

Guideline for Councils

State and Commonwealth Election Signs on roads

March 2025

1. Background

Changes to the *Local Government Act 1999* (SA) (**LG Act**) and the Electoral Act 1985 (SA) (**State Electoral Act**) arising from the commencement of the *Electoral (Control of Corflutes) Amendment Act 2024* (**State Amendment Act**) and *Electoral (Miscellaneous) Amendment Act 2024* (**Commonwealth Amendment Act**) have changed the legislative framework with respect to election signs for State and Commonwealth elections.

Prior to these changes, section 226(3)(c) of the LG Act essentially exempted State and Commonwealth election signs displayed on roads during the period commencing at 5:00pm on the day before the issue of writ or writs for the election and ending at the close of polls on polling day, from regulation by council by-laws.

Council by-laws in force often reflect this historical position, though the language used is different from council to council. (These differences in language can be important, as discussed later in this document.)

The LGA has identified certain issues arising from the changes to the law relating to the display of State and Commonwealth election signs on roads, including the way in which the new laws may interact with council by-laws. Councils may wish to consider a review of their existing moveable signs by-law (and potentially other council by-laws such as the roads by-law and/or local government land by-law) to address these changes.

Importantly, although the new laws with respect to State and Commonwealth election signs appear similar in many respects, there are differences, some of which have important consequences.

Further, the relevant 'road' definitions drawn from the Road Traffic Act 1961 provide a broadened scope for the prohibition to local government land, but which also adds further dimensions to the council/authorised officers enforcement capacity.

The extraordinary complexity of the law is likely inadvertent on the part of Parliament. However, it must be reflected accordingly in this guidance, which is therefore also (regrettably) extraordinarily complex.

2. Definitions

In relation to the State Amendment Act, the following definitions are relevant:	In relation to the Commonwealth Amendment Act, the following definitions set out in s226A of the LG Act are relevant:
designated event or activity is defined in section 115(4) of the State Electoral Act to mean: a) an assembly within the meaning of the <i>Public Assemblies Act 1972</i>; or b) an organised gathering, meeting, function or event relating to an election; or c) a person canvassing for votes relating to an election; or d) any other gathering, meeting, function or event, or class of gathering, meeting, function or event, prescribed by the regulations. electoral advertising poster is defined in section 115(4) of the State Electoral Act to mean a poster, notice or sign displaying an 'electoral advertisement'. Under section 4(1) of the State Electoral Act, electoral advertisement means an advertisement containing 'electoral matter', and electoral matter means matter calculated to affect the result of an election.	designated electoral advertising poster means a poster, notice or sign containing matter calculated to affect the result of a Commonwealth election; designated event or activity is defined in s226A(3) of the LG Act to mean— a) an assembly within the meaning of the <i>Public Assemblies Act 1972</i>; or b) an organised gathering, meeting, function or event relating to a Commonwealth election; or c) a person canvassing for votes relating to a Commonwealth election; or d) any other gathering, meeting, function or event, or class of gathering, meeting, function or event, prescribed by the regulations; relevant road means a public road within the meaning of the <i>Road Traffic Act 1961</i>;²

² See Note below

Note: Electoral advertising poster is also defined in section 226(5) of the LG Act; however, that definition only applies with respect to a local government election. moveable sign is defined in section 4 of the LG Act and means a moveable advertisement or sign. This can include a State election sign. public road means a road within the meaning of the Road Traffic Act 1961 and road-related area has the same meaning as in the <i>Road Traffic Act 1961</i>¹. Note: Public road is also defined in section 4(1) of the LG Act; however, that definition is not the definition which applies in the State Electoral Act. state election sign — For convenience, in this document, the term ‘State election sign’ is used to mean an electoral advertising poster as defined in the State Electoral Act displayed in connection with any election to elect one or more members to the South Australian House of Assembly or Legislative Council.	road-related area has the same meaning as in the <i>Road Traffic Act 1961</i>.³
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¹ In the Road Traffic Act 1961;

‘road’ means:

an area that is open to or used by the public and is developed for, or has as one of its main uses, the driving of motor vehicles;

‘road-related area’ means any of the following:

(a) *an area that divides a road;*

(b) *a footpath or nature strip adjacent to a road;*

(c) *an area that is not a road and that is open to the public and designated for use by cyclists or animals;*

(d) *any public place that is not a road and on which a vehicle may be driven, whether or not it is lawful to drive a vehicle there;*

³ See definition in table column for State election signs and Note 1 above

3. Explanation of Legislative Changes

State Election Signs	Commonwealth Election Signs
The State Amendment Act has (among other things) inserted section 226(3)(caa) into the LG Act. Pursuant to this section, a moveable sign that is an electoral advertising poster related to a State election (i.e. a State election sign) may be placed on a road without an authorisation or permit and without any requirement to adhere to council by-laws if that sign is not prohibited from exhibition by section 115(2a) of the State Electoral Act. Significantly, section 115(2a) of the State Electoral Act has the effect of generally prohibiting the display of an electoral advertising poster on a public road or road-related area (which includes any structure, fixture or vegetation on a public road or road-related area). However, section 115(2b) of the State Electoral Act contains the following exemptions to the application of section 115(2a) of the State Electoral Act (i.e. the following is <u>not prohibited</u>): 1. an electoral advertising poster held by a person in their hands or in a device to which the poster is attached; or	The Commonwealth Amendment Act, has (among other things) amended section 226(3)(e) of the LG Act and inserted section 226A into the LG Act. Pursuant to section 226(3)(c) of the LG Act, a moveable sign that is related to a Commonwealth election (i.e. a Commonwealth election sign) may be placed on a road without an authorisation or permit and without any requirement to adhere to council by-laws if the sign: 1. is not prohibited from exhibition under section 226A of the LG Act (discussed below); and 2. is displayed between 5:00pm on the day before the day a writ/writes are issued for an election and the close of polls on polling day. Section 226A(1) of the LG Act has the effect of generally prohibiting the display of a designated electoral advertising poster on a '<i>relevant road</i>' or '<i>road-related area</i>' (see above definitions).

2. an electoral advertising poster that: a. is not attached to a building, hoarding or other structure or fixture on a public road, or road related area; b. is exhibited at or in the vicinity of a place at which a designated event or activity is being held (see definition of designated event above); and c. is exhibited immediately before, during or immediately after the designated event or activity, provided the electoral advertising poster is not exhibited for more than six hours; or 3. an electoral advertising poster of a kind prescribed by the regulations or exhibited in circumstances prescribed by regulation, namely (see regulation 16(2) of the <i>Electoral Regulations 2009</i> (SA)): a. the exhibition of an electoral advertising poster that is attached to an office or committee room of a political party, member of Parliament or candidate in an election, provided that the place of exhibition is more than 100 metres from the entrance to a polling booth open for polling; b. the exhibition of an electoral advertising poster that is adhered to a vehicle or exhibited on the roof of, or	However, section 226A(2) of the LG Act contains the following exemptions to the application of section 226A(1) of the LG Act (i.e. the following is not prohibited): 1. a '<i>designated electoral advertising poster</i>' held by a person in their hands or in a device to which the poster is attached; or 2. a '<i>designated electoral advertising poster</i>' that: a. is not attached to a building, hoarding or other structure or fixture on a public road, or road related area; b. is exhibited at or in the vicinity of a place at which a designated event or activity is being held (see definition of designated event above); and c. is exhibited immediately before, during or immediately after the designated event or activity, provided the electoral advertising poster is not exhibited for more than six hours; or Apart from the above specific exceptions, the display of a Commonwealth election sign on a road or road-related area is now prohibited.
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a trailer (within the meaning of the Motor Vehicles Act 1959) attached to, a vehicle; c. the exhibition of an electoral advertising poster that is attached to fencing or fixtures in or around the following: i. an enclosed area of land commonly used for playing sports or games, or accommodating the spectators at any sport or game; ii. an enclosed area of land contiguous to, and used in connection with, land referred to in subparagraph i, if the poster is exhibited as part of a paid sponsorship in relation to sports or games played on the land; d. the exhibition of an electoral advertising poster at a show or fair by a political party or member of Parliament, or a candidate or group in an election (the exhibitor), if— i. the show or fair is organised by a person or body that is not— (A) a political party, associated entity (within the meaning of section 130A of the State Electoral Act) or member of Parliament; or (B) a candidate or group in an election; and	
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- ii. the exhibitor holds or sponsors a stall at the show or fair (whether involving the payment of a fee or otherwise) or pays money in sponsorship of the show or fair;
- e. the exhibition of an electoral advertising poster that is adhered to a person's rubbish bin if the bin is placed on the kerbside by the person in the usual way for the purposes of a regular roadside rubbish collection service.

The display of a State election sign at a polling booth in a manner permitted by section 125 of the State Electoral Act is also not prohibited section 115(2a) of the State Electoral Act, even if that sign is on a road or road-related area.

However, apart from the above specific exceptions, the display of a State election sign on a road or road-related area is **now prohibited**.

4. Placement of State/Commonwealth Election Signs otherwise than on roads

The placement of a State or Commonwealth election sign somewhere other than a public road, relevant road or road-related area is also not prohibited by section 115(2a) of the State Electoral Act or section 226A of the LG Act, for example, placement of a sign:

- on private land (though this would require the permission of the landowner); or
- in a public place which is not a road or road-related area (though, for local government land, this may require a permit under the council's moveable signs or local government land by-law).

This document considers the display of State or Commonwealth election signs on roads (as defined in the above table), but not all potential scenarios that could arise on council land.

This document also does not deal with the rules concerning electoral advertising posters at polling booths, which are set out in section 125 of the State Electoral Act (and which the presiding officer at each polling booth has certain powers to enforce) and section 340 of the *Commonwealth Electoral Act 1918* (Cth).

5. Enforcement and Administration Issues

Powers to remove signs pursuant to section 227 of the LG Act

Section 227(1) of the LG Act empowers an authorised person of a council to order the owner of a moveable sign to remove that sign if the sign does not comply with a council by-law, or if the moveable sign unreasonably restricts the use of the road or endangers the safety of members of the public. If the owner of the moveable sign fails to comply immediately with the order, or the owner cannot be found, the authorised person may remove and dispose of the moveable sign pursuant to section 227(2) of the LG Act.

These powers can be exercised by a council authorised person with respect to any State or Commonwealth election sign which unreasonably restricts the use of a road or endangers the safety of members of the public, even if the display of the sign is not prohibited under section 115(2a) of the State Electoral Act or section 226(3)(c) of the LG Act, respectively.

These powers likely cannot be exercised with respect to any State or Commonwealth election sign which does not unreasonably restrict the use of a road or endanger the safety of members of the public, and which is not prohibited from display under section 115(2a) of the State Electoral Act or section 226(3)(c) of the LG Act, even if the sign is inconsistent with the requirements of the council's by-law (though the drafting in sections 226(1) and (3) and 227(1) of the LG Act is not entirely clear, this appears to be the most likely effect of the interaction between those provisions).

As for whether the powers can be exercised with respect to any State or Commonwealth election sign which does not unreasonably restrict the use of a road or endanger the safety of members of the public, but which is prohibited from display under section 115(2a) of the State Electoral Act or section 226(3)(c) of the LG Act, this will depend on the requirements and wording of the council's by-law. This is discussed in further detail below.

For cautionary purposes, section 227 is understood only to apply to removal of signs from a road as defined in the LG Act,⁴ and is not suitable to enforce removal of all prohibited signs.

Powers to remove signs pursuant to section 262 of the LG Act

In addition to the enforcement powers set out above, section 262 of the LG Act empowers an authorised person of the council to order a person who engages in conduct in contravention of the LG Act to:

1. stop the conduct; and
2. take specified action to remedy the contravention

A person who displays a Commonwealth election sign in circumstances prohibited by section 226A of the LG Act engages in conduct in contravention of the LG Act. Accordingly, the enforcement powers set out at section 262 of the LG Act are enlivened.

Section 262 of the LG Act does not empower an authorised officer of the council to proceed directly to removing a Commonwealth election sign that is displayed in breach of the LG Act. An order to the person who has displayed the contravening sign (likely the owner of the sign) must first be made. This would most likely be an order to remove the sign.

This differs from the enforcement powers set out in section 227 of the LG Act, where the sign may simply be removed if the owner of the sign fails to comply with the order immediately (section 262 does not use the word 'immediately') or if the owner cannot be found.

A person must comply with an order that is made pursuant to section 262 of the LG Act, however, if they do not comply, only then can the authorised person take action that is reasonably required to have the order carried out (likely the removal of the sign).

Importantly, the powers under section 262 of the LG Act cannot be exercised with respect to a Commonwealth election sign which is permitted to be displayed under section 226A of the LG Act, but is displayed outside the electoral period specified in section 226(3)(c) of the LG Act. Commonwealth election signs that are displayed outside this electoral period but that

⁴ For the purposes of sections 226 and 227 of the LG Act 'road' means:
a public or private street, road or thoroughfare to which public access is available on a continuous or substantially continuous basis to vehicles or pedestrians or both and includes-
(a) a bridge, viaduct or subway; or
(b) an alley, laneway or walkway;

are not prohibited from being displayed under section 226A of the LG Act may only be removed if they are contrary to a council by-law.

The mere fact that a State election sign is prohibited from display under section 115(2a) of the State Electoral Act does not mean the powers in section 227 or section 262 of the LG Act can be exercised with respect to that sign. Council authorised persons are not able to enforce the provisions of the State Electoral Act.

Penalties for bills posted without consent pursuant to section 23 of the Local Nuisance and Litter Control Act 2016

The *Local Nuisance and Litter Control Act 2016* (section 23) contains penalty provisions for posting a bill on property without the consent of the owner or occupier of the property.

A bill is defined as including a flyer, brochure or poster containing promotional material, and includes anything declared by regulation to be a bill, but does not include anything declared by regulation not to be a bill.

Regulation 10 provides that a moveable sign within the meaning of the LG Act 1999 that is placed or maintained on a road other than in a manner authorised under section 226 of the LG Act is declared to be a bill.

Accordingly, in some specific circumstances a State or Commonwealth election sign may be captured within the definition of a bill under the Local Nuisance and Litter Control Act 2016.

Council's standard operating procedures under the *Local Nuisance and Litter Control Act 2016* should be carefully considered and applied if intended to be used for enforcement.

Alternate Action / Referral

The expectation upon councils to enforce/act in relation to election signs can vary.

Section 115 of the State Electoral Act and section 226A of the LGA Act prohibiting state and commonwealth election signs do not impose an obligation on council to enforce non-compliance. As this guideline sets out councils do not have authority in all circumstances.

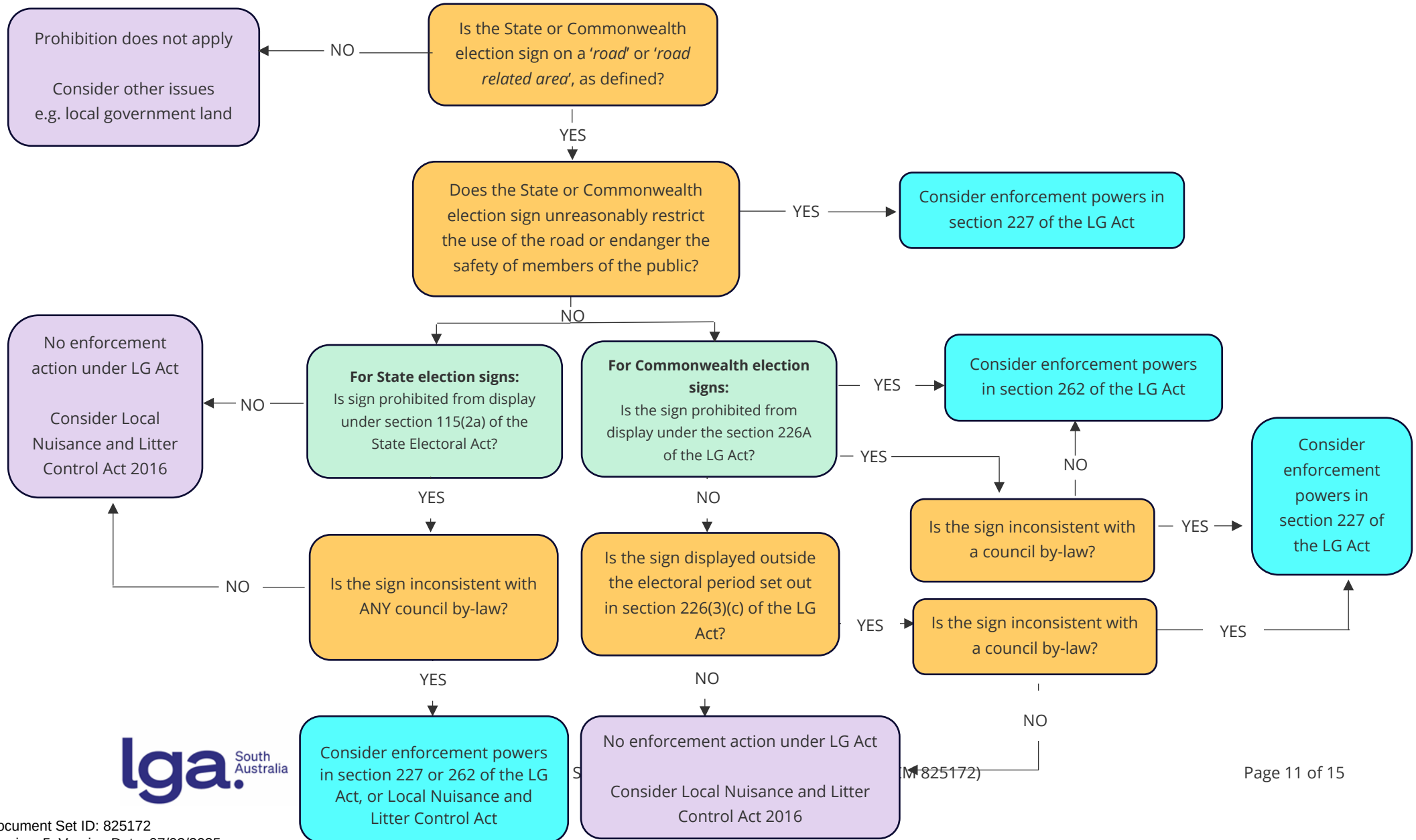
Councils should, however, consider the appropriate response to an election sign that unreasonably restricts the use of the road or endangers the safety of members of the public.

Councils may also have obligations or expectations (and authority) relating to moveable signs and prohibited or permitted activities under by-laws and other policies/procedures.

Council may also consider whether the appropriate response to a state or commonwealth election sign issue is its referral to the electoral office responsible for the conduct of the relevant election (ECSA or AEC) and/or to the relevant candidate or political party responsible for the election sign.

Under no circumstances should an election sign be interfered with without valid authority.

The above discussion can be represented in the following flowchart:



6. Examples of By-Law Provisions

Generally, council moveable signs by-laws take one of four approaches to the treatment of State or Commonwealth election signs. These can broadly be described as:

1. A by-law which expressly exempts State or Commonwealth election signs;
2. A by-law which refers to section 226(3) of the LG Act in a merely explanatory way (noting, prior to the changes referenced above, that this subsection included reference to State and Commonwealth election signs);
3. A by-law which requires State or Commonwealth election signs to comply with the LG Act or the State Electoral Act;
4. A by-law which contains no specific reference to State or Commonwealth election signs or section 226(3) of the LG Act.

These different types of by-laws are discussed below. In particular, we consider how a State or Commonwealth election sign which does not unreasonably restrict the use of a road or endanger the safety of members of the public, but which is prohibited from display under section 115(2a) of the State Electoral Act or section 226A(1) of the LG Act, could be treated under that by-law.

We also consider the situation where there is no moveable signs by-law.

6.1. By-law expressly exempts State or Commonwealth election signs.

Example:

This By-law will not apply to a Moveable Sign which is:

...

- related to a State or Commonwealth election and is displayed during the period commencing at 5:00pm on the day before the issue of writ or writs for the election and ending at the close of polls on polling day.

In this case, a State or Commonwealth election sign which does not unreasonably restrict the use of a road or endanger the safety of members of the public, but which is prohibited from display under section 115(2a) of the State Electoral Act or section 226A(1) of the LG Act:

- **Would not** be subject to the operation of the by-law during the period commencing at 5:00pm on the day before the issue of writ or writs for the election and ending at the close of polls on polling day (because that is what the by-law says);
- **Would** be subject to the operation of the by-law outside that period.

Accordingly, an authorised person could exercise the powers in section 227 of the LG Act with respect to the State or Commonwealth election sign outside the relevant period. However, this is only the case only if that sign is actually inconsistent with some requirement of the by-law.

An authorised person could however take action under section 262 of the LG Act to order the removal of a Commonwealth electoral sign that is inconsistent with the requirements of section 226A of the LG Act.

6.2. By-law refers to section 226(3) of the LG Act in a merely explanatory way

Example:

This By-law does not apply to moveable signs placed and maintained on a road in accordance with section 226(3) of the [LG Act], which includes any sign:

...

- related to a State or Commonwealth election and is displayed during the period commencing on the issue of the writ or writs for the election and ending at the close of polls on polling day.

Unlike the first example (where the by-law stated, in an operative way, and without reference to any legislative provision, that it does not apply to State or Commonwealth election signs displayed during the election period), here in this second example it is clear that the by-law simply seeks to describe the effect of a legislative provision.

Because the by-law is a legislative instrument, section 36 of the *Legislation Interpretation Act* 2021 will in our view have the effect that this reference to section 226(3) of the LG is a reference to that section as amended from time to time. The erroneous dot point can, in our view, be disregarded insofar as it relates to State and Commonwealth election signs.

Accordingly, in our view, in this case, a State or Commonwealth election sign which does not unreasonably restrict the use of a road or endanger the safety of members of the public, but which is prohibited from display under section 115(2a) of the State Electoral Act or section 226A(1) of the LG Act:

- **Would not** be subject to the operation of the by-law during the period commencing at 5:00pm on the day before the issue of writ or writs for the election and ending at the close of polls on polling day (despite what is said in the dot point within the by-law clause, as that dot point simply reflects the wording of the relevant section before it was amended);
- **Would** also be subject to the operation of the by-law outside that period.

Accordingly, an authorised person could exercise the powers in section 227 of the LG Act with respect to the State or Commonwealth election sign, provided again however (as in the first example) that sign is actually inconsistent with some requirement of the by-law.

6.3. By-law requires State and/or Commonwealth election signs to comply with the LG Act or the State Electoral Act.

Example:

This By-law does not apply to a moveable signs which is:

...

- related to a State or Commonwealth election and is otherwise authorised to be exhibited under Section 226 and 226A of the *Local Government Act 1999* or the *Electoral Act 1985*;

In this example, any moveable sign displayed outside of the rules permitted under section 226 and/or 226A of the LG Act or the State Electoral Act is not exempt from the by-law's application.

Accordingly, in our view, in this case, a State or Commonwealth election sign which does not unreasonably restrict the use of a road or endanger the safety of members of the public, but which is otherwise prohibited from display under section 115(2a) of the State Electoral Act or section 226A(1) of the LG Act would be subject to the operation of the by-law.

Accordingly, an authorised person could exercise the powers in section 227 of the LG Act with respect to the State or Commonwealth election sign, provided again however (as in the first example) that sign is actually inconsistent with some requirement of the by-law.

6.4. By-law contains no specific reference to State or Commonwealth election signs or section 226(3) of the LG Act.

In our view, if a by-law contains no specific reference to State or Commonwealth election signs or section 226(3) of the LG Act, then this is effectively the same as the second example above.

That is, a State or Commonwealth election sign which does not unreasonably restrict the use of a road or endanger the safety of members of the public, but which is prohibited from display under section 115(2a) of the State Electoral Act or section 226A(1) of the LG Act, would be subject to the operation of the by-law at all times. An authorised person could exercise the powers in section 227 of the LG Act with respect to the State or Commonwealth election sign, provided that sign is actually inconsistent with some requirement of the by-law.

6.5. There is no moveable sign by-law.

If a council has no moveable sign by-law (and no relevant provisions in its road by-law or other by-laws), its authorised persons have no ability to exercise the powers in section 227 with respect to any State or Commonwealth election sign which does not unreasonably restrict the use of a road or endanger the safety of members of the public, even if that sign is prohibited from display under section 115(2a) of the State Electoral Act or section 226A(1) of the LG Act.

An authorised person could take action under section 262 of the LG Act to order the removal of a Commonwealth electoral sign that is inconsistent with the requirements of section 226A of the LG Act.

6.6. Consideration to other by-laws.

Due to the use of Road Traffic Act 1961 road definitions expanding the prohibition on State and Commonwealth election signs beyond the road areas covered by moveable sign provisions in the LG Act, consideration may also be given to the application of other council by-laws where prohibited (or non-prohibited but non-permitted) signs are located on other areas of local government land, such as trafficable or non-trafficable reserves, community or operational land, and crown land under council care control and management.

It is beyond the scope of this guideline to provide detailed commentary on the various scenarios that could arise, other than to draw councils attention to the potentialities.

7. Review of By-Laws

Councils may, in light of the above, wish to consider reviewing their relevant by-laws to reflect the legislative amendments regarding State and Commonwealth election signs.