



**THE LAW REFORM COMMISSION
OF WESTERN AUSTRALIA**

Project No 52

Local Body Election Practices

WORKING PAPER

MAY 1975

INTRODUCTION

The Law Reform Commission has been 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 Commission, having completed its first consideration of the matter, now issues this working paper. The paper does not necessarily represent the final views of the Commission.

Comments and criticisms on the paper are invited and should be submitted to the Commission by 31 July, 1975.

Copies of the paper are being sent to the -

Chief Justice and Judges of the Supreme Court
Country Shire Councils Association of W.A.
Fremantle City Council
Institute of Legal Executives
Judges of the District Court
Law School of the University of Western Australia
Law Society of Western Australia
Local Government Association of Western Australia
Magistrates' Institute
Perth City Council
Secretary for Local Government
Solicitor General
Stirling City Council
Subiaco City Council
Under Secretary for Law
Law Reform Commissions and Committees with which this Commission is in
correspondence.

The Commission may add to this list.

A notice has been placed in *The West Australian* inviting anyone interested to obtain a copy of the paper and submit comments.

The research material on which this paper is based is at the offices of the Commission and will be made available upon request.

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TERMS OF REFERENCE AND METHOD OF APPROACH

1. The terms of reference are stated in the introduction. Three separate and distinct issues are involved. They are therefore dealt with in separate parts of this paper.

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

LAW IN WESTERN AUSTRALIA

2. Section 143 of the *Local Government Act 1960* 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."

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.

3. 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 seek to control or restrict the content of any such publication.

In the reference to the Commission, attention was drawn to articles in two periodicals as examples of articles which might have the effect of promoting candidates for local body elections but which do not appear to be subject to the provisions of s.143 (see paragraphs 11 and 12 below).

THE LAW IN OTHER AUSTRALIAN STATES

4. In the legislation of all other States there are provisions for the publication of the names of persons printing, publishing or authorising publication of printed materials. The scope of such provisions varies between States.

New South Wales

5. In New South Wales, the position is governed by the *Printing and Newspapers Act 1973*. That Act requires every newspaper (which term has an extended meaning) to bear the name of its printer and publisher and requires every other publication intended to be sold or distributed to the public to bear the name of its printer and the name of the person responsible for printing.

Victoria

6. Section 151(4) of the Victorian *Local Government Act 1958* provides that after public notice has been given of an election, each electoral advertisement (other than in a newspaper) notice, handbill, pamphlet and card shall bear the name of its printer and of the person authorising it.

Queensland

7. Under rule 5(2) of Schedule III to the Queensland *Local Government Act 1936* every article, report, letter or other matter commenting on any candidate, political party or election issue printed and published after public notice of an election has been given, must state the name and address of its author.

South Australia

8. Under s.755a of the *Local Government Act 1934* of South Australia election material issued by a candidate or agent is required to contain at the foot thereof the name and address of the person authorising its issue.

Tasmania

9. Section 830A of the Tasmanian *Local Government Act 1962* requires every article published in a newspaper commenting on a candidate or on any issue being submitted to the voters to be signed by the author and to state his address.

DISCUSSION

10. In support of the case to amend s.143, two articles have been referred to the Commission. These articles were published prior to the 1973 Western Australian local government elections.

11. One article appeared in a periodical named "Business Week in Western Australia" on 16 May 1973. The article gave favourable publicity to a person who stood for election to the Perth City Council shortly afterwards. The periodical appears to be outside the scope of s.143 as it is not an electoral advertisement, a handbill, a pamphlet or an electoral notice, nor does it appear to be a newspaper in the ordinary sense of that word, which is not defined in the *Local Government Act*.

12. The other article was published in the "Subiaco City News" published by the Subiaco City Council on 17 May 1973. The article (headed "Know Your Councillors") gave favourable publicity to a sitting councillor shortly before the 1973 election of members to the Council but made no reference to the fact that he was standing for re-election. The Commission is of the opinion that this article is also not covered by s.143 which applies only to electoral advertisements, handbills, pamphlets and notices and to letters and articles concerning an election.

13. It is not within the Commission's terms of reference to consider whether or not the publication of articles of the type mentioned in paragraphs 11 and 12 should be restricted. However it will be noted that there are no provisions in the corresponding legislation of other States seeking to prohibit publication of such articles.

The question for the Commission to consider is simply whether the requirements of s.143 should be extended to such articles.

14. The Commission has consulted a number of officials in the electoral field and the consensus of opinion of these officials is that s.143 is sufficiently wide as it stands. Prosecutions for breaches of s.143 are rare and the problem is not considered by those officials who have been consulted to be sufficiently widespread or serious to warrant any extension of the scope of s.143.

15. In the case of *Re Baker's Election* [1965] Tas, S.R. 152, a candidate for election to the Tasmanian Legislative Council published an electoral advertisement which did not bear the name of the printer, in contravention of s.154 of the Tasmanian *Electoral Act 1907*. An election petition founded (inter alia) on this irregularity was dismissed. In his judgment, Crawford J. said "The evil aimed at by the creation of these offences is irresponsibility through anonymity."

In *Re Hambleton R.D.C. Election* [1960] C.L.Y. 1104, electoral pamphlets which failed through inadvertence to bear the names and addresses of the printers and publishers were printed, published and distributed contrary to s.95 of the *Representation of the People Act 1949*. The Divisional Court held that the provisions of the Act were aimed at the printing of scurrilous matter, and that as there was nothing in the pamphlets of this nature, the provisions of s.95 should not be invoked.

Neither of the two articles referred to in paragraphs 11 and 12 above contain anything scurrilous or derogatory.

16. 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. On the other hand, the Western Australian *Electoral Act 1907* is less wide in its scope. Section 187(1) of that Act requires electoral advertisements (other than advertisements in newspapers announcing the holding of a meeting), handbills, pamphlets and electoral notices 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.

17. The Commission is tentatively of the view that on balance, it may be desirable to amend s.143 to require the names of persons authorising publication of any letters and articles concerning an election, regardless of where they are published, to be stated. The commission considers that members of the public should be able readily to identify those who are responsible and accept responsibility for letters and articles of the type under consideration, both as electors and from the standpoint of any person who may wish to issue defamation proceedings in respect of anything contained in such letters or articles.

As stated in paragraph 3 above, s.143 does not aim to control or restrict the content of published matter and the amendment of that section proposed in this paragraph would not alter the position.

18. While it is not within the Commission's terms of reference (see paragraph 13 above) the Commission also tentatively considers that there should be an express provision in the Act prohibiting a local body from preparing or printing election or promotional material (other than paid advertisements in Council newsletters) about candidates.

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?

THE LAW AND PRACTICE IN WESTERN AUSTRALIA

19. A complaint has been made to the Minister for Local Government that sitting councillors have access to electoral rolls after they have been used in local government elections and have been marked to show which persons have 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 campaigns to such voters.

20. The *Local Government Act* does not give sitting councillors any privilege with regard to obtaining access to used rolls, and the Commission is unaware of any case law or other authority supporting such a privilege. In practice however councillors may find it easier than others to obtain access to this material. As a result of enquiries made from local government officials, it appears to the Commission that the practice complained of is not widespread.

21. Section 61(2) of the Act entitles each councillor and candidate for election to council to a free copy of the roll for the district or ward he represents or in respect of which he is a candidate (other persons are charged one dollar).

22. Councillors, ratepayers and creditors have, by virtue of s.626(2) of the Act, 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 the definition, but in any event councillors are not in a more favoured legal position than ratepayers.

23. The Act makes no provision for the retention or disposal of marked rolls. The general practice in Western Australia is 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

24. There is no legislation in any Australian State giving sitting councillors any special right of access to marked rolls.

New South Wales

25. In New South Wales, marked rolls, after being checked to detect double voting, are available for inspection by electors within a period of six months from the date of an election (*Local Government Act 1919* s.73(5)). They must then be destroyed (Ordinance 9 clause 27).

Victoria

26. In Victoria, marked rolls must be kept in sealed parcels by town clerks for twelve months after which town clerks are required to destroy them (*Local Government Act 1958* s.145(1)). The sealed parcels may only be opened for the purpose of ascertaining the names of persons who have not voted (*Compulsory Voting (Elections of Municipal Councillors) Regulations 1969* regulation 9).

Queensland

27. In Queensland, after being perused for duplicate voting, marked rolls are sealed in packets which may not be opened except in the presence of each candidate and his scrutineer or after twenty-four hours notice to the candidate or scrutineer. (*Local Government Act 1936* Schedule III, rule 53).

Tasmania

28. In Tasmania, marked rolls are required to be sealed and held for twelve months after which they shall, with the consent of the mayor or warden, be destroyed if no election proceedings are pending. (*Local Government Act 1962* s.106(1)).

South Australia

29. The *Local Government Act* of South Australia does not make any specific provision in relation to marked rolls. The Commission has been advised by the Local Government Department of South Australia that it is customary for such rolls to be retained with voting papers for a period of at least six months after the election. The Act requires voting papers to be kept for that period.

DISCUSSION

30. It has been suggested that sitting councillors who have access to marked rolls which show the names of persons who voted at the preceding election have an advantage over other candidates who do not have such access. The advantage is claimed to be that sitting councillors are thereby enabled to direct their campaign to persons who have voted before and are likely to vote again.

31. It can be argued that, except for the purposes of court proceedings, nobody should have access to marked rolls. Voting is not compulsory and if access to marked rolls were freely given, people who do not intend to vote might be harassed prior to subsequent elections by campaigners pressing them to cast their votes.

32. The practice of the Commonwealth Electoral Office is not to allow inspection of marked rolls. They are required to be preserved for at least six months from the date of declaration of the poll and to be destroyed when the election can no longer be questioned (Commonwealth *Electoral Act 1918* s.218).

With regard to elections to the Western Australian State Parliament, s.153 of the *Electoral Act 1907* of Western Australia provides that any candidate may apply to the returning officer upon payment of a fee of \$10 (which is refundable if the returning officer considers the application bona fide) for production of used rolls for the purposes of inspection. This may only be done before the day when the election can no longer be questioned, after which the Chief Electoral Officer may destroy the used rolls (s.155).

33. The Commission has been informed by local government officials in Western Australia that there is no apparent objection to the destruction of marked rolls after two years have elapsed since an election (see paragraph 23 above).

34. There may be some merit in the proposition that access to used rolls should be prohibited except for the purposes of court proceedings connected with an election and that when the time for commencing such proceedings has expired, the rolls should be destroyed.

The Commission however expresses no view at this stage and would welcome comments.

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 SUPPORTERS WITH A VIEW TO INFLUENCING HIS VOTE?

LAW AND PRACTICE IN WESTERN AUSTRALIA

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

36. 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 might be argued that it amounts to bribery if the object is to induce the voter to vote for a particular candidate. Usually however the commercial value to a voter of free transport is minimal.

In *Woodward v. Maltby* [1959] V.R. 794 a candidate issued free books of matches on which were printed exhortations to vote for the candidate. A charge of bribery against the candidate was dismissed. The fact that the gifts were small in value was one of the factors which the Court took into account.

37. The custom of supplying transport to voters is traditional and widespread. Naturally the candidate or his campaign workers who supply transport hope that the provision of transport will enhance the prospects of the candidate. However some candidates might be motivated by a desire to see a good turnout of voters, regardless of who they vote for. Instances have also been known of voters obtaining transport from candidates for whom they did **not** wish to vote.

THE LAW IN OTHER AUSTRALIAN STATES

38. None of the corresponding statutes in any of the other Australian States expressly prohibit the provision of transport for a voter with a view to influencing his vote.

New South Wales

39. In New South Wales, under s.149 of the *Parliamentary Electoral and Elections Act 1912*, which applies to local government as well as Parliamentary elections, a candidate who corruptly provides or pays for a conveyance for a voter to or from a polling place with a view to influencing his vote is guilty of the offence of "treating".

Victoria

40. The Commission is not aware of any legislation dealing with this matter in Victoria.

Queensland

41. In Queensland the position is governed by s.103 of the *Criminal Code*. Section 103(1) makes it an offence for any person to give, promise or offer any benefit to a voter with a view to obtaining his vote, but does not specifically mention the question of transport.

South Australia

42. In South Australia s.130 of the *Local Government Act 1934* makes the supply of "carriage hire" or "conveyance hire" by any person to an elector to or from a polling booth an act of bribery.

The Local Government Act Revision Committee of that State made the following remarks in paragraphs 1949 and 1950 of its yet unimplemented report published in 1970;

"It is true that the prohibition is only if the supply of the horse or hire is 'with a view to influencing his vote' ...but why else is a car provided? ...The Committee prefers to face the reality of the situation and to say that of course candidates should be allowed to provide transport for intending voters provided that neither the candidate nor any of the agents accompanies the voter into the polling place."

Tasmania

43. The terms of s.146(1) of the Tasmanian *Electoral Act 1907*, which section applies to local government elections, are very similar to those of s.140 of the W.A. *Local Government Act*, (see Appendix) and also do not refer specifically to the provision of transport.

DISCUSSION

44. It might be argued that if the existing practice of candidates and their supporters providing free transport to voters were to cease, there could be a reduction in the already small number of persons eligible to vote who do vote at local body elections.

As the custom of supplying free transport to voters is so traditional and widespread and as the Commission has at this stage no evidence that the custom has been abused, the Commission tentatively considers no change to the existing law is necessary.

45. As an alternative, consideration might however be given to prohibiting the provision of transport provided by candidates and their supporters to and from polling places except for aged, infirm and incapacitated voters.

QUESTIONS

46. The Commission would welcome comments on the following matters as well as any other matter coming within the terms of reference -

- (a) Should s.143 of the *Local Government Act* be extended to cover all printed materials at present excluded from its ambit?
- (b) Should access be allowed to used electoral rolls which have been marked to indicate which persons have voted, and if so, to whom?
- (c) Should free transport of voters by candidates or their supporters to polling places be restricted, e.g. to the aged, infirm and incapacitated?

WORKING PAPER APPENDIX

LOCAL GOVERNMENT ACT 1960 (s.140)

Bribery

140. A person commits the illegal practice of bribery if he -

- (a) promises, or offers, or suggests, valuable consideration, advantage, recompense, reward, or benefit for or on account of, or to induce -
 - (i) candidature at an election;
 - (ii) withdrawal of candidature from an election;
 - (iii) a vote or an omission to vote at an election;
 - (iv) support of, or opposition to, a candidate for election;
 - (v) a promise of a vote, omission, support, or opposition, mentioned in this paragraph; or
- (b) gives or takes valuable consideration, advantage, recompense, reward, or benefit for, or on account of, a candidature, withdrawal, vote, omission, support, or opposition, or promise, mentioned in paragraph (a) of this section; or
- (c) promises, offers, or suggests valuable consideration, advantage, recompense, reward, or benefit, for bribery, or gives or takes valuable consideration, advantage, recompense, reward, or benefit, for bribery.

APPENDIX II

List of persons who commented on the working paper

Burton, R.H., S.M.

City of Perth

Cruickshank, D.C.

Denmark Watch Committee

Department of Local Government

Diggins, R.V.

Dowding, P.

Goodman, T.H.

Hemery, R.C.

Institute of Legal Executives (Western Australia) (Incorporated)

Institute of Municipal Administration (W. A. Division)

Law Reform Commission of Tasmania

Law Society of Western Australia

Leggo, R.L.

Local Government Association of Western Australia (Inc.)

Roper, J.

Shire of Belmont

Slinger, E.

Town of Cockburn