



What you need to know...

Federal election and political matter advertising

March 2018

From 15 March 2018, the authorisation requirement in Part XXA of the Electoral Act applies to a wide range of communications containing 'electoral matter' including all publicly communicated material.

THESE REQUIREMENTS ARE NOT FOR STATE BASED ADVERTISING. For example state member or advocating a political position state-based matters.

This includes printed material, social media, voice calls (including robocalls) and text messaging (for example, bulk text messaging). Political communications that are broadcast by television and radio broadcasters remain covered by the relevant legislation which has been amended to align with the new requirements contained in the Electoral Act. It covers:

- all 'electoral matter' in the form of 'paid for' advertisements. This includes whether all or part of the distribution or production of the advertisement was 'paid for';
- a broad range of 'electoral matter' communicated in the form of promotional items, such as stickers, fridge magnets, leaflets, flyers, pamphlets, notices, posters and How-to-Vote cards; and
- any other material that is communicated by, or on behalf of, a disclosure entity, that is intended to affect voting in a federal election.

IT IS NO LONGER REQUIREMENT TO INCLUDE THE WORD 'ADVERTISEMENT' AT THE TOP OF AN ADVERTISEMENT.

Who or what is a 'disclosure entity'?

A 'disclosure entity' is defined in the Electoral Act and includes a registered political party, an associated entity, current members of Parliament, candidates and a number of others who have to lodge returns of donations and expenditure under Part XX of the Electoral Act.

A 'disclosure entity' has to include more identification details in electoral.

What is electoral matter?

An 'electoral matter' is defined in subsections 4(1) and (9) of the Electoral Act to be communications of the following kinds:

- a. matter that is intended or likely to affect voting in a federal election; or
- b. matter that contains an express or implicit comment on the election, a political party or candidates, or an issue that is before electors in connection with the election.

For example, matter that contains a comment on the current or previous Government or Opposition in relation to an issue in an election is ‘electoral matter’.

When do the new authorisation requirements apply?

All of the requirements of the *Electoral and Other Legislation Amending Act 2017* commence on 15 March 2018.

This includes the new authorisation requirements that apply to the communication of ‘electoral matter’ and ‘political matter’. These requirements apply at all times during the year. This is not limited to only those communications made during the election period (i.e. the period between the issue of the writs and polling day).

What particulars must be included at the end of a written communication?

The Electoral Act sets out what particulars are required if the communication of the ‘electoral matter’ is by a sticker, fridge magnet, leaflet, flyer, pamphlet, notice, poster or How-to-Vote card. The authorisation particulars on these written communications must include:

- a. where the person who authorised the communication is an individual, the name of the individual, the full address, suburb or locality at which the person can be contacted and the name and address of the printer;
- b. where the communication is authorised by a disclosure entity (e.g. a registered political party) the name of the entity, the address of the entity (e.g. where the entity has a principal office or business premises, the full street address, suburb or locality), the name of the natural person within the disclosure entity responsible for giving effect to the authorisation and the name and address of the printer;
- c. where the communication is authorised by an entity that is not a disclosure entity or a natural person (e.g. a company that is not an associated entity) the name of the entity, the address of the entity (e.g. where the entity has a principal office or business premises, the full street address, suburb or locality) and the name and address of the printer;
- d. the Determination sets out that for all printed material the particulars must be at the end (or bottom) of the printed material in a font size that can be read by a person with 20/20 vision without the use of any visual aid.

AUTHORISATIONS ON ELECTORAL ADS PUBLISHED IN NEWSPAPERS AND JOURNALS

Do the authorisation particulars that apply to other types of written communications (i.e. the inclusion of printer details) also need to be published in an electoral advertisement published in a newspaper or magazine?

No. Subsection 321D(5) of the Electoral Act requires printer details, such as the name of the printer who printed the communication and the address of the printer, to be notified, where the communication is a sticker, fridge magnet, leaflet, flyer, pamphlet, notice, poster or how-to-vote card. However, similar to other written electoral communications, authorisation details are required to be included in electoral advertisements published in newspapers and magazines.

If the communication is printed material, the particulars must be notified at the end (or bottom) of the printed material, and in a font size that can be read by a person with 20/20 vision without the use of any visual aid. There is an exception to the requirement for the placement of printer details to be at the end of printed material as required. That is, it does not require the following particulars to be notified at the end of printed material in a journal if those particulars are notified elsewhere in the journal:

- a. the name of the printer who printed the printed material;
- b. the address of the printer.

For example, the printer details for a notice published in a journal do not need to be notified at the end (or bottom) of the printed material, being the notice, if the printer details are notified elsewhere in the journal.

Where must the authorisation particulars appear on social media?

If the communication is communicated by social media, the particulars must be notified:

- a. at the end of the communication; or
- b. if the particulars are too long to be included in the word limit of the communication in:
 - i. a website accessible by a URL included in the communication; or
 - ii. a photo included in the communication.

Is an authorisation in the bio sufficient on Facebook or Twitter? Or does every tweet or post have to be authorised?

Provided the authorisation particulars can be located on the Twitter or Facebook account, then this will be sufficient. However, an issue could arise where a person re-tweets another person's message and the details are not included.

Will social media content (e.g. Facebook or Twitter) containing 'electoral matter' require an authorisation if it is communicated for personal purposes?

No. Social media content will not require an authorisation if it is communicated for personal purposes, for instance only to personal friends.

If I repost an online post with my own commentary on an electoral matter, who should authorise my post: the original poster, the service provider or myself?

If you have not reposted the content for personal purposes, you must authorise your post, including the reposted communication and your commentary. The original post is authorised by the original communicator. The provider of the service used to post both messages does not authorise either the original post or your post, as the service provider did not make the decision to communicate the content.

In a social media post such as Facebook or Twitter, which has an embedded video, is the authorisation at the end of the video sufficient to authorise the post/tweet?

The authorisation is required to be on the Tweet or Facebook post itself. The particulars must be at the end of the communication or, if the particulars are too long to be included, in a website that can be

accessed by a URL included in the communication or by a photo of the particulars included in the communication.

AUTHORISATIONS FOR WEBSITES

What is a sufficient authorisation for a website? Is an authorisation required on every page, or is a link to a special page specifically authorising the specific communication required?

The authorisation particulars for a website that contains electoral communications must include:

- where the person who authorised the communication is an individual, the name of the person and the town or city in which the person lives;
- where the communication is authorised by a disclosure entity (e.g. a registered political party) the name of the entity, the relevant town or city of the entity and the name of the natural person within the disclosure entity responsible for giving effect to the authorisation;
- where the communication is authorised by an entity that is not a disclosure entity or a natural person (e.g. a company that is not an associated entity) the name of the entity and the town or city of the entity.

Where should the authorisation appear on the website?

It is not prescribed where the authorisation should appear on a website or webpage. However, generally it would appear somewhere on each page that contains 'electoral matter' where it can be readily located by readers.

There is a distinction between websites that are published directly by a 'disclosure entity' and other websites that only contain 'electoral matter' on some of their webpages. The AEC suggests that the landing page for a website should have the authorisation particulars where it is published by or on behalf of a 'disclosure entity'. For more general websites, it is only necessary that the webpages that actually contain 'electoral matter' have the required authorisation particulars.

AUTHORISATIONS FOR DIGITAL BANNER ADVERTISEMENTS

Do digital banner advertisements that may contain electoral matter require authorisation particulars?

Yes. The authorisation details are the same as for social media. The term 'digital banner advertisement' is defined under section 4 of the Determination to include static or dynamic banners on websites accessed through internet browsers, or videos that stream when banner advertisements are hovered over. If the communication is a digital banner advertisement, the particulars must be notified:

- a. at the end of the banner; or
- b. if the particulars are too long to be included or embedded in the banner – in a website that can be accessed by a URL included in the banner.

The placement and manner of notifying the particulars for digital banner advertisements, can be notified in either the static or dynamic banner, or the video.

MISLEADING OR DECEPTIVE ELECTORAL ADVERTISEMENT AND OTHER PUBLICATIONS

Does the Electoral Act require truth in electoral advertising?

The short answer is no. The AEC has no role in regulating the political content of electoral advertising. The AEC is responsible for ensuring, as far as possible, that electoral advertising does not mislead or deceive voters about the way in which they must cast their vote.

What does section 329 of the Electoral Act cover?

Subsection 329(1) of the Electoral Act makes it an offence to print, publish or distribute, or cause, permit or authorise to be printed, published or distributed, any matter or thing that is likely to mislead or deceive an elector in relation to the casting of a vote.

Subsection 329(5) provides that in a prosecution of an offender, it is a defence if it is proved that the person did not know, and could not reasonably be expected to have known, that the matter or thing was likely to mislead an elector in relation to the casting of a vote.

When does section 329 of the Electoral Act apply?

Unlike section 321D of the Electoral Act which **applies at all times**, subsection 329(1) is in force only during the formal election campaign. The 'relevant period' which is defined in section 322 is the period commencing on the issue of the writs for the election and expiring at the latest time on polling day at which an elector in Australia could enter a polling booth for the purpose of casting a vote in the election.