



LOCAL GOVERNMENT
INFORMATION SERIES

2016

ELECTORAL ADVERTISING & CAMPAIGN MATERIAL

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Introduction

In council elections, candidates and other organisations and individuals campaign in a variety of ways. This booklet explains the laws relating to local government electoral advertising and campaign material.

Authorisation

The key rule is that advertising and campaign material must be authorised. Authorisation ensures that the producers of election advertising are accountable and contactable, preventing the damage that may be caused by anonymous material.

The authorisation statement must be at the end of the campaign material, as follows:

“Authorised by [*authoriser’s name*], [*authoriser’s address*]”.

The address in the authorisation statement cannot be a PO Box or an email address.

Authorisation requirements apply at all times – not just in the election period. Candidates are able to authorise their own election campaign material.

The above requirements do not extend to items such as car stickers, clothing, lapel buttons, fridge magnets, pens, pencils or balloons.

If in doubt, it is always best to authorise.

The penalty for failure to authorise is up to 10 penalty units (\$1,554.60 as at 1 July 2016) for a natural person and up to 50 penalty units (\$7,773 as at 1 July 2016) for a body corporate.

When can I start campaigning?

Candidates and other interested persons and organisations can campaign for council elections at any time. Campaigning is not confined to the election period (the 32-day period between the close of nominations and election day).

Newspapers

Election advertisements in newspapers must also be properly authorised.

In addition, newspaper proprietors must print the word “advertisement” as a headline (in at least 10 point size) to each article or paragraph printed in the newspaper containing electoral matter which is paid for, or for which compensation is to be made.

During the election period, all articles or letters in a newspaper that contain electoral matter must include the author’s name and address at the end. However, this requirement does not apply to leading articles. Letters to a newspaper simply have to include the author’s name and suburb or locality where the address is located.

Leaflets and direct mail

Leaflets, flyers and other forms of unaddressed direct mail delivered to households must be properly authorised.

Producers and distributors should be aware of other rules relating to such material. It would be advisable to contact Australia Post. Please note that Australia Post advises that political material is exempt from “No Junk Mail” signed letterboxes.

Letters addressed to individual voters by name do not have to include an authorisation statement, but should clearly identify the originator of the letters.

A candidate or other campaigner who intends to distribute campaign material in public should check with the council for any local laws about the distribution of advertising material, and with Public Transport Victoria about distribution of material in public transport facilities.

Radio and television

The broadcast on radio or television of all political and election matter (including election advertisements), must comply with the requirements set out in Schedule 2 of the *Broadcasting Services Act 1992* (Commonwealth).

The VEC is not in a position to offer any advice regarding the operation of Commonwealth legislation. Any enquiries concerning the operation of the above Commonwealth Act should be directed to:

Australian Communications and Media Authority Level 32, Melbourne Central Tower 360 Elizabeth Street Melbourne

PO Box 13112 Law Courts Melbourne Vic 8010
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Tel: 03 9963 6800

Fax: 03 9963 6899

Email: info@acma.gov.au
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Posters and billboards

Posters and billboards must be properly authorised.

Candidates and other producers of such material should check with the council about any local laws that may apply to the display of advertising material, with VicRoads for provisions governing the display of material on highways, and with Public Transport Victoria in relation to the display of material on public transport facilities.

How-to-vote cards (Attendance elections only)

Registered how-to-vote cards are the only form of printed electoral material which may be lawfully distributed within 400 metres of a voting centre on election day or an early voting centre during early voting with a few exceptions explained below. Anyone can register a how-to-vote card – a candidate, an organisation or a member of the public.

How-to-vote cards must be submitted to the Returning Officer for registration from the first working day after nomination day until 12 noon on the sixth working day before election day.

The following endorsement must be included at the bottom of the printed card:

Authorised by (name and address of authoriser)

Registered by the Returning Officer for (name of council)

Electoral material allowed near voting centres

Electoral material may be available within 400 metres of a voting centre or early voting centre in the following ways:

- at a newsagent, as part of the newsagent's normal business;
- at a candidate's campaign office; and
- in the form of a poster attached to a vehicle, building, hoarding or structure.
(This includes posters placed outside voting centres.)

Additionally, printed material may be delivered to *properties* within 400 metres of an early voting centre (e.g. a letter box drop).

Online platforms – including social media

The use of online platforms (including social media) by candidates and others for campaigning purposes must conform with electoral law and terms and conditions of the platforms concerned. In particular, candidates should ensure that:

- all website/webpages are authorised;
- all election-related/campaign postings to Facebook, Twitter, blogs et al are authorised or link directly to an authorisation statement; and
- care is taken not to defame, threaten or harass any person.

Advertisements, including sponsored links, published online must also carry or directly link to an authorisation message.

Candidates should seek their own legal advice in this area.

Publicity

Candidates often seek publicity in the media to increase awareness of their candidacy and promote their election platforms. There can be robust exchanges of opinion, and it is up to the voters to form a view on the merits of arguments put forward by candidates. Candidates and others who intend to make a statement about the personal character or conduct of a candidate should be aware of the legal provisions relating to defamation.

Complaints relating to campaign advertising material

The Victorian Electoral Commission (VEC) will only accept and act (if appropriate) on complaints made in writing – these may either be in letter, fax or email form. Members of the public, or of interest groups, should address their complaints to:

Complaints Officer Victorian Electoral Commission Level 11, 530 Collins Street Melbourne VIC 3000
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Fax: (03) 9629 8632

Email: complaints@vec.vic.gov.au
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Candidates must lodge written complaints with their respective Returning Officer and are encouraged to consider the following information.

It is the VEC's policy that it *will not* discuss individual complaints with members of the media under any circumstances, not even to confirm or deny that a complaint has been received. However, complainants and those complained about are free to talk to the media if they wish.

Many candidates lose considerable time during an election campaign by becoming involved in the complaints process when there has been no breach of the law.

In most cases, complainants are alleging that there has been a breach of the law and as such there must be an evidentiary trail.

All complaints alleging a breach of the *Local Government Act 1989* are referred to the Local Government Investigations and Compliance Inspectorate for follow-up. Complaints that allege a criminal offence are referred to Victoria Police.

Each council is responsible for the enforcement of local laws and codes of conduct where they apply. Complaints that relate to local law matters will be referred to the Chief Executive Officer of the relevant council. Examples include the placement of campaign posters/signs and use of council resources for campaigning purposes.

Complaints that are concerned with the election process, or the act of a VEC Returning Officer, will be referred to the Electoral Commissioner.

Complaints about misleading or deceptive matter

The VEC often receives complaints about misleading or deceptive matter.

Misleading or Deceptive Matter

Section 55A of the *Local Government Act 1989* relates to “any matter or thing that is likely to mislead or deceive a voter in relation to the casting of the vote of the voter” (underline added for emphasis). This provision has been very narrowly defined by the courts.

It applies when a voter has already decided who to vote for, but is misled about how to carry out that intention.

Material that can affect a voter’s decision about who to vote for does not come within the scope of the section.

For example, material that suggests that someone should number the candidates on a ballot paper in a particular order to vote for candidate X when in fact that order would see candidate X getting last preferences, would be likely to be considered misleading or deceptive by the courts.

To provide a representation of a ballot paper demonstrating a tick or cross in one box next to one candidate may lead the elector to mark their ballot paper the same way – which would be contrary to the directions on the ballot paper and so would be likely to be considered misleading or deceptive.

In contrast, to suggest that a candidate has “been in the area all his/her life” when they have lived somewhere else and just worked in the area, is not likely to be considered misleading or deceptive.

A claim that the current councillors have grossly wasted ratepayers’ money is not likely to be considered misleading or deceptive within the terms of the *Local Government Act 1989*.

Glossary of electoral terms

Act	"Act" means the <i>Local Government Act 1989</i> and amending legislation.
Canvassing	Soliciting of votes at an election for a candidate or group of candidates.
Election period	The election period means the 32-day period that: <ul style="list-style-type: none"> • starts on nomination day (close of nominations); and • ends at 6.00pm on election day.
Electoral advertisement, handbill, pamphlet or notice	Any advertisement, handbill, pamphlet or notice that contains electoral matter, but does not include an advertisement in a newspaper announcing the holding of a meeting.
Electoral matter	Means matter which is intended or likely to affect voting in an election but does not include any electoral material produced by or on behalf of the Returning Officer for the purposes of conducting an election. This includes matter which contains an express or implicit reference to, or comment on: <ul style="list-style-type: none"> • the election; or • a candidate in the election; or • an issue submitted to, or otherwise before, the voters in connection with the election.
How-to-vote card (attendance elections only)	Any card, handbill, pamphlet or notice: <ul style="list-style-type: none"> • which is or includes a representation or partial representation or purported representation or purported partial representation of a ballot paper for use in an election; or • which lists the names of any or all of the candidates for an election with a number indicating an order of voting preference against the names of all of those candidates or a statement that a number indicating an order of voting preference must be placed against the name of each candidate.
Registered how-to-vote card	Any how-to-vote card to be handed out within 400 metres of a voting centre during the hours of voting (including those days on which early voting is taking place) must be registered with the Returning Officer for the municipal district concerned.
Entitlement date	The date 57 days before election day which is the last date on which a person may apply to be enrolled on the municipal voters roll.
Publish	To publish by any means including by publication on the Internet.
Regulations	Local Government (Electoral) Regulations 2016.

OTHER BOOKS IN THE SERIES

Costing Local Government Elections

Counting Arrangements

Municipal Voters Roll Information

Structural Overview and Key Dates



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Victorian Electoral Commission

