

1 January 2019

# Electoral Matter and Electoral Expenditure

**Understanding these terms**

## What is electoral matter?

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The *Commonwealth Electoral Act 1918* (Electoral Act) regulates electoral matters that are communicated or intended to be communicated in the following ways:

- certain communications containing electoral matters will require an authorisation to enable voters to know who is communicating the matter; and
- expenditure incurred for the dominant purpose of creating or communicating electoral matter (electoral expenditure) will have to be reported to the AEC.

Electoral matter is defined in the Electoral Act as matter communicated or intended to be communicated for the dominant purpose of influencing the way electors vote in a federal election. Unless the contrary is proved, the dominant purpose of a communication is presumed to be electoral matter, if the matter expressly promotes or opposes:

- a political entity, to the extent that the matter relates to a federal election; or
- a member of the House of Representatives or a Senator, to the extent that the matter relates to a federal election.

The dominant purpose is intended to capture content that includes matter that seeks to influence:

- the order in which a voter indicates their preferences on the ballot paper; and
- a voter's choice of whether to cast a formal ballot paper.

The following matters must be taken into account in determining the dominant purpose of the communication or intended communication of matter:

- the accessibility of the communicated matter – where a matter is communicated publicly, whether universally to the public or a section of the public, it is more likely to be electoral matter;
- the source of the communicated matter – where a matter is communicated publicly by a political entity or political campaigner, it is more likely to be electoral matter;
- the content of the communication – where a matter contains an express or implicit comment on a political entity, a member of the House of Representatives or a Senator, it is more likely to be electoral matter;
- the intended audience of the communication – where the intended audience of a communication is electors, it is more likely to be electoral matter;
- the audience's consent – where a recipient or intended recipient of a communication has not requested or otherwise invited the communication, that is, it is unsolicited, it is more likely to be electoral matter.

There can only be one dominant purpose for any given communication.

## What is not electoral matter?

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A matter is not electoral matter if the communication or intended communication of the matter:

- forms part of the reporting of news, the presenting of current affairs or any genuine editorial content in news media; or
- is for a dominant purpose that is a satirical, academic, educative or artistic; or
- is a private communication by a person to another person who is known to the first person; or
- is or would be by or to a person who is a Commonwealth public official (within the meaning of the Criminal Code) in that person's capacity as such an official; or
- is or would be a private communication to a political entity (who is not a Commonwealth public official) in relation to public policy or public administration; or
- occurs or would occur in the House of Representatives or the Senate, or is or would be to a parliamentary committee.

For example communications that have the dominant purpose of educating their audience, raising awareness of, or encouraging debate on a public policy issue are not considered electoral matter.

Following are examples to illustrate each of the above exemptions.

### **Editorial content**

#### **Example**

Fergus is the editor of a weekly regional newspaper. He writes an excoriating editorial against the candidacy of the local federal Member of Parliament, urging voters to put the member last on their ballot papers.

The next week, Morag, a local businesswoman, pays for an advertorial column to recommend a vote for another candidate in the same electorate.

The editorial written by Fergus is genuine editorial content and therefore is not considered electoral matter. The advertorial written by Morag may look like editorial content, but is considered electoral matter as it is not genuine editorial content.

### **Predominantly satirical purposes**

#### **Example 1**

It has become a tradition at a university for the law students to satirise an issue in contemporary culture. One year, the students choose to create a video satirising a group of Commonwealth Senators. The students publish the video on a popular video streaming service. As the law students' dominant purpose in creating and publishing the video is satirical, the video is not considered electoral matter.

**Example 2**

A registered political party embeds the students' video on their website. Taking into account the dominant purpose of other communications of the registered political party, it is reasonable to conclude the party's dominant purpose in communicating the video is more likely to be political than satirical. Therefore, the recomunication of the video is considered electoral matter. The students' dominant purpose in creating and communicating the video is not relevant in determining the party's dominant purpose in communicating the video by embedding it on its website.

**Predominantly academic purposes**

**Example**

A university professor publishes a journal article on negative campaign techniques employed by a registered political party in the previous election. As this is an easily recognisable form of academic work by a member of an academic profession, it is reasonable to conclude his dominant purpose in communicating the article is academic, rather than political. The journal article is therefore not considered to be electoral matter.

**Predominantly educative purposes**

**Example 1**

Elve teaches high school economics. In the lead up to an election, Elve designs and delivers lesson plans requiring students to evaluate the economic policies of major political parties contesting the election. Taking into account the dominant purpose of Elve's other communications and the context in which her lessons are delivered (that is, the classroom), it is reasonable to conclude her dominant purpose is educative, rather than political. Elve's lessons are therefore not considered to be electoral matter.

**Example 2**

A business peak body releases a video online criticising the economic policies of a major political party contesting an upcoming election through the framework of commonly taught economic theory. Given the dominant purpose of the peak body's other communications, it is reasonable to conclude the peak body's dominant purpose is political, rather than educative. The video is considered to be electoral matter.

### **Predominantly artistic purposes**

#### **Example 1**

Kate, a contemporary playwright, receives a grant from a state arts funding agency to develop a modern Australian play. Kate's play is a commentary on the vaccination debate in Australia. Policies and politicians are featured in the play. The play is produced and performed by a theatre company that regularly presents theatrical work to the public. Given the dominant purpose of Kate and the theatre company's other communications, it is more likely their dominant purposes are artistic. Kate's creation of the play and the theatre company's performance are therefore not considered to be electoral matter.

#### **Example 2**

Miro, a prominent Australian actor, appears in a video published online stating that arts in Australia is under attack by the current government and asks for viewers' support of a particular political party for an upcoming federal election. Despite the dominant purpose of Miro's other communications being mostly artistic or commercial, it is not reasonable to conclude Miro's dominant purpose in the video is artistic as it expressly promotes a political entity in a federal election. Therefore, the video is considered electoral matter.

### **Communications by or to a Commonwealth public official**

#### **Example**

A human rights group is opposed to a Bill before the Commonwealth Senate. The group meets with several Senators and their staff to convince them to vote against the Bill. The conversations are not for the dominant purpose of influencing the way electors vote in an election, so they are not electoral matter. Furthermore, communication of matter to a person who is a Commonwealth public official (when that person is acting in their capacity as a Commonwealth public official) is not considered to be electoral matter.

After the meeting, the group hold a press conference, where the group explains why it has met with the Senators and why it is concerned with the Bill. They urge all Senators who may be watching the press conference to vote against the Bill. A professionally produced video is shared on social media by the group. The statements in the press conference and the social media posts are not likely to be electoral matter as their dominant purpose is not to influence how people vote in a federal election. The dominant purpose of the press conference and social media posts is to demonstrate the group's action in support of their mission to their supporters and to influence Senators to vote against the Bill.

**Private communications to a political entity on public policy**

**Example 1a**

A pro-cycling registered political party sends paying observers to the conference of another registered political party. The conference is closed to members of the public and the media. Representatives from the pro-cycling party speak on a panel observed by the hosting party's members who attend the conference. They speak in favour of cyclist friendly policies and make positive observations about the willingness of the party to adopt some of their proposals. Although their voices may be heard by hundreds of attendees, the communication is not electoral matter as it is a private communication by and to a political entity on a matter of public policy.

**Example 1b**

The bus drivers' union holds a protest outside the same conference, objecting to a proposal to turn bus lanes into cycle lanes that the media has reported will be pitched by the pro-cycling party at the conference. The protest and materials distributed by the union at the protest are intended to influence the way electors vote in an election by opposing the pro-cycling party and the other registered political party, and are promoted to the public at large and are thus considered electoral matter.

**Private communications**

**Example 1a**

Amal is a candidate in an upcoming election. As part of her campaign she hosts a 'meet the candidate' dinner party with 50 of her friends including a mixture of people from work, her sports team and her old university residence. Discussions at Amal's dinner party are not considered electoral matter as it involves private communication to people she knows.

**Example 1b**

Amal holds a 'meet the candidate' street party for all the neighbours in her street, to try to convince them to vote for her. 50 neighbours attend. Amal only knew five of them beforehand, but gets to know the rest at the event. Amal's communications at the event are considered electoral matter as these are not exclusively private communications to people Amal knows.

**Example 1c**

Amal and Jenny are next door neighbours, and know each other well. Jenny is the conductor of a local choir and writes down phone numbers for 50 choristers so that Amal can call them seeking their votes. Even though Amal tells each person on the phone list that Jenny is a mutual friend, the communication is considered electoral matter as Amal had no prior relationship with these individuals.

**Participation in a parliamentary process**

**Example**

A university professor makes a public submission to a parliamentary committee and is subsequently invited to appear before the committee as a witness. As both his submission and appearance are communications to a parliamentary committee, neither of these communications constitute electoral matter.

## What is electoral expenditure?

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Electoral expenditure is expenditure incurred for the dominant purpose of creating or communicating electoral matter. Where expenditure is incurred to create or communicate electoral matter, in addition to other purposes, the dominant purpose of the expenditure must be considered in order to determine whether it is electoral expenditure.

**The dominant purpose of expenditure**

**Example 1**

Kerrie is the Chief Executive Officer of a not-for-profit organisation that encourages healthy eating. The organisation occasionally issues material to influence how electors vote, but Kerrie's primary role involves organising the delivery of healthy eating programs in schools and workplaces. As the dominant purpose of employing Kerrie is not for her to create or communicate electoral matter, her salary is not electoral expenditure.

**Example 2**

A community group decides to support a candidate who is running for election against a sitting member of parliament. The group contracts a temporary employment agency to provide 80 people to door-knock in the member's electorate. The script the temporary employees are given to assist them in talking to residents has a dominant purpose that makes it electoral matter, even though it contains some content relevant to the usual business of the community group. As the community group's dominant purpose in signing the contract to engage the temporary staff is to communicate electoral matter, the money the agency charges the community group is electoral expenditure incurred by the group.

**Example 3**

A local progress association is formed by a group of local businesses to champion proposals for the urban renewal of the town centre and surrounds. The association decides to campaign in the federal election to call for the handover of former Defence land, to allow for construction of a business park. They hire a campaign manager, open a campaign shop front, coordinate volunteers, rent phone lines and issue a voting guide indicating preferred candidates. Although the election campaign is a short-term activity and the association has wider purposes, the dominant purpose of these campaign-related expenses to create and communicate electoral matter makes the expenses electoral expenditure. The dominant purpose of the association (urban renewal) does not determine the dominant purpose of the expenditure.

**Example 4**

Haziq owns an office block, and leases the space to a range of corporate clients. One of Haziq's tenants is a registered political party, who uses the office space for a call centre that routinely communicates electoral matter. Any expenditure Haziq incurs in relation to his tenants, including the registered political party, is not electoral expenditure because Haziq's dominant purpose is commercial (profiting from his investment in his office block). However, the rent paid by the registered political party is electoral expenditure.

**Example 5**

A registered political party prepares a television advertisement and tests it with a focus group. The advertisement is never shown, as it tests poorly with the focus group. Test advertisements are a key part of the party's process for creating an effective campaign, because they help it to develop and select the best series of advertisements for dissemination. As the advertisement was prepared by a political party, it is likely to be electoral matter. As the advertisement was intended to be shown to the public, it is also likely to be electoral matter. This is the case even if the advertisement is not shown. The dominant purpose of creating the advertisements was to influence voting at an election, so the advertisements are electoral matter and any expenditure creating the advertisements is electoral expenditure.

**Expenditure incurred by a registered political party in relation to an election**

**Example 1**

A regional branch of a registered political party hires a bus to send delegates from the branch to the party's annual national conference. One of the purposes of the national conference is to agree the party's policy platform in the upcoming election. As the bus is hired by a registered political party in relation to an election, the cost of the bus hire is electoral expenditure.



**Example 2**

A registered political party invites its members to a book club night, to discuss recent political biographies. As the dinner is a 'social club' activity of the party and unrelated to an election, the cost of the dinner is not electoral expenditure.

## What is not electoral expenditure?

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Expenditure is not electoral expenditure if:

- a) the costs are claimable under the parliamentary expenses framework
- b) it relates to a service provider incurring the expenditure to create or communicate electoral matter. This exception is intended to cover (but not be limited to):
  - a. printers printing electoral matter as paid work for clients
  - b. internet service providers whose networks are used to communicate electoral matter
  - c. social media companies whose platforms are used to communicate electoral matter
  - d. polling companies undertaking research on public opinion for paying clients
  - e. self-employed professionals managing candidate campaigns on a fee-for-service basis
  - f. marketing agencies developing advertising campaigns containing electoral matter for paying clients

**Service provider exemption and electoral matter**

**Example 1a**

A campaign group engages an advertising agency to develop a campaign containing electoral matter. The advertising agency subcontracts the production work associated with the campaign to a number of other firms. The expenditure incurred by the advertising agency in subcontracting the production of electoral matter is not electoral expenditure because the agency was engaged on a commercial basis to create the electoral matter. However, the cost of engaging the advertising agency incurred by the campaign group is electoral expenditure incurred by the group.

**Example 1b**

On being approached by the advocacy group, the advertising agency decides to waive its normal fees and develop the campaign containing electoral matter on a pro bono basis. As the advertising agency has not been engaged on a commercial basis, the service provider exemption does not apply.

The value of the fees not charged under the pro bono arrangement constitute a gift for the purposes of Part XX of the Electoral Act, and disclosure and foreign donations obligations may apply, subject to the value of the gift and other relevant factors.

**Example 2**

A social media company's business model is to allow users to communicate without expense in an online public forum. The company collects revenue from advertisers. During election periods, the public forum is used extensively to communicate electoral matter. However, at other times users comment instead on a wide range of unrelated topics ranging from local events, to entertainment news. The social media company does not use the platform to push a political agenda of its own and runs the venture as a profit-making activity. As the social media company is merely providing a communication platform to create or communicate electoral matter, the service provider exemption applies to any expenditure incurred by the social media company.

## Further information

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Participants in the electoral process should ensure they understand their obligations under the [Electoral Act](#), in particular the funding and disclosure obligations in Part XX of the Act.

Refer to the AEC [website](#) for further information relating to election funding and financial disclosure.

You can also direct your enquiries to [fad@aec.gov.au](mailto:fad@aec.gov.au), or alternatively call the Funding and Disclosure help desk on (02) 6271 4552.