



Please address all correspondence to:
THE STATE SECRETARY, ALP (Qld.), P.O. Box 5032, West End Q 4101
1st Floor, TLC Building, 16 Peel Street, South Brisbane Q 4101

Tel: 07 3844 8101 Fax: 07 3844 8085

Submission No 33

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LEGAL COUNSEL
LEGISLATIVE AND
ADMINISTRATIVE SERVICES

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30 October 1998

Mr Gary Fenlon MLA
Chair
Legal Constitution and Administrative Review Committee
Parliament House
Alice Street
BRISBANE QLD 4000

Dear Mr Fenlon

Subject: Submission on matters arising out of Carol v The Electoral Commission of Queensland and Reeves – judgement by The Honourable Justice Mackenzie

Submissions have been invited in response to the judgement by The Honourable Justice Mackenzie in the matter of Carol v the Electoral Commission of Queensland and Reeves.

In preparing this submission the ALP has taken particular note of Justice Mackenzie's comments in the section of his judgement titled "Proposal to avoid recurring problems".

The first observation which can be made from Justice Mackenzie's comments is that there is absolutely nothing illegitimate in the practice engaged in by both sides of politics in the past in appealing for the preference votes of electors who choose to give their primary vote to other parties. The Liberal Party, the National Party and the Labor Party have all conducted "preference campaigns" in the past and given the nature of politics, are very likely to continue to do so as more and more seats are decided on preferences.

Justice Mackenzie in his judgement clearly takes account of the fact that the Liberal Party distributed a "second preference card" in the recent State election on polling day, in particular in the disputed seat of Mansfield.

As well, the National Party conducted a second preference campaign with advertisements appealing to One Nation voters to direct their second preference to the National Party.

Justice Mackenzie makes his views known about the legitimacy of such practices in comments like *"It is also important that legitimate advocacy or persuasion in favour of a particular way of allocating a preference should not be stifled."* (page 65, paragraph 153).

On this, the Labor Party whole heartedly agrees with Justice Mackenzie's view.

Justice Mackenzie makes reference to only two particular proposals to avoid recurring problems. The Labor Party's views on these two matters are as follows:

Party Identification on Preference Material

Justice Mackenzie makes the recommendation that preference material be required to *"... bear on their face (and on each face if it is double-sided) the name of the Party on whose behalf or on whose candidate's behalf it is distributed."* (page 65, at paragraph 154). He goes on to say *"such information should be required to be printed in type of a size which is sufficiently large to be easily read and is not overwhelmed by other printing on the card."* (page 65, at paragraph 154).

The Labor Party did of course comply with the spirit of this suggestion in the second preference material it used in the recent State election in that the letters "ALP" were included in the authorisation line of the material. In fact, his Honour notes that: *"I note in passing that a Liberal second preference card contains the name and address of the author in even smaller print (than the Labor Party's card) ... without any reference to his Party affiliation."* (page 64, at paragraph 152).

It is reasonable given this recommendation that your Committee consider a requirement that the registered abbreviation of registered political parties appear in the authorisation information of all material which is produced on that Party's behalf. At the moment, the Electoral Act requires the name and residential address of an authorising person, but does not require the registered abbreviation of registered political parties (or for example the word 'independent' in the case of candidates of non-registered political parties or independents).

In relation to the print size, it is reasonable in our submission that the Act contain a minimum print size for this authorisation line which would include the registered political party's abbreviation.

His Honour does not suggest measures which interfere with a candidate's ability to design material in a way which is appealing to a particular target audience and it would be an inappropriate and complex task to seek to legislate on matters of design, particularly considering that this submission suggests a way of complying with Justice Mackenzie's recommendation.

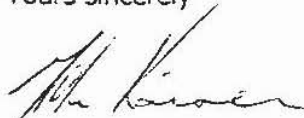
Appeal Mechanism

Justice Mackenzie makes some comments in relation to the fact that under the former Electoral Act there was provision for an appeal to the Court of Appeal on questions of law. (page 66, at paragraph 156).

It is the Labor Party's view that such an appeal mechanism should again be provided, particularly given that the Court of Disputed Returns consists of only one judge and that in cases of dispute complex questions of law frequently arise.

Thank you for providing the opportunity to make this submission.

Yours sincerely



Mike Kaiser
STATE SECRETARY