

**Submission
No 10**

**INQUIRY INTO WHETHER THE PROVISIONS OF THE ELECTORAL ACT
2002 (Vic) SHOULD BE AMENDED TO MAKE BETTER PROVISIONS
FOR MISLEADING OR DECEPTIVE ELECTORAL CONTENT**

Organisation: Australian Press Council

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**AUSTRALIAN
PRESS
COUNCIL**

SUBMISSION

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**Submission of the Australian Press Council to
the Parliament of Victoria Electoral Matters Committee on its inquiry
into provisions on misleading or deceptive electoral content
in the *Electoral Act 2002*.**

Executive Summary

The Australian Press Council makes two specific points:

- the *Electoral Act* should exclude from its ambit fair third party news reports, and commentary upon those reports; and
- if there is a decision to include a redress or corrections policy within the Act, the provisions of that policy should ensure that the person or entity responsible for the original statement is responsible for the publication of any correction.

Submission

The Council is concerned with ethical standards in the print media, in particular the editorial and article sections of newspapers and magazines. The Council does not usually concern itself with advertising or with the commercial operations of publications. In this instance, since the provisions generally address the ethical standards of candidates and political advertising, the main thrust of the inquiry lies outside the Council's general remit.

Nonetheless, the Council makes two specific points to the committee dealing with the provisions of the Act.

Fair reports

The Council is concerned that, under one reading of the current Bill, the news media or journalists employed by them could be subject to a prosecution under the Act for publishing a fair report of a third party during an election period. Given the importance of electors understanding the policies of candidates and the political issues at stake, it is imperative that the media be able freely to report matters of public concern. This right has been recognised by the High Court in several cases, unanimously in *Lange*, wherein the Court recognised that the right to freedom of communication in matters affecting elections is implied in the Australian Constitution. The High Court in *Lange* stressed that for the people to be able to make an informed choice as electors, legislative power "cannot support an absolute denial of access by

the people to relevant information about the functioning of government in Australia and about the policies of political parties and candidates for election".

The provisions of the *Electoral Act* need to be amended to ensure that a fair and accurate third party report, made in good faith, of matters raised by candidates at an election, and commentary upon those reports, should be excluded from the ambit of the Act.

Corrections

While the current Act does not appear to contain any redress provision to provide for some form of correction of false or misleading material during an election, the Electoral Matters Committee may wish to consider such a proposal during its inquiry.

When discussing provisions of the federal *Electoral Amendment (Political Honesty) Bill* 2000, the Council expressed concern with an amendment that sought to give to the Electoral Commission and/or the Federal Court the power to request or order the 'advertiser' to publish a retraction in specific terms and specified manner and form, when what the commission believed to be false or misleading matter was published during an election.

Such a provision, in the Victorian Act, might have the unfortunate consequence of making the publisher of a newspaper or magazine, or the licence holder of a broadcaster, responsible for the publication or broadcast of a correction or clarification ordered by the commission or the court.

If any corrections or redress proposal is considered, the committee should recommend that the Act is worded to ensure that the person responsible for the original material, the advertiser in the case of commercial material or the individual who made the false statement, is responsible to the commission or the court for the publication of any correction of inaccurate or misleading statement.

The Australian Press Council

The Australian Press Council is a voluntary association of organisations and persons established on 22 July 1976. The membership of the Council is set out in the attachment.

The objects of the Australian Press Council are to promote freedom of speech through responsible and independent print media, and adherence to high journalistic and editorial standards, by:

- considering and dealing with complaints and concerns about material in newspapers, magazines and journals, published either in print or on the Internet;
- encouraging and supporting initiatives by the print media to address the causes for readers' complaints and concerns;
- keeping under review, and where appropriate, challenging political, legislative, commercial or other developments which may adversely affect the dissemination of information of public interest, and may consequently threaten the public's right to know;
- making representations to governments, public inquiries and other forums as appropriate on matters concerning freedom of speech and access to information;
- undertaking research and consultation on developments in public policy affecting freedom of speech, and promoting public awareness of such issues;
- promoting an understanding of the Objects, Principles and workings of the Council especially among editors, journalists and journalism schools, through forums and consultations; and encouraging feedback for Council's consideration.

The Australian Press Council
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Panel of Editor Members (2 members of whom 1 attends each meeting)

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For details and biographies see:

<http://www.presscouncil.org.au/pcsite/about/members.html>