

Chapter 5.2: Truth in Political Advertising

Background

Truth in political advertising laws are provisions which prohibit false statements in political advertising during election campaigns. These laws can establish offences or allow for the removal of statements.

South Australia was the first jurisdiction in Australia to introduce truth in political advertising laws in 1985 (with the exception of Commonwealth laws which were passed in 1983 but repealed a year later).¹ In 2020, the ACT passed laws modelled on South Australia's.²

The South Australian provisions, which ban a '*statement purporting to be a statement of fact that is inaccurate and misleading to a material extent*', were found to be the strongest example of such a law by a 2019 United Kingdom analysis.³ Despite some issues with the legislation, the assessment found the laws to be reliable, workable and fair.⁴

Tasmanian Laws

The Tasmanian *Electoral Act 2004* contains:

- offences for advertising that is misleading or deceiving in relation to the recording of a vote;⁵
- bans distribution of political advertisements and 'how to vote' cards on election day;⁶ and
- a ban on the publishing of political advertisements that refer to a candidate by name without that candidate's permission.⁷

These provisions don't prohibit dishonest political communications.

¹ G Williams, [Truth in Political Advertising Legislation in Australia](#), Law and Bills Digest Group, Parliamentary Library, Parliament of Australia.

² J Evans, [ACT passes new political advertising laws to ensure voters are not 'deceived on the way to the ballot box'](#), ABC News, Aug 2020.

³ A Renwick and M Palese, [Doing Democracy Better: How Can Information and Discourse in Election and Referendum Campaigns in the UK Be Improved?](#), University College London, The Constitution Unit, 2019, p. 22.

⁴ Ibid, p.p. 38-39.

⁵ Tasmanian Government, [Electoral Act 2004](#), S. 197.

⁶ Ibid, [S. 198](#).

⁷ Ibid, [S. 196](#).

The ban on referring to a candidate by name may, in some contexts, limit the capacity to make misleading statements about candidates – in that it limits making any statement about an individual candidate. However, the law does not ban misleading statements about political parties – and these are the main form of political advertising about opponents during a House of Assembly election.

These provisions have been argued to potentially apply to matters as broad as social media posts by the Tasmanian Electoral Commission.⁸ This is likely to be unconstitutional,⁹ but most people are unlikely to risk the possibility of having to finance a High Court challenge.

Repeal of Ban on Referring to Candidates by Name

Policy 5.2.1

Section 196 of the *Electoral Act 2004*, which prohibits referring to a candidate by name without their written consent, will be repealed. This provision will be replaced by a ban on distributing advertisements purporting to be on behalf of a candidate without the permission of that person.

Problems with Truth in Political Advertising Laws

The scope of truth in political advertising laws are deliberately tight – they apply to ‘a statement of fact that is inaccurate and misleading to a material extent’.

In South Australia, the Electoral Commission has to seek legal advice from the Crown Solicitor’s Office to determine if a statement is misleading, which takes considerable time. The SA Commission has also received paperwork “some 22-25 cm high” in the form of supporting documentation.¹⁰ Such tactics could be used to delay a decision until after election day – particularly during the crucial last days of a campaign.¹¹

Truth in Political Advertising Laws

Policy 5.2.2

Tasmania will develop ‘truth in political advertising’ laws. These laws will be modelled on South Australian legislation, but will only require the Commissioner to be satisfied that the advertisement is inaccurate and misleading to a material extent. Appeal rights will be available if a statement correction is directed to be issued, guidelines will be developed and published by the Commissioner, and legislated timeframes will be established for determinations.

The South Australian Electoral Commission, which administers SA’s truth in political advertising laws, has been critical of their role in administering the law – a scepticism shared by the Victorian Electoral Commission when submitting to an inquiry around similar laws.¹²

⁸ Letter from the Tasmanian Electoral Commission to the Greens.

⁹ Legal advice obtained by the Greens and accepted by the Office of the Director of Public Prosecutions.

¹⁰ Victorian Electoral Commission, [Inquiry into the impact of social media on elections and electoral administration: Submission from the Victorian Electoral Commission](#), 2020, p. 14.

¹¹ A Renwick and M Palese, [Doing Democracy Better: How Can Information and Discourse in Election and Referendum Campaigns in the UK Be Improved?](#), University College London, The Constitution Unit, 2019, p. 39.

¹² Victorian Electoral Commission, [Inquiry into the impact of social media on elections and electoral administration: Submission from the Victorian Electoral Commission](#), 2020, pp. 12-14.

Complaints made include the time needed to administer disputes can draw substantial resources away from the key role of managing elections, that it's not the core business of Electoral Commissions to discern truth, disputes can take much time to resolve, and it undermines the independence of the Commission if they become involved in political controversy.¹³

Political Advertising Commissioner

Policy 5.2.3

A statutory Political Advertising Commissioner will be established. An assessment of the appropriate officer to be the Commissioner will be undertaken – with a specific assessment of the Tasmanian Electoral Commission and the Office of the Ombudsman. The matter of the resourcing required will also be canvassed.

¹³ Ibid.