

Attachment A: Recommendation to amend the *Electoral Act 2004* (Tas) to include a provision on truth in political advertising

Extend the provisions of section 197 of the *Electoral Act 2004* on misleading and deceptive electoral matter to include political advertising, modelled on South Australian and ACT legislation, as follows.

After subsection 197(f), insert:

“(g) (1) A person commits an offence if—

(a) the person disseminates, or authorises the dissemination of, an advertisement containing electoral matter; and

(b) the advertisement contains a statement purporting to be a statement of fact that is **misleading or deceptive** to a material extent.¹

Penalty: Fine not exceeding 200 penalty units.

(2) It is a defence to a prosecution for an offence against subsection (1) if it is proved by the defendant that the defendant—

(a) took no part in deciding the content of the advertisement; and

(b) could not reasonably be expected to have known that the statement was misleading or deceptive.

The defendant has an evidential burden in relation to the matters mentioned in s (2).

(3) If the commissioner is satisfied that subsection (1) (a) and (b) apply, the commissioner may ask the person, in writing, to do 1 or more of the following:

(a) not disseminate the advertisement again;

(b) publish a retraction in stated terms and in a stated way.

(4) If a person is found guilty of an offence against this section, the court must take the person’s response to any request under subsection (3) into account in deciding the penalty for the offence.

(5) On application by

(a) the Electoral Commissioner; or

¹ Australian consumer law uses **misleading or deceptive**, to regulate advertising rather than inaccurate and misleading, which is used in South Australian truth in political advertising law.

(b) a person who has made a complaint under section (1) (a) and (b);

the Supreme Court may, if satisfied that subsection (1) (a) and (b) apply, order the person to:

(c) not disseminate the advertisement again; and

(b) publish a retraction in stated terms and in a stated way.”

Consider providing for an election to be voided in the case of misleading advertising, modelled on South Australian legislation.

After subsection 197(g), insert:

“(h) An election may be declared void on the ground of misleading advertising but only if the Court of Disputed Returns is satisfied, on the balance of probabilities, that the result of the election was affected by that advertising.”