

**From:** Andrew Johnson

**Sent:** Thursday, 30 August 2018 10:18 AM

**To:** Emily Foat <emilyfoat@twitter.com>; Kara Hinesley <khinesley@twitter.com>

**Cc:** Tim Courtney <tim.courtney@aec.gov.au>; Evan Ekin-Smyth <evan.ekin-smyth@aec.gov.au>; Carla Ward <Carla.Ward@aec.gov.au>; Paul Pirani <paul.pirani@aec.gov.au>

**Subject:** AEC follow up - scenarios regarding compliance with the Commonwealth Electoral Act  
[SEC=UNCLASSIFIED]

Good Morning Emily and Kara

It was good to meet you in Sydney last week. At the meeting I said I would provide some scenarios on how we can manage electoral communications on Twitter that do not comply with the authorisation requirements in the *Commonwealth Electoral Act 1918* (Electoral Act). The closer the electoral communication is to a Federal election the more urgent it will be to either obtain prompt compliance with the Electoral Act or to block or remove the non-compliant communication. To this end the Australian Electoral Commission (AEC) is keen to agree on the process with Twitter for escalating and resolving any such matters.

I have set out below three scenarios. The first two scenarios are the most likely occur, the third scenario will only arise if the AEC is concerned that a communication may breach more serious electoral offences in Part XXI of the Electoral Act. For each scenario I have outlined the actions the AEC will take, when we will contact you and the assistance we will require from Twitter. For completeness I have included a summary of the authorisation requirements in the Electoral Act.

Given the increasing use of social media by political participants, we are interested in your views on the processes suggested below for escalating and resolving any Electoral Act compliance issues that may arise with electoral communications on social media.

Kind regards

**Andrew Johnson | Principal Government Lawyer**  
Electoral Authorisation Section | Legal & Procurement Branch  
Australian Electoral Commission  
T: (02) 6271 4759 | M: 7 [REDACTED]



Make sure you're **enrolled to vote**.  
Visit [www.aec.gov.au](http://www.aec.gov.au)

# Authorisation of electoral communications on social media scenarios

## 1. Paid electoral advertisement on Twitter without proper authorisation

Issue: Paid electoral advertisements require an authorisation to allow voters to know who is communicating the advertisement.

Actions:

Event	Entity	Action
Unauthorised electoral ad on Twitter	AEC	Contact or attempt to contact the person or entity responsible for the electoral ad to advise of the legal requirements in the Electoral Act and ask them to rectify or remove the ad.
Inadequate response from person or entity responsible for the electoral ad	AEC	Notify Twitter of an unauthorised electoral ad on social media site.
AEC notifies Twitter of the unauthorised electoral ad	Twitter	Remove or block the electoral ad, or contact the person or entity responsible for the ad and advise them to add an authorisation or have the ad removed or blocked.

## 2. Anonymous communication on Twitter containing electoral matter

Issue: AEC unable to determine whether an anonymous communication is electoral matter that requires an authorisation under the Electoral Act.

Actions:

Event	Entity	Action
Anonymous communication containing electoral matter on Twitter	AEC	Contact or attempt to contact the person or entity responsible for the electoral communication to ascertain whether they are a disclosure entity and advise of the legal requirements for disclosure entities to authorise electoral communications.
Inadequate response from person or entity responsible for the anonymous electoral communication	AEC	Notify Twitter of an anonymous communication containing electoral matter and the need to ascertain whether the responsible person or entity is a disclosure entity.
AEC notifies Twitter of the electoral communication and the need to settle whether the responsible person or entity is a disclosure entity	Twitter	Contact the person or entity responsible for the electoral communication to advise of the authorisation requirements in the Electoral Act.
Confirm the person or entity responsible for the electoral communication is: * <ul style="list-style-type: none"> <li>not a disclosure entity</li> </ul>	Twitter	<ul style="list-style-type: none"> <li>Advise the AEC. No further action.</li> </ul>

<ul style="list-style-type: none"> <li>a disclosure entity</li> </ul>		<ul style="list-style-type: none"> <li>Advise the AEC. Remove or block the communication if the responsible person or entity does not take action to add an authorisation in compliance with the Electoral Act.</li> </ul>
---	--	--

- \* If Twitter is able to confirm whether a person or entity is a disclosure entity, this will avoid the need to share personal or commercial information with the AEC. AEC can provide advice on the categories of a persons or entities that are disclosure entities for the purposes of the Electoral Act.

### 3. Paid electoral advertisement on Twitter that infringes other offences in the Electoral Act

Issue: In addition to the issues raised above, the AEC may need further details on the person or entity responsible for an electoral communication to consider other civil or criminal action under the Electoral Act. For example it is an offence under section 329 of the Electoral Act to publish or distribute or cause to be published or distributed any electoral communication that is likely to mislead or deceive an elector in relation to the casting of a vote.

Actions: In addition to the actions outlined above:

Event	Entity	Action
Incomplete information on the person or entity responsible for an electoral communication on social media	AEC	Seek information from Twitter about the person or entity responsible for the communication.
Request from the AEC for information	Twitter	Provide the AEC the requested information.

In any of the above scenarios, if Twitter is unable to remove or block a communication that does not comply with the Electoral Act or cannot provide information about the person or entity responsible for the communication, then the AEC (or a candidate in an election) may get an injunction under section 383 of the Electoral Act against the person or entity responsible for the communication and/or Twitter.

## Background

The *Commonwealth Electoral Act 1918* (Electoral Act) is concerned that voters know who is communicating an electoral matter to them (electoral communication). The Electoral Act does not regulate truth in electoral communications. Part XXA of the Electoral Act requires electoral communications to have an authorisation to inform voters who is responsible for the communication.

For a social media communication to be an electoral communication requiring an authorisation under section 321D of the Electoral Act, the communication must:

- contain electoral matter, and
- be at least one of the following:
  - a paid electoral advertisement,

- a matter communicated by, on behalf of, a disclosure entity.

'Electoral matter' is defined in section 4(1) of the Electoral Act as 'matter which is intended or likely to affect voting in an election'. For the purpose of the authorisation requirements in Part XXA of the Electoral Act, paragraph 4(9)(b) clarifies that there must be a sufficient connection between the subject matters of federal elections:

- (9) Without limiting the definition of electoral matter in subsection (1), matter is taken to be intended or likely to affect voting in an election if:
- (b) ... in Part XXA—it contains an express or implicit reference to:
- (i) the election; or
  - (ii) a political party, a branch or division of a political party or a candidate or group of candidates in the election; or
  - (iii) an issue submitted to, or otherwise before, the electors in connection with the election.

'Disclosure entity' is defined in section 321B of the Electoral Act to be a political party, associated entity, member of the House of Representatives, Senator, a candidate or group of candidates in a federal election or other persons or entities who engage in the electoral process and are required by the Electoral Act to provide a return.

**From:** Evan Ekin-Smyth

**Sent:** Thursday, 23 August 2018 10:54 AM

**To:** Emily Foat <[emilyfoat@twitter.com](mailto:emilyfoat@twitter.com)>; Kara Hinesley <[khinesley@twitter.com](mailto:khinesley@twitter.com)>

**Cc:** Tim Courtney <[Tim.Courtney@aec.gov.au](mailto:Tim.Courtney@aec.gov.au)>; Andrew Johnson <[Andrew.Johnson@aec.gov.au](mailto:Andrew.Johnson@aec.gov.au)>

**Subject:** RE: Twitter Follow-up [DLM=For-Official-Use-Only]

Thanks Kara and Emily – it was certainly good to meet you both and talk through election scenarios.

Kara, I imagine Andrew will send through a specific scenario just to bed in what we were talking about. Emily, someone from our communication section will be in touch (either myself or a colleague).

Cheers

Evan

**Evan Ekin-Smyth | Assistant Director**

Media - Australian Electoral Commission

T: (02) 6271 4419 X: 21085 M: 7 [REDACTED]

[www.aec.gov.au/media](http://www.aec.gov.au/media)



Make sure you're **enroll**  
Visit [www.aec.gov.au](http://www.aec.gov.au)

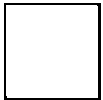
**From:** Emily Foat [<mailto:emilyfoat@twitter.com>]  
**Sent:** Wednesday, 22 August 2018 2:54 PM  
**To:** Kara Hinesley <[khinesley@twitter.com](mailto:khinesley@twitter.com)>  
**Cc:** Evan Ekin-Smyth <[Evan.Ekin-Smyth@aec.gov.au](mailto:Evan.Ekin-Smyth@aec.gov.au)>; Tim Courtney <[Tim.Courtney@aec.gov.au](mailto:Tim.Courtney@aec.gov.au)>; Andrew Johnson <[Andrew.Johnson@aec.gov.au](mailto:Andrew.Johnson@aec.gov.au)>  
**Subject:** Re: Twitter Follow-up

Hi Tim, Evan, and Andrew,

Thanks for the introduction Kara, great meeting you all yesterday,  
As mentioned in our meeting I'm happy to fly to Canberra to facilitate a Twitter media workshop to update you on Twitter's media solutions and showcase the best way to utilise the platform from a campaign perspective.

Please let me know if this would be helpful and we can start looking at some available dates?

Many Thanks,  
Emily



Emily Foat  
Twitter Australia  
[@emilyfoat](https://twitter.com/emilyfoat)  
e: [emilyfoat@twitter.com](mailto:emilyfoat@twitter.com)  
m: 7 [REDACTED]

On Wed, Aug 22, 2018 at 10:06 AM, Kara Hinesley <[khinesley@twitter.com](mailto:khinesley@twitter.com)> wrote:  
Hi Tim, Evan, and Andrew,

Thank you again for coming by our offices yesterday to meet with myself and Emily.

As discussed, we're looking forward to working with the AEC and appreciate your efforts in helping us ensure that we're developing detailed and efficient ways to handle any issues that might arise during future campaigns and elections.

As promised, I also wanted to send through contact details for myself and Emily:

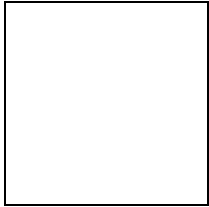
- Kara Hinesley: 7 [REDACTED]; [khinesley@twitter.com](mailto:khinesley@twitter.com); @karahinesley
- Emily Foat: 7 [REDACTED]; [emilyfoat@twitter.com](mailto:emilyfoat@twitter.com); @EmilyFoat

Please don't hesitate to let us know if you have any questions, and we look forward to being in touch in the future.

Warm regards,

Kara

--



@karahinesley | Head of Public Policy, Government, and Philanthropy, Australia & NZ | Twitter Inc.

Released under the Freedom of Information Act 1982