

DISTRIBUTION OF ELECTORAL MATERIAL



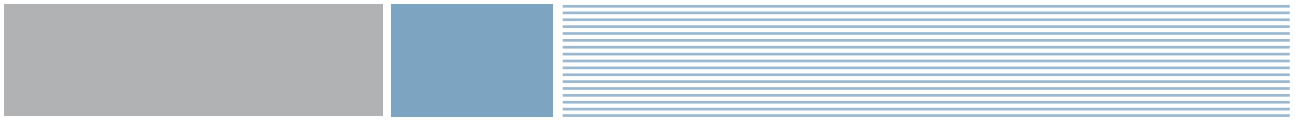
Practice Notes No.1

MARCH 2007

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Please address all enquiries to the New South Wales Electoral Commission, Level 25, 201 Kent Street, Sydney 2000



The purpose of these practice notes is to provide information to organisations and candidates, who may wish to distribute electoral material in connection with the March 2007 State election.

The New South Wales Electoral Commission (NSWEC) provides factual information on procedures and matters which have already been settled by the courts. The NSWEC does not provide advice on questions of legal interpretation or compliance with legislation.

The rules governing the display and content of electoral material are found in sections 151A to 151J of the *Parliamentary Electorates and Elections Act 1912* (the Act).

Colin Barry
Electoral Commissioner



Key Terms

Distribution includes leaving material in such a position and in such circumstances as to indicate that it is intended to be available for collection by members of the public who are in a public place.

Electoral material is essentially the **form** in which the message appears. Although the term applies to advertisements, how to vote cards, handbills, pamphlets, posters and notices, posters are treated differently to the other printed material.

Electoral matter is essentially the **content** of the message. It applies to any matter intended or calculated or likely to affect the result of any election, or of influencing electors in how they cast their vote. It includes: the name of a candidate or a party and the photograph or drawing or representation of a candidate.

In the context of material handed out on election day it also covers an express or implicit reference to, or comment on:

- The election or referendum, or
- The Government, the Opposition, a previous Government or a previous Opposition, of the State, of the Commonwealth or any other State or Territory, or
- A member or former member of Parliament or the Parliament of the Commonwealth or any other State or Territory, or
- A political party, a branch or division of a political party or a candidate in the election, or
- An issue submitted to, or otherwise before, the electors in connection with the election or referendum.

Poster means any electoral matter printed, drawn or depicted on any material.

Premises includes any structure, building, vehicle or vessel or any place, whether built on or not, and any part thereof.



1 Before the issue of the Writs

Until the Writs for the election have been issued by the Governor the provisions of the Parliamentary Electorates and Elections Act 1912 do not apply. This means that candidates, parties, groups, organisations or individuals can display or distribute material in whatever form they choose, and the NSWEC does not have a role to play.

Although compliance with the electoral legislation is not required at this time, anyone wishing to display or distribute electoral material should seek their own legal advice to ensure that they comply with any other legal requirements such as those contained in environmental, planning or local government law.

2 From the issue of the Writs

Content

Once the Writs have issued there are a number of requirements which apply to the content of electoral material which is printed, published or distributed (except for posters). These are:

- where the material contains a representation of a ballot paper or a representation intended to represent a ballot paper, it is **not** to contain any directions intended or likely to mislead or improperly interfere with any elector casting their vote. For example, directing that the number '1' be put in the square of two candidates;
- the material is **not** to contain any untrue or incorrect statement intended or likely to mislead or improperly interfere with any elector casting their vote. For example, voting is not compulsory;
- a candidate is **not** to use the actual (or similar) name, abbreviation, acronym or derivative of a registered political party in a way that is intended or likely to mislead any elector casting their vote. For example, a candidate supported by an organisation known as 'Anti Licensed Premises' would not be able to use the acronym 'ALP' as this could be confused with the Australian Labor Party; and
- a candidate is **not** to use the word 'Independent' in connection with the name, abbreviation, acronym or derivative of a registered political party in a way to suggest or indicate an affiliation with that party that does not exist (unless 'Independent' is included in the name of the registered party). For example, a candidate cannot describe themselves as 'an independent Liberal candidate' or 'an independent Labor candidate'.

In this context, the meaning of 'misleading an elector' and 'incorrect or untrue statements' has been narrowly interpreted by the courts. It does **not** extend to the truth or otherwise of statements seeking to influence electors in deciding for which candidate or party they should vote, but is limited to the actual process of marking the ballot paper.



Authorisation

All electoral material, including posters, must be properly authorised. It must contain the legible name and address of the person authorising the printing (a post box address is acceptable), and the legible name and address of the printer (this must be a street address). If material is printed on a home computer then the printer's address is the residential address. If an advertisement appears in a newspaper, the printer's details do not need to be included in the advertisement, as long as the newspaper's details appear somewhere in the newspaper.

Not providing these details is a breach of the Act, and the person to whom the material belongs will be asked to remove or cease distributing it.

Display of posters

It is an offence to display posters, in or on, property belonging to the Crown or a local council, and in the case of unoccupied property, without permission in writing from the owners. If posters are attached to trees in the grounds of a government-owned school or on a local council-owned nature strip, it may be an offence.

Care needs to be taken in relation to posters displayed on private property. If permission has not been obtained, there is nothing to stop the owner from removing the posters. The NSWEC advises that in relation to telegraph poles these are the property of the various electricity providers and permission should be sought before posters are attached.

The NSWEC has no jurisdiction to intervene where material is displayed on private property if it complies with the requirements set out above.

If there is a breach of the Act, the NSWEC will contact the person, party or group to whom the poster belongs to arrange for its removal. However before this action can be taken, the complainant needs to provide the NSWEC with proof of the property's ownership and photos of the alleged offending material. The NSWEC will be unable to act if this information is not provided or the identity of the owner of the poster is not known.

It is also unlawful for a person to write, draw or depict any electoral matter directly on any roadway, footpath, building, vehicle, vessel, hoarding or place. This section means that sign-painting on a car would not be permitted, but it would not prevent a poster being displayed on a trailer behind a car.

Any person can bring proceedings for a breach of the Act, and NSW Police have the power to remove any posters contravening its provisions.



3 Election day

Printed material

Registration

It is an offence to distribute any unregistered electoral material on election day, and the penalty is a fine up to 10 penalty units (\$1,100) or imprisonment for 6 months.

Any candidate, party, group, organisation or individual can distribute material on election day, provided it has been registered with the NSWEC by **5pm, Friday, 16 March 2007.**

This is done by completing the Application to Register Election Material (RO 146), which can be downloaded from the website (www.elections.nsw.gov.au), or obtained from a returning officer (see website for locations) or by calling 1300 135 736.

This Application, together with a sample of the material, must be sent to the NSWEC, GPO Box 832, Sydney, NSW, 2001. Alternatively the Application and sample material can be faxed (9290-5991), or delivered to Level 25, 201 Kent St, Sydney, NSW, 2001.

The NSWEC will provide advice even if the material is in draft form. If the material is approved, the final version must not differ substantially from that registered.

Applications made by:

- a candidate must be signed by the candidate, or his/her official agent appointed under the *Election Funding Act 1981*;
- a registered political party must be signed by the registered officer (or deputy) if the candidate has been endorsed by that party;
- a group must be signed by the official agent or the candidate at the head of the group if there is no official agent;
- an individual or organisation must be made by the individual or a person authorised by the organisation.

The NSWEC will provide advice even if the material is in draft form. If the material is approved, the final version must not differ substantially from that registered.

An elector enrolled in the district or any scrutineer may attend the returning officer's office between 8am and 6pm on election day to inspect all registered material for the district.



Content

Certain minimum requirements need to be met to enable material to be registered and thus distributed on election day. These are that the material:

- includes in legible characters the name and address of the person on whose instructions the material was printed, and the name of the printer and the address at which it was printed;
- could not result in an elector casting an informal vote;
- does not contain words that are obscene or offensive;
- does not use the actual (or similar) name, abbreviation, acronym or derivative of a registered political party in a way that could mislead any elector; or
- does not use the word 'Independent' in connection with the name, abbreviation, acronym or derivative of a registered political party in a way to suggest or indicate an affiliation with that party that does not exist (unless 'Independent' is included in the name of the registered party).

In addition, how to vote material, which contains a representation of a ballot paper or a representation intended to represent a ballot paper or directions or suggestions on how to cast a vote, must comply with **additional requirements** to ensure electors are not misled in the casting of their vote. This does not extend to the truth or otherwise of statements seeking to influence electors in deciding for which candidate or party they should vote, but is limited to the actual process of marking the ballot paper eg directing that the number '1' be put in the square for two candidates.

Other factors that the Electoral Commissioner has to consider in this context are whether:

- a political party, group or candidate is correctly registered;
- the claimed affiliation of candidates with a particular party or group is accurate;
- a particular candidate is actually endorsed by a particular party or group;
- a particular candidate is actually endorsed for a particular district;
- a political party or group is recommending that the highest preferences be given to its own candidates; and
- a how to vote card showing a ballot paper with the candidates' names, displays all names, correctly spelt and in the order they appear on the actual ballot paper.

If the material meets all the requirements, the Electoral Commissioner will issue a Certificate of Registration to this effect. If it does not, the applicant will be advised as to what changes are necessary and why.



Non-compliance

Electoral material is not to be distributed within 6 metres of the entrance to a polling place. If this requirement or any other provision in the Act is breached, the election official may confiscate it:

- within a polling place,
- in or on a public place within 6 metres of an entrance to a polling place, or
- in or on a public place in the vicinity of, but beyond 6 metres of an entrance to, a polling place.

NSW Police also have the power to remove any such electoral material.

Posters

Although posters do not require registration, on election day certain size limitations apply. Posters displayed **within** 5 metres of the entrance to the polling place **or on** the outer wall, fence or other boundary where the polling place is situated in enclosed grounds, cannot be more than 8,000 sq cm (80 × 100). Single posters of the required size cannot be joined together so as to create a sign in excess of the legal maximum size.

The requirement that posters not be displayed in or on property belonging to the Crown or a local council or unoccupied property, without permission in writing from the owners, continues to apply.

If posters contravening any provisions of the Act are displayed within a polling place, or in or on a public place within 6 metres of an entrance to a polling place, they can be removed by an election official. NSW Police also have the power to remove any such posters.

