr Egan on the telephone on the morning after the incident. *When he telephoned Mr Egan at 7:00 am, he asked Mr Egan if he was involved, and Mr Egan said:*

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I was there, I leaflet dropped two letterboxes and Labour stopped me on the third letterbox. Labour ruffed me up. There is no proof. Labour didn't take the leaflets from me or the bag from me. I was photographed at the scene only when I was ruffed up.

20 Mr Jaeschke telephoned Mr Egan at 9:00 am to ask him to resign. Mr Egan said: "to resign would be to admit guilt". Mr Jaeschke said: "Jeff, I'll be releasing a brief to the press and referring the matter to the Electoral Commission. Mr Jaeschke says that Mr Egan asked him to insert the word "illegible".

21 Mr Jaeschke concedes that Mr Egan did not say that he knew of the contents of the pamphlet, and that he was concerned about being assaulted.

22 Mr Hall says that Mr Egan had trained booth volunteers the previous weekend, and that he would call him from time to time, and offer suggestions.

23 Mr Hall confirms that Mr Egan was concerned about being assaulted.

Issues Arising from the Evidence

24 The evidence is not sufficient to conclude that Mr Egan was talking to the others about the distribution of the pamphlet when they were in Ladbury Avenue. The sequence of events appears to be that Mr Clark and Mr Chijoff had briefed the group before they were seen by Mr Gilchrist to gather around the vehicles. As Mr Egan was a member of the New South Wales State Executive of the Liberal Party, it is possible he addressed the others, but the conversation could have been about any subject.

25 The first issue is whether Mr Egan saw the pamphlet before or when he distributed it. There is no evidence he saw the material before he began to distribute it. Mr Foley says he saw the pamphlets protruding from the bag, Mr Wayne Forno says the bag had a flap and he could not see the pamphlets. Mr Shane Forno says he saw a pamphlet in the bag when his father was trying to take the bag from Mr Egan. Senator Hutchins gives no evidence about seeing a pamphlet in the bag. There is a photograph taken of Mr Egan shortly after Mr Forno tried to take the bag, holding the bag in one hand below the handles. The evidence of whether it was possible for Mr Egan to see the pamphlet while

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OF NEW SOUTH WALES**

carrying the bag is unsatisfactory and insufficient to draw a conclusion that Mr Egan saw the pamphlet while distributing it. It cannot be assumed that when he took the pamphlet(s) from the bag in the course of distribution he saw the pamphlet, because it was nighttime, and it may be true that he just presumed it was ordinary electoral material. By way of analogy, a person delivering newspapers cannot be presumed to look at the headlines on the front page of a newspaper because he has the opportunity to do so while delivering the newspapers. Distributing pamphlets for the Liberal Party was not a novel event for Mr Egan, and like the person who delivers newspapers, it would not evince any particular excitement or inquisitiveness

- 26 The next issue is the evidence of Mr Hall. The words attributed to Mr Egan, being; "I was letterboxing with the other guys, and was astonished how quickly we got caught tend to prove that Egan knew he was doing something wrong. Mr Egan denies saying those words, but is unable to say what he said to Mr Hall, except in broad terms.
- 27 The context in which Mr Egan says he called Mr Chijoff is remarkable. According to Mr Egan he called Mr Chijoff because he had no knowledge of the contents of the pamphlets, and when Mr Chijoff told him he was "bloody angry", however he then called Mr Hall because Mr Chijoff asked him to. It is possible that Mr Hall who spoke to Mr Chijoff on the night asked him to have Mr Egan call him. If Mr Hall did so that explains why Mr Egan called him and told Mr Hall about being assaulted. Mr Hall says he does not recall whether he asked Mr Chijoff to have Mr Egan call him.
- 28 The next issue is the evidence of Mr Jaeschke, who says Mr Egan told him; "There is no proof. Labour didn't take the leaflets from me, or the bag from me. I was photographed at the scene only when I was ruffed up." The conclusions that one can make from the conversation are equivocal. When it is remembered that the telephone call took place the following day, at a time when Mr Egan, on his own evidence, knew that the pamphlets were not authorised, the words alleged to be said by Mr Egan can be viewed as his conclusions based on the facts he knew at the time of the telephone call.
- 29 Why did Mr Egan not give hand over a pamphlet to Mr Wayne Forno? Mr Egan says the person said; "Give me a copy of what you're handing out", and grabbed him by the right wrist. Mr Forno says that he asked Mr Egan to give him a leaflet, and Mr Egan said

**IN THE LOCAL COURT
OF NEW SOUTH WALES**

"No". The question can be answered first; by addressing the temporal connection between the demand for the pamphlet and the physical contact by the person demanding it; and secondly, by considering the words and tone of voice of the person making the demand.

30 The article written in a magazine titled "Challenge" (exhibit 4) provides an insight into the frame of mind Luke Foley. The title of the article in the "Challenge" is "Inside the Lindsay Sting". Mr Foley writes in part;

Steve and I were cruising and we came across Jeff Egan and a young bloke. We pulled up, I jumped out and yelled: 'Gotcha!' Then Wayne Forno pulled up and jumped out with a camera.

31 One would expect the group connected with the Australian Labour Party to be excited about the prospect of catching the Liberal Party distributing non-authorized pamphlets. Senator Hutchins refers to it as a gift that does not come along very often. In the abovementioned article, Luke Foley refers to "a small team for the sting". The small group environment would have manifested in individual vigilance and tension. In the circumstances of the situation that the Australian Labour Party group were in it is highly unlikely that Wayne Forno would have asked Mr Egan for a pamphlet without exhibiting signs of excitement and tension. It is most likely that the version given by Mr Egan is correct, and that due the overbearing nature of the request followed shortly by a grabbing of the wrist of Mr Egan, he became defensive.

32 I find that the evidence of Mr Egan not wanting to give up the pamphlets, because of the circumstance outlined above, sheds no light on whether he knew that the pamphlets were unauthorised.

33 The next issue is the evidence of Wayne Forno that Mr Egan buried his head when Mr Forno tried to take a photograph of him. According to Mr Egan, he was at the time being assaulted, with more than one person holding him. Vehicles had arrived within seconds of one another. Four people surrounded Mr Egan, one of whom tried to take his bag. Mr denies he put his head down to avoid having his photograph taken. It would be quite natural in the circumstances that Mr Egan found himself in for him to lower his

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head. I find that the evidence about Mr Egan lowering his head is not evidence that can be taken into account to determine whether he knew the pamphlet was unauthorised.

34 Of the issues raised, the only ones needing further attention are; the telephone call to Mr Chijoff; and the telephone call to Mr Hall.

35 The Prosecutor submits that Mr Egan did not call Mr Chijoff. Mr Egan cannot recall the conversation, and it is not contained in his statement to the Police. Counsel for Mr Egan submits that the lapse of time between the hearing and the telephone call, as well as the assault are reasons for Mr Egan not being able to recall the conversation. Mr Egan was asked to recount the conversation on 30/03/2009, which is sixteen months after the telephone call. At the time Mr Egan could have been in a state of shock about the events of that night. Given the lapse of time, and the likely state of Mr Egan's emotions when he made the telephone call, and subsequently as he was faced with expulsion from the Liberal Party, and ramifications for his livelihood. I find that it is not remarkable that he can only say what was discussed rather than being able to recount the conversation.

36 The statements made by Mr Egan are not in evidence, it is agreed that they do not mention the telephone call to Mr Chijoff. The telephone call was made after the events of the night. Mr Egan did not make the statement whilst being asked questions by Police. He was concerned about being assaulted. I find that nothing can be drawn from the omission in the statements of the telephone conversation, because Mr Egan was not directed to that area by questioning, and because he was more concerned with being assaulted.

37 The telephone call by Mr Egan to Mr Hall has been traversed earlier in the judgement. Mr Hall also says that Mr Egan said; "All the political journo's know me, what's my line going to be tomorrow?" Counsel for the Prosecutor submits that Mr Egan called Mr Hall in an endeavour to control any damage to himself. Thus, he sought guidance about what he should say to journalist the following day; and suggested an alibi by going back to distribute anti-union material. Counsel for Mr Egan says that; since he had been assaulted, it is unlikely that he suggested to Mr Hall that he go back to the area to distribute anti-union material; and it is unlikely that Mr Egan would have sought advice about what his line was going to be because Mr Egan was a principal of a Public

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Relations firm, and would be expected to keep his own counsel. Counsel for Mr Egan says that Mr Hall has a motive to lie about what Mr Egan said to him so as to avoid criticism of his management of the campaign in Lindsay.

- 38 It seems to me that Mr Hall could not be criticised for what he did not know. After the telephone calls with Mr Chijoff he briefed Mr Jaeschke by telephone. He spoke to Mr Egan. He obtained a copy of the pamphlet and sent it to the National Campaign Headquarters of the Liberal Party. I am unable to find any room for Mr Hall to be criticised, and hence no motivation to make a scapegoat of Mr Egan. There were after all others who were more blameworthy, being those who organised the distribution of the pamphlets and prepared the material.
- 39 Since Mr Egan has a background in public relations, it is likely that he would think along those lines, and be concerned that a uniform line should be used when speaking to journalists. Once again, coming from a public relations background one could envisage Mr Egan thinking along the lines of damage control by distributing other material in the area. At that stage it is unlikely that Mr Egan would have apprehended that the persons connected with the Australian Labour Party would be in the area. With his background, Mr Egan would have known that the persons would be preparing their own "line".
- 40 Mr Hall had been working twelve or more hours a day on a campaign that was in its last few days. Undoubtedly, he would have been tired. Is it possible that he is wrong about the conversation? Mr Hall agrees that Mr Egan was concerned about being assaulted. He says that when Mr Egan talked about a "line", he was not interested in that. Clearly, his role was to quickly gather the information about the event and pass it onto Mr Jaeschke. Mr Hall had spoken to Mr Chijoff before he spoke to Mr Egan. After speaking to Mr Egan, he spoke to Mr Jaeschke. He then went to see the girlfriend of Mr Holstein to collect a copy of the pamphlet. Later that night he had dinner, where he discussed what had happened. Before he made his statement, Mr Hall discussed the matter with Mr Holstein in order to prepare himself for the making of the statement. Is it possible that Mr Hall, having spoken to so many people about the incident on the night and subsequent to the night is confused about who said what?

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The Fault Element

41 The fault element in relation to the circumstances of the pamphlet being unauthorised is recklessness.¹ The relevant questions are whether Mr Egan was aware of a substantial risk the pamphlet was not authorised when he distributed the pamphlet, and having regard to the circumstance known to him, it is unjustifiable to take the risk.

42 Counsel for the Prosecutor submits that element is made out by the following:

- The group of persons met without knowledge of the Liberal Party campaign functionaries. If Mr Egan had not agreed to distribute the unauthorised pamphlet he would not have been invited to do so. The planners would not have taken the risk of inviting Mr Egan unless they knew he would accept, particularly as he was a member of the New South Wales State Executive of the Liberal Party.
- Volunteers normally distribute pamphlets. They usually distribute the pamphlets during the day. Persons of Mr Egan's then standing in the Liberal Party do not usually distribute pamphlets at night.
- Mr Egan knew that the pamphlet was folded, so it is highly likely he saw the words "Islamic Federation of Australia".
- When Mr Egan was accused of handing out "shit sheets" why did he not respond.
- When Senator Hutchins said to Mr Egan, "Jeff what are you doing here" why did Mr Egan not respond.
- There is a divergence in evidence about what was said to Mr Egan at St Mary's.
- Mr Egan did not deny knowledge to Mr Jaeschke, he only said; "there's no proof".
- Why did Mr Egan not keep a record of the telephone calls he made to Mr Chijoff, Mr Hall, and Mr Jaeschke?

¹ Criminal Code Act s 5.4

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- 43 The first point is a circular argument. Once someone asked Mr Egan to become involved in a distribution of unauthorised pamphlets he would have knowledge of the plan, and could inform Liberal Party campaign functionaries. So why take the risk of telling him?
- 44 Mr Egan was known as a person who was willing to help out. He trained the booth volunteers the previous weekend, and would call Mr Hall with suggestions about the campaign. He said that he had done a lot of pamphlet distributions, and they were usually done at night because volunteers worked during the day.
- 45 The issue about whether Mr Egan was highly likely to have seen the pamphlet has been dealt with earlier in the judgement.
- 46 The next two points have been covered earlier in the judgement. In the circumstances of Mr Egan being surrounded by four persons, and being held by two of them it is reasonable that Mr Egan should be non-responsive.
- 47 Mr Foley says he said to Mr Egan; "We know what you're up to, handing out shit sheets on the ALP are you, bogus leaflets. You're in big trouble. We've caught you red-handed." Mr Foley says that Senator Hutchins said to Mr Egan; "Jeff, Jeff, Jeff, what are you doing?" He cannot recall someone saying; "Give me a copy of what you're handing out." Senator Hutchins says he said to Mr Egan. "Jeff, what the fuck are you doing here? Just go home." Later he said; "Jeff, I know you got this from Jackie Kelly's place. Why don't you just go home." Mr Wayne Forno says he said to Mr Egan; "You are handing out shit sheets, can I have one?" Later he said; "You are handing out shit sheets, we've got you. I'm going to hand these across to police, you are fucked". He recalls Mr Forno saying; "Give me the bag, we've got you." Mr Shane Forno says that he heard his father say; "We've got you, you've been caught." Later he heard his father say; "We've got youse, you've been caught, caught red-handed." Mr Forno heard his father say; "We've got youse, you've been caught, caught red-handed." He heard Mr Egan say "Fuck off." And to Senator Hutchins; "Tell him to let me go." Mr Forno heard someone say; "We are going to call the police"
- 48 The conversation recalled by Mr Egan has been described earlier in the judgement. Conversation recalled by Mr Egan that is not recalled by one of the persons listed in the

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paragraph above is: "This is assault please let me go." The difference is so minor that no conclusion can be drawn.

49 The telephone call to Mr Jaeschke was made after Mr Egan had spoken to Mr Chijoff. The response of Mr Egan shows that he was focussed on potential damage to the Liberal Party, and realised that his own fate was tied to the damage done to the Liberal Party.

50 There is no evidence of Mr Egan keeping a record of the telephone conversations. There is no evidence about whether he usually does so. The circumstances were such that Mr Egan was probably in a heightened state during the telephone calls, making it less likely that he would have the presence of mind to keep a record.

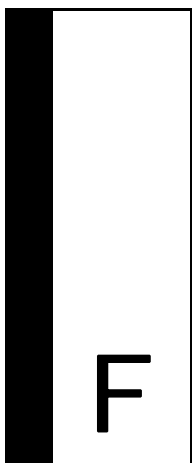
Conclusion

51 There is insufficient evidence to conclude that Egan was aware of a substantial risk the pamphlet was not authorised when he distributed the pamphlet. The evidence trends to show that for Mr Egan it was just a routine "letterbox drop", similar to many others he had done for the Liberal Party.

52 If Mr Egan said to Mr Hall, "I was letterboxing with the other guys, and was astonished how quickly we got caught." the statement is an admission of knowledge, otherwise the words "astonished how quickly we got caught" do not make sense.

53 Given that Mr Egan, a person of good character, has denied saying "astonished how quickly we got caught"; and the possibility that Mr Hall has made an error, due to fatigue at the time, and because he spoke to so many people about the incident, I am not satisfied beyond a reasonable doubt that Mr Egan said, "astonished how quickly we got caught".

54 Mr Egan is not guilty of the offence.



Appendix F – Mr Gary Clark letter of apology

22 November 2007

Mr Graham Jaeschke
State Director
The Liberal Party of Australia (NSW Division)
PO Private Bag No 2
KINGS CROSS NSW 1340

Dear Mr Jaeschke

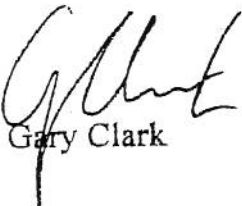
Please accept my sincere apology for the damage done by my actions in preparing and distributing a pamphlet in St Mary's on Tuesday night.

I confirm that neither the candidate for Lindsay nor Jackie, nor you had any advance knowledge of this matter.

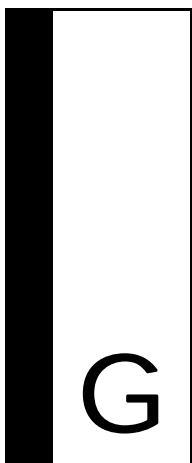
I now recognise that it was a foolish action.

I also take this opportunity to apologise to other members of the community, particularly the Muslim community to whom I bear no malice, for the offence caused by my actions and authorise you to make this letter public.

Yours sincerely



Gary Clark



Appendix G – Mr Greg Chijoff letter of apology

Graham Jaeschke
State Director
NSW Liberal Party
Level 9, 140 William Street
East Sydney NSW 2011

22nd November, 2007

Dear Mr Jaeschke,

I am writing to advise you that I deeply regret the actions taken by a small number of members of the Lindsay campaign team on Tuesday night.

It is with deep embarrassment that I advise you that I was involved with the distribution of this flyer which I regret.

I confirm that my wife Karen nor you were aware of this offensive pamphlet or were any way involved in the production and the distribution.

Apart from the obvious political and moral stupidity exhibited, I regret these actions even more for personal reasons. My wife was absolutely outraged when she heard about the incident.

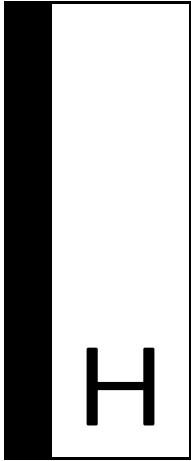
Karen is a warm and genuine woman who has always been a strong and passionate supporter of all of the different cultures present in our wonderful country. She would never condone the production of this pamphlet or anything like it.

I apologise unreservedly to any member of the community who was offended by or objected to this material. I am saddened to have caused this embarrassment to the Liberal Party, and I have already resigned my membership.

Yours sincerely,



Greg Chijoff



Appendix H – Section 328 CEA

328 Printing and publication of electoral advertisements, notices etc.

- (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, poster or notice unless:
- (a) the name and address of the person who authorized the advertisement, handbill, pamphlet, poster or notice appears at the end thereof; and
 - (b) in the case of an electoral advertisement, handbill, pamphlet, poster or notice that is printed otherwise than in a newspaper—the name and place of business of the printer appears at the end thereof.

(1A) A person must not produce, publish or distribute or cause, permit or authorise to be produced, published or distributed an electoral video recording unless the name and address of the person who authorised the video recording appears at the end of it.

(1AB) Subject to subsection (1AC), a person must not print, publish or distribute or cause, permit or authorise to be printed, published or distributed an electoral advertisement that takes up the whole or part of each of 2 opposing pages of a newspaper unless, in addition to fulfilling the requirement under paragraph (1)(a) that the name and address of the person who authorised the electoral advertisement appear at the end of it, such name and address also appears on the other page, or the part of the other page, taken up by the electoral advertisement.

(1AC) Subsection (1AB) does not apply to an advertisement of the kind referred to in that subsection:

- (a) that is contained within:
 - (i) a broken or unbroken border; or
 - (ii) broken or unbroken lines extending across, or partly across, the top and bottom of the advertisement; or
 - (iii) a broken or unbroken line extending along, or partly along, each side of the advertisement; or
- (b) that is printed so that to read one or more lines of the text of the advertisement it is necessary to read across both pages.

(2) A person who contravenes subsection (1), (1A) or (1AB) is guilty of an offence punishable on conviction:

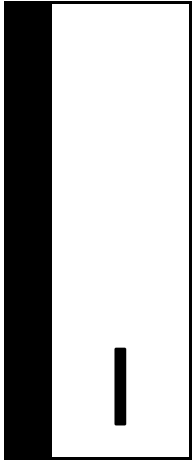
- (a) if the offender is a natural person—by a fine not exceeding \$1,000; or

- (b) if the offender is a body corporate—by a fine not exceeding \$5,000.
- (3) Subsection (1) does not apply in relation to:
 - (a) T-shirt, lapel button, lapel badge, pen, pencil or balloon; or
 - (b) business or visiting cards that promote the candidacy of any person in an election for the Parliament; or
 - (c) letters and cards:
 - (i) that bear the name and address of the sender; and
 - (ii) that do not contain a representation or purported representation of a ballot-paper for use in an election for the Parliament; or
 - (d) an article included in a prescribed class of articles.
- (4) Nothing in paragraph (3)(a), (b) or (c) is taken, by implication, to limit the generality of regulations that may be made by virtue of paragraph (3)(d).
- (5) In this section:

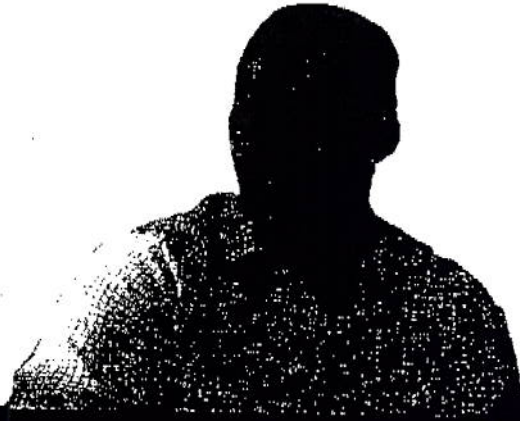
address of a person means an address, including a full street address and suburb or locality, at which the person can usually be contacted during the day. It does not include a post office box.

electoral advertisement, handbill, pamphlet, poster or notice means an advertisement, handbill, pamphlet, poster or notice that contains electoral matter, but does not include an advertisement in a newspaper announcing the holding of a meeting.

electoral video recording means a video recording that contains electoral matter.



Appendix I – 2004 Greenway bogus pamphlet



Ed Husic Labor Candidate for Greenway

Ed Husic is a devout Muslim

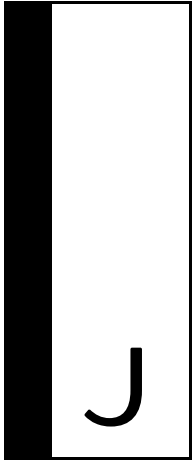
Ed is working hard to get a:

- **Better deal for Islam in Greenway**

A Fresh Approach



Authorised by Nicolle Duffy, 35 Crown St, Riverstone.



Appendix J – AEC Electoral Backgrounder
No. 20 – Polling Place Offences



ELECTORAL backgrounder No. 20

2007 No. 20 published October 2007

ISSN 1440 – 8007

Polling Place Offences

The Act, when describing offences uses different terms in different sections. In this *Backgrounder* definitions for these various terms are:

- (a) A 'polling booth' and a 'polling place' are both terms used to describe a location where polling takes place on election day.
- (b) The 'person in charge', 'person in charge of premises', 'officer in charge' and 'presiding officer' are all terms used to describe the

AEC official responsible for electoral activities in particular locations.

- (c) The 'officer-in-charge' of each polling place is called the 'presiding officer' during polling, from 8 am to 6 pm on election day. From 6 pm, however, during the counting of the votes (the scrutiny), this officer is called the 'assistant returning officer'.

Introduction

1. *Electoral Backgrounders* are published by the Australian Electoral Commission (AEC) to provide a basic introduction to electoral law, policy and procedures for the information and guidance of all interested parties.
2. The AEC administers the conduct of federal elections under the provisions of the *Commonwealth Electoral Act 1918* (the Act).
3. This *Backgrounder* provides introductory information in relation to offences under the Act relevant to polling. More information on some of the offences discussed below, or on those not directly relevant to polling activities, is contained in other *Electoral Backgrounders* available from the AEC website www.aec.gov.au.
4. Readers should not rely on the information in this document as a statement of how the law will apply in any particular case. Accordingly, if you are in doubt about

the interpretation of the law in particular circumstances you should seek your own independent legal advice.

5. The information in this *Backgrounder* is set out under the following headings
 - Compulsory voting
 - Influencing the votes of hospital patients or residents of nursing homes
 - Bribery
 - Interference with political liberty
 - Printing and publication of electoral handbills, pamphlets or posters
 - Misleading or deceptive publications
 - Depiction of certain electoral matter
 - General offences in relation to ballot papers
 - Canvassing near polling booths
 - Displaying badges or emblems of candidates in polling booths

Electoral Backgrounders are published for the general information of AEC staff and people interested in electoral issues. *Electoral Backgrounders* present and analyse the issues on various topics, but do not promote a particular position or represent legal advice, and should not be relied upon as such. Anyone requiring legal advice should consult their own legal advisers.



AEC

Australian Electoral Commission

**Please note: This update replaces
Electoral Backgrounder No. 20
published September 2004**

- Leaving how-to-vote cards in polling booths
- Making false statements to voters about enrolment
- Unlawfully marking ballot papers
- Disobeying lawful directions of the person in charge of the premises
- Officers and scrutineers to observe secrecy
- Scrutineers influencing or communicating with voters in polling booths
- Possible repercussions for persons who commit offences
 - Removal from the premises
 - Injunctions
 - Prosecutions
- Conclusion

6. The Act is available on the Attorney-General's Commonwealth Law website at www.comlaw.gov.au. Unless otherwise specified, all references to sections are to sections of the Act. Also please note, the words 'voter' and 'elector' are used interchangeably throughout this publication.

Compulsory voting s. 245

7. An elector is guilty of an offence if the elector fails to vote at an election unless they have a valid and sufficient reason. For more information on compulsory voting see *Electoral Backgrounder No. 17*, 'Compulsory Voting'.
8. A person found guilty of this offence may be fined up to \$50.

Influencing the votes of hospital patients or residents of nursing homes s. 325A

9. A person who is the proprietor of, or an employee of the proprietor of, a hospital or nursing home must not do anything with the intention of influencing the vote of a patient in, or resident at, the hospital or nursing home.

10. A person found guilty of this offence may be fined up to \$1000 or imprisoned for six months, or both.

Bribery s. 326

11. A person must not ask for, receive or obtain any property or benefit of any kind for themselves or any other person on an understanding that any vote of the person will be influenced or affected.
12. A person found guilty of this offence may be fined up to \$5000 or imprisoned for two years, or both.

Interference with political liberty s. 327

13. A person must not hinder or interfere with the free exercise or performance, by any other person, of any political right or duty that is relevant to an election under the Act.
14. A person found guilty of this offence may be fined up to \$1000 or imprisoned for six months, or both.

Printing and publication of electoral handbills, pamphlets or posters s. 328

15. A person must not print, publish or distribute a handbill, pamphlet or poster unless the name and address of the person who authorised the publication and the name and place of business of the printer appears at the end. For more information on compulsory voting see *Electoral Backgrounder No. 15*, 'Electoral Advertising'.
16. These requirements do not apply in relation to T-shirts, lapel buttons, lapel badges, pens, pencils or balloons, and some types of cards.
17. A person found guilty of this offence may be fined up to \$1000. A body corporate found guilty of this offence may be fined up to \$5000.

Misleading or deceptive publications s. 329

18. A person must not print, publish or distribute any matter or thing that is likely to mislead or deceive an elector in relation to the casting of a vote in an election under the Act.
19. A person found guilty of this offence may be fined up to \$1000 or imprisoned for up to six months, or both. A body corporate found guilty of this offence may be fined up to \$5000.

Depiction of certain electoral matter s. 334

20. A person must not write, draw or depict any electoral matter directly on any roadway, footpath, building, vehicle, vessel, hoarding or place.
21. A person found guilty of this offence may be fined up to \$1000.

General offences in relation to ballot papers s. 339

22. Subsection 339(1) of the Act provides for a number of offences in relation to ballot papers. These offences include impersonating any person with the intention of securing a ballot paper to which the impersonator is not entitled; and impersonating any person with the intention of voting in that person's name.
23. A person found guilty of one of these offences may be imprisoned for six months.
24. A person who votes more than once in the same election is guilty of an offence which carries a current penalty of \$1100, while a person who intentionally votes more than once in the same election is guilty of an offence which carries a current penalty of \$6600 or imprisonment for 12 months, or both.
25. A person is guilty of an offence if the person defaces, mutilates, destroys or removes any notice, list or other document affixed by, or by the authority of, any Divisional Returning Officer (DRO).
26. A person found guilty of this offence may be fined up to \$500.

Canvassing near polling booths s. 340

Note: That where a building used as a polling booth is situated in grounds within an enclosure, those grounds (by notice) may be deemed by the DRO to be part of the polling booth.

27. If a person engages in any of the following activities within a polling booth, or within six metres of the entrance to a polling booth on election day, the person is guilty of an offence
 - Canvassing for votes
 - Soliciting the vote of any elector
 - Inducing any elector not to vote for any particular candidate
 - Inducing any elector not to vote at the election
 - Exhibiting any notice or sign (other than an official notice) relating to an election.
28. A person found guilty of these offences may be fined up to \$500.
29. If a person is engaging in any of the activities listed above and is using a loudspeaker, broadcasting equipment or other sound-amplifier-type equipment, then if the activity is audible within a polling booth or within six metres from the entrance to the polling booth, the person is guilty of an offence.
30. A person found guilty of this offence currently may be fined up to \$550.

Displaying badges or emblems of candidates in polling booths s. 341

31. On election day, no officer or scrutineer is allowed to wear or display a badge or emblem of a candidate or political party in a polling booth.
32. A person found guilty of this offence may be fined up to \$1000.

Leaving how-to-vote cards in polling booths s. 335

33. Any person who exhibits or leaves a card or paper in a polling booth that has any direction or instruction about how an elector should vote, or about the method of casting a vote, will be committing an offence.
34. A person found guilty of this offence may be fined up to \$500.
35. This prohibition does not apply to:
- Official instructions, for example posters put up by the AEC to assist voters in voting formally (so that the vote is counted); and
 - Cases where a person is appointed by an elector to assist that elector to vote under the provisions in s. 234. Section 234 provides that in cases where an elector has low vision, physical disability or literacy issues such that he or she is unable to vote without assistance, the elector may appoint another person to assist them in marking their ballot paper. If the elector does not appoint a person to assist them, the presiding officer of the polling place may do so. The elector may indicate how the ballot paper is to be marked by presenting a how-to-vote card to the presiding officer. This presentation of a how-to-vote card does not contravene s. 335.

Making false statements to voters about enrolment s. 330

36. A person commits an offence if, on election day, they knowingly make a statement to a voter, either orally or in writing, with respect to a voter's enrolment and that statement is false or misleading in a material respect.
37. A person found guilty of this offence may be fined up to \$1000 or imprisoned for six months, or both.

Unlawfully marking ballot papers s. 338

38. If a person makes a mark or writes on a ballot paper of another elector (unless the person is expressly authorised by the Act), the person will be guilty of an offence.

39. A person found guilty of this offence can be fined up to \$1000 or six months imprisonment, or both.

Disobeying lawful directions of the person in charge of polling premises s. 348

40. The person in charge of a polling booth is the presiding officer or the substitute presiding officer. A person in charge of an early voting centre is the DRO or early voting officer.
41. In a polling booth or early voting centre, a person must not commit misconduct or disobey a lawful direction given by the person in charge of the premises.
42. If a person is prosecuted and found guilty of one of these offences, they may be fined up to \$500.
43. A person must not enter or remain in a polling booth or early voting centre without the permission of the person in charge of the premises, with the exception of polling officials, scrutineers or electors who enter the polling booth for the purpose of voting, and should remain no longer than is reasonably necessary to do so.
44. A person who does any of these things at a polling booth may be lawfully removed from the polling booth by a police officer or a person authorised by the person in charge of the premises.
45. If a person is prosecuted and found guilty of this offence, they may be fined up to \$500.

Officers and scrutineers to observe secrecy s. 323

46. Except in relation to Antarctic voting arrangements, an officer or scrutineer must not divulge or communicate any information with respect to the vote of an elector (acquired by him or her in the performance of functions under the Act) that is likely to enable the identification of the elector.
47. A person found guilty of this offence may be fined up to \$1000 or imprisoned for six months, or both.

Scrutineers influencing or communicating with voters in polling booths s. 218

48. A scrutineer must not interfere with or attempt to influence any voter within the polling booth, or communicate with any person in the polling booth except so far as it is necessary in the discharge of the scrutineer's functions.
49. The penalty prescribed for breaching this provision can be a fine of up to \$1000 or imprisonment for six months, or both.
50. The Act requires all scrutineers to wear a badge identifying them as a scrutineer whilst in the polling booth. The badges are supplied by the AEC.
51. A scrutineer who breaches these requirements, commits misconduct or fails to obey the lawful directions of the presiding officer, may be removed from the polling booth by a member of the Australian Federal Police (AFP), the state or territory police force, or another person authorised by the presiding officer.

Possible repercussions for persons who commit offences

52. If the AEC becomes aware that a person is breaching the provisions of the Act during polling, any or all of the following actions may be taken.

Removal from the premises

53. Section 348 provides that where a person commits misconduct in a polling booth, counting centre or a early voting centre, the person in charge of the premises may direct that person to leave the premises or have the person removed from the premises.

Injunctions

54. Section 383 of the Act provides that the Federal Court may grant an injunction to (amongst other things) prohibit a person from engaging in conduct that constitutes a contravention of the law in relation to elections.
55. The AEC and candidates in the election may make an application for an injunction to the Federal Court. If the AEC is informed or becomes aware that a person may have

committed an offence, the AEC determines whether it is appropriate in the circumstances to apply for an injunction. The Federal Court is able to order injunctions at short notice on election day.

56. If an injunction is granted against a person, failure to comply with the injunction order may constitute contempt of court, for which the Federal Court can order arrest and detention.

Prosecutions

57. When the AEC becomes aware of a person engaging in activity that may constitute a breach of an offence provision, the AEC may refer the matter to the AFP for investigation. The AFP may then refer the matter to the Commonwealth Director of Public Prosecutions for consideration, in accordance with the *Commonwealth Prosecution Policy*, as to whether a prosecution is initiated.

Conclusion

58. Anyone with an interest in the laws on offences relating to polling, or their application in particular circumstances, should consult the exact provisions of the Act and seek their own legal advice.
59. The *Commonwealth Electoral Act 1918* is available on the Attorney-General's Commonwealth Law website at www.comlaw.gov.au. AEC parliamentary submissions relating to electoral law can be accessed through the AEC website at www.aec.gov.au.
60. Anyone who believes that the law governing polling place offences should be changed may make a submission to the Joint Standing Committee on Electoral Matters at Parliament House.

Endnotes

The *Commonwealth Electoral Act 1918* can be purchased over the counter in major cities, or accessed through any major public library, or the ComLaw website www.comlaw.gov.au. For information about over the counter or mail order sales, ring CanPrint Information Services 1300 889 873.

Further information in relation to compliance with the Act is set out in the AEC's *Electoral Backgrounder* publications which can be found on the AEC's website at: http://www.aec.gov.au/About_AEC/Publications/Backgrounders/index.htm.

AEC Publications

The AEC has available a number of publications for people interested in the electoral process including

- *Electoral Pocketbook*: a concise handbook of electoral facts and statistics
- *Electoral Boundaries Maps*: maps showing the geographic boundaries of the 150 electoral divisions
- *Nominations Pamphlet*: key facts for people considering standing for election
- *Electoral Newsfile series*: editions are produced on various electoral events
- *Candidate's Handbook*: a handbook to assist candidates standing for election to the Senate or House of Representatives
- *Scrutineer's Handbook*: an information handbook for scrutineers at federal elections and referendums
- *Election Funding and Financial Disclosure Handbooks*: handbooks of funding and disclosure requirements of candidates and political parties.

Copies of these and other publications are available from www.aec.gov.au, by phoning 13 23 26 or at AEC national, state, territory and divisional offices.

Australian Electoral Commission Contacts

General Enquiries

Telephone: 13 23 26
Email: info@aec.gov.au

Editor, *Electoral Backgrounder*

Cate Thompson
(02) 6271 4583

Media Liaison

Members of the media are asked to use the Media Liaison contact numbers listed rather than the general enquiry number 13 23 26 which appears on AEC advertising.

Director

Media and Communication Strategy Section
Phil Diak
(02) 6271 4415

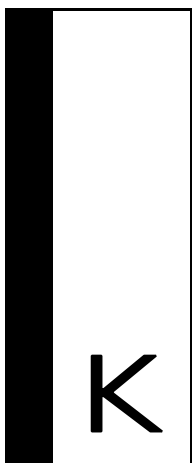
Assistant Director

Media and Communication Strategy Section
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www.aec.gov.au

National Enquiry Service
Ph: 13 23 26



Appendix K – AEC Proposed changes to penalty provisions

Changes to penalty provisions as outlined by the Australian Electoral Commission in Submission 3A

Section Number	Nature of the Offence	Current Penalty	Possible Change
78	Improper influence of a member of a Redistribution Committee	\$2,000 or imprisonment for 12 months, or both	
91A(1)	Prohibition on the improper use of information from the Roll	100 penalty units	
91B(2)	Prohibition on the disclosure of protected information from the Roll	1,000 penalty units	
91B(3)	Prohibition on the improper use of protected information from the Roll	1,000 penalty units	
101(6)	Failure to enrol to vote or to transfer enrolment when there is a change in the place of living	1 penalty unit and a strict liability/absolute liability offence depending on type of enrolment claim	
103	Penalty on an officer neglecting to enrol claimants	\$1,000	
187(1)	Breach of the duty of a witness to a postal vote application	\$500	
189B(2)	Prohibition on the improper disclosure of information from the electronic list of postal vote applicants	1,000 penalty units	
189B(3)	Prohibition on the commercial use of information from the electronic list of postal	1,000 penalty units	

	vote applicants		
195	Interference with a postal vote ballot paper	\$1,000	
196	Prohibition on any person other than an AEC officer opening a envelope containing a postal vote ballot paper	\$500 and strict liability	
197	Failure to post or deliver postal vote application or a postal vote ballot paper	\$1,000	
200DB(1)	Offence for scrutineer interfering or influencing elector in pre-poll voting office	Imprisonment for 6 months	
200DB(2)	Offence for scrutineer communicating with some else at pre-poll voting office where that communication is not necessary for the discharge of the functions of a scrutineer	Imprisonment for 6 months	
200J	Prohibition on any person other than an AEC officer opening a pre-poll voting envelope	\$500 and strict liability	
200K	Breach of obligations on person present when an elector signs a pre-poll certificate or marks a ballot paper	\$1,000	
218	Prohibition on scrutineers	\$1,000 or imprisonment	

	interfering or influencing electors within a polling booth	for 6 months, or both	
245	Failure to vote without a valid and sufficient reason	245(5) administrative penalty \$20 245(15) \$50 penalty imposed by court and a strict liability offence 245(15C) \$50 penalty imposed by court for false or misleading information in response to a penalty notice for failure to vote	
271	Prohibition on officers marking ballot papers which would enable a voter to be identified	\$1,000	
315(1) and (1A)	Failure to lodge donor returns, election returns and annual returns relating to election funding and disclosure matters	\$5,000 for agent of a political party and \$1,000 for all others – strict liability offence	120 penalty units
315(2) and (2A)	Lodging an incomplete return or failing to retain relevant records	\$1,000 and strict liability offence	120 penalty units
315(3)	Lodging of a return by the agent of a political party that is false or misleading in a material particular.	A fine not exceeding \$10,000	Imprisonment for 2 years or 240 penalty units or both
315(4)	Lodging of a	A fine not	Imprisonment

	return by persons other than political party agent that is false or misleading in a material particular	exceeding \$5,000	for 12 months or 120 penalty units or both
315(6A)	Prohibition on persons providing false or misleading information in relation to a claim for election funding	\$1,000	Imprisonment for 2 years or 240 penalty units or both
315(7)	Prohibition on persons providing false or misleading information in a person who is required to lodge a return	\$1,000	Imprisonment for 12 months or 120 penalty units or both
315(8)	Additional daily penalty of \$100 for failing to lodge a return within the required period	\$100 per day	1 penalty unit per day
315(10)	Cap on the total penalty that may be imposed		
316(5), (5A) and (5B)	Refusing or failing to comply with a notice from an authorized officer to produce information relating to an investigation	\$1,000 and strict liability offence	Imprisonment for 12 months or 60 penalty units or both
316(6)	Prohibition on persons providing false or misleading information in response to a notice	\$1,000 or imprisonment for 6 months, or both	Imprisonment for 12 months or 60 penalty units or both
323	Officers and scrutineers to observe secrecy	\$1,000 or imprisonment for 6 months, or	Maximum penalty of 50 penalty units or

	in relation to the identification of electors who have voted	both	imprisonment for 10 months or both
324	Officers not to contravene a provision of the Act for which no other penalty applies or contravenes a direction given under the Act	\$1,000	Maximum penalty 50 penalty units
325(1) &(2)	Officers not to influence the vote of another person	\$1,000 or imprisonment for 6 months, or both	Maximum penalty of 50 penalty units or imprisonment for 10 months or both
325A	Proprietors and employees in hospitals and nursing homes not to influence the votes of patients and residents	\$1,000 or imprisonment for 6 months, or both	Maximum penalty of 50 penalty units or imprisonment for 10 months or both
326 (1) & (2)	Bribery for votes and support	\$5,000 or imprisonment for 2 years, or both	Maximum penalty of 240 penalty units or imprisonment for 4 years or both
327(1)	Interference with any political right or duty	\$1,000 or imprisonment for 6 months, or both	Maximum penalty of 240 penalty units or imprisonment for 4 years or both
327(2)	Discrimination against persons who have given donations to a political party or candidate	Offender is a natural person - \$5,000 or imprisonment for 2 years Offender is a body corporate - \$20,000	Maximum penalty of 240 penalty units or imprisonment for 4 years or both
328	Failure to include authorization details on printed electoral	Offender is a natural person – a fine not exceeding \$1,000	Maximum penalty of 50 penalty units for a natural person or a maximum

	advertisements	Offender is a body corporate – a fine not exceeding \$5,000	penalty of 250 penalty units for a body corporate
328A	Failure to include authorization details on paid for electoral advertisements published on the Internet	10 penalty units	Maximum penalty of 50 penalty units for a natural person or a maximum penalty of 250 penalty units for a body corporate
329	Prohibition on certain types of misleading or deceptive publications during the election period	Offender is a natural person – a fine not exceeding \$1,000 or imprisonment for a period not exceeding 6 months or both Offender is a body corporate – a fine not exceeding \$5,000	Maximum penalty of 50 penalty units for a natural person or a maximum penalty of 250 penalty units for a body corporate
330	Prohibition on making false or misleading statements about the enrolment of an elector on polling day	\$1,000 or imprisonment for a period not exceeding 6 months or both	Maximum penalty of 50 penalty units or imprisonment for 10 months or both
331(1)	Failure to include the word “advertisement” as a headline for electoral advertisements in the print media	5 penalty units	Maximum penalty of 25 penalty units
331(2)	Failure to include the word “advertisement” as a headline for electoral advertisements that take up 2	\$500	Maximum penalty of 25 penalty units

	opposing pages in the print media		
334(1) and (2A)	Depiction of certain electoral matter directly on public property and locations	\$1,000 and a strict liability offence	Maximum penalty of 25 penalty units and a strict liability offence
335	Leaving How to Vote material in a polling booth	\$500	Maximum penalty of 25 penalty units
336	Prohibition on making the signature of another person on an electoral paper	\$1,000	Maximum penalty of 50 penalty units
337(1)	Falsely witnessing any electoral paper	Imprisonment for 12 months	Maximum penalty of 240 penalty units or imprisonment for 4 years or both
338	Unlawfully marking ballot papers	\$1,000 or imprisonment for 6 months, or both	Maximum penalty of 50 penalty units or imprisonment for 10 months or both
339(1)	Other offences in relation to nomination papers and ballot papers	Imprisonment for 6 months	Maximum penalty of 50 penalty units or imprisonment for 10 months or both
339(1A) and (1B)	Prohibition on a person voting more than once in an election	10 penalty units and a strict liability offence	Maximum penalty of 50 penalty units and a strict liability offence
339(1C)	Prohibition on a person intentionally voting more than once in an election	60 penalty units or imprisonment for 12 months, or both	Maximum penalty of 240 penalty units or imprisonment for 4 years or both
339(2)	Prohibition on any act that results in the defacement or destruction of a notice list or	\$500	Maximum penalty of 25 penalty units

	other document affixed under the authority of a DRO		
340(1) and (2)	Prohibition on canvassing within 6 metres of a polling booth	\$500	Maximum penalty of 25 penalty units
341(1) and (2)	Prohibition on officers and scrutineers wearing political badges or emblems in a polling booth	\$1,000 and a strict liability offence	Maximum penalty of 50 penalty units and a strict liability offence
342	Breach of the duty of a witness to enrolment claim	\$1,000	Maximum penalty of 240 penalty units or imprisonment for 4 years or both
343	Breach of duty to forward claims for enrolment to a DRO	\$1,000 and a strict liability offence	Maximum penalty of 50 penalty units and a strict liability offence
345(3)	Breach of duty on employers to allow an employee time off (of up to 2 hours) for the purpose of voting	Offender is a natural person – \$500 Offender is a body corporate – \$2,500	Maximum penalty of 50 penalty units for a natural person or a maximum penalty of 250 penalty units for a body corporate
346(1)	Prohibition on making or possessing any papers with the “official mark” that is used on ballot papers without lawful authority	\$1,000	Maximum penalty of 50 penalty units
347(1)	Disorderly behaviour at any lawful public political meetings held in relation to the election of MPs during the	\$500	Maximum penalty of 25 penalty units

	election period		
347(4)	Prohibition on a person who has been removed from a public political meeting for being disorderly returning to the meeting	\$1,000 or imprisonment for 6 months, or both	Maximum penalty of 50 penalty units or imprisonment for 10 months or both
348(1)	Prohibition on misconduct at a polling booth	\$500	Maximum penalty of 25 penalty units
351(1)	Prohibition on the publication of certain unauthorised statements purporting to be made on behalf of candidates	Offender is a natural person – \$1,000 Offender is a body corporate – \$5,000	Maximum penalty of 50 penalty units for a natural person or a maximum penalty of 250 penalty units for a body corporate
384	Offence under section 315(3) and 326 are indictable offences which may be dealt with by a court of summary jurisdiction with decreased penalties	315(3) – a fine not exceeding \$5,000 326 – a fine not exceeding \$2,000 or imprisonment for a period not exceeding 12 months or both	