

OPERATING IN A FEDERAL ELECTION

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Charities



Overview



WHAT IS IN?

- Authorisation requirements
- Limited misleading conduct requirements after writs issued
- Disclosure regime
- No donations from foreign donors
- **Disclosure threshold = \$16,900**



WHAT IS NOT IN?

- Donation caps
- Expenditure caps
- Real time disclosure (ie. disclosure within 7-21 days of donating)
- No prohibited donors (except for foreign donors)

Top of mind considerations

- ▼ Authorisation (Electoral Act)
- ▼ Disclosure requirements (Electoral Act)

Disclosure Entity



Political Party/Candidate

A political party, independent candidate, associated entity (ie. unions).



Significant third party

An entity which spends more than \$250k in a year on electoral expenditure or is primarily a donor to political parties/candidates.

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Third party

An entity which spends between the disclosure threshold and \$250k on electoral expenditure

Disclosure Obligations

Entity Type	Disclosure Obligations	Timeframe
Associated Entity	<ul style="list-style-type: none"> - Total receipts, payments, and debts - Details of receipts and debts above disclosure threshold 	Annual return due by October 20 each year
Significant Third Party	<ul style="list-style-type: none"> - Total political expenditure - Total donations used for political expenditure - Details of donors whose donations were used for political expenditure above disclosure threshold <p>Key differences from third party:</p> <ul style="list-style-type: none"> • Donors need to lodge returns • Heightened compliance obligations • Need to register when you become a significant third party • Need to remain registered for 3 years 	Annual return due by October 20 each year
Third Party	<ul style="list-style-type: none"> - Total political expenditure - Total donations used for political expenditure - Details of donors whose donations were used for political expenditure above disclosure threshold <p>No registration required.</p>	Annual return due by November 17

Key Terms

Disclosure threshold

\$16,900

Relevant to assessing disclosure obligations

Electoral matter

Matter communicated or intended to be communicated for the dominant purpose of influencing the way electors vote in a federal election, including by promoting or opposing a political entity (ie. candidate/party).

Electoral expenditure

Money spent in relation to an election (broad).

Money spent for the dominant purpose of creating or communicating electoral matter (narrow).

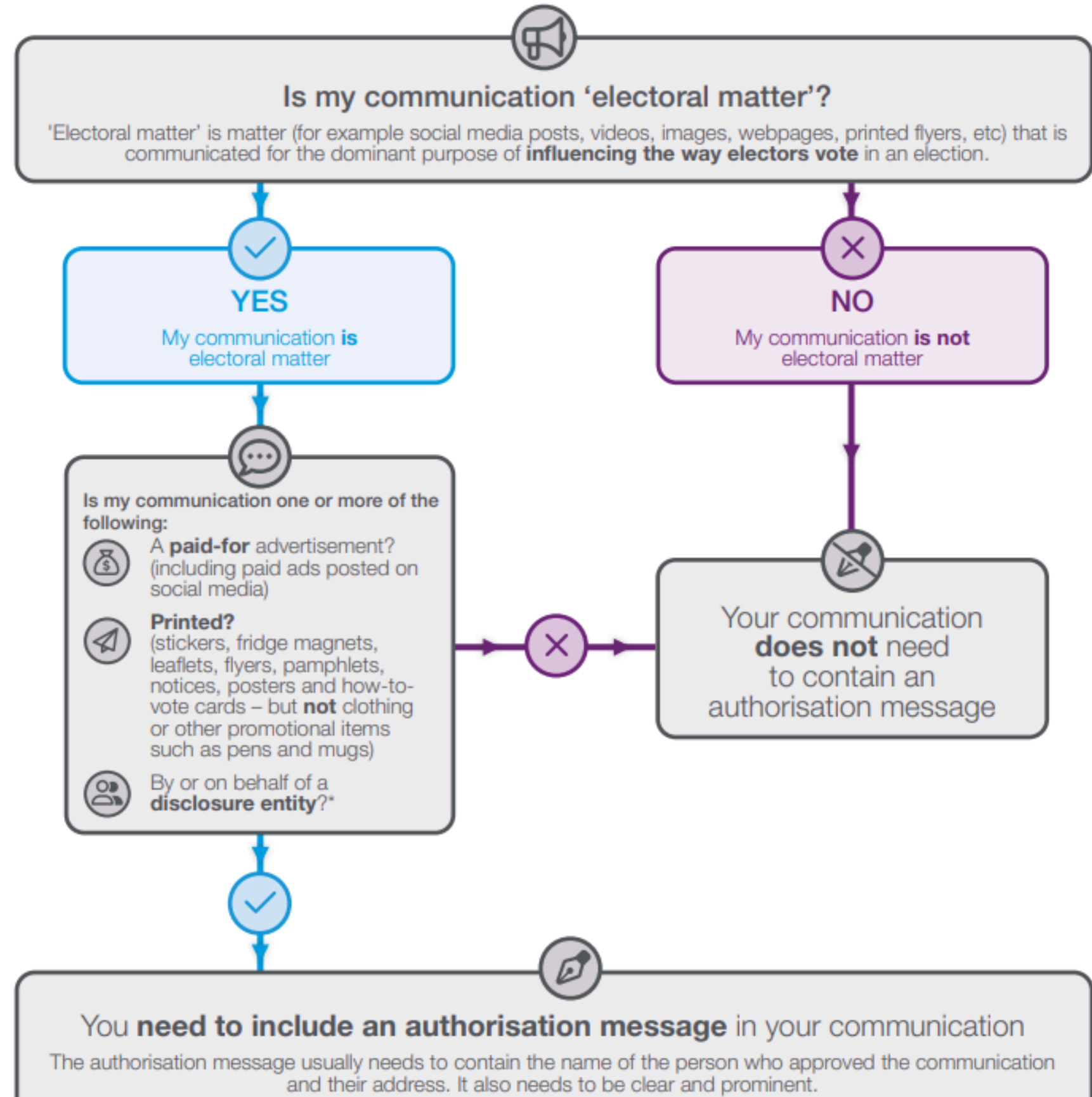
Authorisation and disclosure

- ▼ **Authorisation:**
Does this have a dominant purpose of influencing how someone might vote? Or is it promoting awareness about a public policy issue?
- ▼ **Disclosure:**
Am I spending money on this? If so, does that spend have a dominant purpose of creating materials/comms which influence vote?
- ▼ Note: in either of the above consider whether the expenditure expressly promotes or opposes a candidate in the context of an election.

Authorisation (Electoral Act)

Does your **electoral communication** need to be authorised?

If you are creating content about an election and sharing it, it may need to include an authorisation message that makes clear who approved it. Answer the questions below to determine if your electoral communication needs to include an authorisation message.



Misleading conduct (Electoral Act)

Section 329(1) A person shall not, during the relevant period in relation to an election under this Act, print, publish or distribute, or cause, permit or authorize 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.

Misleading conduct (Electoral Act)



Charities, Elections & Advocacy

Charity Law Association of Australia and New Zealand
Thursday 10 April 2025

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Practical Tips

- Check the charity's constitution:

"Neutrality

In order to enjoy the confidence of all, the Movement may not take sides in hostilities or engage in any time in controversies of a political, racial, religious or ideological nature."

(Red Cross Fundamental Principles)

ARTICLE III (a) No substantial part of the activities of this corporation shall consist of carrying on propaganda, or otherwise attempting to influence legislation, and this corporation shall not participate in or intervene in (including the publishing or distribution of statements) any political campaign on behalf of any candidate for public office.

(Direct Relief, US charity)

Cf s50-50(2), ITAA 97: an income tax exempt entity must 'comply with all the substantive requirements in its governing rules'.

- Check the charity's delegations of authority:
 - Who can authorise the activity and associated expenditure?
 - Is it a (reserved) Board matter? Has the Board (or senior management) already made submissions or public statements about the matter

Practical Tips

- Check the charity's policies and procedures:
 - Is there a policy on issues-based advocacy?
 - Is there a Board 'risk appetite' statement?
- Check fundraising compliance:
 - Advocacy activities that includes 'soliciting or receiving' resources for a charitable purpose
 - How will funds/donations be collected?
 - Does the 50% cap on expenses apply? (clause 6 of the NSW standard conditions of a fundraising authority)
- Check privacy compliance:
 - Will sensitive information be collected/solicited? (note that 'sensitive information' includes information or an opinion about an individual's political opinions, associations or religious or philosophical beliefs.
 - Is there a collection statement?
 - Will the proposed use and/or disclosure comply with Australian Privacy Principle 6?

Practical Tips

- Check where the funding for the activity is sourced:
 - Is the funding subject to conditions/limitations on its use? Is the proposed advocacy in accordance with those conditions?
 - Where fundraising appeal proceeds are being used, is the advocacy consistent with the 'donor promise' - cf s20(1), *Charitable Fundraising Act 1991* (NSW): "Any money or benefit received in the course of a fundraising appeal conducted by the holder of an authority is to be applied according to the objects or purposes represented by or on behalf of the persons conducting the appeal as the purposes or objects of the appeal."
 - Is the advocacy activity in compliance with contractual obligations to funders (including providers of funds that are not being used for the proposed activity)?
 - Note the limitations of the *Not-for-profit Sector Freedom to Advocate Act 2013* (Cth).
 - Note provisions in funding agreements that restrict a charity from doing anything that may impact the reputation of the funder.

Practical Tips

- Is the source of funding for the proposed activity from overseas:

- *Foreign Influence Transparency Scheme Act 2018* (Cth)

Generally, the Act imposes obligations on persons that engage in foreign influence activities on behalf of foreign organisations for the purpose of influencing Australian government or politics.

Section 18 provides that a person that must register under the Foreign Influence Transparency Scheme if the person:

- (a) undertakes an activity on behalf of a foreign principal that is registrable in relation to the foreign principal; or
- (b) enters a registrable arrangement with a foreign principal.

- Registrable activity includes activity on behalf of a foreign principal that (broadly) is for the purpose of political or governmental influence.
- A 'registrable arrangement' is an arrangement 'between a person and a foreign principal for the person to undertake, on behalf of the foreign principal, one or more activities that, if undertaken by the person on behalf of the foreign principal, would be registrable in relation to the foreign principal.'

Practical Tips

- *Foreign Influence Transparency Scheme Act 2018* (Cth) (continued)
 - Section 29C exempts ACNC registered charities from the operation of the Act - subject to conditions, including that:
 - the activity is undertaken in pursuit of a charitable purpose of the person within the meaning of Part 3 of the *Charities Act 2013*;
 - the activity is not 'disbursement activity'; and
 - at the time the activity is undertaken, both of the following matters are either apparent to the public or disclosed to the public:
 - (i) the fact that the person is undertaking the activity on behalf of a foreign principal; and
 - (ii) the identity of the foreign principal.
 - A charity undertakes 'disbursement activity' if the person 'disburses money or things of value' and neither the charity nor the recipient is required to disclose it under Division 4, 5 or 5A of Part XX of the *Commonwealth Electoral Act 1918* (Cth).
 - Other available exemptions, including:
 - (humanitarian aid) s24: the 'activity is, or relates primarily to, the provision of humanitarian aid or humanitarian assistance.'
 - (religious activity) s27: 'A person is exempt in relation to a religious activity the person undertakes, in good faith, on behalf of a foreign principal.'

Practical Tips

- Are any of the charities' staff directly involved in a political campaign or standing for office?
 - Does the charity have a relevant policy or procedure?
 - The usefulness and limits of an employer's 'reasonable directions'.
- How will the charity retain suitable controls over the advocacy campaign? How will the charity distinguish between its activities and the activities of its supporters.
 - Online campaigns - who is monitoring comments on the charity's webpages?
 - If the campaign goes awry, how will the charity correct course and distinguish between its activities and those of its supporters?
- Does the advocacy activity involve a public event?
 - Who will be the other speakers? What might they say?
 - If children can attend, then how will the event safeguard them?
 - Is the event covered by the charity's insurance? Has the insurer been notified?

Useful resources

- ACNC Guidance, 'Charities, campaigning and advocacy'
(<https://www.acnc.gov.au/tools/guides/charities-campaigning-and-advocacy>)
- Human Rights Law Centre, 'Not-for-profits' guide to complying with Commonwealth electoral laws'(August 2024)
(<https://www.hrlc.org.au/commonwealth-electoral-law>)
- Matthew Harding, 'Charities & Politics: A Principled Approach'
(<https://www.booktopia.com.au/charities-politics-matthew-harding/book/9781923192003.html>)

Questions?

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