

Electoral communications escalation scenarios

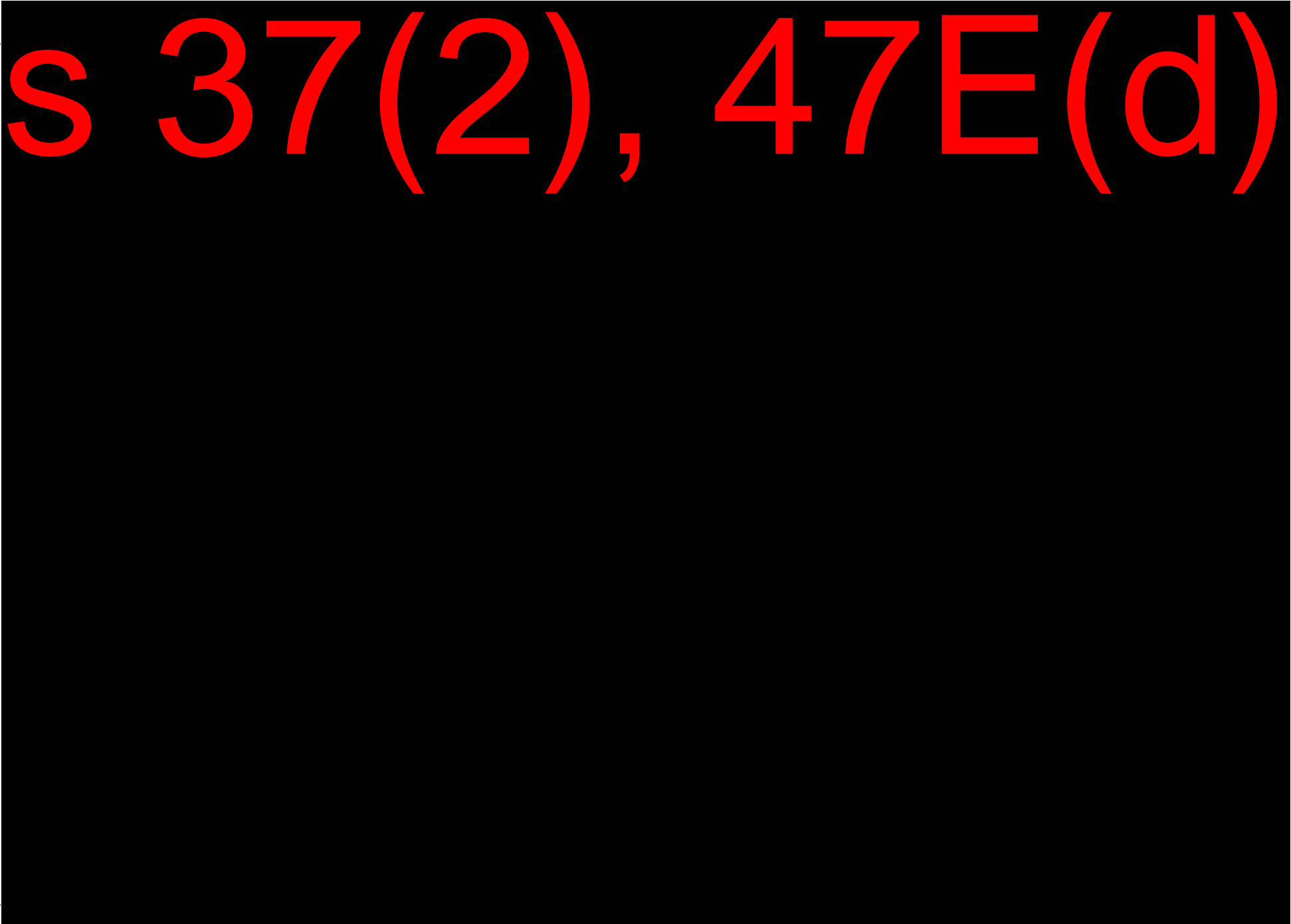
For all reports:

Slides [here](#) on escalation pathways (shared with AEC previously)

Scenario	Description	Examples	Commonwealth law infringed/issues
1	Paid electoral advertisement without proper authorisation (for other unpaid communications see scenario 7)	Electoral ad that is not authorised or is authorised by fictitious person/entity.	Section 321D <i>Commonwealth Electoral Act 1918</i> Paid electoral advertising must be authorised to allow voters to know who is communicating the ad.
2	Electoral communication (including a paid electoral ad) that infringes other offences in the Commonwealth Electoral Act	Electoral communication misleads voters on how to cast their votes, e.g. ad incorrectly advises voters a candidate has withdrawn from the election, or that a formal vote is to number just one box.	Section 329 <i>Commonwealth Electoral Act 1918</i> Offence to publish or distribute any matter that is likely to mislead or deceive an elector in relation to the casting of a vote.
3	Electoral communication (including a paid electoral ad) that impersonates a Commonwealth official, entity or service	Electoral communication on social media by a person/entity falsely representing themselves to be a Commonwealth entity, official or service.	Part 7.8 – Section 150.1 False representations in relation to a Commonwealth body and injunction provisions in Part 7 <i>Regulatory Powers (Standard Provisions) Act 2014</i>

s 37(2), 47E(d)

4	Electoral communication (including a paid electoral ad) posted by a foreign person/entity	Electoral communication made by or on behalf of foreign person or entity that is registrable under the <i>Foreign Influence Transparency Scheme Act 2018</i> (FITS Act).	<i>Foreign Influence Transparency Scheme Act 2018</i> An intermediary for a foreign principal must register within 14 days of entering a relationship with a foreign principal or undertaking an activity on behalf of a foreign principal. If the communication is a paid ad that is unauthorised, please refer to scenario 1 for appropriate action.
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5	Foreign interference This scenario notes the difference between the legislated and policy definitions of “foreign interference”, and the differing approaches taken by policy agencies (CFICC), and operational agencies/bodies (including the CFI Taskforce).	Policy: Social media accounts that appear to: <ul style="list-style-type: none">• amplify, then consistently promote divisive political positions designed to fragment the electorate,• target specific demographics within the electorate with messaging designed to influence voting behaviour. Operational: To be actionable under s92, FI activity must meet the elements specified in s92, notably: 1. Conduct; 2. done on half of/directed by a Foreign Principal; 3. to achieve one of the four stated intentions; 4. done covertly/deceptively/with menace/etc	Policy: FI is likely to be a break of platforms’ own terms of use Operational: Division 92, Part 5.2 <i>Criminal Code Act 1995</i> Detection and attribution can be time and resource intensive, while disinformation strategies are cheap and agile.
6	Electoral communication containing threats of terrorist action	Electoral communication threatening terrorist action against polling booths and/or voters.	Anti-terrorism laws and powers activated.

s 37(2), 47E(d)

Scenario	Description	Examples	Commonwealth law infringed/issues
7	Anonymous electoral communication (other than a paid advertisement) without authorisation	Anonymous communication promoting informal voting	Depends on who is communicating the matter as to whether the communication must be authorised under the <i>Commonwealth Electoral Act 1918</i> . An electoral communication must be authorised if it is for, or on behalf of, a disclosure entity (i.e. a candidate, political party or other person or group that is required to report electoral expenditure or donations to the Electoral Commission under Part XX of the Electoral Act).
8	Electoral communication (including a paid electoral ad) that is defamatory	Third party authorises a paid advertisement that defames a candidate so as to affect public perception of the integrity of the candidate, party, election or political system.	Affected individual or organisation can take legal action, however, issue may be to stop the spread of disinformation during an election campaign.

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9	Electoral communication (including a paid electoral ad) brings a Commonwealth agency into disrepute	Third party authorises a paid advertisement that defames a Commonwealth agency or representative so as to affect public perception of the integrity of the electoral system.	Affected individual or agency can take legal action, however, issue may be to stop the spread of disinformation during an election campaign.
10	Electoral communication (including a paid electoral ad) containing hate speech	Electoral communication on social media vilifying a person or group of people to influence voters.	<p>Vilification or freedom of expression on the basis of race, religion, nationality, national or ethnic origin or political opinion.</p> <p>Some forms of online abuse may meet the threshold of cyberbullying or adult cyber abuse in the Online Safety Act 2021 and be subject to removal notices issued by the eSafety Commissioner.</p>
11	Any other electoral communication that may not breach a Commonwealth law, but which may breach Platform policy	Video on social media promoting informal voting that provides incorrect information on the consequence of voting informally.	Other communications not covered by scenarios 7-9, where no Commonwealth law may have been infringed, but the communication nevertheless is spam or false news.

