



Electoral Commissioner

Our Ref: 15/488

Ms Rebecca Gordon
Inquiry Secretary
Joint Standing Committee on Electoral Matters
Parliament House
CANBERRA ACT 2600

Dear Ms Gordon

AEC submission to the inquiry into campaigning activities at polling places

Thank you for the invitation to provide a submission to the Joint Standing Committee on Electoral Matters' (JSCEM) inquiry into campaigning activities at polling places.

Appropriate behaviour at polling places is a vital part of Australian democracy. During electoral events, the Australian Electoral Commission (AEC) rigorously enforces the legislative requirements of the *Commonwealth Electoral Act 1918* (Electoral Act) and the *Referendum (Machinery Provisions) Act 1984* (Referendum Act) working with all parties and candidates to ensure voters are able to properly exercise their democratic rights.

This submission provides a factual outline of the legislation, policy and operational arrangements for campaigning activities at polling places for federal elections. This submission does not outline or address any alleged instances of misconduct or inappropriate activities at polling places that have not been reported or substantiated with the AEC. The AEC is aware of multiple instances of alleged misconduct outlined in the media, but does not deem it appropriate to speculate or respond to unsubstantiated allegations where no evidence has been provided directly to the AEC.

The structure of this submission is as follows:

- 1) Legislative framework for campaigning activities at polling places
 - AEC policies
 - how-to-vote (HTV) cards (legislative and technical issues)
 - material intending or likely to mislead or intimidate electors
 - campaigning at polling places
 - enforcement
 - handling of queries about the Electoral Act and complaints

- 2) Issues arising at recent elections
- 3) Legislative recommendations

Key documents attached to this submission include:

- Electoral Backgrounder – Polling Place Offences - the AEC publishes Electoral Backgrounders to assist candidates, political parties, parliamentarians, media commentators, academics, schools, and citizens generally, in understanding those aspects of electoral legislation, particularly the Electoral Act that gives rise to most of the questions and complaints received by the AEC during an election period. Electoral Backgrounders are an attempt to turn complex electoral law, particularly in relation to electoral offences, into relatively plain English for the information and guidance of all interested persons. (**Attachment A**)
- Backgrounder – Electoral Advertising (**Attachment B**)
- Extracts from the Election Procedures Handbook (EPH) - all polling staff are provided a role specific instructional handbook prior to election day. The Officer-in-Charge (OIC) EPH provides guidance to the OIC on managing the polling place; this includes the management of staff and expectations when dealing with party workers and electors. The OIC is expected to refer to the EPH throughout the polling period. Extracts include the responsibilities and rights of candidates, party workers and scrutineers at polling places, complaints/other issues and, polling place security and emergency guidelines. (**Attachment C**)
- Electoral Offences poster (EF019) - this poster is displayed at the entrance of the polling place, providing details of the Electoral Act and Referendum Act in relation to canvassing for votes or soliciting the vote of any elector. This notice formally defines the entrance to a polling place for the purposes of s. 340. (**Attachment D**)

I welcome the opportunity to respond to additional questions the Committee may have, or provide information that would be useful to the Committee in its inquiry.

Yours sincerely,

Tom Rogers
Electoral Commissioner

10 July 2015

1. Legislative framework for campaigning activities at polling places

AEC Policies

- 1.1 The rules surrounding campaigning activities at polling places are established in the Electoral Act. AEC policies and handbooks detail the implementation of these legislative requirements.
- 1.2 Specifically, the AEC has produced and makes publically available on the AEC website Electoral Backgrounders on polling place offences (**Attachment A**) and electoral advertising (**Attachment B**) to ensure that a consistent and appropriate message is available to those enquiring about canvassing requirements.
- 1.3 The AEC also produces role-specific Electoral Procedures Handbooks (EPHs) to support temporary staff during the conduct of polling (extracts from the OIC version are at **Attachment C**). Scrutineers and Candidates also receive handbooks that provide specific guidance on election processes and offences.

How-to-vote (HTV) cards

Legislative and technical issues

- 1.4 The rules relating to the printing and publication of HTV cards are contained in s. 328B of the Electoral Act. Section 328B provides that a person must not publish a HTV card from the issue of a writ for an election to the close of polling unless it contains, at the top or bottom of each printed face:
 - the name and the address of the person who authorised the HTV card; and
 - the name of the registered political party or candidate on whose behalf the card has been published.
- 1.5 However, there is no requirement for printer details to be included on the HTV cards, as with other campaign materials (s. 328).¹
- 1.6 There is also no legislative requirement for HTV material produced for federal elections to be lodged or registered with the AEC.
- 1.7 Section 328B provides for two offences with respect to the printing and publication of HTV cards. The first is committed if a person publishes or distributes a HTV card, or causes, permits or authorises another person to publish or distribute a HTV card, where the authorisation requirements

¹ Section 328 of the Electoral Act specifically relates to the printing and publication of electoral handbills, pamphlets or posters. Under s. 328, a person must not print, publish or distribute a handbill, pamphlet or poster unless the name and address of the person who authorised the publication and the name and place of business of the printer appears at the end. These requirements do not apply in relation to T-shirts, lapel buttons, lapel badges, pens, pencils or balloons, and some types of cards. A person found guilty of this offence may be fined up to \$1000. A body corporate found guilty of this offence may be fined up to \$5000.

described above have not been met. The second offence occurs when a person publishes or distributes a HTV card, or causes, permits or authorises another person to publish or distribute a HTV card, where the authorisation details on it are false.

- 1.8 A person found guilty of either offence may be fined up to 50 penalty units. As a single penalty unit is currently \$170 (see s. 4AA of the *Crimes Act 1914*), the maximum penalty for breaching s. 328B is \$8 500.²
- 1.9 The Committee will also note that a person may be guilty of an offence under s. 335 of the Electoral Act if they leave a HTV card in a polling booth (subject to certain exceptions). A \$500 penalty applies such cases.
- 1.10 The Electoral Backgrounder: Electoral advertising at **Attachment B** provides further electoral law details on HTV cards.

Material intending or likely to mislead or intimidate electors

- 1.11 Under s. 329 of the Electoral Act it is an offence to print, publish or distribute any matter or thing during an election period that is likely to mislead or deceive an elector in relation to the casting of a vote. Section 329 applies not only to printed matter but also to electoral advertisements broadcast on radio, television, internet or by telephone.
- 1.12 A person found guilty of this offence may be fined up to \$1 000 or imprisoned for a period not exceeding six months, or both. A body corporate found guilty of this offence may be fined up to \$5 000.
- 1.13 It is important to note that s. 329 only applies to matters or things done 'during the relevant period in relation to an election', in other words, matters or things done between the issue of a particular writ and the return of that writ. It is also important to note that the notion of a matter or thing being likely to 'mislead or deceive an elector in relation to the casting of a vote' has, following the High Court's decision in *Evans v Crichton-Browne* (1981) 147 CLR 169, been restricted to those things directed at influencing the way in which a ballot paper is marked; it is not aimed at messages that might influence a voter's views on a particular candidate or political party. As Justice Greenwood in the Federal Court later noted in *Faulkner v Elliot* [2010] FCA 884: 'The question is whether the conduct...is arguably likely to mislead or deceive an elector in relation to the casting of a vote as opposed to influencing the *formation of a judgment* by an elector of for whom to vote'.

² The value of a penalty unit will increase to \$180 for offences committed on or after 31 July 2015. Consequently, the maximum penalty under s. 328B will increase to \$9 000.

Campaigning at polling places

- 1.14 Under s. 340 of the Electoral Act, a person is guilty of an offence if the person engages in any of the following activities within a polling booth, or within six metres of the entrance to a polling booth, on election day (or any day to which polling is adjourned)³:
- canvassing for votes;
 - soliciting the vote of any elector;
 - inducing any elector not to vote for any particular candidate;
 - inducing any elector not to vote at the election; or
 - exhibiting any notice or sign (other than an official notice) relating to an election.
- 1.15 A person found guilty of such an offence can be fined up to \$500.
- 1.16 If a person canvasses, solicits or induces, in any of the manners described above, six metres or more of the entrance to a polling booth, through the use of a loudspeaker, broadcasting equipment or similar type of equipment, and the activity is audible within a polling booth, or at or within six metres of the entrance to a polling booth, the person is also guilty of an offence. A person found guilty of this offence can currently be fined up to five penalty units (or \$850)⁴.
- 1.17 Section 340 offences are capable of being committed by any person, including persons campaigning on behalf of political parties or any other organisation or representative body. They are also committed whether the person is in a public or private place at the relevant time.
- 1.18 It is important to note that at present s. 340 applies specifically to polling booths operating on election day (and all days to which polling is adjourned). While s. 227(8)(e) of the Electoral Act effectively provides that s. 340 applies to mobile polling booths, the AEC remains of the view that s. 340 does not apply to pre-poll voting offices. As such, there is no comparable prohibition on canvassing, etc., outside the entrance to a pre-poll voting centre.

Enforcement

- 1.19 The AEC's general approach to enforcing rules relating to canvassing and other matters is to ask a person to comply with the relevant law. When a person is suspected of committing a technical or minor breach of a provision, usually of ss. 328 or 328B of the Electoral Act, the AEC adopts a practical approach by requesting an undertaking that the offending article is withdrawn or amended so as to comply with the Electoral Act.

³ For mobile polling per this is defined as the time of the visit per s. 227(e) of the Electoral Act.

⁴ \$900 from 31 July 2015.

- 1.20 However, if the AEC becomes aware that a person is breaching the provisions of the Electoral Act during polling, and practical or informal resolution methods are not effective, any or all of the following actions may be taken.

i) Directions to leave premises

Section 348 provides that where a person commits misconduct in a polling booth, counting centre or early voting centre, disobeys a lawful direction from the person in charge of a polling booth, counting centre or early voting centre, or enters or remains in a polling booth, counting centre or early voting centre without permission, that person will be committing an offence. In circumstances where a person commits misconduct, disobeys a direction or refuses to leave a relevant premise that person may be removed from the premises by a police officer or an 'authorised person' who would typically be a polling worker, often the OIC. If the OIC is unable to resolve the issue, they are encouraged to consult with the Divisional Returning Officer (DRO) who will attempt to seek cooperation initially from the candidate or party, depending upon the type of alleged misconduct.

ii) Injunctions

Section 383 of the Electoral Act provides that the Federal Court may grant an injunction to (amongst other things) prohibit a person from engaging in conduct that constitutes a contravention of the Electoral Act.

The AEC and candidates in the election may make an application for an injunction to the Federal Court. If the AEC is informed or becomes aware that a person may have committed an offence, the AEC determines whether it is appropriate in the circumstances to apply for an injunction. The Federal Court is able to order injunctions at short notice on election day.

If an injunction is granted against a person, failure to comply with the injunction order may constitute contempt of court, for which the Federal Court can order arrest and detention.

iii) Prosecutions

When the AEC becomes aware of a person engaging in activity that may constitute a breach of an offence provision, the AEC may refer the matter to the Australian Federal Police (AFP) for investigation. The AFP may then refer the matter to the Commonwealth Director of Public Prosecutions (CDPP) for consideration, in accordance with the Prosecution Policy of the Commonwealth, as to whether a prosecution should be initiated.

Handling of queries about the Electoral Act and complaints

- 1.21 The role of the OIC is fundamental in coordinating people and processes at a polling place and ensuring the integrity of voting. In the majority of polling places across the country, party workers, scrutineers and polling officials cooperate to achieve these goals. However, in small number of instances, breaches of the requirements of the Electoral Act or tensions do arise and these have to be handled in an appropriate, consistent and timely manner. Complaints are handled as per the process outlined below.
- 1.22 During election periods, the AEC actively manages complaints related to alleged breaches of the Electoral Act. Most of these complaints are resolved locally before formal escalation occurs, and can be recorded in the written OIC returns.
- 1.23 Complaints may be received by the AEC in a number of ways, including verbally, via the election call centre, electronically (through the AEC website) and by post. Whilst they might be made at different times, typically complaints about unlawful activities in and around polling places are made on election day itself or throughout the polling period. Complaints may be received from any number of persons. This includes electors/members of the public, scrutineers, political party members and AEC staff members. Not all matters are reported, especially those of a minor nature that are resolved without incident. More serious matters and matters of a legal nature are escalated to the Legal Services Branch in the AEC's National Office. Only a small number of these occur.
- 1.24 Legal complaints are currently managed in accordance with the AEC Legal Complaints Statement, which is publicly available on the AEC website (www.aec.gov.au). Such complaints are directed to the AEC's Chief Legal Officer in the first instance for assessment. Where appropriate, a complaint may be referred to the AFP for further investigation and, beyond that, to the CDPP for prosecution. Some matters are resolved with the involvement of the AEC Executive without recourse to the CDPP or the AFP.
- 1.25 In all cases where a legal complaint is referred to either the AFP or the CDPP, the AEC will not provide any further information to the complainant until these other authorities advise the AEC that it is appropriate to do so. In cases where a legal complaint is dealt with by the AEC and not referred to the AFP or CDPP, the AEC will write to the complainant advising of its decision and actions.
- 1.26 For the 2013 federal election, the AEC received 291 electoral advertising complaints. Of those escalated, two were referred to the AFP for further investigation. The first referral was for a HTV Card that did not, in the AEC's view, comply with s. 328B. The second referral was for a candidate who refused to authorise electoral matter in accordance with s. 328.

2. Issues arising at recent elections

- 2.1 The vast majority of complaints made during an election period relate to incorrect authorisation of electoral advertisements in accordance with s. 328. The authorisation requirements can usually be met with simple amendments to the advertisements, such as including 'printed by' details.
- 2.2 The 2013 federal election was the first election at which the requirements of s. 328B applied to HTV cards. The different authorisation requirements between ss. 328 and 328B appeared to cause some confusion about the authorisation requirements, giving rise to many complaints. Most of these were of a technical nature and dealt with accordingly.
- 2.3 The AEC occasionally receives feedback about inappropriate behaviour of party workers outside pre-poll centres including aggressive distribution of HTV material. The OIC of a polling place will normally deal with any such allegations directly. The AEC notes its previous comments in paragraph 1.18 regarding inconsistencies on canvassing provisions within the Electoral Act.
- 2.4 The AEC can also be called upon to regulate the placement of banners, corflutes and other material that is often located near polling places and around the electoral division, for example, signage on telegraph poles and in front of gardens or residences, etc. For example, this includes being asked to intervene when extensive plastic wrapping or similar branded material for a particular candidate has been placed along the fence of a polling place, allowing no space for an opposing candidate. These matters are beyond the authority ascribed to the AEC in the Electoral Act.
- 2.5 Complaints are sometimes made that an individual has removed election signage for one candidate and replaced it with signage from another candidate. The Electoral Act does not address this particular issue, other than ensuring that the material is authorised correctly, that it does not mislead or deceive in relation to the manner of casting a formal vote, and that the 'six metre rule' is applied. As such the AEC does not intervene in these types of matters that fall outside the provisions of the Electoral Act.

3. Legislative recommendations

- 3.1 Should an opportunity for legislative change arise, the Committee may wish to consider the following matters and associated recommendations.

Canvassing near pre-poll voting offices

- 3.2 The combination of ss. 340 and 348 of the Electoral Act currently authorise the AEC to control behaviour inside a polling booth, and within six metres of the entrance to a polling booth. At some polling places, such as many schools, where the polling booth is located inside 'enclosed grounds,' a

DRO may issue a notice under s. 340(2)(b) of the Electoral Act, the effect of which is to deem the grounds to be part of the polling booth. This has the effect of moving canvassers further away from the actual place where the votes are being cast.

- 3.3 However, while s. 348 (related to control of behaviour at the polling booths) applies at pre-poll voting centres as well as polling booths on election day - s. 340 does not apply to pre-poll centres as it addresses the issue canvassing near 'polling places'. Consequently, a DRO or pre-poll voting officer may direct people to leave a pre-poll voting centre on grounds such as misconduct, but they may not ask that canvassers stay at least six metres away from the entrance to the pre-poll voting centre. Wherever possible, pre-poll voting centres are in locations serviced by public transport, in main streets or in or near shopping centres to enable elector access. The inability to control population levels around these centres means that the spaces close to the centres can at times become congested by a combination of canvassers, other pedestrians, or both.

Recommendation 1: That s. 340 of the Electoral Act be amended to harmonise provisions related to pre-poll voting centres with existing mobile polling provisions as at s. 227(8)(e).

HTV cards

- 3.4 The 2013 federal election was the first time that s. 328B applied to HTV cards. Prior to this, HTV cards were subject to the general authorisation requirements of s. 328. As the Explanatory Memorandum to the *Electoral and Referendum Amendment (How to Vote Cards and Other Measures) Act 2010* noted:

'the intention of the amendments is to make it clearer who will benefit from the preference flow suggested on the how-to-vote card. It is intended that these amendments will reduce the potential for voters to be misled and to give voters the means to make informed decisions by ensuring that the political source of how-to-vote material is clearly stated.'

- 3.5 At the 2013 federal election the AEC identified a number a technical breaches of this authorisation provision. In most cases this involved a HTV card that had been authorised but did not specifically state on whose authority the card was produced. Despite these omissions, the AEC was satisfied, having regard to each HTV card as a whole, that it was clear who was seeking to benefit from the preference flow advocated by the card. Consequently, the AEC decided not to refer these matters to the AFP for further investigation.
- 3.6 However, there was one incident during the 2013 federal election which resulted in the AEC referring a potential breach of s. 328B to the AFP, who later sought advice from the CDPP. While the CDPP advised that insufficient evidence existed for a prosecution in that particular case, the

matter highlighted a potential broader issue regarding the scope of s. 328B—namely, whether it extended to persons who authorised HTV cards but who did not do so on behalf of either a political party or independent candidate. In this case, the producer of the HTV card argued that his card was one developed purely in a personal capacity, and that the requirements of s. 328B(1)(b) therefore did not apply. Given that s. 328B does not expressly address that HTV cards may be authorised by or on behalf of other bodies or organisations, there would appear to be a legal argument that HTV cards authorised by such bodies or organisations need not reveal that fact to recipients.

Recommendation 2: That s. 328B of the Electoral Act be amended to require that HTV cards be authorised by or on behalf of bodies or organisations that are not registered political parties.

Recommendation 3: That for the avoidance of doubt, s. 385A of the Electoral Act be amended to include unauthorised HTV cards.

Authorisation of electoral advertisements

- 3.7 The AEC notes that different authorisation requirements for ss. 328 and 328B may have contributed to confusion apparently experienced by some candidates and parties during the 2013 federal election with respect to the requirements of ss. 328 and 328B.
- 3.8 Unlike an electoral advertisement, a HTV card does not need to include ‘printed by’ details. However, a HTV card does need to include details about whether it is authorised by or on behalf of a particular candidate (party endorsed or otherwise) which an electoral advertisement does not. A HTV card also needs the authorisation details on each printed face of the card.
- 3.9 This divergence in requirements is a result of legislative changes enacted in the *Electoral and Referendum Amendment (How to Vote Cards and Other Measures) Act 2010*

Recommendation 4: That the JSCEM consider whether the requirements in the Electoral Act related to electoral advertising and HTV cards be harmonised.

Attachment A: Electoral Backgrounder – Polling Place Offences

Electoral Backgrounder - polling place offences

Updated: 23 June 2015

The Act, when describing offences uses different terms in different sections. In this Backgrounder definitions for these various terms are:

- a. A 'polling booth' is the location provided at a 'polling place' where voting screens are available at which voters mark their ballot papers.
- b. A 'polling place' is the street address for the location at which a 'polling booth' is located and at which voting takes place.
- c. The 'person in charge', 'person in charge of premises', 'officer in charge' and 'presiding officer' are all terms used to describe the AEC official responsible for electoral activities in particular locations.
- d. The 'officer-in-charge' of each polling place is called the 'presiding officer' during polling, from 8am to 6pm on election day. From 6pm, however, during the counting of the votes (the scrutiny), this officer is called the 'assistant returning officer'.

Introduction

1. Electoral Backgrounders are published by the Australian Electoral Commission (AEC) to provide a basic introduction to electoral law, policy and procedures for the information and guidance of all interested parties.
2. The AEC administers the conduct of federal elections under the provisions of the *Commonwealth Electoral Act 1918* (the Act).
3. This Backgrounder provides introductory information in relation to offences under the Act relevant to polling. More information on some of the offences discussed below, or on those not directly relevant to polling activities, is contained in other [Electoral Backgrounders](#).
4. Readers should not rely on the information in this document as a statement of how the law will apply in any particular case. Accordingly, if you are in doubt about the interpretation of the law in particular circumstances you should seek your own independent legal advice.
5. The information in this Backgrounder is set out under the following headings:
 - Compulsory voting
 - Influencing the votes of hospital patients or residents of nursing homes
 - Bribery
 - Interference with political liberty
 - Printing and publication of electoral handbills, pamphlets or posters
 - Printing and publication of How-to-Vote cards Misleading or deceptive publications
 - Depiction of certain electoral matter
 - General offences in relation to ballot papers
 - Canvassing near polling booths
 - Displaying badges or emblems of candidates in polling booths

Attachment A: Electoral Backgrounder – Polling Place Offences

- Leaving how-to-vote cards in polling booths
- Making false statements to voters about enrolment
- Unlawfully marking ballot papers
- Disobeying lawful directions of the person in charge of the premises
- Officers and scrutineers to observe secrecy
- Scrutineers influencing or communicating with voters in polling booths
- Obligations of persons present when pre-poll vote cast
- Possible repercussions for persons who commit offences
- Removal from the premises
- Injunctions
- Prosecutions
- Court of Disputed Returns
- Conclusion

6. The Act is available on the [Attorney General's Commonwealth Law website](#). Unless otherwise specified, all references to sections are to sections of the Act. Also please note, the words 'voter' and 'elector' are used interchangeably throughout this publication.

Compulsory voting s. 245

7. An elector is guilty of an offence if the elector fails to vote at an election unless they have a valid and sufficient reason. For more information on compulsory voting see [Electoral Backgrounder No. 17, 'Compulsory Voting'](#).

However, the effect of sections 231, 233 and 234 is that the voter is actually required to take the issued ballot paper(s) and to retire to the polling booth to mark their vote. It is not sufficient compliance to merely have your name marked off and then to leave the polling booth.

8. If a person found guilty of this offence, a court may impose a maximum penalty of \$170 in accordance with sections 4AA and 4AB of the *Crimes Act 1914*. In addition, court costs may also be payable.

Influencing the votes of hospital patients or residents of nursing homes s. 325A

9. A person who is the proprietor of, or an employee of the proprietor of, a hospital or nursing home must not do anything with the intention of influencing the vote of a patient in, or resident at, the hospital or nursing home.

10. A person found guilty of this offence may be fined up to \$1000 or imprisoned for six months, or both.

Bribery s. 326

Attachment A: Electoral Backgrounder – Polling Place Offences

11. A person must not ask for, receive or obtain any property or benefit of any kind for themselves or any other person on an understanding that any vote of the person will be influenced or affected.

12. A person found guilty of this offence may be fined up to \$5000 or imprisoned for two years, or both.

Interference with political liberty s. 327

13. A person must not hinder or interfere with the free exercise or performance, by any other person, of any political right or duty that is relevant to an election under the Act.

14. A person found guilty of this offence may be fined up to \$1000 or imprisoned for six months, or both.

Printing and publication of electoral handbills, pamphlets or posters s. 328

15. A person must not print, publish or distribute a handbill, pamphlet or poster unless the name and address of the person who authorised the publication and the name and place of business of the printer appears at the end.

16. These requirements do not apply in relation to T-shirts, lapel buttons, lapel badges, pens, pencils or balloons, and some types of cards.

17. A person found guilty of this offence may be fined up to \$1000. A body corporate found guilty of this offence may be fined up to \$5000.

Printing and publication of How-to-Vote cards s. 328B

18. Subsection 4(1) contains the definition of what is a How-to-Vote card. In short, it is any printed medium that lists the name of two or more candidates and directs or encourages electors to mark their preference for the candidates in a particular order.

19. Section 328B provides that a person must not publish a How-to-Vote card from the issue of a writ for an election to the close of polling in Australia unless it contains, at the top or bottom of each printed face:

- The name and address of the person who authorised the how-to-vote card; and
- The name of the registered political party or candidate on whose behalf the card has been published.

However, as section 328 does not apply to How-to-Vote cards, there is no requirement for the printer details to be included on the cards.

Attachment A: Electoral Backgrounder – Polling Place Offences

20. A person found guilty of this offence may be fined up to 50 penalty units. A single penalty unit is currently \$170 under section 4AA of the Crimes Act 1914.

Misleading or deceptive publications s. 329

21. A person must not print, publish or distribute any matter or thing during an election period that is likely to mislead or deceive an elector in relation to the casting of a vote in an election under the Act. The scope of what amounts to "publish" has been expanded to include not just the print media, but also by radio, television, internet or telephone.

22. A person found guilty of this offence may be fined up to \$1000 or imprisoned for up to six months, or both. A body corporate found guilty of this offence may be fined up to \$5000.

Depiction of certain electoral matter s. 334

23. A person must not write, draw or depict any electoral matter directly on any roadway, footpath, building, vehicle, vessel, hoarding or place. The history of this offence goes back to the shortages of building supplies following WWII. In essence it amounts to a graffiti type offence and does not cover printed and paid for signage.

24. A person found guilty of this offence may be fined up to \$1000.

General offences in relation to ballot papers s. 339

25. Subsection 339(1) of the Act provides for a number of offences in relation to ballot papers. These offences include impersonating any person with the intention of securing a ballot paper to which the impersonator is not entitled; and impersonating any person with the intention of voting in that person's name.

26. A person found guilty of one of these offences may be imprisoned for six months.

27. A person who votes more than once in an election is guilty of an offence which carries a penalty of 10 penalty units, while a person who intentionally votes more than once in the same election is guilty of an offence which carries a penalty of 60 penalty units. A single penalty unit is currently equivalent to \$170 under section 4AA of the *Crimes Act 1914*.

28. A person is guilty of an offence if the person defaces, mutilates, destroys or removes any notice, list or other document affixed by, or by the authority of, any Divisional Returning Officer.

29. A person found guilty of this offence may be fined up to \$500.

Canvassing near polling booths s. 340

Attachment A: Electoral Backgrounder – Polling Place Offences

Note: That where a building used as a polling booth is situated in grounds within an enclosure, those grounds (by notice) may be deemed by the DRO to be part of the polling booth itself and the entrance to those grounds would become the entrance to the polling booth.

30. If a person engages in any of the following activities within a polling booth, or within six meters of the entrance to a polling booth on election day, the person is guilty of an offence:

- Canvassing for votes
- Soliciting the vote of any elector
- Inducing any elector not to vote for any particular candidate
- Inducing any elector not to vote at the election
- Exhibiting any notice or sign (other than an official notice) relating to an election.

31. A person found guilty of these offences can be fined up to \$500.

32. If a person is engaging in any of the activities listed above and is using a loudspeaker, broadcasting equipment or other sound amplifier-type equipment, then if the activity is audible within a polling booth or within six meters from the entrance to the polling booth, the person is guilty of an offence.

33. A person found guilty of this offence currently can be fined up to \$850.

Displaying badges or emblems of candidates in polling booths s. 341

34. On election day, no officer or scrutineer is allowed to wear or display a badge or emblem of a candidate or political party in a polling booth.

35. A person found guilty of this offence can be fined up to \$1000.

Leaving how-to-vote cards in polling booths s. 335

36. Any person who exhibits or leaves a card or paper in a polling booth that has any direction or instruction about how an elector should vote, or about the method of casting a vote, will be committing an offence.

37. A person found guilty of this offence can be fined up to \$500.

38. This prohibition does not apply to:

- Official instructions, for example posters put up by the AEC to assist voters in voting formally (so that the vote is counted); and
- Cases where a person is appointed by an elector to assist that elector to vote under the provisions in s. 234. Section 234 provides that in cases where a person has low vision, physical disability or literacy issues such that he or she is unable to vote without assistance, the elector may appoint another person to assist them in marking their ballot

Attachment A: Electoral Backgrounder – Polling Place Offences

paper. If the elector does not appoint a person to assist them, the presiding officer of the polling place may do so. The elector may indicate how the ballot paper is to be marked by presenting a how-to-vote card to the presiding officer. This presentation of a how-to-vote card does not contravene s. 335.

Making false statements to voters about enrolment s. 330

39. A person commits an offence if, on election day, they knowingly make a statement to a voter, either orally or in writing, with respect to a voter's enrolment and that statement is false or misleading in a material respect.

40. A person found guilty of this offence can be fined up to \$1000 or imprisoned for six months, or both.

Unlawfully marking ballot papers s. 338

41. If a person makes a mark or writes on a ballot paper of another elector (unless the person is expressly authorised by the Act), the person will be guilty of an offence.

42. A person found guilty of this offence can be fined up to \$1000 or six months imprisonment, or both.

Disobeying lawful direction of the person in charge of polling premises s. 348

43. The person in charge of a polling booth is the presiding officer or the substitute presiding officer. A person in charge of an early voting centre is the Divisional Returning Officer or early voting officer.

44. In a polling booth or early voting centre, a person must not commit misconduct or disobey a lawful direction given by the person in charge of the premises.

45. If a person is prosecuted and found guilty of one of these offences, they may be fined up to \$500.

46. A person must not enter or remain in a polling booth or early voting centre without the permission of the person in charge of the premises, with the exception of polling officials, scrutineers or electors who enter the polling booth for the purpose of voting, and who should remain no longer than is reasonably necessary to do so.

47. A person who does any of these things at a polling booth may be lawfully removed from the polling booth by a police officer or a person authorised by the person in charge of the premises.

48. If a person is prosecuted and found guilty of this offence, they may be fined up to \$500.

Attachment A: Electoral Backgrounder – Polling Place Offences

Officers and scrutineers to observe secrecy s. 323

49. Except in relation to Antarctic voting arrangements, an officer or scrutineer must not divulge or communicate any information with respect to the vote of an elector (acquired by him or her in the performance of functions under the Act) that is likely to enable the identification of the elector.

50. A person found guilty of this offence may be fined up to \$1000 or imprisoned for six months, or both.

Scrutineers influencing or communicating with voters in polling booths s. 218

51. A scrutineer must not interfere with or attempt to influence any voter within the polling booth, or communicate with any person in the polling booth except so far as it is necessary in the discharge of the scrutineer's functions.

52. The penalty prescribed for breaching this provision can be a fine of up to \$1000 or imprisonment for six months, or both.

53. The Act requires all scrutineers to wear a badge identifying them as a scrutineer whilst in the polling booth. The badges are supplied by the AEC.

54. A scrutineer who breaches these requirements, commits misconduct or fails to obey the lawful directions of the presiding officer, may be removed from the polling booth by a member of the Australian Federal Police, the state or territory police force, or another person authorised by the presiding officer.

Obligations of persons present when pre-poll vote cast s. 200K

55. A person who is present when an elector marks a ballot paper at a pre-poll voting place must not interfere with the elector in relation to the elector's vote or do anything that would enable the person to find out how the elector marked the ballot paper.

56. The penalty for breaching this provision is a fine of \$1 000.

Possible repercussions for persons who commit offences

57. If the AEC becomes aware that a person is breaching the provisions of the Act during polling, any or all of the following actions may be taken. Removal from the premises.

Attachment A: Electoral Backgrounder – Polling Place Offences

58. Section 348 provides that where a person commits misconduct in a polling booth, counting centre or early voting centre, the person in charge of the premises may direct that person to leave the premises or have the person removed from the premises.

Injunctions

59. Section 383 of the Act provides that the Federal Court may grant an injunction to (amongst other things) prohibit a person from engaging in conduct that constitutes a contravention of the law in relation to elections.

60. The AEC and candidates in the election may make an application for an injunction to the Federal Court. If the AEC is informed or becomes aware that a person may have committed an offence, the AEC determines whether it is appropriate in the circumstances to apply for an injunction. The Federal Court is able to order injunctions at short notice on election day.

61. If an injunction is granted against a person, failure to comply with the injunction order may constitute contempt of court, for which the Federal Court can order arrest and detention.

Prosecutions

62. When the AEC becomes aware of a person engaging in activity that may constitute a breach of an offence provision, the AEC may refer the matter to the AFP for investigation. The AFP may then refer the matter to the Commonwealth Director of Public Prosecutions for consideration, in accordance with the Commonwealth Prosecution Policy, as to whether a prosecution is initiated.

Court of Disputed Returns

63. There is a risk that if a person has engaged in an 'illegal practice' (which is defined in section 351 to be a contravention of the Act or Regulations) the election of a candidate could also be challenged in the Court of Disputed Returns (CDR). Section 362 gives the CDR the power to void an election on the grounds of an illegal practice where the Court is satisfied that the results of the election was likely to have been affected as a result of the practice (see *Mitchell v Bailey* (No.2) [2008] FCA 692 and *Scott-Irving v Oakeshott* [2009] FCA 487).

Conclusion

64. Anyone with an interest in the laws on offences relating to polling, or their application in particular circumstances, should consult the exact provisions of the Act and seek their own legal advice.

65. The *Commonwealth Electoral Act 1918* is available on the [Attorney-General's Commonwealth Law website](#). AEC [parliamentary submissions](#) relating to electoral law can be accessed through the AEC website.

Attachment A: Electoral Backgrounder – Polling Place Offences

66. Anyone who believes that the law governing polling place offences should be changed may make a submission to the Joint Standing Committee on Electoral Matters at Parliament House.

Attachment B: Electoral Backgrounder: Electoral Advertising

Electoral Backgrounder: Electoral advertising

Updated: 17 February 2015

Introduction

1. Electoral Backgrounders are published by the Australian Electoral Commission (AEC) to provide a basic introduction to electoral law, policy and procedures for the information and guidance of all interested parties.

2. This Electoral Backgrounder provides a basic introduction to electoral advertising. Its contents are a guide only. Individual matters are assessed on a case-by-case basis and, ultimately, it is for the courts to decide upon the interpretation of the law in any particular case. Accordingly, if you are in doubt about the interpretation of the law in particular circumstances, you should seek your own independent legal advice.

3. This Electoral Backgrounder discusses:

- Intent of the law
- Authorisation of electoral advertising – printed matter and videos
- Electoral advertising – internet
- How-to-vote cards
- Misleading and deceptive electoral advertisements
- Truth in political advertising
- Defamation of candidates
- Electronic media blackout
- Political advertising bans
- Non-compliance – electoral advertising offences
- Other action
- Complaints

4. The *Commonwealth Electoral Act 1918* (the Act) is available on the [Attorney-general's commonwealth law website](#). Unless otherwise specified, all references to sections are to sections of the Act. Also, please note that the words 'voter' and 'elector' are used interchangeably throughout this publication.

Intent of the law

5. Federal elections are conducted by the AEC under the provisions of the Act.

Attachment B: Electoral Backgrounder: Electoral Advertising

6. The Australian Parliament has determined that the Act should not regulate the content of political messages contained in electoral advertising. Rather, the intent of the Act is to ensure electors are informed about the source of political advertising and to ensure that political advertising does not mislead or deceive electors about the way in which a vote must be cast. Further, as the authorisation details are required to include a street address, this facilitates the taking of legal action and the serving of legal documents where a person believes they have been defamed or otherwise have some legal cause of action arising from the publication of the material.

7. Accordingly, the AEC has no role or responsibility in deciding whether political messages published or broadcast in relation to a federal election are true or untrue. However, the AEC does have a role in ensuring, to the extent possible, that electoral advertisements which appear in the print media, on posters and on videos are properly authorised so that electors know who is responsible for the statements contained in them.

Authorisation of electoral advertisements – printed matter and videos

8. In relation to printed matter, subsection 328(1) requires electoral advertisements to state at the end of an electoral advertisement the name and street address of the person who authorised the advertisement and the name and place of business of the printer. However, subsection 328(1) does not apply to particular items (such as T-shirts and how-to-vote cards) set out in subsection 328(3). This is discussed in further detail below under the heading, 'What does not require authorisation?'

Subsection 328(1A) requires that all electoral video recordings contain the name and address of the person authorising the video recording at the end of the recording.

9. It is important to note that electoral advertisements must be authorised at all times – not just during an election period. 'Election period' is defined in section 287 as follows:

... period commencing on the day of issue of the writ for the election and ending at the latest time on polling day at which an elector in Australia could enter a polling booth for the purpose of casting a vote in the election.

10. An 'electoral advertisement' is defined in subsection 328(5) as follows:

... an advertisement, handbill, pamphlet, poster or notice that contains electoral matter, but does not include an advertisement in a newspaper announcing the holding of a meeting.

11. 'Electoral matter' is defined in subsections 4(1) and 4(9). In subsection 4(1) 'electoral matter' is defined as matter which is intended or likely to affect voting in an election. Subsection 4(9) further states that:

Attachment B: Electoral Backgrounder: Electoral Advertising

... 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. any issue submitted to, or otherwise before, the electors in connection with the election.

12. It should be noted however, that despite the words 'shall be taken to be', subsection 4(9) must be read in light of the limits on the Commonwealth's constitutional power to regulate electoral matters. That is, the Commonwealth may not regulate electoral advertising that contains no connection to the Commonwealth.

13. The effect of the above is that the closer to the due date for the holding of an election (for example, the 3-year term for the expiry of the House of Representatives in section 28 of the Constitution) the more likely that a reference to one of the above matters will be 'likely to affect voting'. This will therefore be an electoral matter that requires the inclusion of the authorisation details set out in section 328.

The tests applied by the AEC

14. In the AEC's view, there are two broad approaches for determining whether a particular electoral advertisement requires authorisation under section 328. The first applies to material that falls within paragraphs 4(9)(a), (e) and (f). The second applies to material that falls within paragraphs 4(9)(b), (c) and (d).

Material that falls within paragraphs 4(9)(a), (e) and (f)

15. In determining whether material which makes reference to paragraphs 4(9)(a), (e) and (f), and therefore whether the material falls within section 328, the AEC applies the following:

Is the reference in the material to 'the election' a reference to the federal election? If the answer is 'yes', the advertisement is likely to contain 'electoral matter' and requires the inclusion of the authorisation details 'at the end thereof' as stated in section 328.

Material that falls within paragraphs 4(9)(b), (c) and (d)

Attachment B: Electoral Backgrounder: Electoral Advertising

16. With respect to paragraphs 4(9)(b), (c) and (d), the AEC's view is that these provisions may operate slightly differently depending on the proximity of the publication of the electoral advertisement to the due date for the holding of an election. Generally speaking, the closer the publication date for the electoral advertisement to the due date for the holding of an election, the greater the likelihood that the AEC may conclude that a matter is 'intended or likely to affect voting in an election'. Clearly once an election date has been set for a federal election or a by-election, the presumption is that all printed and video advertising that covers any of the subject matters listed in subsection 4(9) is likely to be required to include the authorisation details set out in section 328.

17. The AEC notes that the current practice of political parties is that the conduct of an election campaign commences well in advance of the actual issue of the writs for an election. The AEC also notes that there are some provisions in the Act which only create an offence during the 'relevant period' which is defined in section 322 as being the period between the issue of the writs for an election and polling day. However, the Parliament has specifically not placed such a limited operation on section 328. In circumstances where there is an absence of bi-partisan political support for measures and policies that may be the subject of advertisements, the AEC will regard such advertising as prima facie amounting to advertising containing 'electoral matter' notwithstanding that there has been no announcement or issuing of the writs for an election.

18. Accordingly, in determining whether material which makes reference to paragraphs 4(9)(a), (e) and (f) and therefore whether the material falls within section 328, the AEC applies the following:

During a federal election period

Where an advertisement falls within a federal election period, subsection 4(9) will deem an advertisement making an express or implicit reference to one of the people or bodies politic listed in paragraphs (b), (c) and (d) to contain electoral matter. Accordingly, the advertisement requires authorisation as stated in section 328.

Outside a federal election period

Where the advertisement falls outside a federal election period, the issue is whether there is some connection between the reference to a person or institution described in paragraphs 4(9)(b), (c) or (d) and a federal election. If the answer is 'yes', for example, if the reference is intended or likely to affect voting in a federal election, the advertisement requires authorisation as stated in section 328. Importantly, this requires an assessment of the intention or effect of the advertisement.

19. Of course, where material falls outside of the deeming provision in subsection 4(9), it will only require authorisation if it otherwise contains 'electoral matter' in subsection 4(1), for example, if it is intended or likely to affect voting in a federal election. This will require an assessment of the intention or effect of the advertisement.

Attachment B: Electoral Backgrounder: Electoral Advertising

Details of the person who authorised the advertisement

20. Section 328 requires electoral advertisements to include the name and full street address of the person who authorised the advertisement, as well as the name and place of business of the printer of the advertisement, at the end of the advertisement. This ensures that anonymity does not become a protective shield for irresponsible or defamatory statements. The inclusion of the street address details enables legal proceedings to be issued and served.

Address of the authoriser

21. The address requirements contained in subsection 328(5) prohibit the use of a post office box and require a full street address and suburb or locality at which the person can usually be contacted during the day. The address does not have to be a residential address.

Place of business of the printer

22. Paragraph 328(1)(b) states that 'the name and place of business of the printer appears at the end thereof'. The purpose of this provision is to facilitate the taking of legal action and the serving of legal documents where a person believes that they have been defamed or otherwise have some legal cause of action arising from the publication of the material. Accordingly, the AEC has the view that the details of the actual street address of the printer at which the business of printing is undertaken is required to be included to comply with this requirement.

Advertisements published in newspapers

23. Although paragraph 328(1)(a) requires electoral advertisements in newspapers to contain the name and address of the person who authorised the electoral advertisement, paragraph 328(1)(b) makes it clear that the name and place of business of the printer is not required at the end of an advertisement in a newspaper. Subsections 328(1AB) and (1AC) make it an offence to print, publish or distribute or cause, permit or authorise the printing, publication and distribution, of electoral advertisements that take up the whole or part of each of two opposing pages of a newspaper, without including the name and address (not being a post office box number) of the person who authorised the electoral advertisement at the end of both pages, except in specific circumstances relating to the layout of the advertisement.

24. Subsection 328(2) provides that the maximum penalty for a contravention of subsections 328(1), (1A) or (1AB) is a fine not exceeding \$1 000 for a person or a fine not exceeding \$5 000 for a body corporate.

What does not require authorisation?

25. Subsections 328(3) and (5) provide certain exceptions to the usual authorisation requirements. The following electoral advertisements do not require an authorisation and printer details:

Attachment B: Electoral Backgrounder: Electoral Advertising

- electoral advertisements in newspapers announcing the holding of a meeting;
- electoral advertisements on T-shirts, lapel buttons and badges, pens, pencils and balloons;
- business cards that promote a candidate;
- letters and cards that already bear the name and address of the sender (and do not contain a representation of a ballot paper).

This means that, for example, letters to constituents from Members of Parliament or business cards from candidates do not require the person who authorised them and printer details to appear at the end if they already contain the name and address of the person responsible. On the other hand, other publications such as stickers, fridge magnets, wine bottle labels and cinema slides that, for example, contain electoral advertisements, do require the name and address of the person who authorised them and the name and place of business of the printer to be included.

What do you do if the material has already been produced and you have omitted to authorise it?

26. In circumstances where material has already been produced without the appropriate authorising information, and it would be expensive to discard the production run, the AEC recommends that additional material containing the authorising information be printed and attached to render the advertisement legal (for example, stickers containing the authorisation).

Headings to electoral advertisements

27. Electoral advertisements in a journal (for example, newspapers, magazines and other periodicals), whether published for sale or for distribution without charge, must contain an identifying heading stating that it is an advertisement. Section 331 requires the proprietor of a journal to cause the word 'advertisement' to be printed as a headline to the advertisement in letters not smaller than 10 point. Other special requirements apply to large advertisements spread across two opposing pages of a journal (see paragraph 22 above).

28. There is no requirement for the identification of the authors of letters to the editor in newspapers and journals. Similarly, there is no law requiring the identification of talkback radio callers during an election period.

29. The maximum penalty for a contravention of section 331 is five penalty units. (A single penalty unit is currently equivalent to \$170 under section 4AA of the *Crimes Act 1914*.)

30. It is important to note that section 331 applies at all times, not just during an election period.

Electoral advertising – internet

Attachment B: Electoral Backgrounder: Electoral Advertising

31. Section 328A applies to electoral advertisements intended to affect voting in a federal election where a person has paid for the advertisement to appear on the internet.

32. It is important to distinguish the reference to 'electoral advertisement', as it applies to advertising on the internet in section 328A, from the definition of an 'electoral advertisement' contained in subsection 328(5) that applies to printed matter (see section 328). Section 328A does not define electoral advertisements that are published on the internet by reference to the term 'electoral matter'. This was deliberate in giving effect to Recommendation 44 of the report of the Joint Standing Committee on Electoral Matters (JSCEM) entitled 'Report of the Inquiry into the Conduct of the 2004 Federal Election and Matters Related Thereto', which led to the inclusion of section 328A. The AEC has the view that the ordinary natural meaning of the word 'advertisement' applies to the interpretation of section 328A. The Macquarie Dictionary defines 'advertisement' as 'any device or public announcement, as a printed notice in a newspaper, a commercial film on television, a neon sign, etc., designed to attract public attention, bring in custom, etc.'

33. Accordingly, any paid-for announcement on the internet designed to attract public attention, which is intended to affect voting in a federal election, would appear, on its face, to attract the operation of subsection 328A(1).

34. It is important to note that subsection 328A(2) provides a defence to a contravention of subsection 328A(1) if the material published forms part of a general commentary on a website.

35. The maximum penalty for a contravention of section 328A is five penalty units. A single penalty unit is currently equivalent to \$170 under section 4AA of the *Crimes Act 1914*.

36. It is important to note that section 328A applies at all times, not just during an election period.

How-to-vote cards

37. Section 328B deals with the requirements for how-to-vote cards which are a subset of other forms of printed electoral advertisements covered by section 328. These requirements will apply for the first time to the 2013 federal election.

38. Subsection 4(1) contains the definition of what is a how-to-vote card. In very broad terms, it is any printed medium that lists the name of two or more candidates and directs or encourages electors to mark their preference for the candidates in a particular order.

39. Section 328B provides that a person must not publish how-to-vote cards during 'the relevant period for an election' unless the name of the registered political party or candidate on whose behalf the cards have been published is clearly printed at either the top or bottom of the cards. In addition, the name and address of the person who authorised the card must also appear at either the top or bottom of the cards. The address of the person must be the full street address at which the person can normally be contacted during business hours and does not include a post office box. However, as section 328 does not apply to how to vote cards

Attachment B: Electoral Backgrounder: Electoral Advertising

(see paragraph 328(3)(aa)) there is no requirement for the printer details to be included on the cards. The 'relevant period' which is defined in section 322 is the period commencing on the issue of the writs for the election and expiring at the latest time on polling day at which an elector in Australia could enter a polling booth for the purpose of casting a vote in the election.

40. A person found guilty of this offence may be fined up to 50 penalty units. A single penalty unit is currently equivalent to \$170 under section 4AA of the *Crimes Act 1914*, so this would be a total of up to \$8 500. It only applies during an election period.

Misleading or deceptive electoral advertisements

41. At election time, electors generally rely on official AEC publications and broadcasts for information on when and where to vote. The AEC also provides advertising which includes guidance on how to fill out their ballot papers correctly so as to cast a formal vote. AEC publications and broadcasts also provide advice on how to cast a full preferential vote by numbering all the squares on the House of Representatives ballot paper, and by either numbering all the squares below the line or by casting a group ticket vote by voting above the line on the Senate ballot paper.

42. Political parties and candidates, and other interested individuals and organisations, also produce electoral advertising during an election campaign to assist voters in choosing their preferred candidates when casting a vote. The print versions of such electoral advertising will usually take the form of how-to-vote cards, which demonstrate how voters should number their preferences against each candidate on the ballot paper so as to ensure the election of the most favoured candidate or group of candidates.

43. Voters are not required to follow how-to-vote cards. The order in which preferences are placed against candidates on the ballot paper is a decision for the voter alone, in the privacy of the voting compartment in accordance with the principle of the secret ballot.

44. Although the AEC has no role in regulating the political content of electoral advertising, the AEC is responsible for ensuring, as far as possible, that electoral advertising does not mislead or deceive voters about the way in which they must cast their vote. For example, how-to-vote cards should not advocate optional preferential voting because, with limited exceptions, the Act clearly requires full preferential voting. Incomplete ballot papers are informal and are unable to be counted.

45. Subsection 329(1) 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. Section 329 applies not only to printed matter but also to electoral advertisements broadcast on radio, television, the internet or by telephone. Subsection 329(5) provides that in a prosecution of an offender, it is a defence if it is proved that the person did not know, and could not reasonably be expected to have known, that the matter or thing was likely to mislead an elector in relation to the casting of a vote.

Attachment B: Electoral Backgrounder: Electoral Advertising

46. Unlike sections 328, 328A and 331 (which apply at all times), subsection 329(1) is in force only during the relevant period in relation to an election. The 'relevant period' which is defined in section 322 is the period commencing on the issue of the writ for the election and expiring at the latest time on polling day at which an elector in Australia could enter a polling booth for the purpose of casting a vote in the election.

47. The maximum penalty for a contravention of subsection 329(1) is a fine not exceeding \$1 000 or imprisonment for a period not exceeding six months, or both, for a person, and a fine not exceeding \$5 000 for a body corporate.

48. The intention of subsection 329(1) is not to regulate the content of political messages directed at influencing the choice of preferred candidates or political parties by voters but to regulate publications and broadcasts that are directed at influencing the way in which the ballot paper is actually marked. This distinction was upheld by the High Court in *Evans v Crichton-Browne* (1981) 147 CLR 169, the leading case on subsection 329(1).

49. In this case the provision in question was section 161, the relevant part of which is now contained in subsection 329(1), so that the following conclusion of the court is equally applicable to subsection 329(1) as it stands today: The words in section 161(e) 'in or in relation to the casting of his vote' refer to the act of recording or expressing the elector's political judgment, for example, in obtaining and marking a ballot paper and depositing it in the ballot box, and not to the formation of that judgment.

50. This means that the AEC has no role or responsibility in handling complaints about allegedly untrue statements in published or broadcast electoral advertisements that are intended to influence the judgment of voters about who they should vote for. Complaints that do fall within the scope of subsection 329(1) are those that relate to electoral publications, broadcasts, internet or telephone messages that are likely to mislead or deceive an elector in relation to the way the ballot paper is marked.

51. In coming to its conclusion in *Evans v Crichton Browne*, the High Court indicated that it will be reluctant to find that the offence provisions of the Act infringe on conduct that is more appropriately covered by the political process:

But even if the paragraph were thought to apply only to those statements affecting a voter's choice of candidate which appear to be statements of fact, that construction would require an election campaign to be conducted in anticipation of proceedings brought to test the truth or correctness of any statement made in the campaign. Indeed any person who published an electoral advertisement containing an incorrect statement of fact might be exposed to criminal proceedings. In a campaign ranging over a wide variety of matters, many of the issues canvassed are likely to be unsuited to resolution in legal proceedings, and a court should not attribute to the Parliament an intention to expose election issues to the potential requirement of legal proof in the absence of clear words.

52. The above High Court decision was also considered in the context of the 2010 election in the cases of *Faulkner v Elliott* [2010] FCA 884 and *Peebles v Honourable Tony Burke* [2010] FCA 838, and most recently in the decision of the South Australian Supreme Court in

Attachment B: Electoral Backgrounder: Electoral Advertising

Holmdahl v Australian Electoral Commission (No 2) [2012] SASCFC 110. At paragraph 10 of the decision in the *Peebles v Honourable Tony Burke* case the Court stated that:

It is clear from reading the entire reasons for judgment of the High Court in *Crichton-Brown* that the prohibition in s 329 concerns misleading or deceptive conduct which might affect the process of casting a vote rather than the formation of the political judgment about how the vote will be cast. That is, the section concerns conduct which might, for example, lead a voter either to fail to record a valid vote or to record a valid vote but not for the candidate or candidates of the voter's choice. An obvious example would be information which told a voter how to go about completing the ballot paper which was wrong and would result in the casting of an informal vote.

53. Accordingly, the test that is applied by the AEC in examining a publication under section 329 is whether the publication merely goes towards the formation of the judgment as to who to vote for, rather than the actual act of marking the ballot paper. The AEC notes that the distinction between these two things is a question of fact and degree.

54. Section 329 also extends to radio and television advertising. The courts have not yet considered the application of section 329 to the electronic publication of electoral advertising on the internet. However, the AEC considers that section 329 does apply to electoral advertising on the internet.

Second preference how-to-vote cards

55. Second preference how-to-vote cards are those in which a party (usually a major party) recommends a first preference vote for a candidate of another party (usually a minor party) while recommending its own candidate as the second preference (or at least a preference higher than other major parties). These how-to-vote cards are actually authorised by the originating political party (usually a major party) although they sometimes appear, due to their heading, colour and general layout, similar to the official how-to-vote card of the party endorsing the candidate recommended as the first preference. A party which puts out a second preference how-to-vote card may also put out its own official how-to-vote card recommending a first preference vote for its own endorsed candidate.

56. The political strategy involved in major political parties issuing second preference how-to-vote cards is to capture the second or later preferences ahead of other major political parties after the minor political party candidate or independent candidate is eliminated from the count. The concern is that voters might be misled into believing that these second preference how-to-vote cards are the official how-to-vote cards for the minor political party or independent candidate shown as the first preference.

57. On the basis of relevant decisions handed down by the courts over the years, second preference how-to-vote cards would probably be held by a court to be in contravention of subsection 329(1) if they were very similar in appearance to the official how-to-vote card for

Attachment B: Electoral Backgrounder: Electoral Advertising

another political party or independent candidate. This might mislead a voter into thinking it is the official how-to-vote card and thereby mislead the voter in casting a vote.

58. The previous concerns over these types of how-to-vote cards will hopefully be addressed by all candidates and political parties complying with the requirements of new section 328B which now requires the details of the candidate or political party, on whose behalf the card was published, to be clearly identified.

59. It should be noted that section 351, which relates to the publication of matter regarding candidates, might also apply to first preference recommendations for one political party candidate in second preference how-to-vote cards issued by another political party.

Truth in political advertising

60. Although the Act previously contained a prohibition on 'untrue' advertising (see former subsection 161 (2)), this was repealed in 1984. Subsequent JSCEM reports have made various recommendations about reinstating it. Successive governments have not supported these recommendations. For example, in the Government's response to the 1997 JSCEM report tabled in Parliament on 8 April 1998, the recommendation was rejected, as follows:

The Government firmly believes that political advertising should be truthful in its content. However, any legislation introduced to enforce this principle would be difficult to enforce and could be open to challenge. Previous Committees have found that it was not possible to legislate to control political advertising and that voters, using whatever assistance they see fit from the media and other sources, remain the most appropriate arbiters of the worth of political claims.

61. It should be noted, however, that Free TV Australia (formerly the Federation of Australian Commercial Television Stations) reviews election advertisements prior to broadcast by commercial television stations for the purpose of:

- classifying the advertisement under the Commercial Television Industry Code of Practice
- ensuring the advertisement includes the authorisation tag required by the *Broadcasting Services Act 1992* (Clause 4 of Part 2 of Schedule 2) and complies with other requirements on broadcasters under applicable electoral acts (Commonwealth, State or Territory), and
- protecting broadcasters from liability for publishing defamatory material.

62. The party or candidate authorising the advertisement is expected to ensure that the advertisement complies with all relevant laws including the applicable electoral acts and the laws of defamation.

Defamation of candidates

Attachment B: Electoral Backgrounder: Electoral Advertising

63. Section 350 of the Act previously provided for an offence of defaming a candidate. However, on 15 March 2007 the *Electoral and Referendum Legislation Amendment Act 2007* repealed section 350. Aggrieved candidates will now need to seek redress under the applicable statutory or common law if they believe they have been defamed.

Electronic media blackout

64. Under Schedule 2 to the *Broadcasting Services Act 1992*, which is administered by the Australian Communications and Media Authority (ACMA), there is an election-advertising blackout on all TV and radio broadcasts from midnight on the Wednesday before polling day to the end of polling on the Saturday. This three-day blackout effectively provides a 'cooling off' period in the lead up to polling day, during which political parties, candidates and others are no longer able to purchase time on television and radio to broadcast political advertising.

65. The election-advertising blackout provisions and other provisions relating to the broadcasting of political matter are administered by ACMA. The election advertising blackout only applies to broadcasters. It does not include online services or print media.

Political advertising bans

66. In June 1989 the JSCEM tabled its Report No 4, entitled 'Who pays the piper calls the tune', which discussed minimising the risks of private funding of political campaigns. The JSCEM concluded that the high cost of advertising on television was placing increasing pressures on Australian political parties and candidates to become dependent on corporate funding. This dependence carried the risk of corporate interests bringing undue influence to bear on the federal political agenda. In its examination of the problem the JSCEM looked at the possibility of legislating for a complete ban on all political advertising, but rejected such an option in the following terms.

While some viewers might support a complete ban on political advertising, it would have a direct effect on freedom of speech by reducing opportunities for discussion during election periods when voters are determining the candidate or party they wish to support.

Most witnesses disagreed with a complete ban on political advertising, claiming that it would have an adverse effect on freedom of speech and in particular would disadvantage citizens and groups who wished to bring issues before the electorate. The beneficiaries of a complete ban would be the existing major parties.

67. The JSCEM decided instead to recommend a 'carrot and stick' approach to the problems raised by corporate donations to political campaigns: the provision of free time by all electronic broadcasters to political parties, and an extension of the requirements for disclosure of political donations.

68. Subsequently, on 3 January 1992 the *Political Broadcasts and Political Disclosures Act 1991* came into force. This Act amended the *Commonwealth Electoral Act* with respect to election funding and disclosure, and inserted a new Part IIID into the *Broadcasting Act 1942* to

Attachment B: Electoral Backgrounder: Electoral Advertising

ban political advertising at all parliamentary elections and to provide for free air time for all political parties on television stations. The ban also applied to all government advertising for three months before polling day.

69. However, in August 1992 Part IIID of the *Broadcasting Act 1942*, which was inserted by the *Political Broadcasts and Political Disclosures Act 1991*, was struck down by the High Court as unconstitutional (see *Australian Capital Television Pty Ltd v Commonwealth* (1992) 177 CLR 106).

70. Six of the seven Justices of the High Court held that there was a freedom of political communication in relation to political matters inherent in the Constitution. The Constitution is predicated on representative government, and freedom of communication is essential to that system. All of the Justices who recognised an implied freedom also recognised that the freedom was not absolute and could be restricted to the extent that other legitimate public interests required. They held that control of the use of the media for political advertising could be valid in some circumstances. However, five of the Justices found that Part IIID of the *Broadcasting Act 1942* went beyond a justifiable restriction of the freedom.

Non-compliance – electoral advertising offences

71. The following discussion provides a guide as to courses of action that the AEC will take in response to an apparent or alleged breach of the law. However, they are a guide only; the AEC reserves the right to take any other course of action it considers necessary in the circumstances.

72. Further, while compliance with the law is important at all times, the AEC recognises that some breaches of the law are more serious than others. These are described below, for convenience, as more serious and less serious instances of non-compliance.

More serious non-compliance

73. More serious non-compliance is a matter of concern for the AEC at all times. More serious non-compliance involves instances where the purpose of the law, for example, the prevention of anonymous electoral advertising, is undermined by the publication of electoral advertising that fails to provide the elector with the ability to discern the identity of the person responsible for the advertisement. Advertisements which carry the words 'published by people concerned about...' represent more serious matters as they do not provide any information as to who is responsible for the advertisement.

Less serious non-compliance

74. Examples of less serious instances of non-compliance include:

- absence of an explicit authorisation in an otherwise clearly identifiable advertisement (State, Territory and Commonwealth Government advertising with clearly displayed

Attachment B: Electoral Backgrounder: Electoral Advertising

government logos, a coat of arms, or the display of the name of a prominent member of a Government, such as Ministers, Premiers or the Prime Minister)

- absence of the word 'advertisement' in an otherwise authorised advertisement in a newspaper
- absence of the place of business of the printer of an electoral advertisement in an otherwise compliant electoral advertisement
- absence of a suburb or locality in the street address of an authorisation.

75. While all instances of non-compliance with the law are serious matters, those that occur during federal election periods have the potential to have a more significant and direct impact on the casting of votes. In light of their capacity to directly affect the casting of votes in a federal election, misleading or deceptive publications receive a high priority in the AEC's compliance activities. Outside of the periods during which provisions relating to misleading or deceptive publications operate, the AEC prioritises anonymous electoral advertisements over advertisements containing less serious instances of apparent non-compliance.

76. Breaches of sections 328B and 329, because of their possible impact on the outcome of an election, require immediate action. If offending material is not immediately withdrawn or amended, the AEC may take injunction action in accordance with section 383 of the Act. *(Note: Injunctive action may also be taken by a candidate in the election pursuant to section 383.)*

77. If the AEC considers there to be a breach of sections 328 or 328A, generally the AEC will write to the relevant person seeking that the material be withdrawn until such time as the material is amended so as to comply with the law. In relation to a breach of section 331, the AEC will write to the relevant person seeking that any future publication of the same material comply with the law.

78. If there is continued non-compliance or a more serious breach of sections 328, 328A, 328B, 329 or 331, the matter may be referred to either, or both, the Australian Federal Police (AFP) and the Director of Public Prosecutions (DPP) for further action. Further, because the electoral impact of a less serious matter may vary according to the circumstances in which it occurs, the AEC may also consider it appropriate to refer a less serious matter to either, or both, the AFP and the DPP.

79. If there is any doubt as to whether there may have been a breach, the matter will be referred to the DPP for advice.

80. In summary, the AEC may adopt any or all of the following strategies in response to an apparent breach of the Act:

- a request by the AEC to cease and desist
- injunction action undertaken in the Federal Court to compel compliance

Attachment B: Electoral Backgrounder: Electoral Advertising

- referral to the AFP for investigation
- referral to the DPP for preliminary advice or prosecution.

81. Decisions with respect to the institution of criminal proceedings by the Commonwealth rest with the DPP.

Other action

82. Because many of the electoral offences contained in the Act are not punishable by a term of imprisonment, section 13 of the *Crimes Act 1914* applies which enables any person to launch a criminal prosecution against an alleged offender.

83. There is also a risk that if a person has engaged in an 'illegal practice', which is defined in section 352 as a contravention of the Act or the regulations, the election of a candidate could also be challenged in the Court of Disputed Returns (CDR). Section 362 gives the CDR the power to void an election on the grounds of an illegal practice where the Court is satisfied that the results of the election was likely to have been affected as a result of the practice (see *Mitchell v Bailey (No.2)* [2008] FCA 692 and *Scott-Irving v Oakeshott* [2009] FCA 487).

Complaints

84. Complaints must be made in writing addressed to either the Deputy Electoral Commissioner or the Chief Legal Officer of the AEC in Canberra. The complainant should also provide as much information as possible to enable assessment of the alleged breach. If possible, complaints should be accompanied by an original copy of the electoral advertisement from which the AEC can make a formal assessment of its compliance with the law.

85. If an original copy cannot be obtained, a copy of the entire document may be forwarded to the AEC. Similarly, in relation to a complaint about electoral advertisements on the internet, the complaint should, if possible, be accompanied by a printed copy of the web page showing the advertisement. The AEC can then make a formal assessment of its compliance with the law.

86. If complaints with attachments are being sent to the AEC by email, some care needs to be taken to ensure that the attachments are less than 10 megabytes in size and that a read receipt is requested to ensure that they actually are received through the AEC's systems firewall.

87. In the absence of a printed copy of the advertisement as it appeared on the internet being provided with the complaint, the AEC will require enough information about the internet site in order to locate the advertisement and make an assessment regarding compliance with the Act.

88. Information relevant to a complaint, allegation or investigation that is, or could become, subject to Part XXI proceedings – dealing with electoral offences – will not be provided to any person not directly involved with the matter. In all cases after a complaint has been laid the

Attachment B: Electoral Backgrounder: Electoral Advertising

AEC will not provide any further information to the complainant until the investigating authorities advise the AEC that it is appropriate to do so. When appropriate the AEC will write to the complainant advising of its decision and actions.

Conclusion

89. The AEC is able to assist organisations and individuals by informing them of the legislative requirements in relation to electoral advertising at federal elections. The AEC is not authorised to approve electoral advertisements for publication nor does it provide legal advice on whether a particular advertisement is in breach of the Act. If in doubt about the interpretation of the law in particular circumstances the AEC recommends people seek independent legal advice.

Endnotes

Parliamentary reports that deal with the subject of electoral advertising may be accessed through any major public library or the relevant internet site. For JSCem reports, contact the JSCem through the [Australian Parliament website](#).

Court decisions dealing with the subject of electoral advertising and free speech may be accessed through any major public library or the [Australasian Legal Information Institute website](#).

The *Commonwealth Electoral Act 1918* can be accessed at any major public library or on the [ComLaw website](#).

Relevant provisions of the *Commonwealth Electoral Act 1918*

The following relevant provisions on electoral advertising in the *Commonwealth Electoral Act 1918* are extracted for the convenience of readers. The extracted law is current at July 2007. In some instances, emphasis has been added to keywords of particular relevance.

Part I – Preliminary

4 Interpretation

1. In this Act unless the contrary intention appears:
 - electoral matter* means matter which is intended or likely to affect voting in an election
 - how-to-vote card* means a card, handbill or pamphlet:
 - a. that:
 - i. is, or includes, a representation of a ballot paper or part of a ballot paper for an election (or something apparently intended to represent a ballot paper or part of a ballot paper for an election); and

Attachment B: Electoral Backgrounder: Electoral Advertising

- ii. is apparently intended to affect, or is likely to affect, how votes are cast for any or all of the candidates in the election; or
 - b. that lists the names of 2 or more of the candidates or registered political parties in an election, with a number indicating the order of voting preference in conjunction with the names of 2 or more of the candidates or parties; or
 - c. that otherwise directs or encourages the casting of votes in an election in a particular way, other than a card, handbill or pamphlet:
 - i. that only relates to first preference votes; or
 - ii. that only relates to last preference votes.
9. 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.

Part XXI – Electoral offences

322 Interpretation

In this Part, *relevant period*, in relation to an election under this Act, means the period commencing on the issue of the writ for the election and expiring at the latest time on polling day at which an elector in Australia could enter a polling booth for the purpose of casting a vote in the election.

328 Printing and publication of electoral advertisements, notices etc.

1. A person shall not print, publish or distribute or cause, permit or authorise to be printed, published or distributed, an electoral advertisement, handbill, pamphlet, poster or notice unless:
- a. the name and address of the person who authorised the advertisement, handbill, pamphlet, poster or notice appears at the end thereof; and

Attachment B: Electoral Backgrounder: Electoral Advertising

- b. in the case of an electoral advertisement, handbill, pamphlet, poster or notice that is printed otherwise than in a newspaper – the name and place of business of the printer appears at the end thereof.
1. A. A person must not produce, publish or distribute or cause, permit or authorise to be produced, published or distributed an electoral video recording unless the name and address of the person who authorised the video recording appears at the end of it.
 1. AB. Subject to subsection (1AC), a person must not print, publish or distribute or cause, permit or authorise to be printed, published or distributed an electoral advertisement that takes up the whole or part of each of 2 opposing pages of a newspaper unless, in addition to fulfilling the requirement under paragraph (1)(a) that the name and address of the person who authorised the electoral advertisement appear at the end of it, such name and address also appears on the other page, or the part of the other page, taken up by the electoral advertisement.
 1. AC. Subsection (1AB) does not apply to an advertisement of the kind referred to in that subsection:
 - a. that is contained within:
 - i. a broken or unbroken border; or
 - ii. broken or unbroken lines extending across, or partly across, the top and bottom of the advertisement; or
 - iii. a broken or unbroken line extending along, or partly along, each side of the advertisement; or
 - b. that is printed so that to read one or more lines of the text of the advertisement it is necessary to read across both pages.
 2. A person who contravenes subsection (1), (1A) or (1AB) is guilty of an offence punishable on conviction:
 - a. if the offender is a natural person – by a fine not exceeding \$1 000; or
 - b. if the offender is a body corporate – by a fine not exceeding \$5 000.
 3. Subsection (1) does not apply in relation to:
 - a. a how-to-vote card (aa); or
 - b. T-shirt, lapel button, lapel badge, pen, pencil or balloon; or
 - c. business or visiting cards that promote the candidacy of any person in an election for the Parliament; or
 - d. letters and cards:
 - i. that bear the name and address of the sender; and

Attachment B: Electoral Backgrounder: Electoral Advertising

- ii. that do not contain a representation or purported representation of a ballot paper for use in an election for the Parliament; or
 - e. an article included in a prescribed class of articles.
- 4. Nothing in paragraph (3)(aa)(a), (b) or (c) is taken, by implication, to limit the generality of regulations that may be made by virtue of paragraph (3)(d).
- 5. In this section:

address of a person means an address, including a full street address and suburb or locality, at which the person can usually be contacted during the day. It does not include a post office box.

electoral advertisement, handbill, pamphlet, poster or notice means an advertisement, handbill, pamphlet, poster or notice that contains electoral matter, but does not include an advertisement in a newspaper announcing the holding of a meeting.

electoral video recording means a video recording that contains electoral matter.

328A Publication of electoral advertisements on the Internet

- 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.

- 2. Subsection (1) does not apply if the matter published on the internet forms part of a general commentary on a website.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the Criminal Code).

- 3. Section 15.2 of the Criminal Code (extended geographical jurisdiction – category B) applies to an offence against subsection (1).
- 4. In this section:

Attachment B: Electoral Backgrounder: Electoral Advertising

address of a person means an address, including a full street address and suburb or locality, that is located in Australia at which the person can usually be contacted during the day. It does not include a post office box.

328B Requirements relating to how-to-vote cards

1. The following information (the *authorisation details*) must be included at the top or bottom of each printed face of a how-to-vote card:
 - a. the name and address of the person who authorised the how-to-vote card;
 - b. the following information (to the extent that it is not already required by paragraph (a)):
 - i. if the card is authorised by or on behalf of a registered political party, or by or on behalf of a candidate who is endorsed by a registered political party – the name of the registered political party;
 - ii. if the card is authorised by or on behalf of a candidate who is not endorsed by a registered political party – the candidate's name, and the word 'candidate'.

Offence of publishing etc. how-to-vote card that does not contain required authorisation details

4. A person (the *first person*) commits an offence if:
 - a. the first person:
 - i. publishes or distributes a document; or
 - ii. causes, permits or authorises another person to publish or distribute a document; and
 - b. that conduct of the first person occurs during the relevant period for an election; and
 - c. the document is a how-to-vote card; and
 - d. the how-to-vote card does not comply with the requirements of subsection (1) relating to authorisation details; and
 - e. if regulations made for the purpose of this paragraph provide that this subsection does not apply to prescribed kinds of articles—the how-to-vote card is not an article of any of those kinds.

Penalty: 50 penalty units.

Offence of publishing etc. how-to-vote card that contains false authorisation details

5. A person (the *first person*) commits an offence if:
 - a. the first person:
 - i. publishes or distributes a document; or

Attachment B: Electoral Backgrounder: Electoral Advertising

- ii. causes, permits or authorises another person to publish or distribute a document; and
- b. that conduct of the first person occurs during the relevant period for an election; and
- c. the document is a how-to-vote card; and
- d. some or all of the authorisation details on the how-to-vote card are false; and
- e. if regulations made for the purpose of this paragraph provide that this subsection does not apply to prescribed kinds of article – the how-to-vote card is not an article of any of those kinds.

Penalty: 50 penalty units.

Definition

2. In this section:

address of a person means an address, including a full street address and suburb or locality, at which the person can usually be contacted during the day. It does not include a post office box.

329 Misleading or deceptive publications, etc.

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 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.
4. A person who contravenes subsection (1) is guilty of an offence punishable on conviction:
 - a. if the offender is a natural person – by a fine not exceeding \$1 000 or imprisonment for a period not exceeding 6 months, or both; or
 - b. if the offender is a body corporate – by a fine not exceeding \$5 000.
5. In a prosecution of a person for an offence against subsection (4) by virtue of a contravention of sub-section (1), it is a defence if the person proves that he or she did not know, and could not reasonably be expected to have known, that the matter or thing was likely to mislead an elector in relation to the casting of a vote.

Note: A defendant bears a legal burden in relation to the defence in subsection (5) (see section 13.4 of the Criminal Code).

5. A. Section 15.2 of the *Criminal Code* (extended geographical jurisdiction—category B) applies to an offence against subsection (4).
6. In this section, *publish* includes publish by radio, television internet or telephone.

Attachment B: Electoral Backgrounder: Electoral Advertising

331 Heading to electoral advertisements

1. Subject to subsection (2), where an advertisement in a journal contains electoral matter (whether or not the advertisement was inserted for consideration), the proprietor of the journal must cause the word 'advertisement' (in letters not smaller than 10 point) to be printed as a headline to the advertisement:
 - a. if the advertisement takes up one page or part of one page – on that page; or
 - b. if the advertisement takes up the whole or part of each of two opposing pages – on each page.

Penalty: 5 penalty units.

2. Where an advertisement of the kind referred to in subsection (1) that takes up the whole or part of each of two opposing pages of a journal:
 - a. is contained within:
 - i. a broken or unbroken border; or
 - ii. broken or unbroken lines extending across, or partly across, the top and bottom of the advertisement; or
 - iii. a broken or unbroken line extending along, or partly along, each side of the advertisement; or
 - b. is printed so that to read one or more lines of the text of the advertisement it is necessary to read across both pages; the proprietor of the journal must cause the word 'advertisement' to be printed as a headline in letters not smaller than 10 point to the advertisement on one of the pages.

Penalty: \$500.

3. In this section:

journal means a newspaper, magazine or other periodical, whether published for sale or for distribution without charge.

351 Publication of matter regarding candidates

1. If, in any matter announced or published by any person, or caused by any person to be announced or published, on behalf of any association, league, organisation or other body of persons, it is:
 - a. claimed or suggested that a candidate in an election is associated with, or supports the policy or activities of, that association, league, organisation or other body of persons, or
 - b. expressly or impliedly advocated or suggested:

Attachment B: Electoral Backgrounder: Electoral Advertising

- i. in the case of an election of Senators for any State – that a voter should place in the square opposite the name of a candidate on a ballot paper a number not greater than the number of Senators to be elected; or
- ii. in the case of an election of a Member of the House of Representatives – that that candidate is the candidate for whom the first preference vote should be given;

that person shall be guilty of an offence.

Penalty:

- a. if the offender is a natural person – \$1 000; or
 - b. if the offender is a body corporate – \$5 000.
1. A. Subsection (1) does not apply if the person proves that he or she is authorised in writing by the candidate to announce or publish the thing claimed, suggested or advocated.

Note: A defendant bears a legal burden in relation to the matter in subsection (1A) (see section 13.4 of the Criminal Code).

2. Where any matter, the announcement or publication of which by any person without the written authority of a candidate would be an offence against subsection (1) on the part of that person, is announced or published by or on behalf of, or with the support of, any association, league, organisation or other body of persons, every person who was an officer thereof at the time of that announcement or publication shall be deemed to be guilty of an offence against subsection (1).
3. For the purposes of this section, where any matter purports expressly or impliedly to be announced or published by or on behalf of, or in the interests or with the support of, any association, league, organisation or other body of persons, the matter shall, in the absence of proof to the contrary, be deemed to be announced or published by or on behalf, or with the support, of the association, league, organisation or other body of persons.

Note: A defendant bears a legal burden in relation to proof to the contrary under subsection (3) (see section 13.4 of the Criminal Code).

4. Nothing in the foregoing provisions of this section shall apply to or in relation to any announcement or publication made or authorised by any *bona fide* political party or by any *bona fide* branch thereof respecting a candidate who, by public announcement, has declared his or her candidature to be a candidature on behalf of or in the interests of that party.
5. The person whose name and address appears at the top, bottom or end of any matter as the person who authorised the matter under section 328, 328A or 328B, in the absence of evidence to the contrary, is taken to have announced or published the matter, or caused it to be announced or published, for the purpose of this section.

Attachment B: Electoral Backgrounder: Electoral Advertising

Note: A defendant bears an evidential burden in relation to evidence to the contrary under subsection (5) (see subsection 13.3(3) of the Criminal Code).

385A Evidence of authorship or authorisation of material

6. In proceedings for an offence against this Act:

- a. an electoral advertisement, handbill, pamphlet, notice or video recording that includes a statement that it was authorised by a specified person is admissible as evidence of that fact; and
- b. an electoral advertisement published on the internet that includes a statement that it was authorised by a specified person is admissible as evidence of that fact (aa); and
- c. a printed electoral advertisement, handbill, pamphlet or notice that includes a statement that a specified person or firm was the printer is admissible as evidence of that fact; and
- d. a newspaper, circular, pamphlet or 'dodger' containing an article, or part of an article, containing electoral matter that includes a name purporting to be the author's name is admissible as evidence that the person named is the author of the article.

7. In this section:

article means an article, report, letter or other matter.

electoral advertisement, handbill, pamphlet or notice and *electoral video recording* have the same meaning as in section 328.

Protocol for the investigation of complaints during a Federal Election regarding possible breaches of the *Commonwealth Electoral Act 1918*

The most common complaints received by the AEC at election time concern possible breaches of sections 328, 329 and 331 of the Act. Following amendments to the Act by the *Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Act 2006* on 22 June 2006, the AEC also expects complaints under section 328A of the Act.

Sections 328 and 328A deal with the need to identify the person who takes responsibility for an electoral advertisement; section 329 covers the content of such advertisements where they may mislead or deceive the reader, and section 331 places responsibilities on publishers to ensure that an electoral advertisement is clearly identified as an advertisement.

While this document relates to the process adopted by the AEC during investigations of complaints under these sections, in the course of those enquiries other matters may be disclosed warranting further consideration. In any event the following protocol will be applied.

Attachment B: Electoral Backgrounder: Electoral Advertising

The Protocol

The AEC will exercise its discretion in the operation of this protocol, commensurate with its obligations under Part XXI of the Act. (Part XXI deals with electoral offences.)

Information relevant to a complaint, allegation or investigation that is or could become subject to Part XXI proceedings, will not be provided to any person not directly involved with the matter.

Complaints must be made in writing addressed to the Deputy Electoral Commissioner and be accompanied by *evidence* of the material in question, for example, an original copy of how-to-vote card, electoral advertisement or other documents relevant to the allegation. Depending on the nature of the document in question a scanned copy or an emailed photograph may be acceptable. This provides the context for preliminary assessment of the matter and also enables relevant evidence to be tendered in court if proceedings are undertaken at a later date. The complainant should also provide as much additional information as possible to enable assessment of the alleged breach. The AEC will immediately acknowledge receipt of the complaint.

If the AEC considers there to be a breach of sections 328 or 328A, generally the AEC will write to the relevant person seeking that the material be withdrawn until such time as the material is amended so as to comply with the law. In a breach of section 331, the AEC would expect any future publication of the same material to comply with the law.

Breaches of section 329, because of their possible impact on the outcome of an election, require immediate action. If offending material is not withdrawn or amended immediately, the AEC may seek injunctive relief in accordance with section 383 of the Act. (*Note: a candidate in the election pursuant to section 383 may also seek injunctive relief.*)

If there is any doubt as to whether there may have been a breach, the matter will be referred to the DPP for advice. If that advice indicates a breach of sections 328, 328A, 329 or 331, generally the AEC will follow the steps set out above.

If there is continued non-compliance or a more serious breach, the matter may be referred to either, or both, the AFP and the DPP for further action.

In all cases after a complaint has been laid, the AEC will not provide any further information to the complainant until the investigating authorities advise the AEC that it is appropriate to do so. When appropriate, the AEC will write to the complainant advising of its decision and actions.

The AEC recognises that all complaints during the election period must be handled promptly. As some complaints may require the AEC to seek external advice (from, for example, the DPP), it is not possible to set a minimum response time. However, the AEC will generally aim to respond to all complaints within one day of receipt.

Attachment B: Electoral Backgrounder: Electoral Advertising

Further information in relation to compliance with the Act is set out in the [AEC's Electoral Backgrounder publications](#).

Attachment C: Extracts from the Election Procedures Handbook (EPH)

Candidates, party workers and scrutineers

Introduction

Candidates, party workers and scrutineers have very different responsibilities and rights at polling places.

Candidates

Rights and responsibilities

Candidates are not allowed to take part in any way in the conduct of an election for which they are a candidate.

They may not be scrutineers and they may not enter a polling place except to record their own vote.

They may, however, mix with party workers and voters outside the polling place in the approved area (i.e. 6 metres from the entrance to the polling place).

Party workers

Rights and responsibilities

Party workers distribute how-to-vote material and encourage voters to vote for the party or candidate that they support. This is called 'canvassing'.

At polling places on polling day candidates and party workers are prohibited by the *Commonwealth Electoral Act 1918*, from canvassing within 6 metres of an entrance to a polling place (see Electoral Backgrounder – Polling place offences at Attachment 5 for further information). This provision should be enforced if the activities of party workers obstruct voters.

At polling places on polling day, ensure that the 'electoral offences' sign is placed at the entrance to the polling place.

Party workers may enter the polling place only once, to record their vote.

An exception is made if a voter who needs help nominates a party worker to assist them.

Party workers asked to assist voters must remove any political badges they are wearing and cover any political logos on clothing etc before entering the polling place.

Scrutineers

Introduction

Scrutineers are appointed by candidates to observe voting and the counting of votes. Scrutineers and party workers will often be the same people.

Scrutineers play an important role in the election process as the candidates' representatives. It is their job to observe that you are doing your job properly.

During polling each candidate can be represented by one scrutineer per issuing point.

During the scrutiny each candidate can be represented by one scrutineer per officer counting the votes.

Attachment C: Extracts from the Election Procedures Handbook (EPH)

It is your responsibility to ensure that scrutineers and party workers do not breach the *Commonwealth Electoral Act 1918*.

Identifying scrutineers

Scrutineers must present their appointment forms to you on arrival, and you must check to see that:

- the name of the polling place has been entered,
- the 'undertaking by scrutineer' on the form has been signed by the scrutineer, and
- the form has been signed by the candidate (a rubber stamp, facsimile or photocopy is sufficient).

A scrutineer may also be appointed by fax or by an imaged signature attached to an email, but it must satisfy the above requirements.

If these matters are in order, issue the scrutineer with a scrutineer's badge. A scrutineer must always wear a scrutineer's badge when inside the polling place.

If there is no signature, the person cannot be appointed as a scrutineer. Anyone who seeks to be a scrutineer but who does not satisfy these requirements should be told to contact the party, candidate or campaign office.

Scrutineers may come and go during polling, or they may be replaced by another scrutineer provided appointment forms are in order.

Rights and responsibilities

You should check with all scrutineers that they are aware of their rights and responsibilities as outlined in the *Scrutineers' Handbook*.

You will be provided with copies of the *Quick Reference Guides for Scrutineers and Party Workers* (EP020a) to issue to scrutineers or party workers who ask for information about their duties on polling day.

Quick reference guides are also designed to help you provide accurate information to scrutineers and party workers on their rights and responsibilities during polling and scrutiny.

Scrutineers may:

- observe all voting procedures except the voter actually voting, unless the voter is being assisted by a polling official,
- object to the right of any person to vote, and
- be nominated by a voter to help with the completion of a ballot paper.

Scrutineers must not:

- remain in a polling place without a scrutineer's badge,
- touch ballot papers unless a voter nominates them to assist,
- interfere with, or attempt to influence, any voter,
- disclose any knowledge gained concerning the vote of a person,
- wear a badge or emblem of a political party or candidate within the polling place,
- deliberately show or leave in the polling place any how-to-vote card or similar direction as to how a voter should vote, or
- help with the clearing of voting screens or removal of material from the polling area or assist in transporting polling equipment.

Attachment C: Extracts from the Election Procedures Handbook (EPH)

Objections

If a scrutineer objects to any procedure, or questions staff in any way, staff should immediately refer the matter to you.

Where a scrutineer objects to the right of any person to vote, the reasons must be recorded on the 'Report on issues and miscellaneous matters' form in the OIC return (EF027). You must then advise the scrutineer that the person may still vote.

The DRO will investigate in these circumstances.

Media

During polling

If you are asked to allow photographers or television cameras into the polling place, they may be admitted under the following conditions:

- their presence must be approved by the DRO,
- no photographs or film are to be taken of people actually recording a vote,
- photographers or camera crews, or their equipment, must not hinder, inconvenience or intimidate polling officials or voters, and
- no undue delays are to be caused to voters recording their vote or entering or leaving the polling place.

Exit polls

An increasing trend is for the media to conduct 'exit polls', in which voters are asked, after they leave the polling place, how they have voted.

As long as no attempt is made by the pollsters to enter the polling place and they do not impede or harass voters entering or leaving the polling place, no intervention is necessary.

Monitor the situation and note any matters of contention in the OIC return (EF027).

The AEC may also conduct its own exit poll. In this case, the questions asked are about the service provided in the polling place and the AEC's own advertising campaigns, and not about how voters have voted.

Attachment C: Extracts from the Election Procedures Handbook (EPH)

Complaints/other issues

Disturbances during polling

If a disturbance occurs during the day, either inside or outside the polling place, you should try to solve the problem.

In any situation, common sense should prevail.

Contact your PPLO or DRO if you are concerned.

Adjournment

Voting may be adjourned or temporarily suspended if it is interrupted by a flood, fire, severe storm, outbreak of a riot or open violence, health hazard or any other reason related to the safety of voters.

If, for any reason, it is considered that voting should be adjourned or temporarily suspended, it is vital that you attempt to telephone the DRO immediately.

In this situation, the adjourned or temporarily suspended polling notice must be displayed at the polling place. The DRO will advise you of alternative voting arrangements, which may include resuming polling later that day or adjourning polling to another day.

Removal of a person

A scrutineer or any other person who commits any breach or misconduct, or who fails to obey your lawful directions, may be removed from the polling place at your request by a member of the Federal, State or Territory police forces.

If this happens, you must document details in the *Report on issues and miscellaneous matters* in the OIC return (EF027) and obtain a statement from witnesses. You must also advise the DRO as soon as possible.

Cameras in the polling place

Polling officials and scrutineers are not permitted to use any image recording device (including cameras, video recorders and mobile phones) to record images of ballot papers or declaration vote envelopes (EF012), or any other images that might identify a voter and how they have voted, in a polling place.

You must be notified of anyone using an image recording device.

Political signs and banners

You may receive complaints from the public, or candidates, that large banners or signs are attached to buildings or fences.

At a polling place on polling day, provided that the banners or signs are outside the area that has been proclaimed part of a polling place by your 'Electoral offences' sign, their placement is not your responsibility.

You should advise complainants that the *Commonwealth Electoral Act 1918* does not address the placement of signs outside the proclaimed area.

The removal or relocation of signs is a matter for the property owner and is covered by local government by-laws and/or State/Territory legislation.

Attachment C: Extracts from the Election Procedures Handbook (EPH)

For example, if someone complains that there are political signs on electricity poles in a street, the person should take the matter up with the electricity supplier for that region, not the AEC.

However, if you consider that the banners or signs pose a danger to the public or obstruct access by voters, you should ask that they be relocated.

Polling officials and scrutineers are forbidden to wear political messages on badges and clothing when in the polling place.

However, voters are allowed to wear political messages on badges and clothing in the polling place.

Party workers asked to assist a voter or to witness such assistance must remove promotional badges before entering a polling place.

Ballot box opened before 6pm on election night

Under no circumstances should a ballot box that has been used to collect votes be opened before 6pm on election night.

If this happens the OIC must:

- Secure the opened ballot box.
- Any ballot papers or declaration vote envelopes that have been removed must be placed in a bag and sealed with the 'For investigation' label (EF033). The OIC must complete and sign the label.
- Complete the *Prematurely opened ballot box report* located in the OIC Return (EF027), describing the circumstances in which the ballot box was opened, including details of any witnesses.
- The DRO must be informed immediately. If the ballot box was opened through a malicious act you must bring this to the DRO's attention.
- All of the above, including the ballot box must be given to the DRO.

AEC Security incident

The AEC Security Incident report will be completed by the DRO if a ballot box has been intentionally or maliciously opened prematurely. The DRO will need your input to include as much information as possible.

Attachment C: Extracts from the Election Procedures Handbook (EPH)

Attachment 4 Polling place security and emergency guidelines

Introduction

These Security and Emergency Guidelines are intended to complement your EPH. If for any reason, you are unsure of the contents, meaning or application of any of these guidelines, you should immediately seek clarification from the DRO.

These guidelines have been written with the safety and security of AEC staff and members of the public as the priority. In all situations staff are expected to use their best judgement to ensure the security of the polling place and the protection of life.

During an emergency, the OIC must manage the situation until emergency services arrive and take charge. Be prepared to provide the emergency services with information on the incident.

Note: If the OIC is incapable of managing the situation due to injury etc, the 2IC or most senior staff member must become the substitute OIC and take charge.

Any person performing the role of the OIC should clearly understand that their primary duty is not to combat an emergency but to ensure, as far as practicable, the safety of all persons within the polling place, and their orderly evacuation from possible danger to a safe place.

In some circumstances, the polling place will be located at a facility that already has existing procedures. In these circumstances the existing procedures should apply but may be substituted or augmented by the application of these guidelines as deemed necessary by the DRO.

Any polling place staff who are assisting in directing people out of a danger area should, in the first instance position themselves so that they are:

- clearly visible,
- not exposing themselves or any other person to danger, and
- able to exercise control over persons leaving the area.

They should direct persons towards the exits using a calm but firm voice and smooth and commanding hand signals.

Potential threats to AEC polling places and staff

A threat exists where there is a likelihood of deliberate intent on the part of a person or persons to do harm and they have the ability to carry out the threat.

The primary concern of the AEC is the safety of voters, polling staff and any other people in attendance on the day.

Under no circumstances should polling staff risk their lives or safety or, through their actions, jeopardise or endanger the lives or safety of others.

The most likely threats to AEC staff and property at the time of a Federal Election include:

- abusive or aggressive behaviour or confrontation directed at AEC staff or other people present in the polling place,
- disorderly conduct by individuals or groups in or in the immediate vicinity of the polling place,
- political or issue motivated protests,

Attachment C: Extracts from the Election Procedures Handbook (EPH)

- telephone threats (less likely in polling places where there are no landline telephones),
- suspicious or unidentifiable items left in the polling place,
- bomb threats, and
- biological incidents (e.g. white powder).

Should any of these threats eventuate or be suspected by staff they should immediately advise the OIC and follow the appropriate response procedures detailed in these guidelines.

Identification of authorised persons

General

Identification and verification of staff is essential to polling security, as well as ensuring good communication and liaison between all staff.

In accordance with the EPH, staff are required to clearly display their official ID badge to assist with quick identification of polling officials.

AEC identification must be worn at all times. In the event that a member loses or misplaces their identification that person is to report the incident immediately to the OIC.

Procedure

The OIC or substitute OIC is to:

- personally sign and confirm the staff member's AEC Confirmation of Employment, and
- check that the name of the person presenting as a staff member corresponds with the attendance list provided by the AEC.

Stand-in staff

OIC's should only accept replacement staff members if advised by the DRO.

The OIC should ensure that the late or replacement staff member is introduced to existing staff and familiarised with these instructions and other relevant briefs and or instructions.

Queries

If for any reason, a staff member is unsure of, suspicious of, or cannot identify another person as being an official of the AEC, that staff member should immediately report their suspicion to the OIC.

How to query suspected/unauthorised persons or persons impersonating staff – OIC or substitute OIC only

- Confirm whether the person is wearing an official AEC form of identification.
- Request that the person produce AEC authorised identification or otherwise identify themselves.
- If you cannot positively determine that the person is authorised, alert your PPLO or DRO immediately and follow their advice.
- DO NOT ATTEMPT to detain, physically restrain, or eject the person. Do not get involved in a confrontation. Should the unauthorised person refuse to leave or become confrontational, follow the instructions that are detailed under 'Disruptive persons'.

Attachment C: Extracts from the Election Procedures Handbook (EPH)

Scrutineers

When identifying and verifying scrutineers, the OIC should sign a letter of appointment signed by the candidate for whom the person is representing.

Scrutineers should not be permitted to leave unattended items or objects in the polling place.

Disruptive persons

General

Polling staff should immediately report anyone intentionally disrupting the electoral process to the OIC. Again, do not approach this person/s, just take note of appearance, their last known behaviour and whereabouts and report this to the OIC.

The following action should then be taken by the OIC or substitute OIC (see also Red Flag Indicators on page 78):

- notify the Police and request assistance (Dial 000 or 112 if calling from a mobile and ask for the police operator),
- restrict entry to the polling place, after advice from the DRO (in the event of suspended polling),
- if possible confine the presence of the demonstrators/agitators to the outside of the polling place,
- restrict contact between demonstrators and staff and members of the public, and
- remind staff to promote an air of confidence and calm.

During a Confrontation

If a member of staff is confronted by an insistent/aggressive person, the OIC should step in and follow these instructions:

- remind yourself to stay calm. Do not attempt to be a hero – accept the situation and be prepared to wait,
- do not speak unless spoken to and then only if necessary,
- do not attempt to restrain or touch the individual,
- do not be argumentative,
- do not make suggestions to the aggressor. If your suggestion is taken in the wrong context, the person may think you planned it that way,
- try to be observant. Notice the insistent/aggressive person's mannerisms, physical characteristics, clothing, speech etc, and
- try not to involve any other people in the incident.

Suspicious or unattended items

How to conduct security inspections

Under the supervision of the OIC, the polling place should be inspected for suspicious items and or fire/safety hazards:

- prior to opening,
- periodically during the day, and
- immediately upon closing.

Attachment C: Extracts from the Election Procedures Handbook (EPH)

Staff should, to the best of your ability, ensure that communal areas are inspected as above and secured where possible. Where the OIC believes that a risk exists in any of the above you should seek advice from your PPLD or DRO.

Any type of container not supplied for polling purposes, or not previously identified, should be treated with suspicion. This includes items discovered/declared as "found" (i.e. lost and found).

During the course of your duties, staff should periodically check your immediate work area for unattended items or objects, which, by their very nature:

- would not normally be "unattended" (i.e. those used to primarily carry personal belongings),
- have appeared suddenly,
- are declared as "found", or
- are not normally in place during polling time or for polling purposes.

If you have any doubt or 'suspicion' about an unattended item or object, report your suspicion immediately to the OIC.

What to do if a "Suspicious" or "Found" Item is Located – OIC only

If an item is deemed to be "suspicious" or is reported as "found":

- do not touch the item,
- arrange for another member of staff to observe the item and prevent any unauthorised person from touching the item (unless that person "claims" the item),
- try to locate the owner of the "found" object by making enquiries,
- clear the immediate area and ensure that it is cordoned off or isolated in some way to prevent access to the item, and
- call 000 (or 112 if calling from a mobile phone) and ask for the police.

Biological incidents – OIC or substitute OIC

In the event of a suspected biological incident in the polling place (e.g. white powder) remain calm at all times to prevent unnecessary alarm to staff and visitors and implement the following procedures:

- isolate the immediate area,
- close all entrances and windows,
- all occupants must remain in the room,
- remember you are not in immediate danger,
- if the suspect item is in an envelope or another container, and there has been no spillage, place it inside another container (e.g. an A4 plastic sleeve, fold the sleeve over then place it inside another A4 sleeve) and seal the contents as securely as possible,
- if there has been a spillage, where possible cover the suspected contaminant with large plastic garbage bags, an upturned waste receptacle or other covering such as a plastic sheet, coat or similar,
- turn off fans and air-conditioning systems if possible to do so without leaving the room,
- dial "000" (or 112 from a mobile phone) and ask for Fire Hazmat,
- advise the DRO of the incident.

Attachment C: Extracts from the Election Procedures Handbook (EPH)

- if you have touched the item, or anything in its immediate vicinity, wash your hands thoroughly and do not touch anything or anybody else until the item has been identified, and
- when the emergency services arrive explain the actions that have been taken.

Staff must be aware that a wash down of their person for decontamination may be required by the emergency services.

Fire prevention

Staff should be encouraged to take note of and bring to the attention of the OIC:

- any accumulation of litter that may increase the danger of fire,
- incorrect storage of flammable liquids, dangerous goods and/or hazardous materials,
- any furniture, decoration, equipment or any other item that might restrict the width of, or impede access to, the emergency exits,
- missing, defective or discharged fire extinguishers,
- any fire and smoke doors that are not kept shut (except during use) and any self-closing mechanism which is not operational. These doors should close and fully latch automatically and are not to be held open by wedges etc,
- any obstructions in passageways, or
- the storage of any article that restricts the path of access to fire extinguishers and fire hose reels.

Fire emergency procedure

On becoming aware of a fire in their area, staff are to:

- call '000' (or 112 from a mobile phone), request the Fire Brigade and advise them of the fire,
- evacuate the polling place via the nearest safe exit whilst maintaining a firm but calm approach. Do not allow others to see you flustered or uncertain of what action to take,
- check to ensure all persons have evacuated the polling place,
- once all persons have evacuated the polling place proceed in an orderly manner to a designated assembly area that provides an external safe place away from the polling place, and
- notify the DRO as soon as possible.

Fighting fire with a fire extinguisher

Only staff who are familiar in the use of a fire extinguisher and feel it is safe to use the apparatus, may do so.

How to respond to a security related incident

Should you be faced with an emergency situation or incident e.g. damage to polling equipment by an irate voter, inform, or ask another staff member to inform the OIC immediately, the OIC is to:

- assess the situation and where necessary contact your PPLO in the first instance. If your PPLO cannot be reached the OIC should contact the DRO. If the security threat is urgent contact the Police on 000 (or 112 from a mobile phone) before contacting the PPLO/DRO,

Attachment C: Extracts from the Election Procedures Handbook (EPH)

- advise all staff and members of the public on further actions, if necessary, and
- if it is deemed necessary or prudent to evacuate the polling place, follow the response actions outlined in these guidelines and gather at the assembly point as previously identified by the OIC.

Access to police and emergency contacts

In some States/Territories, separate phone numbers are used for "non" emergency situations (i.e. where an event is not life threatening and/or has already occurred). These should be recorded on the front of your OIC return (EF027) and used if required.

Staff should conduct periodic inspections of the polling place and its surrounds to ensure that, if required, emergency service vehicles have clear access to and exit from the polling place.

Remember that your responsibilities are to ensure the smooth operation of your polling place during polling. Should a security breach or emergency situation occur life is always the priority and if in doubt call in the Emergency Services.

Aggressive behaviour - red flag indicators

Changes in a person's behaviour, mood or presentation can often provide an early warning of a looming incident.

Staff should be aware of the following indicators and seek team support in providing early identification of visitors who may be displaying behavioural patterns out of the norm.

A visitor's manifestation of any of the following indicators is not, in itself, an indication that their behaviour may become aggressive or violent. It is, however, an effective visitor relations tool which may also assist staff in identifying those customers who may present a potential threat to the safety or wellbeing of staff or other individuals who may be present at the polling place.

Motivation Factors

The motivation of aggressors varies greatly, each person is different and has different emotional states and levels at which his or her aggression motivators are triggered. These motivators and levels can change on a daily basis. For example, a person who is upset by having to wait in a queue one day will be happy to wait the next. The following motivation factors are the most common; each can be broken down into its own sub-heading and dealt with separately:

- altered states of consciousness: neurosis, alcoholism or drug abuse,
- high anxiety, irritation arising from cultural differences, language barriers, or
- irritation arising from compulsory voting, omission from the electoral roll, etc.

Cues to impending aggression - red flag indicators

Cues to rising irritation are usually manifested in a person's behaviour and appearance. They should be interpreted in context as each could be an indication of a medical condition, ranging from headaches to Parkinson's disease, bipolar disorder, heat exhaustion etc. Sensitive and aware staff should note such cues, consider their significance and, if appropriate, act to reduce the person's irritation by using positive verbal and non-verbal language.

Attachment C: Extracts from the Election Procedures Handbook (EPH)

Recognising Cues – body language

Recognise these cues by watching, listening and observing body language indicators such as, facial expression, eyes, mouth, arms, hands/fists, fingers, gait, speech - its pitch, loudness, speed, slurred, swearing, accent, excitability, coherency.

This list is not intended to be exhaustive but should provide a guideline for the assessment of personal behaviour.

Never attempt to restrain an aggressive person always inform the OIC and call the Police if required.

IT Security Guidelines

Polling place IT issued equipment – the risks

The polling place may be issued with IT equipment which is essential to polling place operations. These items are often valuable and may be attractive to thieves. If removed or accessed by unauthorised personnel, this equipment and the data it retains may become compromised.

These would normally consist of AEC branded laptops, 3/4G modems, wireless modems, smart cards and memory sticks.

Some IT equipment distributed to polling places contains an electronic certified list. This list must be protected against ANY unauthorised access and must, under no circumstances, be copied.

Avoiding compromise of IT equipment or information

To avoid the possibility of theft or compromise to IT equipment or information, it must be closely monitored and maintained by polling place staff from time of issue until the equipment is returned to the DRO.

ONLY equipment issued by the AEC in the polling place kit is to be used, no unauthorised equipment may be connected to AEC IT equipment.

AEC equipment will be easily identifiable. Where legitimacy of IT equipment is in question, the OIC should contact the DRO or PPLO.

Incident reporting

The following IT Security related incidents must be reported to the OIC:

- IT equipment that is unaccounted for prior, during or after polling.
- Unauthorised/unknown devices/media placed in or around polling place IT equipment.
- Unauthorised copying, filming or viewing of the electronic certified list.

Follow up action to incidents

The OIC must immediately report any missing equipment or security related incidents to the DRO.

Any unknown devices or IT equipment must be stored by the OIC and given to the DRO with the return of polling materials.

Attachment D: Electoral Offences Poster



Division of

ELECTORAL OFFENCES

Pursuant to subsection 340(2) of the *Commonwealth Electoral Act 1918* and/or subsection 131(2) of the *Referendum (Machinery Provisions) Act 1984* this is the entrance to a polling booth.

The following activities are prohibited by section 340 of the *Commonwealth Electoral Act 1918* within this polling booth, or at the entrance to this polling booth or within 6 metres of the entrance to this polling booth:

- canvassing for votes;
- soliciting the vote of any elector.

The following activities are prohibited by section 340 of the *Commonwealth Electoral Act 1918* and section 131 of the *Referendum (Machinery Provisions) Act 1984* within this polling booth, or at the entrance to this polling booth or within 6 metres of the entrance to this polling booth:

- inducing an elector not to vote for a particular candidate at the election or to vote in a particular way at the referendum;
- inducing an elector not to vote at the election/referendum; or
- exhibiting any notice or sign (other than an official notice) relating to the election/referendum.

PENALTY: \$500

This also applies to any of the above activities if the person uses:

- loud speaker;
- a public address system;
- an amplifier (whether fixed or mobile);
- a broadcasting van;
- a sound system;
- radio equipment; or
- any other equipment or device for broadcasting

if the activity is audible within this polling booth, at an entrance of this polling booth or within 6 metres of the entrance of this polling booth.

PENALTY: \$850

The activities are prohibited whether carried out in a public place or a private place.

Signature of Divisional Returning Officer

Authorised and printed by Bronwen Shelley, 50 Marcus Clarke Street, Canberra ACT.

EF019 – 07/2015

Note - the value of a penalty unit will increase to \$180 for offences committed on or after 31 July 2015.