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Dear s 47F

Referral of Content from the Australian Electoral Commission

On 23 March 2023, the Australian Parliament passed the [Referendum \(Machinery Provisions\) Amendment Act 2023](#) which amended the [Referendum \(Machinery Provisions\) Act 1984](#) (RMPA).

The AEC is responsible for the administration of laws that deal with certain referendum communications, which can include communications posted on social media platforms. The AEC is writing to you to outline the current legislative environment concerning the circumstances where the AEC may contact your platform regarding referendum content.

Authorisation of Referendum Matter

The AEC is responsible for investigating and ensuring compliance with the authorisation of referendum communications.

Under section 3AA of the [RMPA](#), referendum matter means matter communicated or intended to be communicated for the dominant purpose of influencing the way electors vote in a referendum. Subsection 3AA(1)-(6) contain further guidance to determine whether matter is 'referendum matter'.

The authorisation requirements for referendum matter on social media platforms are set out in Part IX of the [RMPA](#) and the [Commonwealth Electoral \(Authorisation of Voter Communication\) Determination 2021](#) (The Determination). The authorisation requirements for referendum communications align with those contained in the [Commonwealth Electoral Act 1918](#) (Electoral Act).

Social media content will require an authorisation if the communication includes 'referendum matter' that is communicated:

- By on or behalf of a disclosure entity or
- In a paid advertisement on social media (including communications which all or part of the distribution or production has been paid for).

A disclosure entity is defined in section 110A of the [RMPA](#) to include:

- A registered political party;
- An associated entity registered under Part XX of the Electoral Act;
- Any person or entity who has to lodge an electoral expenditure return under Part XX of the [Electoral Act](#);

- A referendum entity incurring referendum expenditure over the referendum disclosure threshold at any time during the referendum expenditure period;
- A significant third party; or
- Current federal senator or a member of the House of Representatives.

The table in section 110C of the [RMPA](#) set out the authorisation particulars which must include:

- Where the person who authorised the communication is an individual, the name of the person and the relevant town or city of the person;
- Where the communication is authorised by a disclosure entity (e.g. a registered political party), the name of the entity, the relevant town or city of the entity and the name of the natural person within the disclosure entity responsible for giving effect to the authorisations;
- Where the communication is authorised by an entity that is not a disclosure entity or a natural person (e.g., a company that is not an associated entity), the name of the entity and the town or city of the entity.

Unlike elections, recent candidates, Senate groups and donors are not specifically covered by the authorisation requirements under the RMPA. However, persons and entities spending money on campaigning or communicating relating to the respective referendum matter in excess of the indexed financial disclosure threshold, will be covered by the authorisation requirements. The relevant period for expenditure is the 12 months prior to the issue of the writ for a referendum rather than the financial year.

The display of the authorisation particulars will depend on the type of communication. For example, for video communications, the authorising particulars must be announced and shown at the end of the communication according to section 12(2)(b) of the [Determination](#). This differs from text posts.

Social media content will not require an authorisation if it is communicated for personal purposes.

If the AEC considers a communication containing referendum matter does not include the required authorisation particulars, the AEC will generally write to the relevant person or entity to request that the communication is withdrawn until such time as the communication is properly authorised to comply with the law. The AEC may also contact your platform to request a content takedown in line with your relevant policies if the relevant communication is non-compliant. If there is continued non-compliance or a more serious breach of the RMPA, the AEC may seek an injunction or apply to the Courts to impose a civil penalty.

Section 122 – Misleading or Deceptive Publications etc

Section 122 of the [RMPA](#) makes it an offence to print, publish or distribute, or cause, permit or authorise to be printed, published or distributed, any matter or thing that is likely to mislead or deceive an elector in relation to the casting of a vote at the referendum. Publish includes publish by internet and may apply to social media posts that mislead an elector in relation to casting a vote for a referendum.

Section 122 only applies to communications printed, published, or distributed during the formal referendum period. The relevant period, which is defined in section 3, means the period commencing on the day of the issue of the writ for the referendum and ending at the latest time on the voting day for the referendum at which an elector in Australia could enter a polling booth for the purpose of voting at a referendum.

If the AEC considers a communication is likely to mislead or deceive an elector in relation to the casting of a vote at a referendum, the AEC will generally write to the relevant person or entity to request that the communication is withdrawn. The AEC may also contact your platform to request a content takedown if the communication is likely to mislead or deceive electors. If the communication has not ceased being communicated by the relevant person or entity, the AEC may seek an injunction or apply to the Courts to impose a civil penalty.

Other resources

The [Transparency Register](#) is available to provide information about political parties, significant third parties, associated entities, members of the House of representatives, Senators and third parties. Additional guidance on referendum disclosure is also available on the [AEC website](#).

Further guidance on authorisation requirements is available in the [Electoral Backgrounder: Electoral and referendum communications and authorisation requirements](#) on the AEC website.

Yours sincerely

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1 May 2023