

Standing Committee on Finance and Public Administration

ANSWER TO QUESTION ON NOTICE

Budget Estimates Hearing – May 2008

Finance and Deregulation Portfolio

Australian Electoral Commission



Outcome 2, Output 2.1.1

Topic: Authorisation of electoral matter

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Senator Ronaldson asked:

The requirements for the authorisation of electoral material raising electoral matters is well known, but there may be some areas where material falls within gaps in the law or its common interpretation, are the following items required to be authorised:

- (a) An invitation extended to branch members of a political party for a public meeting?
- (b) An invitation extended to branch members of a political party for a private meeting?
- (c) An invitation extended to employees of a company or individuals not being a member of a political party to attend a fundraiser?
- (d) A community related newsletter informing electors of the activity of the local Member or Senator?
- (e) A fridge magnet sent to electors informing them of emergency phone numbers?
- (f) A writing pad in the form of a shopping list with a Member or Senators face and or contact details on it?
- (g) A pen with a Member or Senators name on it?
- (h) A reusable shopping bag that has the name, face or slogan of a local member or senator on it?
- (i) A paper show bag that has the name, face or slogan of a local member or senator on it?
- (j) A poster containing information about local services within a Member electorate or a Senators state?
- (k) Greeting cards?
- (l) Christmas cards from a Member or Senator?
- (m) Personalised stationary for Members and Senators – including letterhead, with complement slips and note pads?
- (n) Mouse pads with a Member or Senator's name, contact details and or slogan?
- (o) Email newsletters?

Answer:

The specific examples raised in these questions do not always contain sufficient details for the AEC to be able to provide advice on whether or not they require the inclusion of authorisation details because of the operation of either section 328 or 328A of the Electoral Act. However, the following information is provided along with the reasoning processes applied by the AEC in dealing with such matters.

(a) If the invitation is contained in a letter that is sent by letter on a letterhead that sets out the name and address of the sender, then paragraph 328(3)(c) of the Electoral Act would apply so that there is no requirement for any authorisation details to be included.

Unless the contents of the invitation could be categorised as “*an electoral advertisement, handbill, pamphlet, poster or notice*”, then no authorisation obligation exists under subsection 328(1) of the Electoral Act. The definition of this phrase includes an advertisement, handbill, pamphlet, poster or notice that “*contains electoral matter*” but excludes “*an advertisement in a newspaper announcing the holding of a meeting*”. Accordingly, an invitation in a newspaper of a public meeting does not attract the authorisation requirements.

The phrase “*electoral matter*” is a key element in the possible application of the authorisation requirements contained in subsection 328(1) of the Electoral Act to the contents of any printed material. This phrase is defined in subsection 4(1) of the Electoral Act to mean “*matter which is intended or likely to affect voting in an election*”. The inclusion of the term “*election*” means that the electoral matter must relate to a federal election.

Subsection 4(9) of the Electoral Act further amplifies the definition of “*electoral matter*” and provides that:

“Without limiting the generality of the definition of electoral matter in subsection (1), matter shall be taken to be intended or likely to affect voting in an election if it contains an express or implicit reference to, or comment on:

- (a) the election;*
- (b) the Government, the Opposition, a previous Government or a previous Opposition;*
- (c) the Government or Opposition, or a previous Government or Opposition, of a State or Territory;*
- (d) a member or former member of the Parliament of the Commonwealth or a State or of the legislature of a Territory;*
- (e) a political party, a branch or division of a political party or a candidate or group of candidates in the election; or*
- (f) an issue submitted to, or otherwise before, the electors in connection with the election.”*

Accordingly, a key matter is whether the contents of the invitation actually contain “*electoral matter*”. The absence of any details of the contents of the invitation means that it is not possible to provide a yes or no answer to this question.

(b) The answer to question (a) would also apply to this question. The fact of the invitation relating to a private meeting as opposed to a public meeting does not alter the key matters that would need to be examined.

(c) The answer to question (a) would also apply to this question. The fact of the invitation being addressed to employees of a company and persons who are not members of a political party does not alter the key matters that would need to be examined.

(d) The key matters in this question are the nature of the information contained in the newsletter and whether it could reasonably be regarded as being an “*electoral advertisement*” as opposed to un-sponsored journalist commentary about the activities. The inclusion of a reference to a Member or Senator means that prima facie the newsletter will contain “*electoral matter*”. However, in the absence of any detail on whether the information contained in the newsletter is an advertisement, means that it is not possible to provide a yes or no answer to this question.

(e) If the fridge magnets contain any information that could be regarded as falling within the definition of “*electoral matter*” then authorisation details would be required by subsection 328(1).

(f) The answer to question (e) would also apply to this question. The possible variation of the facts with a Member or Senator’s face alone on the writing pad will give rise to an examination of whether or not the writing pad can be said to contain “*electoral matter*” as the wording in subsection 4(9) of the Electoral Act refers to the matter containing “...*an express or implicit reference to, or comment on....*” a member of the Parliament.

(g) A pen on which is printed electoral matter is specifically exempted from the authorisation requirements by paragraph 328(3)(a) of the Electoral Act.

(h) The answers to questions (e) and (f) apply to this question.

(i) The answers to questions (e) and (f) apply to this question.

(j) The answer to question (e) applies to this question.

(k) This question does not describe the contents of the greeting cards. If the contents contain “*electoral matter*” then the greeting cards would be subject to the authorisation requirements of subsection 328(1) of the Electoral Act except for the specific exemption that is contained in paragraphs 328(3)(b) and (c). These two paragraphs exempt from the authorisation requirements for printed material containing electoral matter the following two categories:

“(b) *business or visiting cards that promote the candidacy of any person in an election for the Parliament; or*

(c) *letters and cards:*

(i) *that bear the name and address of the sender; and*

(ii) *that do not contain a representation or purported representation of a ballot-paper for use in an election for the Parliament;”*

(l) The answer to question (k) applies to this question.

(m) The answer to question (k) applies to this question.

(n) The answer to question (e) applies to this question.

(o) The publication of an “*electoral advertisement*” via the Internet is regulated by section 328A of the Electoral Act. Subsection 328A(1) of the Electoral Act provides that:

“(1) A person commits an offence if:

(a) either:

(i) the person publishes an electoral advertisement on the Internet; or

(ii) the person causes, permits or authorises an electoral advertisement to be published on the Internet; and

(b) the electoral advertisement is intended to affect voting in an election; and

(c) the electoral advertisement is paid for by the person or another person; and

(d) the name and address of the person who authorised the advertisement do not appear at the end of the advertisement.

Penalty: 10 penalty units.”

The word “*and*” appears at the end of each of paragraphs (a) to (d) therefore all of the above elements must exist for the authorisation requirements contained in this section to apply.