



New South Wales

# Parliamentary Electorates and Elections Amendment (Truth in Advertising) Bill 2007

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

## Overview of Bill

The object of this Bill is to make it an offence for a person to authorise, cause or permit the publication of an electoral advertisement containing a statement of fact that is inaccurate and misleading to a material extent.

The offence will apply to State and local government elections and will carry a maximum penalty of 1000 penalty units (\$110,000) for a body corporate and 100 penalty units (\$11,000) for individuals.

## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on the date of assent to the proposed Act.

**Clause 3** is a formal provision that gives effect to the amendments to the *Parliamentary Electorates and Elections Act 1912* set out in Schedule 1.

**Clause 4** provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the

proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

## **Schedule 1      Amendment**

**Schedule 1** inserts a new section 151AA into the Act containing the provisions referred to in the Overview.

Introduced by Mr D Page, MP

First print



New South Wales

# Parliamentary Electorates and Elections Amendment (Truth in Advertising) Bill 2007

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New South Wales

# Parliamentary Electorates and Elections Amendment (Truth in Advertising) Bill 2007

No. , 2007

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## A Bill for

An Act to amend the *Parliamentary Electorates and Elections Act 1912* to provide for truth in political advertising in State and local government elections; and for other purposes.

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<b>The Legislature of New South Wales enacts:</b>	1
<b>1 Name of Act</b>	2
This Act is the <i>Parliamentary Electorates and Elections Amendment (Truth in Advertising) Act 2007</i> .	3 4
<b>2 Commencement</b>	5
This Act commences on the date of assent to this Act.	6
<b>3 Amendment of Parliamentary Electorates and Elections Act 1912 No 41</b>	7
The <i>Parliamentary Electorates and Elections Act 1912</i> is amended as set out in Schedule 1.	8 9
<b>4 Repeal of Act</b>	10
(1) This Act is repealed on the day following the day on which this Act commences.	11 12
(2) The repeal of this Act does not, because of the operation of section 30 of the <i>Interpretation Act 1987</i> , affect any amendment made by this Act.	13 14

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## Schedule 1      Amendment

(Section 3)

### Section 151AA

Insert after clause 151A:

#### **151AA    Misleading electoral advertisements—State and local government elections**

(1) In this section:

*electoral advertisement* means an electoral advertisement in respect of:

(a) an election of any member or members of the Assembly or a periodic Council election, or

(b) an election under the *Local Government Act 1993*.

(2) A person who authorises, causes or permits the publication of an electoral advertisement (an *advertiser*) is guilty of an offence if the advertisement contains a statement purporting to be a statement of fact that is inaccurate and misleading to a material extent.

Maximum penalty:

(a) 1000 penalty units in the case of a body corporate, or

(b) 100 penalty units in any other case.

(3) It is a defence to a prosecution for an offence under this section if it is established that the defendant:

(a) took no part in determining the content of the advertisement, and

(b) could not reasonably be expected to have known that the statement to which the prosecution relates was inaccurate and misleading.

(4) If the Electoral Commissioner is satisfied that an electoral advertisement contains a statement purporting to be a statement of fact that is inaccurate and misleading to a material extent, the Electoral Commissioner may request the advertiser to do either or both of the following:

(a) withdraw the advertisement from further publication,

(b) publish a retraction in specified terms and a specified manner and form,

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Schedule 1      Amendment

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- (and in proceedings for an offence under this section arising from the advertisement, the advertiser's response to a request under this subsection is to be taken into account in assessing any penalty to which the advertiser may be liable). 1  
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- (5) If the Supreme Court is satisfied beyond reasonable doubt on application by the Electoral Commissioner that an electoral advertisement contains a statement purporting to be a statement of fact that is inaccurate and misleading to a material extent, the Court may order the advertiser to do either or both of the following: 5  
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- (a) withdraw the advertisement from further publication, 11
- (b) publish a retraction in specified terms and a specified manner and form. 12  
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- (6) This section applies to advertisements published by any means (including radio, television or internet). 14  
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- (7) In proceedings for an offence against this section: 16
- (a) an electoral advertisement that includes a statement that its publication was authorised by a specified person, or 17  
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- (b) an electoral advertisement that includes a statement that it was printed by or on the instructions of a specified person, or 19  
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- (c) an apparently genuine document purporting to be a certificate of the Electoral Commissioner stating that the Electoral Commissioner made a request for the withdrawal of a misleading advertisement or the publication of a retraction, 22  
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- is evidence of the matter stated. 27