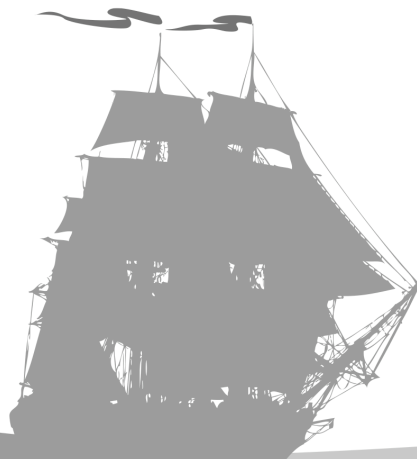




**Submission to the Joint Standing
Committee on Electoral Matters
Inquiry into and Report on All
Aspects of the Conduct of the 2016
Federal Election and Matters
Related Thereto**

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Submission to the Joint Standing Committee on Electoral Matters Inquiry into and Report on All Aspects of the Conduct of the 2016 Federal Election and Matters Related Thereto

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1 Authorisation of Electoral Materials

Information relating to who authorised and who printed electoral materials encourages transparency and accountability without excessively interfering with either freedom of expression or freedom of political communication. However, the requirements of the *Commonwealth Electoral Act 1918* (Cth) (*'Electoral Act'*) regarding the inclusion of this information are in places ambiguous and inconsistent.

The *Electoral Act* unnecessarily divides the provisions relating to authorisation of electoral materials across three separate sections — sections 328, 328A and 328B. Each of these sections contains substantially the same requirements as regards the inclusion of the name and address of the person who authorised the material.¹ The key difference is that how-to-vote cards require the inclusion of the name of the candidate or party who authorised the material, or on whose behalf it was authorised, but only to the extent that this is not already covered by the default authorisation information.² This division of provisions is a needlessly inefficient approach and the provisions relating to authorisation information should be combined into a single subsection prescribing the content of the authorisation information, and a single subsection containing an exhaustive list of which materials require inclusion of the information.

Recommendation 1: The *Electoral Act* be amended to combine sections 328, 328A and 328B into a single, comprehensive section dealing with the inclusion of authorisation and printing information in electoral materials.

*Pirate Party Australia is a federal political party registered under the *Commonwealth Electoral Act 1918* (Cth) and an incorporated association under the *Associations Incorporation Act 2009* (NSW).

¹*Commonwealth Electoral Act 1918* (Cth) ss 328(1), 328(1A) 328A(1)(d), 328B(1)(a).

²*Ibid* s 328B(1)(b).

Recommendation 2: The *Electoral Act* be amended to prescribe, in a single subsection, the form and content of the authorisation information required to be included in electoral materials.

Recommendation 3: The *Electoral Act* be amended to provide, in a single subsection, an exhaustive list of which materials require the inclusion of authorisation information.

All three sections specify that the name and address of the person who authorised the electoral material must be included.³ In all three, the address is specifically defined as the address at which the person can normally be contacted during the day, and does not include a post office box.⁴ It appears that, in lieu of a definition of ‘person’ in the *Electoral Act*, the name and address of an incorporated body would be sufficient to fulfil this requirement,⁵ but the intent of the provisions are ambiguous in this regard.

The requirement that the address be the address at which the person can be contacted during the day poses particular problems for smaller political parties. The Pirate Party, for example, is an incorporated association in New South Wales, and the Party’s ‘address’ for incorporation purposes is the residential address of its Public Officer. It does not have an office, nor is the Public Officer necessarily contactable at that address *during the day*. The requirements relating to the names and addresses of the person who authorise electoral material should be amended to provide clarity as to whether an incorporated body’s name is sufficient, and to allow the address to be any address at which the person can be regularly contacted.

Recommendation 4: The *Electoral Act* be amended to explicitly provide that an incorporated body’s name may suffice for the purposes of the inclusion of authorisation information, and to replace the requirement that the address be one ‘at which the person can usually be contacted during the day’ with an address at which the person can be regularly contacted.

Similarly to the authorisation information requirements, the *Electoral Act* also requires the inclusion of information relating to the printer of certain electoral

³Ibid ss 328(1), 328(1A) 328A(1)(d), 328B(1)(a).

⁴Ibid ss 328(5), 328A(4), 328B(6).

⁵*Acts Interpretation Act 1901* (Cth) s 2C(1).

materials.⁶ There are a number of improvements that could be made to these requirements.

Firstly, while the exception for notices printed in newspapers⁷ is logical (the publisher and printer is apparent from the newspaper itself), it would be appropriate to broaden this exception to include *any* electoral material printed in a periodical or collection where the publisher is apparent from the periodical or collection.

Secondly, for reasons unknown, the requirement to include the name and place of the printer of the electoral materials does not extend to how-to-vote cards⁸ — they are in fact explicitly *excluded* from this requirement.⁹ The printing requirements should apply as uniformly as appropriate to allow candidates, parties and others to develop consistent practices. This should be implemented through a single subsection containing an exhaustive list of materials that require the inclusion of printing information.

Lastly, the *Electoral Act* seems to assume that all printed electoral material will be printed by a commercial printer, rather than by an individual at home with a desktop printer. While it *would* be possible for individuals who have printed material at home to include their own name and address, the use of the term ‘place of business’ in section 328(1)(b) implies that the intention was not to extend its operation to such circumstances. The Act should be amended to unambiguously state the circumstances in which printing information is required.

Recommendation 5: The *Electoral Act* be amended to extend the exception to the requirement to include printing information for newspapers to apply to any periodical or collection where the printer or publisher is apparent from the publication itself.

Recommendation 6: The *Electoral Act* be amended to prescribe, in a single subsection, the form and content of the printing information required to be included in electoral materials.

⁶*Commonwealth Electoral Act 1918* (Cth) s 328(1)(b).

⁷*Ibid.*

⁸*Ibid* s 328B.

⁹*Ibid* s 328(3)(aa).

Recommendation 7: The *Electoral Act* be amended to apply the requirement to include printing information consistently, by replacing the existing provisions with a single subsection containing an exhaustive list of electoral materials that require the inclusion of printing information.

Recommendation 8: The *Electoral Act* be amended to provide that printing information need only be included in cases where the printer is a business, or the printing is performed under a commercial arrangement.

The *Electoral Act* ostensibly sets up a distinction between printed advertisements and paid Internet advertisements, which seems to be the assumption that the Australian Electoral Commission operates under.¹⁰ By its nature, section 328 appears to extend to the Internet only in cases where an electoral video recording is published on the Internet.¹¹ Section 328(1) is slightly ambiguous in that it uses the phrase ‘print, publish or distribute’ (‘publish’ and ‘distribute’ can apply to printed as well as electronic materials), and does not specify that the materials must be printed, although the list of materials (‘advertisement, handbill, pamphlet, poster or notice’) suggests a class of materials that would generally only be printed and not distributed on the Internet. By contrast, section 328A specifically applies to electoral advertisements on the Internet, but *only* where they have been paid for by any person.¹² The result is that there is a grey area for Internet materials such as memes and infographics that are not paid for, but nonetheless share similarities with advertisements, handbills, pamphlets, posters and notices. The nature of these materials in terms of the difficulty in tracing the author and the rapid speed with which they spread makes it impractical to regulate them in the same way as other electoral materials.

Recommendation 9: The *Electoral Act* be amended to include a single subsection containing an illustrative list of materials excluded from the authorisation requirements and, if necessary, a separate subsection containing an illustrative list of materials excluded from the printing information requirement.

¹⁰Australian Electoral Commission, *Electoral Backgrounder: Electoral Advertising* (9 June 2016) [8], [31] <http://www.aec.gov.au/About_AEC/Publications/backgrounders/electoral-advertising.htm>.

¹¹*Commonwealth Electoral Act 1918* (Cth) s 328(1A).

¹²*ibid* s 328A(1)(c).

Recommendation 10: The *Electoral Act* be amended to specifically exclude Internet materials and the existing materials in section 328(3), with the exception of how-to-vote cards, from the authorisation and printing information requirements.

2 The Current Donations, Contributions, Expenditure and Disclosure Regime

A successful donations, contributions, expenditure and disclosure regime requires comprehensive legislation that both defines the obligations of various persons and establishes an effective mechanism by which to enforce those obligations. The *Electoral Act* is fairly successful on both fronts, but improvements could be made to take into account political and technological developments.

As the Joint Committee is no doubt aware, the New South Wales Independent Commission Against Corruption ('ICAC') has made enormous strides in the uncovering and investigation of illegal and undisclosed gifts and other donations. It is vital to ensuring public confidence in the integrity of the political system that parties, candidates and representatives comply with electoral laws and are made accountable for failures to do so. An independent commission to investigate corruption would indicate to the public that corruption is taken seriously and reduce the perception that politicians are a law unto themselves.

Recommendation 11: Establish a Parliamentary Inquiry into the establishment of a federal anti-corruption authority with powers modelled on the New South Wales Independent Commission Against Corruption.

In order to alleviate public cynicism regarding the relationship between donors and politicians, greater transparency should be built into the *Electoral Act*. For reasons unknown (it is not clear from the explanatory memorandum or second reading speech), the *Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Act 2006* (Cth) raised the threshold for disclosure of donations from \$1500 to \$10 000 (which has increased to around \$13 000 through indexation). Reducing the threshold for disclosure down

to \$1000 would restore it to about the same level as it was prior to 2006, and allow greater public scrutiny of the effects of donations on politics. This should be supplemented with the introduction of a single, searchable database compiled by the Australian Electoral Commission, allowing the public to search donation records by amount, donor and recipient at Commission offices and online. Ideally, these donations would be required to be reported within six weeks.

Recommendation 12: The *Electoral Act* be amended to require disclosure of all political gifts and donations provided to elected representatives which have a value over \$1000.

Recommendation 13: Enact a regulation, or amend the *Electoral Act* if necessary, requiring the Australian Electoral Commission to collate information on donations into a single searchable database accessible online and at AEC Offices, updated at three-month intervals, with the requirement that donations be reported within six weeks.