



Electoral Law Authorisation Guidelines

For Australian Government agencies in relation to the requirements in electoral laws that apply to advertising, promotional or information products

Updated August 2013 (Governance and Resource Management Group)

Electoral Law Authorisation Guidelines

The purpose of these guidelines is to assist Australian Government agencies to understand how authorisation and other requirements in Commonwealth, State or Territory electoral laws apply to Government advertising, promotional or information products, and website/ internet materials.

The guidelines outline the electoral law authorisation requirements for:

- Australian Government campaign advertising;
- other Australian Government advertising (other than campaign advertising), promotional or information products (other than material on the internet); and
- Australian Government websites and material on the internet.

Senate F&PA Committee

Tabled Document

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Organisation: AEC

Australian Government campaign advertising

Federal Electoral Law Requirements: *Commonwealth Electoral Act 1918 and the Referendum (Machinery Provisions) Act 1984*

- Campaign advertising is governed by the *Guidelines on Information and Advertising Campaigns by Australian Government Departments and Agencies* (published March 2010). The Government has agreed that campaign advertising will include an authorisation.

Form of authorisation for campaign advertising:

- For campaign advertisements published in newspapers:
 - on part or the whole of a single page (ss 328(1) of the Commonwealth Electoral Act and ss 121(1) of the Referendum (Machinery Provisions) Act):

Authorised by the Australian Government, Capital Hill, Canberra.

- on part or the whole of two opposing pages, the authorisation must be at the end of both pages (ss 328(1AB) of the Commonwealth Electoral Act and ss 121(1AB) of the Referendum (Machinery Provisions) Act).
- For all other campaign advertising (other than on T-shirts, lapel buttons and badges, pens, pencils, balloons, or letters and cards that already bear the name and address of the sender):

Authorised by the Australian Government, Capital Hill, Canberra. Printed by [insert name and place of business of printer (including the full street address of the printer)].

- An advertisement in a journal (i.e. a newspaper, magazine or other periodical, whether published for sale or for distribution without charge) must also have the word “advertisement” in letters not smaller than 10 point in the headline to the advertisement (s 331 of the Commonwealth Electoral Act and s 124 of the Referendum (Machinery Provisions) Act). If the ad takes up two pages the word must be on each page.

State and Territory Electoral Law Requirements:

- The authorisation required to satisfy the Commonwealth Electoral Act will satisfy State and Territory electoral law requirements.

Other Australian Government advertising (other than campaign advertising), promotional or information products (other than material on the internet)

Federal Electoral Law Requirements:
Commonwealth Electoral Act 1918 and the
Referendum (Machinery Provisions) Act 1984

Which other advertising, promotional or information products will require an authorisation:

- Material that can be characterised as an advertisement, handbill, pamphlet, poster or notice may be caught.
- This may include:
 - advertising other than campaign advertising (e.g. signage or ATO advertising about tax returns);
 - promotional products (e.g. water bottles, temporary tattoos, stickers, stress balls, frisbees, coffee cups, stationery (other than pens and pencils), golf balls, satchels, bags, backpacks, clothing (other than T-shirts), caps, hats, fridge magnets, puzzles, bookmarks, mobile phone stickers, sun protection products, mouse mats, calendars, lanyards, USBs, key rings, wristbands, business card holders and branded sweets); and
 - information products (e.g. plaques, brochures, booklets, posters, fact sheets and letters).
- However, an authorisation will only be required if the advertising, promotional or information products are intended or likely to affect voting in an election or relate to a referendum and are intended or calculated to affect the result of a referendum. This will necessarily require some connection between the products and a federal election, a by-election or a referendum. In the context of Australian Government advertising, promotional or information products the necessary

State and Territory Electoral Law Requirements:

Which other advertising, promotional or information products will require an authorisation:

- Advertising, promotional or information products will not be caught by ACT or SA electoral laws regulating State elections, or by NT, SA or WA electoral laws regulating local government elections.
- Generally, for any of the remaining State or Territory electoral laws to apply, it will be necessary to establish some connection between the advertising, promotional or information products and a State, Territory or local government election. In the context of Australian Government advertising, promotional or information products the necessary connection may exist if the product, for example, refers to:
 - the State, Territory or local government (or 'Australian Government' in Vic and Tas);
 - matter that is likely to be a State, Territory or local government election issue (this will depend on the particular election);
 - a joint Australian Government/State, Territory or local government project or program; or
 - a website address reflecting the name of a particular joint Australian Government/State, Territory or local government project or program, particularly if the material contains an 'aspirational', adjectival or issues based statement.
- However, the risk of the material being caught may vary between States and depend on the time in the electoral cycle

connection may exist if the product, for example, refers to:

- the Australian Government or a State or Territory Government;
 - matter that is likely to be an election issue;
 - a particular Australian Government project or program;
 - a particular proposed constitutional change; or
 - a website address reflecting the name of a particular project or program, particularly if the product contains an ‘aspirational’, adjectival or issues based statement (e.g. Nation Building – Economic Stimulus Plan (NB-ESP) material).
- The placement of signage may also guide whether an authorisation is required (e.g. Government signage placed in or around a likely polling booth such as the Building the Education Revolution NB-ESP signage at schools requires an authorisation).
 - However, material that merely refers to the ‘Australian Government’ but has no connection to a federal election or a referendum would not require authorisation. It would be reasonable to conclude that the following material would not be caught:
 - wholly administrative material, which simply contains information or instructions about existing rights, obligations or processes (e.g. information relating to how to apply for an Australian Government benefit or submit tax returns, requests for tenders, signage at an airport indicating what can be taken on a plane);
 - material which sets out uncontroversial factual information of an ongoing nature would be unlikely to be electoral matter or relate to a referendum (e.g. position vacant advertisements, agency annual financial reports, advertisements by a national institution regarding a new exhibition, or

when it is printed, published or distributed. Whether advertising, promotional or information products are caught by the remaining State and NT electoral laws, and require authorisation, will ultimately depend on the particular State or Territory electoral law and the circumstances of the State, Territory or local government election.

- Advertising, promotional or information products that merely refer to the ‘Australian Government’ or a ‘State, Territory or local government’ but has no connection to a State, Territory or local government election would not require an authorisation. As with the requirements in the Commonwealth Electoral Act, it is reasonable to conclude that the following kind of material would not be caught:
 - wholly administrative material, which simply contains information or instructions about existing rights, obligations or processes (e.g. information relating to how to apply for an Australian Government benefit or signage at an airport indicating what can be taken on a plane);
 - material which sets out uncontroversial factual information of an ongoing nature, and which is appropriately placed (e.g. an agency’s annual financial reports or a plaque/signage on a building indicating who owns or opened the building); and
 - material which has been available for distribution since before the last general election (e.g. Black Spot Program or Road to Recovery signage).
- Vic, Qld, WA, SA and Tas State electoral laws and Vic and Qld local government electoral laws contain exceptions to authorisation requirements similar to the provisions in the Commonwealth Electoral Act (e.g. T-shirts, lapel buttons, lapel badges, pens, pencils, balloons do not require authorisations).

a plaque/signage on a building indicating who owns or opened the building); and

- material which has bipartisan support (i.e. the Government is continuing to promote or provide information that was provided by a previous government, e.g. Black Spot Program or Road to Recovery signage). The exception would be a referendum issue which has bipartisan support.

- The authorisation requirements also do not apply to:
 - T-shirts, lapel buttons, lapel badges, pens, pencils or balloons (ss 328(3) of the Commonwealth Electoral Act);
 - advertisements in a newspaper regarding the holding of a meeting (ss 328(5) of the Commonwealth Electoral Act);
 - car stickers, T-shirts, lapel buttons, lapel badges, pens, pencils or balloons in relation to a referendum (ss 121(3) of the Referendum (Machinery Provisions) Act); or
 - other prescribed articles (currently no other articles are prescribed).
- As noted above, campaign advertising is governed by the *Guidelines on Information and Advertising Campaigns by Australian Government Departments and Agencies*.

At what time will other advertising, promotional or information products require an authorisation (assuming an authorisation is required):

- Advertising, promotional or information products that require an authorisation should be authorised at all times. However:
 - there is generally a low risk of infringement if the relevant material does not have an authorisation affixed before writs are issued for a federal election or a by-election, or before the

At what time will other advertising, promotional or information products require an authorisation (assuming an authorisation is required):

Generally:

- Adding authorisations to material at the time the material is printed and distributed will satisfy the authorisation requirements in all State and Territory electoral laws.

Specifically:

- NSW, Vic and WA electoral laws regulating State elections, and Vic electoral laws regulating local government elections, require relevant material to be authorised at all times.
- Tas and Qld electoral laws regulating State elections, and NSW and Qld laws regulating local government elections require relevant material to be authorised from the time writs are issued until the close of polling.
- NT electoral laws regulating Legislative Assembly elections require relevant material to be authorised during the period from the issue of the writ and the date the writ is returned.
- Tas electoral laws regulating local government elections require relevant material to be authorised for the period from the issue of the notice of the election until the closing day noted in that notice.
- NSW also requires electoral and promotional material distributed on election day to be registered. Signage that remains in place and can be viewed by the public on polling day would not amount to a distribution of the signage. However, signage that is erected on polling day could amount to a distribution and should be registered.

Form of authorisation:

*Authorised by the Australian Government, Capital Hill, Canberra.
Printed by [insert name and place of*

passage by the Parliament of a constitutional alteration bill (noting that relevant material must be authorised once the writs have been issued for a referendum);

- once the writs have been issued for a federal election, the relevant material must contain an authorisation;
- during a federal by-election(s), appropriate authorisations must be affixed to relevant material in, or in the vicinity of, the relevant electorate(s); and
- relevant material must contain an authorisation once the writs for a referendum have been issued.

- Adding the authorisation at the time the material is printed and placed will ensure compliance with the authorisation requirements.

Form of authorisation:

- For advertisements published in newspapers:

Authorised by the Australian Government, Capital Hill, Canberra.

- For all other advertising, promotional or information products:

Authorised by the Australian Government, Capital Hill, Canberra. Printed by [insert name and place of business of printer (including the full street address of the printer)].

- Although there is no requirement that the authorisation needs to be of a particular size, for signage the authorisation should be reasonably legible and accord with relevant signage industry practice.
- An advertisement in a journal (i.e. a newspaper, magazine or other periodical, whether published for sale or for distribution without charge) must also have the word “advertisement” in letters not smaller than 10 point in the headline to the advertisement (s 331 of the

business of printer (including the full street address of the printer)].

Distribution requirements on polling day for material caught by State or Territory authorisation requirements:

- On polling day for a Tas State election, any printed or promotional material that can be characterised as an advertisement, handbill, pamphlet, poster or notice cannot be distributed.
- On polling day for a Vic State or local government election, any printed or promotional material that can be characterised as an advertisement, handbill, pamphlet, poster or notice cannot be distributed within 400m of the entrance of a voting centre.
- In NSW printed material that can be characterised as a handbill, pamphlet or notice cannot be distributed in a public place on polling day unless it is registered.

Placement requirements on polling day for signage caught by State or Territory electoral laws:

- Meeting the placement requirements for the Commonwealth Electoral Act will generally satisfy the requirements of State and Territory electoral laws.
- However, the following additional State and NT placement requirements apply:
 - For NSW local government elections, signage that exceeds 8,000 square centimetres on display in an area within the grounds of an enclosure in which a building is being used for polling is situated, including anywhere on the outer wall, fence or other boundary of the grounds, should be covered.
 - For NT Legislative Assembly elections, signage cannot be within 10 metres of the entrance of a polling place on polling day.
 - Qld and SA State electoral laws

Commonwealth Electoral Act and s 124 of the Referendum (Machinery Provisions) Act). If the ad takes up two pages the word must be on each page.

Placement requirements on polling day for signage caught by the Commonwealth Electoral Act (s 340) and the Referendum (Machinery Provisions) Act (s 131):

- Signage must be located no closer than 6 metres (from the edge of the sign) to the edge of an entrance to a building in which a polling booth is located.
- If a polling booth is in a building situated in an enclosed ground (e.g. a fully-fenced school), the Divisional Returning Officer may declare that the entire grounds are part of the polling booth. In this case, the signage must not be situated anywhere within the grounds and must be no closer than 6 metres (from the edge of the sign) to the edge of any entrance (e.g. a gate) to the grounds.
- If signage at a polling booth is closer than 6 metres to an entrance to the polling booth (or the enclosed grounds in which a polling booth is located), it must be removed, repositioned or covered.

apply not only on polling day, but also on other days where voting takes place e.g. pre-poll voting. However, if the signs are positioned more than 6 metres from an entrance to any polling booth, these additional State electoral requirements will be satisfied.

Australian Government websites and material on the internet

Federal Electoral Law Requirements:
Commonwealth Electoral Act 1918 and the *Referendum (Machinery Provisions) Act 1984*

Which material on the internet will require an authorisation:

- Generally the authorisation requirement in s 328A of the Commonwealth Electoral Act and s 121A of the Referendum (Machinery Provisions) Act will not apply to Australian Government websites.
- Authorisations are required for material published on the internet that:
 - can be characterised as an ‘electoral

State and Territory Electoral Law Requirements:

Which material on the internet will require an authorisation:

- It is unlikely that material on Australian Government websites will be caught by ACT, NSW, NT or WA electoral laws relating to elections in those States or Territories, or by NSW, NT, SA or WA electoral laws regulating local government elections.
- Vic, Qld, SA or Tas electoral laws will only apply to material on an Australian Government website if there is a connection between the material and the

advertisement’;

- is intended to affect voting in a federal election;
 - is intended or calculated to affect the result of a referendum; and
 - a person has paid for the publication of the material on the internet (payment for the production of the advertisement will not be enough).
- This requirement is unlikely to catch material on an Australian Government website because there will not be a relevant payment for the publication of the material on the website (even if the material is otherwise characterised as an ‘electoral advertisement’ that is ‘intended to affect voting in a federal election’).
 - Australian Government material on the internet will only require an authorisation if:
 - the Australian Government pays for the publication of an advertisement (e.g. on a news provider’s website) that is intended to affect voting in a federal election (s 328A of the Commonwealth Electoral Act) or is intended or calculated to affect the result of a referendum (s 121A of the Referendum (Machinery Provisions) Act); or
 - an ‘electoral video recording’ is placed on the internet being a video recording that contains electoral matter (ss 328(1A) of the Commonwealth Electoral Act) (the same considerations for determining whether non-internet advertising, promotion and information products contain electoral matter (see above) are relevant to considering whether a video recording contains electoral matter); and
 - a ‘video recording’ that is intended or calculated to affect the result of a referendum is placed on the internet (ss 121(1A) of the Referendum (Machinery Provisions) Act).
- relevant State or local government election. The necessary connection may exist if the material, for example, refers to:
- the State, Territory or local government (or the ‘Australian Government’ in Tas and Vic);
 - matter that is likely to be a State, Territory or local government election issue (this will depend on the particular election); or
 - a joint Australian Government/State, Territory or local government project or program; particularly if the material on the website contains an ‘aspirational’, adjectival or issues based statement.
- However, whether internet material will require an authorisation under Vic, Qld, SA or Tas electoral laws will vary between States and will depend on the circumstances of the State, Territory or local government election.
 - Material that merely refers to the ‘Australian Government’, ‘State or Territory Government’ or ‘local government’ but has no connection to a State, Territory or local government election would not require an authorisation. It would be reasonable to conclude that the following material would not be caught:
 - wholly administrative material, which simply contains information or instructions about existing rights, obligations or processes (e.g. information relating to how to apply for an Australian Government benefit);
 - material which sets out uncontroversial factual information of an ongoing nature, and which is appropriately placed (e.g. an agency’s annual financial reports); or
 - material which has been on the Australian Government website from before the last Federal, State or local government election.

Form of authorisation:

Authorised by the Australian Government, Capital Hill, Canberra.

At what time will the material require an authorisation (assuming an authorisation is required):

- Vic electoral laws regulating State elections, and Vic electoral laws regulating local government elections, require signage to be authorised at all times.
- SA, Tas and Qld electoral laws regulating State elections, and Qld laws regulating local government elections require signage to be authorised from the time writs are issued until the close of polling.
- Tas electoral laws regulating local government elections require signage to be authorised for the period from the issue of the notice of the election until the closing day noted in that notice.

Form of authorisation:

- Material on an Australian Government website that is likely to be caught by State and Territory electoral laws, should include the following authorisation:

Authorised by the Australian Government, Capital Hill, Canberra.

