

## Authorising electoral material

*This fact sheet is accurate as at November 2023*

### Why does electoral material need to be authorised?

When people decide how to vote in an election, they are influenced by things they have heard, seen or read about the election, such as reports or comments on the issues, the candidates, the political parties, Members of the Legislative Assembly (MLA), the government and the opposition.

Even material not directly related to an election that, for example, relates to the performance of the government or a current MLA published years before the next election, might influence how a person will vote on election day.

To ensure that voters are able to judge the accuracy, balance and fairness of published electoral material, electoral laws require this material to identify the person or organisation responsible for writing or publishing the material. This usually means either printing an authorisation statement on the material, or otherwise clearly identifying who has published the material.

In other words, the authorisation rules are intended to prevent “irresponsibility through anonymity” – that is, making it unlawful to publish electoral material that does not identify the author so that voters are unable to judge whether the material is coming from a source with a particular interest in the election. The authorisation rules also mean that people cannot hide behind anonymity to make irresponsible or defamatory statements about election matters.

### What is electoral material?

“Electoral matter” includes any material, in printed or electronic form, that is intended or likely to affect the voting in an ACT Legislative Assembly (the Assembly) election. This includes, but is not limited to, matter which contains an express or implicit reference to, or comment on:

- The election;
- The performance of the ACT Government, the ACT Opposition, a previous ACT Government or a previous ACT Opposition;
- The performance of an MLA or a former MLA;
- The performance of a political party, a candidate or group of candidates in the election; or
- An issue submitted to, or otherwise before, the electors in relation to the election.

This applies to all types of printing and electronic publishing such as websites, emails, social media pages (Facebook, X, YouTube) and videos. There are some exceptions, listed under ‘What electoral matter does not need to include an authorisation statement?’ below.

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## What needs to be included in an authorisation statement?

Electoral matter (whether in printed or electronic form) that is printed, published, distributed, produced or broadcast must include an authorisation statement, unless it falls within one of the exceptions listed below. The authorisation consists of three elements:

1. It must contain the first and last name of the person who authorised the electoral matter, or its author; **and**
2. It must include a statement to the effect that the named person authorised, or is the author of, the material; **and**
3. If the matter is published for or on behalf of a registered political party, a candidate in an election or a person who has publicly indicated that he or she intends to be a candidate for election, the material must include a statement to the effect that the matter is published for the party, candidate or person.

or

If the matter is published for or on behalf of an entity other than a registered political party or candidate, the material must include a statement to the effect that the matter is published for the entity and the full name of the entity.

The three elements must be connected, but that does not necessarily mean they have to be in the one statement or appear in the same place. The requirement is that these elements are included in the matter being published.

For example:

- Authorised by Jan Brown for ABC Party.
- Authorised by Jon Smith on behalf of ABC Party.
- Authorised by Jan Brown for Julie Smith.
- Authorised by Jon Smith on behalf of Julie Smith.
- Authorised by Jim Jones, candidate for Yerrabi
- Authorised by Gary Thompson on behalf of Jim Jones, candidate for Yerrabi
- Authorised by Tom White on behalf of [full name of the entity]

### Language requirements / form and access

Authorisation statements must also comply with set language requirements as well as form and access requirements.

- If the matter is communicated in a language or languages other than English, it must include an authorisation statement in English **and** in at least one of the other languages used;
- If the statement is in text, it must be reasonably prominent, be legible at the distance the matter is intended to be viewed, displayed in a colour that contrasts with the background and is not placed over a complex image or multicoloured background. It must also be

printed in a way that the authorisation information cannot be removed or erased under normal conditions and will not fade, run or rub off.

- If the matter is on a webpage, the authorisation statement must be in text in the footer of the webpage;
- If the matter is in audio, the authorisation statement must be communicated in speech; and
- If the matter is on the social media account in the name of an individual, the authorisation statement must be in text by a link in the matter or in a reasonably prominent place on the account.

Failure to include an authorisation statement when required is punishable by a fine of up to \$1,600 under the ACT's *Electoral Act 1992* (ACT).

## When does electoral matter need to be authorised?

The provisions within the Electoral Act regarding the authorisation of electoral matter apply **at all times**. The requirements are not limited to communication undertaken during an election period.

## What electoral matter does **not** need to include an authorisation statement?

### Letters to the editor

The requirement to authorise electoral matter does not apply to the dissemination of a letter to the editor in a particular news publication if:

- The author's name and the place where the author lives appear at the end of the letter; and
- The publication includes a statement to the effect that a person named in the statement has authorised publication of all matter contained in letters to the editor of the publication.

It is sufficient to identify the place where the author lives by reference to:

- The suburb or town of, or nearest to, the author's residence; and
- In the case of a locality outside the ACT—the State, other Territory or other country of that residence.

For the purposes of electoral law, 'Letters to the editor' includes similar commentary published via an online version of a news publication.

### Campaign novelties, letters, cards and media releases

The requirement to authorise electoral matter does not apply to electoral matter on any of the following items, unless the item includes a representation of a ballot paper:

- A T-shirt, button, badge, pen, pencil or balloon;
- A business or visiting card that promotes the candidacy of a person in an election;
- A letter or card on which the name of the sender appears; and

- A letter or media release published by or on behalf of an MLA that includes the name of the MLA and an indication that he or she is an MLA.

Note that car stickers must be authorised.

### **Personal views on online social media**

The requirement to authorise electoral matter does not apply to the dissemination of electoral matter by an individual using social media, if:

- The matter is disseminated in a private capacity; and
- The electoral matter forms part of the expression of the individual's personal political views; and
- The individual is not paid to express those views; and
- If the social media account is not in the individual's name – the account was not created for the dominant purpose of disseminating electoral matter.

However, in the instance where, for example, a candidate has published electoral matter on a personal social media page that is viewable by the public, this page should contain an authorisation statement.

### **News publication reporting**

A news publication is a newspaper or periodical, including electronic publications of a similar kind.

The requirement to authorise electoral matter does not apply to electoral matter contained in reportage or commentary in an issue of a news publication if the issue contains a statement to the effect that a person whose name appears in the statement has authorised the publication of all electoral matter contained in reportage or commentary in that issue.

### **ACT Government publications**

The requirement to authorise electoral matter does not apply to electoral matter on any of the following ACT Government publications, unless the item includes a representation of a ballot paper:

- An annual report of an ACT Government agency; or
- An ACT Government agency publication that contains:
  - the words "Australian Capital Territory", "Australian Capital Territory Legislative Assembly", "ACT Legislative Assembly", "Australian Capital Territory Government" or "ACT Government"; and
  - the name of the agency; and
  - the Canberra coat of arms.

Government agencies to which the above applies include an administrative unit, a Territory instrumentality or a statutory office holder and the staff required to assist the statutory office holder.

## Radio and television electoral advertising

Authorisation of electoral matter broadcast on the TV and on radio is regulated under the *Commonwealth Broadcasting Services Act 1992* (Cth) by the Australian Communications and Media Authority (ACMA). Further information regarding the rules on political advertising on TV and radio can be found on ACMA's website at:

[www.acma.gov.au/publications/2019-11/guide/political-and-election-matter-guidelines](http://www.acma.gov.au/publications/2019-11/guide/political-and-election-matter-guidelines)

Election advertising in the electronic media is subject to a "blackout" from midnight on the Wednesday before election day until election day. The blackout does not relate to news broadcasts or to the printed media. This is also a requirement of the Broadcasting Services Act. For further information contact the Australian Communications and Media Authority. For ACT elections, the blackout only applies to election advertisements related to an ACT election that are broadcast in or across the ACT.

## Other electoral advertising requirements and offences

### Misleading or deceptive electoral matter

It is an offence for a person to disseminate, or authorise to be disseminated, electoral matter that is likely to mislead or deceive an elector about the casting of a vote. The penalty for this offence is \$8,000 or imprisonment for 6 months, or both.

### Disclosure of electoral expenditure

Costs incurred related to the production and distribution of any material requiring an authorisation statement is electoral expenditure.

Any person or organisation that incurs electoral expenditure of \$1,000 or more may become subject to the election finance, expenditure and financial disclosure provision of the Electoral Act.

Refer to the electoral expenditure factsheet on the Elections ACT website at [www.elections.act.gov.au](http://www.elections.act.gov.au) for more information.

### Advertorials

An electoral "advertorial" is a paid advertisement in a news publication which appears to be reportage or commentary and includes electoral matter.

Where an electoral advertorial is published, the proprietor of the news publication must ensure the word "advertisement" is included in a legible form as a headline to the advertisement on each page on which the advertisement appears.

### Inducement to illegal voting—representations of ballot papers

A person shall not disseminate, or authorise to be disseminated, electoral matter including a representation of a ballot paper, or part of a ballot paper, likely to induce an elector to mark his or her vote otherwise than in accordance with the directions on the ballot paper.

The penalty for this offence is \$8,000 or imprisonment for 6 months, or both.

## Defamation of candidates

A person shall not make or publish, or authorise to be made or published, a false and defamatory statement about the personal character or conduct of a candidate.

The penalty for this offence is \$8,000 or imprisonment for 6 months, or both.

It is a defence to a prosecution for this offence if it is established that the defendant believed on reasonable grounds that the relevant statement was true.

A person who makes a false and defamatory statement in relation to the personal character or conduct of a candidate may, as a result of legal proceedings initiated by the candidate, be restrained by injunction from repeating the statement or any similar false and defamatory statement.

## Publication of statements about candidates

A person shall not, without the written authority of the candidate, publish, or authorise to be published, on behalf of a body (whether incorporated or unincorporated) a statement:

- Expressly or impliedly claiming that a candidate in an election is associated with, or supports the policy or activities of, that body; or
- Expressly or impliedly advocating that a candidate should be given the first preference vote in an election.

The penalty for this offence is \$4,800.

This offence does not apply in relation to a statement:

- Published on behalf of a political party; and
- Relating to a candidate who has been nominated by that party, or who has publicly declared his or her candidature to be on behalf of, or in the interests of, that party.

## Further information

The specific laws that outline the requirements to authorise electoral matter are found in the *Electoral Act 1992* (ACT), notably section 4 and division 17.3 of the Act.

While this factsheet provides an overview of the authorisation requirements imposed on political entities in the ACT, it should not be regarded as a substitute for the law on any of the topics addressed. You are advised to obtain a copy of the *Electoral Act 1992* from [www.legislation.act.gov.au](http://www.legislation.act.gov.au) and seek your own legal advice if necessary.

For further information or assistance on the authorisation of electoral matter please contact Elections ACT at [elections@act.gov.au](mailto:elections@act.gov.au) or on (02) 6205 0033.