



Publisher's manual

2018 HOUSE OF ASSEMBLY ELECTIONS

Introduction

Purpose of this booklet

The following information has been compiled to assist publishers in complying with the advertising provisions contained in the *Electoral Act 2004*. Further information of a more general nature can be found in the 'Information for Candidates' booklets published for House of Assembly and Legislative Council elections.

For ease of reading, some sections of the various Acts and Regulations have been paraphrased. However, it is important to note that this booklet has **no legal status and should not be substituted for the Act itself**.

References are to the *Electoral Act 2004* unless otherwise specified.

(At the time of publication, the value of a penalty unit is \$159.)

Role of the office of the Tasmanian Electoral Commission

The media, political parties and candidates should be aware that the role of the office of the Tasmanian Electoral Commission and Returning Officers is to **administer** the election in accordance with the relevant Tasmanian legislation. While interpretation of the Act forms part of the daily function of the Electoral Commissioner and Returning Officers, it is not their role to provide legal advice.

It is in the best interests of publishers to obtain legal interpretations from their own legal advisers.

Legislation on the internet

Tasmanian legislation can be found on the internet at www.thelaw.tas.gov.au

Printed electoral matter

Campaign material to be authorised

(sections 4, 190 & 191)

The Act imposes obligations on any person who prints, publishes, keeps on display or distributes election articles. The requirements are set out in full in the *Electoral Act 2004* and are summarised below.

In summary section 191 requires that, between the issue of the writ for an election and the close of poll for that election:

- any printed **electoral matter** that is printed, published, kept on display or distributed must have the name and address of the responsible person printed at the end in legible characters; and
- any **electoral matter** which is published on the internet must also have the name and address of the responsible person appearing at the end.
- (Penalty: Fine not exceeding 100 penalty units or imprisonment for a term not exceeding 3 months, or both.)
- Printed electoral matter is published or kept on display by a person if the publication or display is published or kept on display with that person's consent.

Definition of 'electoral matter'

Section 4 of the *Electoral Act 2004*

- (1) 'Electoral matter' means matter which is intended to, is likely to or has the capacity to affect voting in an election.
- (2) Without limiting subsection (1), matter is to be taken to be intended or likely to affect voting in an election if it—
 - (a) contains an express or implicit reference to, or comment on—
 - (i) the election; or
 - (ii) the Government, the Opposition, a previous Government or a previous Opposition; or
 - (iii) the Government or Opposition, or a previous Government or Opposition, of the Commonwealth or a State or Territory; or
 - (iv) a member or former member of the Parliament of the Commonwealth or a State or of the legislature of a Territory; or
 - (v) a party, a branch or division of a party or a candidate or group of candidates in the election; or
 - (vi) an issue submitted to, or otherwise before, the electors in connection with the election; or
 - (b) contains—
 - (i) a photograph of a candidate in an election; or
 - (ii) a drawing or printed matter which purports to depict a candidate in an election or which purports to be a likeness or representation of any such candidate.

'**Address**' is defined in section 190 as the address, other than a post office box or an electronic address—

- (a) at which the person resides; or

(b) at or through which the person can be readily contacted.

'Responsible person' means the person who is taking responsibility for causing electoral matter to be printed, published or distributed.

Post office box addresses or electronic addresses are not permitted for authorisation of electoral matter.

Authorisation: If you are unsure whether a particular item requires authorisation, it is advisable to authorise it to avoid committing an offence under the Act.

Examples of suitable authorisations

Authorised by: John Citizen, 1 Long Road, Hobart

or

Authorised by: John Citizen, Parliament House, Hobart

Consent required to use candidate name, photograph or likeness

section 196

Between the issue of the writ for an election and the close of poll, it is an offence to print, publish or distribute any advertisement, "how to vote" card, handbill, pamphlet, poster or notice which contains the name, photograph or a likeness of a candidate or intending candidate at that election without the written consent of the candidate.

Newspaper and periodical reportage and commentary

(section 193)

The requirement in section 191 to authorise electoral matter does not apply to electoral matter in reportage or commentary in an issue of a newspaper or periodical provided that the following condition is met—

- the issue must contain a statement to the effect that the editor or a person whose name and address appears in the statement has authorised the publication of all electoral matter contained in reportage or commentary in that issue.

'Reportage or commentary' is defined in section 193(2) as everything in the newspaper or periodical except advertisements and letters to the editor.

Letters to the editor

(section 194)

The requirement in section 191 to authorise electoral matter does not apply to a letter to the editor of a newspaper or periodical if—

- (a) the name of the author and the locality of the author's residence appears at the end; and
- (b) the editor of the newspaper or periodical—
 - (i) keeps, for 6 months after publication, a written record of the address of the author, as stated in the original of the letter sent to the editor, or as otherwise ascertained by the editor; and
 - (ii) provides, when requested by the Electoral Commission, a copy of a record kept under subparagraph (i).

It is sufficient to identify the locality of an author's residence by reference to either the suburb or town including, or nearest to, that residence or, in the case of a locality outside Tasmania, the State, Territory or other country of that residence.

The word 'advertisement' to appear at the top of paid advertisements or advertorials in newspapers and periodicals

(section 195)

If payment, reward or compensation is made, or is to be made, for the insertion of an advertisement, article or paragraph published in a newspaper or periodical between the issue of the writ for an election and the close of poll at that election, the proprietor must cause the word 'advertisement' to be printed as a headline, in letters not smaller than 10 point.

Penalty— A fine not exceeding 50 penalty units.

The word "**advertisement**" is to be printed as a headline to all electoral advertisements between the issue of the writ and the close of poll.

Authorisation not required on specific items

sections 192, 193, & 194

Electoral matter does not require authorisation if it is printed on—

- (a) an item of clothing, lapel button or lapel badge; or
- (b) a pen, pencil or balloon; or
- (c) a business card or visiting card that promotes the candidacy of a person in an election; or
- (d) a letter or card on which the name and address of the sender appears; or
- (e) any other approved item.

Further, the requirement to authorise electoral matter may not apply to reportage and commentary in a newspaper or periodical, or a letter to the editor of a newspaper or periodical if particular information is provided – refer to sections 193 and 194 of the Act.

False information

(section 197)

It is an offence to—

- print, publish or distribute, or permit or authorise the printing, publishing or distribution of, any printed electoral matter; or
- publish on the internet, or permit or authorise the publishing on the internet of, any electoral matter;

that is intended to, likely to or has the capacity to mislead or deceive an elector in relation to the recording of his or her vote.

Penalty—

A fine not exceeding 200 penalty units or imprisonment for a term not exceeding 6 months, or both.

The equivalent section in the *Commonwealth Electoral Act 1918* has been held in the High Court of Australia (in the case of Evans v Crichton-Brown [1981] 147 C.L.R. 169) to apply to the more mechanical aspects of obtaining and marking a ballot paper and depositing it in a ballot box and not to the formation of a judgment as to who to vote for. **That is, the truth or otherwise of the material is not covered by this section.**

Use of published materials without permission

Reproduction of published materials (eg. newspaper photos, headlines or articles) is likely to require the permission of the authors and publishers. Candidates should clarify the status of material with the publisher to avoid breaching the Commonwealth *Copyright Act 1968*.

Publication or distribution of electoral matter on polling day banned

(section 198)

It is an offence for a person to do the following on polling day—

- distribute any advertisement, “how to vote” card, handbill, pamphlet, poster or notice containing any electoral matter: or
- publish or cause to be published in a newspaper—
 - (i) an advertisement for or on behalf of, or relating in any way to, a candidate or party; or
 - (ii) a matter or comment relating to a candidate or a question arising from, or an issue of, the election campaign.

Penalty—

A fine not exceeding 100 penalty units or imprisonment for a term not exceeding 3 months, or both.

The above restriction does not apply to any matter printed, published or distributed by the Electoral Commission or the Electoral Commissioner in the course of promoting public awareness of elections and parliamentary matters.

Justices of the Peace

The Attorney General’s current policy states that—

The fact that a person is a justice of the peace should **not** be mentioned in or on any papers relating to the candidature of the justice in Federal, State or Local Government elections whether by the use of the letters “J.P.” or otherwise.

This has been interpreted to include all electoral campaign material and accordingly, the fact that a candidate is a JP is not to be mentioned in any published electoral advertising.

Legislative Council candidate advertising expenditure

Party expenditure

(section 162)

No political party expenditure is allowed at Legislative Council elections. Printers, publishers and broadcasters should therefore be alert for any party advertisements or promotional material which appear to promote or procure the election of a Legislative Council candidate.

Expenditure by person other than candidate

(sections 159 & 199)

It is an offence for a candidate to authorise anyone other than his/her election agent to incur election campaign expenses on his/her behalf.

If a person other than a candidate seeks to incur advertising expenses, the printer, publisher or broadcaster should ensure that this person is the election agent of the candidate.

Permitted electoral expenditure

(sections 160 & 199)

It is an offence for a Legislative Council candidate or his/her election agent to spend more than the 'expenditure limit' on their election campaign within the 'expenditure period' (see below).

The 'expenditure limit' for 2018 and the next 3 years is shown below—

Year	Permitted maximum amount
2018	\$16 500
2019	\$17 000
2020	\$17 500
2021	\$18 000

Candidates spending more than the expenditure limit will be liable to a penalty. In addition, if an elected candidate exceeds the expenditure limit by more than \$1000, **their election may be declared void**.

Expenditure period

(sections 3 and 5)

The 'expenditure period' is defined to be:

- in the case of a Council periodic election, the period beginning on 1 January in the year in which the election is to be held and ending at the close of poll; or
- in the case of a by-election, the period beginning on the day on which the seat of a Member of the Council becomes vacant and ending at the close of poll.

Expenditure which was incurred before the expenditure period in respect of goods and services which are to be supplied, provided to, or made use of during the expenditure period, is included in the definition of electoral expenditure (section 5).

Candidate's return of electoral expenditure

(sections 161,165 & 199)

All candidates must file an accurate return of their electoral expenditure with the Electoral Commissioner, within 60 days of the result of the election being declared. The return is to be accompanied by any invoice account or receipt in respect of each item that exceeds \$20. If a candidate does not file his/her return within the time specified, he/she is subject to a penalty. In addition, elected candidates who do not file their returns on time **may have their election declared void**.

The Electoral Commissioner has the power to require information, records, explanation of records and answers to questions relating to candidate expenditure where he believes that a person is in possession of relevant information.

Polling day and night

Persons permitted at a polling place

(section 120)

Candidates are not permitted to take part in any way in the conduct of polling at the polling place other than to cast their vote.

Photographing or filming: Prior arrangements to photograph or film inside a polling place should normally be made through the Returning Officer. In any case, photographers are only permitted into a polling place at the discretion of the election official in charge of that polling place.

Photographs of candidates inserting their ballot paper (vote concealed) into the ballot box may be taken by party workers or the press.

Electors recording their vote should not be filmed.

After close of the poll

After the close of the poll, a provisional count is conducted at each polling place.

For House of Assembly elections, a tally room will be provided with areas for candidates, parties, media and the public. The provisional primary votes for each Division will usually appear on tally boards progressively when available from polling places.

The office of the Tasmanian Electoral Commission will arrange a meeting with media at the tallyroom location to discuss technical and other requirements prior to polling day.

Progressive results will be available on the Tasmanian Electoral Commission website at www.tec.tas.gov.au for House of Assembly and Legislative Council elections.