



**THE LAW REFORM COMMISSION  
OF WESTERN AUSTRALIA**

**Project No 52**

**Local Body Election Practices**

**REPORT**

**OCTOBER 1975**

The Law Reform Commission of Western Australia was established by the *Law Reform Commission Act 1972*.

The Commissioners are -

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Mr. E.G. Freeman

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TO: THE HON. N. McNEILL, M.L.C.  
MINISTER FOR JUSTICE

### **TERMS OF REFERENCE**

1. The Commission was asked to consider and report on -
  - (1) whether s.143 of the *Local Government Act* should be extended to cover printed materials at present excluded from its ambit;
  - (2) the extent to which access should be restricted to copies of local body electoral rolls which, have been marked to indicate those who voted;
  - (3) whether s.140 of the *Local Government Act* should be amended to expressly include within the, definition of bribery the transport of an elector to and from a polling place by a candidate or his supporter with a view to influencing his vote.

### **THE WORKING PAPER**

2. The Commission issued a working paper on this project on 19 May 1975, copies of which were sent to those persons listed on page 1 of the working paper and to members of the public who answered the Commission's notice in the press inviting comments. A copy of the working paper is attached as Appendix I to this report.
3. A list of those who commented on the working paper is contained in Appendix II. All comments have been taken into account even though not specifically referred to.

### **THE PLAN OF THIS REPORT**

4. The terms of reference involve three distinct issues and accordingly are dealt with separately in this report.

**PART I - SHOULD SECTION 143 OF THE LOCAL GOVERNMENT ACT BE EXTENDED TO COVER PRINTED MATERIALS AT PRESENT EXCLUDED FROM ITS AMBIT?**

5. Section 143 of the *Local Government Act* of Western Australia provides as follows -

"143. In addition to bribery and undue influence, the following are illegal practices:-

- (a) the publication of an electoral advertisement, handbill, or pamphlet, or the issue of an electoral notice, without showing at the end of it the name and address of the person authorising it;
- (b) printing or publishing a printed electoral advertisement, handbill, or pamphlet, other than an advertisement in a newspaper, without the name and place of business of the printer being printed at the end of it; and
- (c) printing or publishing in a newspaper a letter or article concerning an election, without the name and the address of the person authorising it being shown at the foot of the letter or article."

6. Section 144 of the Act prescribes a penalty not exceeding four hundred dollars or imprisonment not exceeding six months in relation to the illegal practices set out in s.143.

7. The attention of the Commission was drawn to articles in two periodicals, as examples of articles which might have had the effect of promoting candidates in local body elections but which did not seem to be subject to the provisions of s.143 (see paragraphs 11 and 12 of the working paper). The purpose of s.143 is to make it mandatory for the name of the person printing or authorising the publication to be disclosed. The section does not however regulate the contents of the electoral material. It became apparent to the Commission that the majority of the complaints of alleged breaches of s.143 really related to the contents of the electoral material and the way in which such material had been prepared. The addition of the names and addresses of the persons authorising the publication, (if that had been shown to be legally necessary) would not have remedied the complaints.

**The law in other Australian States**

8. There are various provisions in all other Australian States requiring publication of the names of persons printing, publishing or authorising publication of electoral material (see paragraphs 4 to 9 of the working paper). Only in Queensland; (Rule 5(2) Schedule III *Local Government Act 1936*) do the provisions include articles, and letters.

## **Commonwealth and State elections**

9. Section 164 of the Commonwealth *Electoral Act 1918* requires every article, report, letter or other matter commenting upon any candidate, political party or issue being submitted to the electors and published in any newspaper, circular, pamphlet or dodger to be signed by the author, who must state his address. The Western Australian *Electoral Act 1907* is less wide in its scope and provides in s.187(1) that electoral advertisements (other than advertisements in newspapers announcing the holding of a meeting), handbills, pamphlets and electoral notices are to state the name and address of the person authorising publication or issue. Section 187(2) makes it an illegal practice to print or publish any printed electoral advertisement, handbill or pamphlet (other than an advertisement in a newspaper) without the name and place of business of the printer being printed on it.

## **Discussion**

10. The requirement for the name and address to be published on electoral material, historically arose from the need to protect people against anonymous defamatory statements. In some instances the courts have refused to invoke similar sections to s.143 because the material was not of a defamatory or scurrilous nature even though a technical breach had occurred. See *Re Baker's Election* [1965] Tas. S.R. 152 and *Re Hambleton R.D.C. Election* [1960] C.L.Y. 1104 (see paragraph 15 of the working paper).

11. The commentators on the Commission's working paper were fairly evenly divided as to whether the section should be extended or not. The three local government bodies who commented on the working paper all felt no amendment was necessary. On the other hand, the Institute of Municipal Administration (W.A. Division) considered that an amendment was necessary on the ground that persons who may wish to issue defamation proceedings in respect of anything contained in such letter or article should know the author of those documents.

## **Recommendations**

12. The Commission recommends that the scope of s.143 should be broadened to provide that any letters and articles concerning forthcoming elections, regardless of whether they are

published in a newspaper or not should have the name and address of the person authorising publication. If the letter or article is published elsewhere than in a newspaper it should also have the name and address of the printer stated at the end of it. The Commission considers that members of the public should be readily able to identify those who are responsible and accept responsibility for letters and articles of the type under consideration, both as regards their standing as electors and from the point of view that any person mentioned in them may wish to issue defamation proceedings in respect of the printed material. Section 143(c) could be interpreted to cover publications both before and after an election but the Commission considers that it should be restricted to publications prior to an election.

13. Although it was outside its terms of reference the Commission recommends that provision should be made in the *Local Government Act* prohibiting a local body from preparing or printing election or promotional material (other than paid advertisements in council newsletters) about candidates. In this respect it may be necessary to require councils to accept paid advertisements from candidates without discrimination. The Commission further recommends that councillors should also be prohibited from using council facilities or materials to promote their own election or that of any other candidate for office.

The proposed provisions would require an extended definition of the word "candidate" to include at least -

- (a) any person who is nominated for election;
- (b) any sitting councillor who is to retire from office within three months of the publication of the article.

Mr. D.C. Cruickshank in supporting the need for the proposed amendments, considered that the definition of candidate should also extend to cover any person who is known to intend nominating within one month for an election. While the Commission appreciates that such a provision would discourage the practice complained of, it considers that its enforcement would not be practicable.

**PART II - TO WHAT EXTENT SHOULD ACCESS BE RESTRICTED TO COPIES OF LOCAL BODY ELECTORAL ROLLS WHICH HAVE BEEN MARKED TO INDICATE THOSE WHO VOTED?**

14. This question arose out of a complaint that sitting councillors had access to electoral rolls after they had been used in local government elections and had been marked to show which persons had voted. It is claimed that this gives sitting councillors an advantage when campaigning in subsequent elections in that having ascertained the names of those persons on the roll who have shown sufficient interest to vote, they can direct their campaigners to such voters.

15. While in practice, councillors may find it easier than others to obtain access to this material the *Local Government Act* certainly does not give sitting councillors any special privilege with regard to access to used rolls. Enquiries made by the Commission from local government officials confirms that the practice complained of is not widespread.

16. Under s.61(2) of the Act each councillor and candidate for election to council obtains a free copy of the roll for the district or ward he represents or in respect of which he is a candidate.

17. Under s.626(2) of the Act, councillors, ratepayers and creditors have by virtue of that section the right to inspect and take copies or extracts from council books. The term "books" is defined in s.625 as "records kept in such manner and form as the Minister directs and includes such other accounts, papers and records as a council considers necessary for the effective carrying out of its functions under this Act." It is not clear whether marked rolls come within this definition, but in any event it is clear that councillors are not in a more favoured legal position than ratepayers.

18. The Act makes no provision for the retention or disposal of marked rolls and the Commission understands that it is the general practice in Western Australia for marked rolls to be retained in safe custody for a period of at least two years being the time within which prosecution may be brought by a council under the Act (s.646).

## **The law in other Australian States**

19. There is no legislation in any Australian State giving sitting councillors any special right of access to marked rolls. The legal position in other States is set out in detail in the working paper paragraphs 25 to 29 inclusive. The broad position is that New South Wales allows access to marked rolls by any elector within six months from date of election while other States allow only candidates to peruse the rolls or otherwise allow them only to be opened to prosecute non-voters where voting is compulsory.

## **Discussion**

20. Commentators on this matter were fairly evenly divided. However, it was pointed out that access to marked rolls could occur in two different situations. One is access to marked rolls held by the local government body between elections and the other is the actual access by a scrutineer to the rolls on election day.

21. On election day many scrutineers who have obtained a copy of the electoral roll under s.61 of the Act enter the polling booth and are allowed to mark off those people who have voted in order that they can direct campaigners to those people who have not voted and request them to come to the polls to vote. This practice apparently continues throughout the entire day so that at the end of the day a candidate would have in his possession a marked roll which he could use at subsequent elections. It is accordingly clear that if it was felt necessary to restrict access to the marked rolls, access would also have to be refused to scrutineers, otherwise scrutineers and their candidates would be in a privileged position in any subsequent election.

This practice appears to be widespread (certainly in the metropolitan area) and longstanding and not in contravention of any existing provision of the *Local Government Act*.

## **Recommendation**

22. The Commission recommends that as it is clear that councillors are not in any better position under the Act than anyone else and in view of the fact that no harm appears to have

occurred in allowing access to the marked electoral rolls and having regard to the practice of scrutineers on election day, such access should be allowed to continue.

23. Paragraph 23 of the working paper pointed out that the Act made no provision for the retention or disposal of marked rolls though the general practice is for marked rolls to be retained for two years, being the time within which a prosecution may be brought by a council under the Act (s.646). The Commission recommends that the Act be amended to provide that the marked rolls be retained for that period.

**PART III - SHOULD SECTION 140 OF THE LOCAL GOVERNMENT ACT BE AMENDED TO EXPRESSLY INCLUDE WITHIN THE DEFINITION OF BRIBERY THE TRANSPORT OF AN ELECTOR TO AND FROM A POLLING PLACE BY A CANDIDATE OR HIS SUPPORTER WITH A VIEW TO INFLUENCING HIS VOTE?**

24. Section 140 of the *Local Government Act 1960* states the acts which constitute the illegal practice of "bribery" (see Appendix to the working paper). Under s.144 bribery is punishable by a penalty not exceeding eight hundred dollars or by imprisonment not exceeding one year.

25. In the Commission's view, the provision of transport for a voter to or from a polling place is not in itself a breach of s.140. If it gives some other benefit to the voter, such as access to a shopping centre, which it might otherwise cause the voter expense to reach, it could be argued that it amounts to bribery if the object is to induce the voter to vote for a particular candidate. However, the commercial value to a voter of free transport is minimal and in normal circumstances could never be bribery.

26. The practice of supplying transport to voters is traditional and widespread and the overwhelming opinion of commentators was that there was no good reason to abolish this. The practice may be of assistance to elderly or infirm people. As the ballot is a secret ballot it is impossible to determine how a voter cast his vote and so it would be a completely ineffective exercise if the purpose was to bribe the voter.

## **The law in other Australian States**

27. The law in other Australian States is set out in the working paper in paragraphs 39 to 43 and none of the other States expressly prohibit the provision of transport of a voter to the polls or deems the action to be bribery.

## **Recommendation**

28. The Commission sees nothing objectionable in the present practice and recommends that no change be made to the existing law.

## **OTHER MATTERS**

29. The project elicited a wide range of comments on matters outside the terms of reference such as -

- (i) whether Shire officials should act as returning officers;
- (ii) whether the present absentee and postal voting systems are fair and practicable;
- (iii) whether canvassing should be permitted on polling day;
- (iv) whether voting in local government elections should be compulsory.

These are matters which may be taken into account in a general review of the *Local Government Act*.

(Signed) R.W. Harding  
*Chairman*

E.G. Freeman  
*Member*

D.K. Malcolm  
*Member*

14 October 1975