

Our reference s 47F
Phone s 47F
Email s 47F
Your reference LEX4002

21 July 2023

s 47F
Principal Government Lawyer
Electoral Authorisation Team
Australian Electoral Commission

By email: authorisationsection@aec.gov.au

Dear s 47F

RE: Failure to authorise referendum matter

1. We act for Australians for Indigenous Constitutional Recognition Ltd.
2. We refer to your letter of 20 July 2023, in which you state that the following Facebook and Instagram advertisements published by our client do not comply with the authorisation requirements outlined under the *Commonwealth Electoral (Authorisation of Voter Communication) Determination 2021 (Authorisation Determination)*:
 - (a) The advertisement identified as ID no. 249534914492816, published on 7 July 2023, and which can be accessed via [this link](#);
 - (b) The advertisement identified as ID no. 240106882281826, published on 6 July 2023, and which can be accessed via [this link](#); and
 - (c) The advertisement identified as ID no. 982066722994062, published on 7 July 2023, and which can be accessed via [this link](#),(the **Advertisements**).
3. We confirm that our client has undertaken a review of the Advertisements, but has been unable to identify the reason why they are considered by the Australian Electoral Commission (**AEC**) to be non-compliant with the Authorisation Determination. We are instructed that the Advertisements were uploaded in the belief that they were compliant with the Authorisation Determination.
4. Accordingly, and to ensure that our client can make any necessary amendments to the Advertisements by the requested deadline of Monday, 24 July 2023, we would be grateful if the

AEC could please provide further guidance as soon as possible as to the reason(s) why it has formed the view that the Advertisements do not comply with the requirements of the Authorisation Determination.

5. To assist the AEC, we have otherwise outlined the approach our client has taken to authorisation of the Advertisements and compliance with the Authorisation Determination below.

Approach taken to authorise the Advertisements

6. As explained in your letter, because they contain referendum matter, the Advertisements must contain the particulars required by section 110C(5) of the *Referendum (Machinery Provisions) Act 1984* (Cth). For a digital communication that is communicated by a disclosure entity which is not a natural person, this means that at a minimum, the Advertisements should contain the name of the relevant person responsible for authorising the Advertisements, along with the name and town/city of the relevant entity (**Authorisation Particulars**).
7. As you would be aware, section 12 of the Authorisation Determination outlines further requirements as to:
 - (a) the way in which the authorisation should be communicated, including with respect to the placement of the authorisation on the relevant communication; and
 - (b) formatting of the authorisation.
8. In terms of the placement of the authorisations on the Advertisements, we note the following with respect to the Advertisements.
 - (a) The Advertisements are digital communications, and are accordingly subject to the requirements outlined under section 12 of the Determination.
 - (b) The Advertisements are each communicated in the form of a stationary image. They are also each accompanied by text. Neither of these forms are referred to in section 12(2)(a)-(c) of the Authorisation Determination. The requirements of section 12(2)(d) therefore apply.
 - (c) The Authorisation Particulars can be viewed and/or accessed via two locations on each of the Advertisements. These are as follows.
 - (i) The stationary images contained in the Advertisements each include the text 'yes23.com.au' at the foot of the images. Yes23.com.au is a URL that can be used to access Yes23's official website, which contains the Authorisation Particulars at the foot of the home page. This form of placement is expressly permitted by section 12(2)(d)(ii) of the Authorisation Determination.
 - (ii) Our client has taken the additional step of authorising its Facebook page via the 'About Us' section. The effect of doing so is that the Authorisation Particulars can

also be viewed by hovering over the text “Yes23” contained on each of the Advertisements.

9. In terms of the formatting of the authorisation, in accordance with section 12(3)-(4) of the Determination, the authorisations of each of the Advertisements are:
- (a) in English;
 - (b) reasonably prominent;
 - (c) legible at the distance at which the Advertisements are intended to be read;
 - (d) not placed over complex pictorial or multicoloured backgrounds; and
 - (e) in a text which contrasts with the background.

Next steps

10. We would appreciate if the AEC could please review the matters outlined above, and confirm that the approach our client has taken with respect to authorising the Advertisements is appropriate and complies with the requirements of the Authorisation Determination.
11. To the extent the AEC identifies any issue with the above approach, and/or if the AEC remains of the view that the Advertisements do not comply with the Authorisation Determination, we confirm that our client is willing to make any necessary amendments to ensure compliance.
12. If the AEC maintains its views that the Advertisements fail to comply with the Authorisation Determination, we would be grateful for the AEC’s assistance in providing further detail which will assist us in identifying and rectifying any non-compliance.
13. If you have any questions, or if there is anything further we can do to assist, please do not hesitate to contact me.
14. We otherwise look forward to hearing from you.

Yours sincerely

s 47F

s 47F
Partner