

Authorising electoral material

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, sitting members, 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 sitting member published years before the next election, might influence how a person will vote on election day.

To make sure that voters are able to judge the accuracy, balance and fairness of published electoral material, the 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 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 a Member of the ACT Legislative Assembly (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.

However, a publication of the Assembly (including a committee of the Assembly) is not electoral matter.

All types of printing and electronic publishing are included, including internet websites, emails, social media pages (such as Facebook, Twitter, YouTube) and videos, except that authorisation of radio and television electoral broadcasting is covered by the Commonwealth's *Broadcasting Services Act 1992* (see below).

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 (unless it falls within one of the exceptions listed below) include an authorisation. The authorisation consists of three elements:

1. It must contain the 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

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.

Failure to include an authorisation statement when required is punishable by a fine of up to \$1,000 under the ACT's *Electoral Act 1992*.

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 name of the author and the place where the author lives appear at the end; 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.

A letter to the editor includes electronic commentary of a similar kind.

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 do have to 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 electoral matter forms part of the expression of the individual's personal political views and the person is not paid to express those views.

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

Authorisations for TV and radio political advertising are regulated under the Commonwealth's *Broadcasting Services Act 1992*. The responsible authority is the Australian Communications and Media Authority. The relevant rules for TV and radio political advertising are set out on the Australian Communications and Media Authority's website at www.acma.gov.au.

Election advertising in the electronic media is subject to a "blackout" from midnight on the Wednesday before polling day until polling day. The blackout does not relate to news broadcasts or to the printed media. This is also a requirement of the *Broadcasting Services Act 1992*. 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 \$5,000 or imprisonment for 6 months, or both.

Disclosure of electoral expenditure

From 1 July 2012 any person or organisation incurring expenditure (costs to produce any material requiring an authorisation statement is electoral expenditure) of \$1000 or more may become subject to the election finance, expenditure and financial disclosure provision of the Electoral Act. Refer to the Elections ACT website at 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 \$5,000 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 \$5,000 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, at the suit of 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 \$3,000.

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 law relating to authorisation of electoral matter for ACT Legislative Assembly elections is set out in the ACT's *Electoral Act 1992*, specifically section 4 and division 17.3.

Authorisations for TV and radio political advertising are regulated under the Commonwealth's *Broadcasting Services Act 1992*. The responsible authority is the Australian Communications and Media Authority.

For further information contact the ACT Electoral Commission on phone (02) 6205 0033, fax (02) 6205 0382, by email to elections@act.gov.au or visit the website at www.elections.act.gov.au.