

Truth in political advertising laws

In most of Australia it is perfectly legal to lie in political advertising. Unlike commercial advertising laws, Australia's political advertising laws do not prohibit misleading or deceptive claims.

What are the current rules on truth in political advertising?

Pharmaceutical companies cannot claim to have the cure for cancer. Food companies cannot claim that sugary foods are good for kids. Lawyers cannot say that they will win every case. But under the *Electoral Act*, politicians can lie about their opponents' policies—or about their own.

For decades, politicians have argued that it is too difficult to regulate political communication—and, admittedly, some attempts have failed. But a model that has been working quietly in South Australia for almost four decades provides a way forward.

If the Government and Parliament are serious about addressing misinformation and improving debate, they could pass truth in political ad laws in time for the next election.

Truth in political advertising laws work in South Australia and the ACT

South Australia has had truth in political advertising laws for almost forty years. The ACT has had similar laws since 2020; the first election with those laws in effect will occur in late 2024.

How do these laws work?

Section 113 of SA's *Electoral Act 1985* makes it an offence to authorise or cause to be published electoral advertisements that are materially inaccurate and misleading, with similar wording in the ACT. These laws are overseen by the relevant electoral commission. The Electoral Commission of South Australia only needs about five staff to handle all election complaints. This is a tiny fraction of the thousands of people needed to run an election.

How can an electoral commission enforce laws?

The SA Electoral Commissioner can request that misleading ads be withdrawn and a correction (formally known as a retraction) published. Timeliness is important to nip misleading campaigns in the bud, and the SA Electoral Commission aims to resolve most issues in just three to four days.

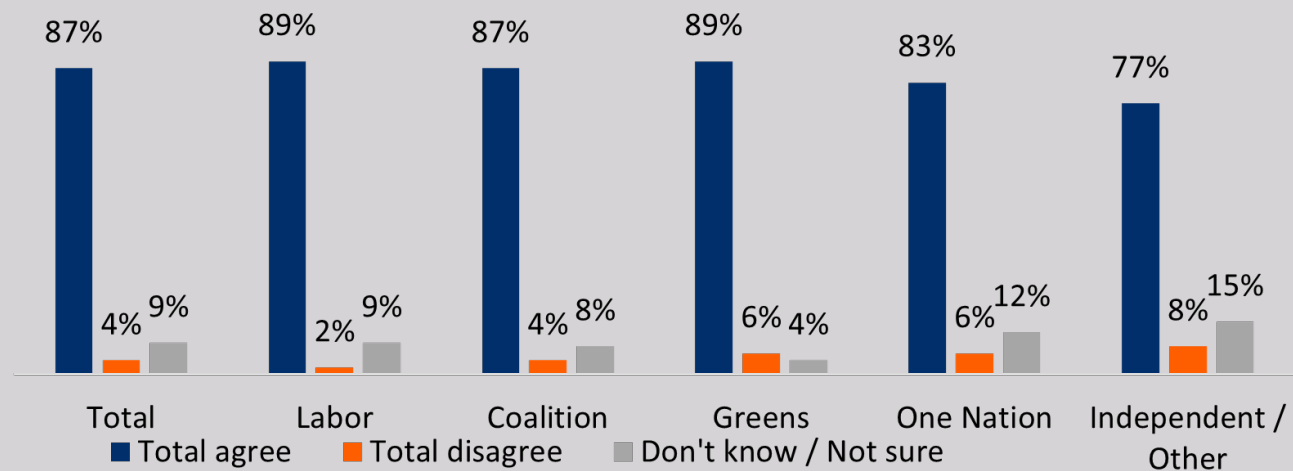
The decisions of the SA Electoral Commission are almost always respected. If not, the Commission can apply to the Supreme Court for enforcement, with the Court able to fine parties up to \$25,000.

If misleading advertising changes an election result, the consequences are even more serious than fines and retractions. SA's Court of Disputed Returns can invalidate the results of an election on the grounds of misleading advertising, if that advertising affected the election result. However, this has never been required in South Australia so far.

Examples of the laws in action include:

- In 1993, the SA Labor State Secretary was fined over a TV ad that said: "The fact is that the Brown Liberals have stated that any school with less than three hundred students will be subject to closure. We have 363 schools with less than 300 students". The Liberal spokesperson had actually said that "a small number of schools that have got a very small number of students" would potentially be closed, but not 200 schools or schools with 300 students.
- In 1997, the Court found that an SA Liberal print ad was misleading when it said that a vote for independents or Democrats "gives you" Labor's

Figure 1: Response to “Q: Truth in political advertising laws should be in place for the next election”



Source: Australia Institute polling (2023) *Misinformation and the referendum*

Mike Rann as premier “thanks to preferences”. Voters decide their own preferences, and some independents actually preferred Liberals over Labor. The court ruled, however, that the ad did not change the outcome of the election.

- In 2017, the SA Liberal Party published ads claiming that their energy plan would save households \$300 per year. In truth, most of those savings would occur regardless of the Liberal energy plan, with the plan saving households only \$60–\$70. The Electoral Commissioner requested the party publish a correction.

Australians supporting their introduction in time for the next election.

These laws were supported in the ACT by Labor, Liberal and the Greens, and could be adopted easily in other jurisdictions.

Independent MP Zali Steggall has drafted a bill to introduce federal truth in political advertising laws. The Albanese Labor Government has also indicated it supports such laws, and Opposition Leader Peter Dutton says they are “probably welcome”. The Government could get truth in political advertising laws in place ahead of the next election.

Is there support for these laws?

As Figure 1 shows, truth in political advertising laws have overwhelming public support, with 87% of

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