

# Electoral (Truth in Advertising) Amendment Bill 2010

## Clause and Explanatory Notes

### Introduction

#### Short title of the Bill

The short title of the Bill is the *Electoral (Truth in Advertising) Amendment Bill 2010*

#### Objective of the Bill

The objective of the Bill is to amend the *Electoral Act 1992* and the *Local Government Act 1993* and the *Local Government Act 2009* for particular purposes.

#### Reasons for the Bill

To prevent deliberately false and misleading electoral advertising being distributed to the Queensland community that undermines the fair and honest electoral process.

#### Achievement of the Bill

The Bill implements a penalty regime for persons who authorise the publication of false electoral advertising and also for persons who make false and misleading statements during election campaigns.

#### Fundamental legislative principals

Any penalty imposed on a person can impact on the liberties of a person, but this penalty must be weighed against the detriment of allowing persons to deliberately mislead the electoral voters of Queensland during election campaigns.

**Clause 1-** This clause states that the Act when cited may be referred to as the *Electoral (Truth in Advertising) Amendment Act 2010*

**Clause 2-** The Act will come into effect on a date to be fixed by proclamation.

**Clause 3-** This part amends the *Electoral Act 1992*

**Clause 4-** Inserts a new provision 162A into the act.

Section 162A provides for a new offence of misleading electoral advertising. Under this offence provision, any person who authorises, cause or permits the publication of an electoral

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advertisement that contains a statement purporting to be fact that is inaccurate and misleading to a material extent, commits an offence and is liable to a fine of up to \$10,000.

162A (1)(b) makes it an offence for a person to deliberately make a statement purporting to be a statement of fact that is inaccurate and misleading to a material extent during an election campaign

Subsection (2) provides a defence to the offence

Subsection (3) provides the Electoral Commission with the power to require the advertiser, which includes the person who authorised the false advertisement to withdraw the publication and/or publish a retraction.

Subsection (4) provides that when considering an offence under subsection 1, the advertiser's response to the Electoral Commission's request under subsection 3 must be taken into account.

Subsection (5) provides the Supreme Court with the same power as the Electoral Commission by way of directing the advertiser to withdraw and/or publish a retraction.

Subsection (6) provides for the evidentiary provisions of the actual advertisement.

Subsection (7) provides for the definitions as used in the above provision.

**Clause 5-** states that this part amends the *Local Government Act 1993*

**Clause 6-** Inserts a new provision 393A into the act.

Section 393A provides for a new offence of misleading electoral advertising. Under this offence provision, any person who authorises, cause or permits the publication of an electoral advertisement that contains a statement purporting to be fact that is inaccurate and misleading to a material extent, commits an offence and is liable to a fine of up to \$10,000.

393A (1)(b) makes it an offence for a person to deliberately make a statement purporting to be a statement of fact that is inaccurate and misleading to a material extent during an election campaign

Subsection (2) provides a defence to the offence.

Subsection (3) provides the Electoral Commission with the power to require the advertiser, which includes the person who authorised the false advertisement to withdraw the publication and/or publish a retraction.

Subsection (4) provides that when considering an offence under subsection 1, the advertiser's response to the Electoral Commission's request under subsection 3 must be taken into account.

Subsection (5) provides the Supreme Court with the same power as the Electoral Commission by way of directing the advertiser to withdraw and/or publish a retraction.

Subsection (6) provides for the evidentiary provisions of the actual advertisement.

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Subsection (7) provides for the definitions as used in the above provision.

**Clause 7-** amends the *Local Government Act 2009*

**Clause 8-** inserts a new 260A provides for a new offence of misleading electoral advertising. Under this offence provision, any person who authorises, cause or permits the publication of an electoral advertisement that contains a statement purporting to be fact that is inaccurate and misleading to a material extent, commits an offence and is liable to a fine of up to \$10,000.

260A (1)(b) makes it an offence for a person to deliberately make a statement purporting to be a statement of fact that is inaccurate and misleading to a material extent during an election campaign

Subsection (2) provides a defence to the offence

Subsection (3) provides the Electoral Commission with the power to require the advertiser, which includes the person who authorised the false advertisement to withdraw the publication and/or publish a retraction.

Subsection (4) provides that when considering an offence under subsection 1, the advertiser's response to the Electoral Commission's request under subsection 3 must be taken into account.

Subsection (5) provides the Supreme Court with the same power as the Electoral Commission by way of directing the advertiser to withdraw and/or publish a retraction.

Subsection (6) provides for the evidentiary provisions of the actual advertisement.

Subsection (7) provides for the definitions as used in the above provision.