



Queensland

Electoral (Truth in Advertising) Amendment Bill 2010



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2010

A Bill

for

An Act to amend the Electoral Act 1992, the Local Government Act 1993 and the Local Government Act 2009 for particular purposes

[s 1]

The Parliament of Queensland enacts— 1

Part 1 Preliminary 2

Clause 1 Short title 3
This Act may be cited as the *Electoral (Truth in Advertising)* 4
Amendment Act 2010. 5

Clause 2 Commencement 6
This Act commences on a day to be fixed by proclamation. 7

Part 2 Amendment of Electoral Act 1992 8
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Clause 3 Act amended 10
This part amends the *Electoral Act 1992*. 11

Clause 4 Insertion of new s 162A 12
After section 162— 13
insert— 14

‘162A Misleading electoral advertisements or statements 15
‘(1) A person must not— 16
(a) authorise, cause or permit the publication of an electoral 17
advertisement containing a statement purporting to be a 18
statement of fact that is inaccurate and misleading to a 19
material extent; or 20

-
- (b) deliberately make a statement purporting to be a statement of fact that is inaccurate and misleading to a material extent. 1
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- Maximum penalty—100 penalty units. 4
- ‘(2) It is a defence to a prosecution for an offence against subsection (1)(a) for the defendant to prove the defendant— 5
6
- (a) took no part in deciding the content of the electoral advertisement; and 7
8
- (b) could not reasonably be expected to have known that the statement to which the prosecution relates was inaccurate and misleading. 9
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11
- ‘(3) If the commission is satisfied subsection (1)(a) has been contravened, it may by a written notice (a *correction request*) ask the advertiser of the electoral advertisement to do either or both of the following— 12
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15
- (a) withdraw the advertisement from further publication; 16
- (b) publish a retraction in stated terms and in a stated way. 17
- ‘(4) In a proceeding for an offence against subsection (1)(a) relating to an electoral advertisement for which a correction request has been made, the advertiser’s response to the request must be taken into account in considering any penalty. 18
19
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21
- ‘(5) If the Supreme Court is satisfied beyond reasonable doubt that subsection (1)(a) has been contravened, the court may, on the application of the commission, order the advertiser of the electoral advertisement to do either or both of the following— 22
23
24
25
- (a) withdraw the advertisement from further publication; 26
- (b) publish a retraction in stated terms and in a stated way. 27
- ‘(6) In a proceeding for an offence against subsection (1)(a)— 28
- (a) an electoral advertisement that includes a statement that its publication was authorised by a stated person; or 29
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- (b) an electoral advertisement that includes a statement that it was printed on the instructions of a stated person; or 31
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-

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- (c) an apparently genuine document purporting to be a
certificate by the commissioner stating that the
commission made a correction request relating to a
stated electoral advertisement;
is evidence of the matter stated.
- ‘(7) In this section—
advertiser, for a provision about an electoral advertisement,
means anyone who published the advertisement or authorised
its publication.
electoral advertisement means an advertisement containing
election matter, whether or not consideration was given for
the publication of the advertisement.
publication, of an electoral advertisement, means the
broadcasting or publishing of it in any way, including, for
example, on the internet, even if the internet site on which the
publication is made is located outside Queensland.’.

Part 3 **Amendment of Local** 17
Government Act 1993 18

Clause 5 **Act amended** 19
This part amends the *Local Government Act 1993*. 20

Clause 6 **Insertion of new s 393A** 21
After section 393— 22
insert— 23

‘393A Misleading electoral advertisements or statements 24
‘(1) A person must not— 25
(a) authorise, cause or permit the publication of an electoral 26
advertisement containing a statement purporting to be a 27

-
- statement of fact that is inaccurate and misleading to a material extent; or
- (b) deliberately make a statement purporting to be a statement of fact that is inaccurate and misleading to a material extent.
- Maximum penalty—100 penalty units.
- ‘(2) It is a defence to a prosecution for an offence against subsection (1)(a) for the defendant to prove the defendant—
- (a) took no part in deciding the content of the electoral advertisement; and
- (b) could not reasonably be expected to have known that the statement to which the prosecution relates was inaccurate and misleading.
- ‘(3) If the electoral commission is satisfied subsection (1)(a) has been contravened, it may by a written notice (a ***correction request***) ask the advertiser of the electoral advertisement to do either or both of the following—
- (a) withdraw the advertisement from further publication;
- (b) publish a retraction in stated terms and in a stated way.
- ‘(4) In a proceeding for an offence against subsection (1)(a) relating to an electoral advertisement for which a correction request has been made, the advertiser’s response to the request must be taken into account in considering any penalty.
- ‘(5) If the Supreme Court is satisfied beyond reasonable doubt that subsection (1)(a) has been contravened, the court may, on the application of the electoral commission, order the advertiser of the electoral advertisement to do either or both of the following—
- (a) withdraw the advertisement from further publication;
- (b) publish a retraction in stated terms and in a stated way.
- ‘(6) In a proceeding for an offence against subsection (1)(a)—
- (a) an electoral advertisement that includes a statement that its publication was authorised by a stated person; or
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- (b) an electoral advertisement that includes a statement that it was printed on the instructions of a stated person; or
 - (c) an apparently genuine document purporting to be a certificate by the commissioner stating that the electoral commission made a correction request relating to a stated electoral advertisement;
- is evidence of the matter stated.
- ‘(7) In this section—
- advertiser*, for a provision about an electoral advertisement, means anyone who published the advertisement or authorised its publication.
- electoral advertisement* means an advertisement containing election matter, whether or not consideration was given for the publication of the advertisement.
- publication*, of an electoral advertisement, means the broadcasting or publishing of it in any way, including, for example, on the internet, even if the internet site on which the publication is made is located outside Queensland.’

Part 4 **Amendment of Local Government Act 2009**

- Clause 7** **Act amended**
- This part amends the *Local Government Act 2009*.
- Clause 8** **Insertion of new s 260A**
- Chapter 7, part 6—
- insert—*
- ‘260A Misleading electoral advertisements or statements**
- ‘(1) A person must not—

-
- (a) authorise, cause or permit the publication of an electoral advertisement containing a statement purporting to be a statement of fact that is inaccurate and misleading to a material extent; or
 - (b) deliberately make a statement purporting to be a statement of fact that is inaccurate and misleading to a material extent.
- Maximum penalty—100 penalty units.
- ‘(2) It is a defence to a prosecution for an offence against subsection (1)(a) for the defendant to prove the defendant—
- (a) took no part in deciding the content of the electoral advertisement; and
 - (b) could not reasonably be expected to have known that the statement to which the prosecution relates was inaccurate and misleading.
- ‘(3) If the electoral commission is satisfied subsection (1)(a) has been contravened, it may by a written notice (a ***correction request***) ask the advertiser of the electoral advertisement to do either or both of the following—
- (a) withdraw the advertisement from further publication;
 - (b) publish a retraction in stated terms and in a stated way.
- ‘(4) In a proceeding for an offence against subsection (1)(a) relating to an electoral advertisement for which a correction request has been made, the advertiser’s response to the request must be taken into account in considering any penalty.
- ‘(5) If the Supreme Court is satisfied beyond reasonable doubt that subsection (1)(a) has been contravened, the court may, on the application of the electoral commission, order the advertiser of the electoral advertisement to do either or both of the following—
- (a) withdraw the advertisement from further publication;
 - (b) publish a retraction in stated terms and in a stated way.
- ‘(6) In a proceeding for an offence against subsection (1)(a)—
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[s 8]

- (a) an electoral advertisement that includes a statement that its publication was authorised by a stated person; or
 - (b) an electoral advertisement that includes a statement that it was printed on the instructions of a stated person; or
 - (c) an apparently genuine document purporting to be a certificate by the commissioner stating that the electoral commission made a correction request relating to a stated electoral advertisement;
- is evidence of the matter stated.
- ‘(7) In this section—
- advertiser**, for a provision about an electoral advertisement, means anyone who published the advertisement or authorised its publication.
- election** means an election of councillors, or a councillor, of a local government.
- election matter** means anything able to, or intended to—
- (a) influence an elector about voting at an election; or
 - (b) affect the result of an election.
- electoral advertisement** means an advertisement containing election matter, whether or not consideration was given for the publication of the advertisement.
- publication**, of an electoral advertisement, means the broadcasting or publishing of it in any way, including, for example, on the internet, even if the internet site on which the publication is made is located outside Queensland.’.