



Government Response

to the

Joint Standing Committee on Electoral Matters

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

June 2011

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Recommendation 1

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.

Response

Supported. The Government supports amending the *Commonwealth Electoral Act 1918* (Electoral Act) and the *Referendum (Machinery Provisions) Act 1984* (Referendum Act) to update the penalty provisions. Using Appendix K of the Report as a guide, the Special Minister of State will review the penalty provisions in both Acts, with advice from the Department of Finance and Deregulation and other agencies, including the Attorney-General's Department, as required.

Recommendation 2

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 units for a body corporate.

Response

Partly-supported. The Government agrees that electoral advertisements published or distributed during an election campaign by a candidate, a political party or another participant in an election campaign must have the appropriate authorisation. Failure to do so should be a strict liability offence in the Electoral Act with the maximum penalties being 60 penalty units for an individual and 300 penalty units for a body corporate.

However, the Government notes that section 328 currently applies more broadly to a wide range of publications that may be published or distributed at any time of year by persons or organisations, including the Government. The Government is concerned that as section 328 currently applies this offence may often be inadvertently breached.

The Government therefore proposes to prepare legislative amendments to the Electoral Act to establish two offences in section 328 to apply to certain publications that do not include the required authorisation:

- during the period from the date of the issuing of writs for an election until the close of voting, a strict liability offence with the maximum penalties of 60 penalty units for individuals and 300 penalty units for a body corporate would apply to electoral advertisements published or distributed by candidates, political parties and other participants; and
- at all other times, the current arrangements in section 328 would apply to electoral advertisements.

Recommendation 3

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 Electoral Act to deal with polling place offences.

Response

Supported in principle. The Australian Electoral Commission reviews and reports on the adequacy of the powers under the Electoral Act following each election. This advice will assist the review of some of the penalty provisions in response to Recommendation 1.