
The Parliament of the Commonwealth of Australia

The 2016 Federal Election

Interim Report on the authorisation of voter communication

Joint Standing Committee on Electoral Matters

December 2016
Canberra

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Chair's foreword

The right to freedom of speech and the right to communicate campaign messages are cornerstones of all modern western democracies and underpins our own unique Australian democracy. It is a right that should be enjoyed by all Australians and it must be protected. Every Australian must be confident that their voices have been heard in our electoral system and that all parties have acted within the rules.

Authorisation requirements for electoral material are longstanding and well understood by political participants. They were included in the earliest Commonwealth electoral law in 1902, and this inquiry has reaffirmed the principles on which these laws were founded. However, this inquiry has identified that the current *Commonwealth Electoral Act 1918* has not kept pace with the rapid technological changes in methods of communication resulting in the emergence of loopholes within the Act.

This interim report specifically addresses the application of provisions requiring authorisation of electoral material to all forms of communication to voters in line with 1(a) of the terms of reference.

The principles of accountability, traceability and consistency of authorising all electoral material remains essential as it provides clear context for the message and allows voters to have confidence in the message or position contained in that electoral material. It also reassures voters that those disseminating electoral material into the public domain are accountable. It is one of the most important checks and balances built into our electoral system to ensure integrity and accountability for campaigning in our democratic process.

Many submitters and witnesses to this inquiry provided evidence that the current rules are insufficient to cope with the evolution in communications technology, resulting in electoral material communicated through new mediums not subject to authorisation requirements.

The 2016 Federal election saw concerns raised regarding authorisation of election material and subsequently questions have been asked about whether the current legislation is able to effectively address the modern techniques used in political campaign strategies of the 21st century.

The Committee identified three core principles that underpin current electoral laws and must be extended to cover all forms of emerging communication:

1. Accountability – parties and other participants should be held to account and be responsible for their political statements;
2. Traceability – those who authorise electoral materials should be identifiable and traceable for enforcement and other purposes; and
3. Consistency – in the application of the rules and requirements to all electoral material.

These three core principles has guided the Committee in forming the six recommendations found at page xiii.

Amendments based on the three core principles will add to a fairer electoral system that does not impact the capacity of candidates, parties and other political participants to make their points, and for electors to be so informed.

Lastly, on behalf of the Committee, I want to acknowledge and place on record my appreciation and thanks to the Committee Secretariat: Julia Agostino, Rebecca Gordon, David Monk, Andrew Gaczol, Katrina Gillogly, and the AEC technical advisor, Nick Parsons for their hard work and efforts during the conduct of the inquiry to date.

My sincere thanks to Mr Andrew Giles MP, Deputy Chair of the Committee for his bi-partisan commitment to electoral reform and also to all participating committee members for their significant engagement and commitment to this inquiry.

Senator Linda Reynolds CSC
Chair



Membership of the Committee

Chair Senator Linda Reynolds

Deputy Chair Mr Andrew Giles MP

Members Mr Scott Buchholz MP

Senator Carol Brown (to 1/12/16)

Mr Milton Dick MP

Senator Chris Ketter

Mr Ben Morton MP

Senator Barry O'Sullivan

Mrs Lucy Wicks MP

Senator Lee Rhiannon

Senator Lisa Singh (from 1/12/16)

Participating members for the purpose of the inquiry

Senator the Hon Eric Abetz

Senator Chris Back

Senator Cory Bernardi

Senator Catryna Bilyk

Senator David Bushby

Senator the Hon Doug Cameron

Senator the Hon Kim Carr

Senator the Hon Jacinta Collins

Senator Sam Dastyari

Senator Richard Di Natale

Senator Jonathon Duniam

Senator the Hon Don Farrell

Mr David Fawcett

Senator Alex Gallacher

Senator Sarah Hanson-Young	Senator Derryn Hinch
Senator Jane Hume	Senator David Leyonhjelm
Senator Sue Lines	Senator Scott Ludlam
Senator the Hon Ian Macdonald	Senator Gavin Marshall
Senator Jenny McAllister	Senator Malarndirri McCarthy
Senator Bridget McKenzie	Senator Nick McKim
Senator Claire Moore	Ms Deborah O'Neill
Senator James Paterson	Senator Helen Polley
Senator Louise Pratt	Senator Janet Rice
Senator Rachel Siewert	Senator Dean Smith
Senator Glenn Sterle	Senator Anne Urquhart
Senator Larissa Waters	Senator Murray Watt
Senator Peter Whish-Wilson	Senator John Williams
Senator the Hon Penny Wong	

Committee Secretariat

Secretary	Ms Julia Agostino (from 28/11/16) Ms Rebecca Gordon (to 25/11/16)
Inquiry Secretary	Mr David Monk
Technical Advisor	Mr Nick Parsons
Senior Research Officer	Dr Andrew Gaczol
Administrative Officer	Ms Katrina Gillogly



Terms of reference

That the following matters be referred to the Joint Standing Committee on Electoral Matters for inquiry and report:

1. All aspects of the 2016 Federal election and matters related thereto, and without limiting the scope of the committee's inquiry, with particular reference to:
 - 1a. The application of provisions requiring authorisation of electoral material to all forms of communication to voters;
 - 1b. The potential applicability of 'truth in advertising' provisions to communication to voters including third-party carriage services;
 - 1c. The options available to Parliament to ensure consistent application of disclosure rules to and the regulation of all entities undertaking campaign activities; and,
 - 1d. The potential application of new technology to voting, scrutiny and counting, with particular reference to its application to remote voting, ADF personnel on deployment and supporting vision-impaired voters.
2. The extent of donations and contributions from foreign sources, persons, entities and foreign-owned subsidiaries to political parties, associated entities and other third parties and entities undertaking campaign activities, and the options available to Parliament to regulate these.
3. The current donations, contributions, expenditure and disclosure regime, its application and timeliness and alternative approaches available to Parliament.
4. The extent to which fundraising and expenditure by third parties is conducted in concert with registered political parties and the applicability and utilisation of tax deductibility by entities involved in campaign activities.

5. Any matters related to the terms outlined above.

In considering these matters, the Committee is encouraged to consider previous inquiries and reports of past committees, regulatory developments implemented by States and Territories and recent determinations of the High Court with respect to these.

The Committee is requested to provide a report in respect of item 1a by December 1, 2016, and item 2 by March 3, 2017.



List of abbreviations

ACMA	Australian Communications and Media Authority
ADMA	Association for Data-Driven Marketing and Advertising
AEC	Australian Electoral Commission
ALP	Australian Labor Party
ALRC	Australian Law Reform Commission
AMTA	Australian Mobile Telecommunications Association
SMS	Short message service



List of recommendations

Recommendation 1

The Committee recommends that the Act is amended to specifically and explicitly address the matter of authorisation of electoral materials to ensure that:

- parties and other participants should be held to account and be responsible for their political statements;
- those who authorise electoral materials should be identifiable and traceable for enforcement and other purposes; and
- there is consistency in the application of the rules and requirements to all electoral material.

Recommendation 2

The Committee recommends that the *Commonwealth Electoral Act 1918* be amended to include a separate part/ division addressing authorisations, and that the requirements should be clear, concise and easy to navigate.

Recommendation 3

The Committee recommends that an objects clause is included into the *Commonwealth Electoral Act 1918* to complement and strengthen existing legislation.

Recommendation 4

The Joint Standing Committee on Electoral Matters conduct further inquiry and make recommendations in early 2017 regarding the issues of impersonating a Commonwealth officer and Commonwealth entity.

Recommendation 5

The Committee recommends that the government ensures consistency between all other relevant legislation and the *Commonwealth Electoral Act 1918* in relation to authorisation of electoral advertising.

Recommendation 6

The Committee recommends that authorisation requirements in line with the principles of accountability, traceability and consistency should, as far as reasonably possible, not interfere with the purpose of the communication, which is to communicate with electors.