



# Election fact sheet: Misleading and Deceptive Material

It is an offence to print, publish, distribute or cause to be printed, published or distributed any matter that the person knows, or should be reasonably expected to know, is likely to mislead or deceive a voter in relation to their casting of their vote.

The terms **misleading** and **deceptive** in this context have been narrowly defined by the courts. They refer to the **effect and understanding of a voter's vote** rather than influencing how the voter decides who to vote for (see *Evans v Crichton-Browne* (1981) 147 CLR 169). You can find further examples of case law on the Inspectorate's website [here](#).

Section 288 of the Local Government Act (2020) (the Act) governs when material is misleading and deceptive:

- **Section 288(1)** prohibits a person printing, publishing or distributing material that is likely to mislead or deceive a voter in relation to the casting of their vote
- **Section 288(2)** prohibits a person printing, publishing or distributing misleading and deceptive material containing a representation or purported representation of a ballot paper that is likely to induce a voter to mark their vote other than in accordance with the directions on the ballot paper

The Local Government Inspectorate enforces the prohibition against printing, publishing or distributing misleading and deceptive material to ensure members of the public cast formal votes with candidates listed in the order of their preference, and do not cast informal votes which are not able to be counted.

This requirement **always applies**, not just during an election period. It applies to all people, not just candidates and registered political parties.

## Defamatory material

Defamation means *causing serious harm to a person's reputation by publishing material about them that changes the way people feel about them*.

While there have been claims in previous local government elections that defamatory material has been printed, published or distributed (see for example *Mulholland & Anor v Langdon* [2022] VCC 1848), as defamation is a private, civil matter **it is not within the jurisdiction of the Local Government Inspectorate**.

A person who believes they have been defamed can seek independent legal advice regarding the options available to them.

## Examples of misleading and deceptive material

Provided on the following pages are three (3) examples of electoral material that **would be considered misleading and deceptive** by the Local Government Inspectorate.

**EXAMPLE 1**

To ensure your vote counts and avoid a fine of

**\$99.00**

Vote 1 Oe, Jane D

**DON'T FORGET TO VOTE**

Remember to post your ballot paper before 6pm on Friday 25 October 2024. If you have any questions about voting please call the Victorian Electoral Commission on 131 832

Authorised by: Jane D Oe, 123 Rivergum Street, Riverland 3333


**A candidate distributes electoral material which reads “to ensure your vote counts and avoid a fine, vote [1] Oe, Jane D.**

This is likely to be misleading or deceptive under section 288(1) of the Act. It is likely that the material may lead a voter to believe that:

- they must vote for the candidate to cast a valid vote; and/or
- they must vote for the candidate to avoid a fine

**EXAMPLE 2**

**A candidate distributes electoral material which contains a purported representation of a ballot paper with how-to-vote instructions. There are eight candidates in the election. The candidate attempts to number all candidates consecutively, in order of preference, but places the number 5 against two candidates and does not place the number 6 against any candidates.**



4	Candidate D	<b>RIVERS SHIRE</b> <b>Rivergum Ward</b> Lorem ipsum dolor sit amet, consectetur adipiscing elit, sed do eiusmod tempor incididunt ut labore et dolore magna aliqua. Ut enim ad minim veniam, quis nostrud exercitation ullamco laboris nisi ut aliquip ex ea commodo consequat. Duis aute irure dolor in reprehenderit in voluptate velit esse cillum dolore eu fugiat nulla pariatur. Excepteur sint occaecat cupidatat non proident, sunt in culpa qui officia deserunt mollit.
5	Candidate H	
1	<b>OE Jane D</b>	
7	Candidate G	
3	<b>Candidate C</b>	
5	Candidate E	
2	<b>Candidate B</b>	
8	Candidate F	

**How to vote Jane D Oe**  
Number the boxes 1 to 8 in the order of your choice

**Jane D Oe**

Authorised by: Jane D Oe, 123 Rivergum Street, Riverland 3333

This is likely to be misleading or deceptive under section 288(2) of the Act. The Act requires full preferential voting – a voter is to mark their first preference as ‘1’ on the ballot paper and then number candidates consecutively, in order of preferences. Incorrect ballot papers are informal and unable to be counted.

### EXAMPLE 3

**Rivers Shire  
Council 2024  
Rivergum Ward**  
(Ballot Paper Sample)

<input type="checkbox"/>	Candidate C	<input type="checkbox"/>	Candidate G
<input checked="" type="checkbox"/>	Jane D Oe	<input type="checkbox"/>	Candidate H
<input type="checkbox"/>	Candidate D	<input checked="" type="checkbox"/>	Candidate B
<input type="checkbox"/>	Candidate E		
<input type="checkbox"/>	Candidate F		

Authorised by: Jane D Oe, 123 Rivergum Street, Riverland 3333

*A candidate distributes material which contains a purported representation of a ballot paper with how-to-vote instructions. The candidate numbers two candidates consecutively, in order of preference. There are eight candidates in the election. The other six candidates are listed in the order they appear on the ballot paper but are not numbered in order of preference.*

This is likely to be misleading or deceptive under section 288(2) of the Act. The Act requires full preferential voting – a voter is to mark their first preference as ‘1’ on the ballot paper and then number candidates consecutively, in order of preference. Incomplete ballot papers are informal and unable to be counted.

### Examples of material that is **not** considered misleading or deceptive


Provided on the following pages are two (2) examples of electoral material that **would not be considered misleading and deceptive** by the Local Government Inspectorate.

### EXAMPLE 1

***A candidate distributes electoral material which reads “In the current Councillor term Councillor Jane D Oe voted to close all kindergartens in the Council area.”***

This is not likely to be misleading or deceptive under the Act. While the material may affect the formation of a political judgment by a voter, it is not likely to mislead or deceive a voter in relation to how they mark their ballot paper.

## EXAMPLE 2



How to complete your ballot paper

- 1** Candidate A
- 2 Candidate B
- 3 Candidate C

Authorised by: Jane D Oe, 123 Rivergum Street, Riverland 3333

***A candidate distributes material which numbers three candidates consecutively, in order of preference. There are eight candidates in the election. The other five candidates are not listed. The three named candidates are not listed in the order they appear on the ballot paper.***

This is not likely to be misleading or deceptive under the Act. The material:

- is not a representation or purported representation of a ballot paper; and
- illustrates the candidate's preferences, which candidates are entitled to do.