

October 2023

Regulatory Action Policy

Authorisation of Electoral and Referendum Communications

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1. Introduction

Purpose

The purpose of this Regulatory Action Policy is to explain how the Australian Electoral Commission (AEC) will enforce the authorisations requirements in the *Commonwealth Electoral Act 1918* (Electoral Act) and *Referendum (Machinery Provisions) Act 1984* (Referendum Act). This includes setting out:

- the AEC's priorities when enforcing the requirements (what will be investigated first), and
- the AEC's processes when enforcing the requirements (for example, sending warning letters to persons that may have breached the requirements).

Neutrality

The AEC is an independent electoral management body established under Part II of the Electoral Act. The AEC places special emphasis on political and issue neutrality because it is responsible for providing the Australian people with an independent electoral service. Every AEC employee signs a neutrality agreement. At all times the AEC acts impartially when enforcing regulatory requirements.

The AEC and the authorisation scheme

The AEC administers federal elections and referendums under the Electoral Act and Referendum Act. These Acts establish regulatory requirements for participants in federal elections and referendums, including the requirement to authorise certain electoral matter or referendum matter.

The authorisation scheme requires a person or entity who communicates certain matter for the dominant purpose of influencing the way electors vote at a federal election (electoral matter) or referendum (referendum matter) to authorise that communication so that, among other reasons, electors can know who is responsible for the communication. For example, paid advertising that communicates electoral matter or referendum matter must be authorised.

This policy provides a framework for the AEC's regulation of the authorisation of electoral and referendum matter, including the actions the AEC may take to enforce the authorisation requirements.

The AEC's role is to:

- provide guidance on the application of electoral and referendum authorisations requirements
- detect and investigate potential non-compliance with the Electoral Act and Referendum Act, and
- where necessary, take action for non-compliance.

The AEC reserves the right to take any available action to enforce the authorisation requirements.

While the AEC provides guidance on the authorisation requirements, it is unable to provide legal advice. Persons and entities that may have obligations under the Electoral Act or Referendum Act are encouraged to seek their own independent legal advice. The AEC's general guidance for persons and entities that are communicating electoral or referendum matter is – 'if in doubt, authorise it'.

Persons and entities considering communicating electoral or referendum matter should familiarise themselves with the authorisation requirements by referring to the AEC's guidance in the [Electoral Background: Electoral Communications and Authorisation Requirements](#) and the [Electoral Matter and Electoral Expenditure Fact Sheet](#).

Note the AEC does not regulate political communications broadcast by television and radio. This is regulated by the Australian Communications and Media Authority (ACMA). For more information, visit the [ACMA website](#).

Objects of the authorisation scheme

The objects of the authorisation requirements are to promote free and informed voting at elections and referendums by enhancing:

- the transparency of the electoral system (including as it relates to referendums) by allowing voters to know who is communicating electoral matter
- the accountability of those persons participating in public debate relating to electoral and referendum matter, by making those persons responsible for their communications
- the traceability of communications of electoral and referendum matter, by ensuring that legislative obligations in relation to those communications can be enforced
- the integrity of the electoral and referendum system, by ensuring that only those with a legitimate connection to Australia are able to influence Australian elections.

Ensuring the transparency, accountability, integrity and traceability of matter that is regulated under the authorisation scheme is a part of the AEC's broader role in delivering an impartial and independent electoral system for eligible voters.

The AEC is committed to investigating, and where appropriate, enforcing penalties for potential breaches of the authorisation scheme.

2. The authorisation scheme – framework and penalties

Relevant legislation

The communication of certain electoral matter and referendum matter is regulated by:

- [Part XXA of the Electoral Act](#)
- [Part IX of the Referendum Act](#)
- The [Commonwealth Electoral \(Authorisation of Voter Communication\) Determination 2021](#) (the Determination).

This policy provides an overview of those requirements. However, this overview is not exhaustive.

The communication of broadcast electoral matter and referendum matter is governed by:

- [Australian Broadcasting Corporation Act 1983](#)
- [Broadcasting Services Act 1992](#)
- [Special Broadcasting Service Act 1991](#).

Electoral communications that need to be authorised

Certain communications of 'electoral matter' are required to contain an authorisation message. 'Electoral matter' is defined by [section 4AA of the Electoral Act](#) to be matter communicated or intended to be communicated for the dominant purpose of influencing the way electors vote in a

federal election. More information on the definition of electoral matter can be found in the [Electoral Matter and Electoral Expenditure Fact Sheet](#).

[Section 321D](#) of the Electoral Act requires a communication of electoral matter to be authorised where:

- the matter is an electoral advertisement that was approved by a person, and all or part of the distribution or production of the advertisement was paid for; or
- the content of the matter was approved by a person, and it forms part of a sticker, fridge magnet, leaflet, flyer, pamphlet, notice, poster or how-to-vote card; or
- the matter is communicated by, or on behalf of, a [disclosure entity](#).

Note that there are exceptions for certain communications, which are set out in the Electoral Act and explained in the [Electoral Backgrounder](#). There are also exceptions to what is considered 'electoral matter', for the purposes of s 4AA of the Electoral Act. See the [Electoral Matter and Electoral Expenditure Fact Sheet](#) for more information.

If a communication of electoral matter needs to be authorised, the content of the authorisation message is governed by the table at [s 321D\(5\)](#) of the Electoral Act. There are also requirements for the legibility and prominence of the authorisation message, which are set out in [Part 3 of the Determination](#).

Referendum communications that need to be authorised

Similar authorisation requirements apply to referendum communications, with some modifications to reflect the differences between a referendum and an election.

Certain communications of 'referendum matter' are required to contain an authorisation message. 'Referendum matter' is defined by section 3AA(1) of the Referendum Act to be 'matter communicated or intended to be communicated for the dominant purpose of influencing the way electors vote at a referendum'.

Section 110C of the Referendum Act requires the communication of referendum matter to be authorised where:

- the matter is a referendum advertisement that was approved by a person, and all or part of the distribution or production of the advertisement was paid for; or
- the content of the matter was approved by a person, and it forms part of a sticker, fridge magnet, leaflet, flyer, pamphlet, notice, poster or how-to-vote card; or
- the matter is communicated by, or on behalf of, a disclosure entity.

As with electoral communications, there are exceptions in the definition of referendum matter in s 3AA of the Referendum Act and in the authorisation requirements in s 110C.

There are also requirements for the legibility and prominence of the authorisation message, which are set out in [Part 3 of the Determination](#).

Restrictions on foreign campaigners

Foreign individuals and entities are restricted from campaigning in federal elections and referendums and from communicating electoral matter and referendum matter that is required to be authorised. 'Foreign campaigner' is defined at section 287AA of the Electoral Act to include foreign persons and entities that do not have a legitimate connection with Australia. Penalties apply for breaches of the authorisation restrictions on foreign campaigners.

Information-gathering powers

Section 321F of the Electoral Act and section 110E of Referendum Act provide the Electoral Commissioner information-gathering powers to assess compliance or investigate potential breaches of the authorisation requirements. As part of an investigation, the Electoral Commissioner may issue a notice to require a person or entity to provide relevant information or documents relating to compliance with the authorisation requirements.

Injunctions, enforceable undertakings and penalties

Injunctions

The AEC may apply to the Federal Court of Australia for an injunction to restrain a person from engaging in conduct in breach of the Electoral Act (s 383) or Referendum Act (s 139).

The Electoral Commission may apply to the Federal Court for an injunction to prevent a breach or restrain a person from further breaching the authorisation requirements for an election or referendum.

At a federal election, a candidate may also apply for an injunction to restrain a person from engaging in conduct in breach of the Electoral Act (s 383).

Enforceable undertakings

The AEC may agree to an enforceable undertaking with a person or entity who has breached the civil penalty provisions in the Electoral Act or Referendum Act rather than apply to a court to impose a civil penalty. An enforceable undertaking is a legally binding agreement that may be entered into to resolve non-compliance or improve compliance with the Electoral Act or Referendum Act.

Enforceable undertakings are published on the [Transparency Register](#) on the AEC's website.

Civil penalties

The AEC may apply to a court to impose a civil penalty on a person or entity who fails to properly authorise the communication of electoral matter or referendum matter.

The Electoral Act establishes civil penalties for the following breaches of authorisation requirements:

- failure to include notifying particulars on certain electoral matter: **120 penalty units** (s 321D(5))
- breaching the prohibition on foreign campaigners authorising electoral matter: **120 penalty units** (s 321DA(1)).

The Referendum Act establishes similar civil penalties for breaching the referendum authorisation requirements:

- failure to include notifying particulars on certain referendum matter: **120 penalty units** (s 110C(5))
- breaching the prohibition on foreign campaigners authorising referendum matter: **120 penalty units** (s 110CA(1)).

From 1 July 2023, the value of one penalty unit is **\$313**. For corporations, s 82 of the *Regulatory Powers (Standard Provisions) Act 2014* provides that a court may impose a penalty of 5 times the civil penalty specified.

Referral of criminal matters

Part XXI of the Electoral Act and Part X of the Referendum Act establish criminal offences, including the offence of printing, publishing or distributing matter likely to mislead an elector in relation to casting a vote (s 329 of the Electoral Act and s 122 of the Referendum Act).

The AEC may refer potential breaches of criminal offence provisions of the Electoral Act and Referendum Act to the Australian Federal Police for further investigation and action.

3. Enforcement of authorisation requirements

How authorisations matters may come to the AEC's attention

The AEC uses all available resources to maintain an awareness of electoral and referendum communications that may need to be authorised. The AEC works with its stakeholders to monitor electoral and referendum matter and address any potential breaches of the authorisation requirements. Potential non-compliance with the authorisation scheme may come to the AEC's attention via:

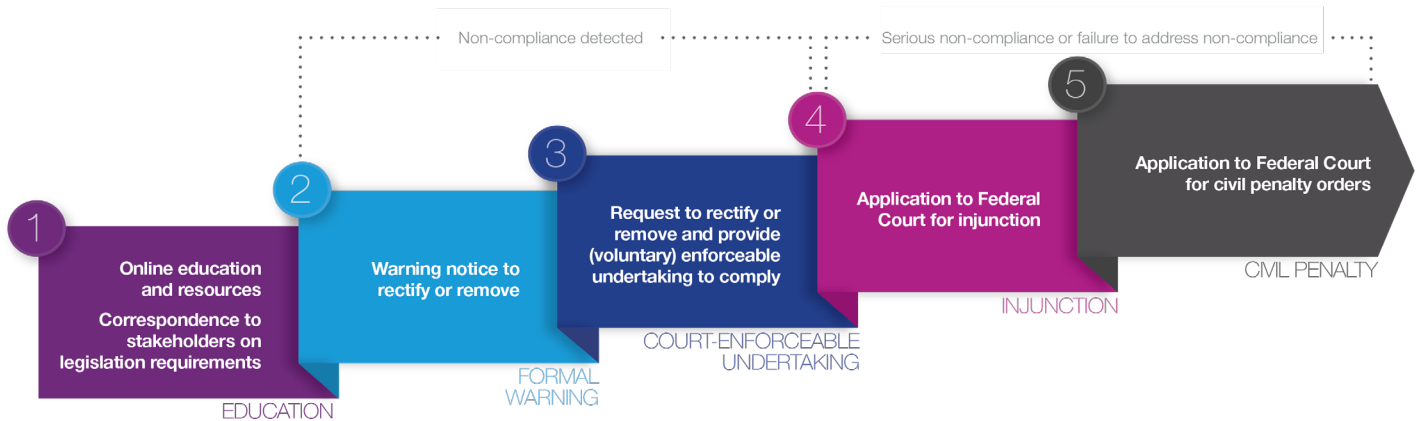
- state and federal police
- referrals from other government departments
- tipoffs from the public via the AEC's [online complaints and feedback forms](#)
- direct contact with the AEC's Authorisation Section
- the AEC's social media presence (for example, [Twitter](#))
- engagement with social media companies
- engagement with state electoral commissions
- monitoring and anti-avoidance programs.

The AEC's [Complaints Management Policy](#) provides more information on the management of complaints from the public, including tipoffs.

If the AEC is notified of an authorisation matter via public tipoff, an outcome of any investigation or regulatory action may not be provided to the person that lodged the tipoff.

If an authorisation matter comes to the AEC's attention and is outside of the AEC's jurisdiction (for example, it relates to a state election), the AEC will refer it to the relevant authority for investigation.

How the AEC ensures compliance with the authorisation scheme



The AEC seeks to achieve compliance with the authorisation scheme by:

- providing information on the AEC website to educate and promote awareness of authorisation requirements under Commonwealth legislation
- monitoring information in the public domain to determine whether an individual or entity may have an obligation to authorise electoral matter or referendum matter
- encouraging reporting of potential breaches of the authorisation scheme via the online complaints and feedback forms
- investigating potential breaches of the authorisation requirements
- sending information, and where required, warning letters, to stakeholders that are communicating electoral matter or referendum matter
- seeking injunctions, enforceable undertakings and civil penalties against persons and entities that are non-compliant with the authorisation requirements.

Priorities for enforcement

The authorisation schemes require a broad range of communications containing electoral matter or referendum matter to be authorised. This includes, but is not limited to:

- television and radio advertisements
- social media content
- how-to-vote cards
- flyers and leaflets
- stickers and fridge magnets.

The AEC addresses all breaches of the authorisation requirements. However, as the AEC states in the [Authorisation Backgrounder](#), while compliance with the law is important at all times, some breaches of an authorisation scheme are more serious than others. For example, a technical breach of incomplete information being included in an authorisation message may be less serious than a breach that involves a printed flyer campaign that is distributed without an authorisation message.

The AEC is also required to determine where its resources are best used in the circumstances. Where possible, the AEC will take an educative approach to pre-empt any potential breaches of the authorisation requirements.

Where an educative approach is not effective in addressing breaches of the authorisation scheme, the AEC will prioritise enforcement involving:

- anonymous communications
- paid communications, including social media advertisements
- misleading communications
- print media.

Actions the AEC may take

The AEC reserves the right to take any available action described in the diagram on page 8 to enforce the authorisation requirements.

The AEC may vary its approach to enforcing the authorisations requirements based on the seriousness of the breach and any other relevant circumstances (see the AEC's enforcement priorities above).

If the AEC becomes aware of a communication containing electoral matter or referendum matter that is not properly authorised, the AEC will take one or more of the following actions:

Actions
Review and investigation: <i>Review of the communication</i> The AEC reviews the communication to determine if it is compliant with the authorisation requirements. If the communication is compliant, the AEC will take no further action. If it is outside of the AEC's jurisdiction, the AEC will refer it to the relevant state electoral commission or other body, as appropriate. The AEC will acknowledge receipt of an authorisation complaint/enquiry within 1 – 2 days of receipt. <i>Investigation</i> If the AEC needs more information to determine if the communication meets the authorisation requirements or who is responsible for the communication, it will investigate. The AEC may send a notice (under s 321F of the Electoral Act or s 110E of the Referendum Act) to a person or entity to request information and/or documents relevant to assess compliance.
If non-compliance detected: <i>Warning letter issued to notifying person or entity</i> If the communication is not compliant with the authorisation requirements, depending on the seriousness of the non-compliance, the AEC may issue a warning letter notifying the person or entity who approved the communication that it is in breach of the legislation. The letter will require the communication to be amended to include a proper authorisation message or be removed. <i>Enforceable undertaking</i> If the communication is not amended to include an appropriate authorisation or removed following a warning, the AEC may seek to enter an enforceable undertaking with the person or entity to prevent further non-compliance.

Actions
Serious non-compliance detected or failure to address non-compliance:
<i>Request removal from social media</i> The AEC may ask a social media company to remove an unauthorised electoral or referendum communication on social media if the communication is not amended to include an appropriate authorisation or removed following a warning, or a responsible person or entity cannot be identified or contacted to amend the communication.
<i>Injunction</i> The AEC may seek an injunction in the Federal Court of Australia (s 383 of the Electoral Act or s 139 of the Referendum Act), if the communication is not amended or withdrawn following a warning, and/or the AEC considers there may be time sensitivities.
<i>Application to a court for civil penalties or to enforce an enforceable undertaking</i> The AEC may apply to the Federal Court of Australia: • to impose civil penalties, and/or • to enforce an enforceable undertaking.

4. Further information

- [Electoral Backgrounder: Electoral Communications and Authorisation Requirements](#)
- [Electoral Matter and Electoral Expenditure Fact Sheet](#)
- [AEC Complaints Management Policy](#)
- [Authorisations - Referendum Flowchart](#) and [Election Flowchart](#)
- [Compliance and Enforcement Activities](#)