

Preparing your electoral material

This is general guidance about the requirements for electoral material

The NSW Electoral Commission can provide general information about the requirements for electoral material under the *Electoral Act 2017*. However, we do not provide legal advice about whether electoral material complies with the *Electoral Act 2017*.

If you are in doubt about the interpretation of the law in relation to electoral material you should seek independent legal advice.

Electoral material

Electoral material is defined under the *Electoral Act 2017* as any thing containing electoral matter. Electoral matter is anything that:

- is intended, calculated, likely to affect or capable of affecting the result of an election; or
- is intended, calculated, likely to affect or capable of affecting an elector in relation to their vote; or
- contains the name of a candidate or political party; or
- contains the address of a candidate or party's headquarters; or
- contains a photograph, drawing or printed depiction of a candidate.

It may include, but is not limited to how-to-vote cards, flyers, brochures, posters or advertisements.

Registration of electoral material

- All electoral material to be distributed on election day, including how-to-vote cards, must be registered between the day nomination close and ends 5pm 8 days prior to the election. Electoral material is registered by using form **SEBY.212 Application to Register Electoral Material**.
- Only items to be distributed or handed out on election day need to be registered. Posters to be displayed on election day are exempt from this requirement. Material is deemed to be distributed if it is left in a position where it can be read or collected by any person.
- All registered electoral material can be viewed online on the NSW Electoral Commission website from Monday preceding the election day.
- It is an offence to distribute unregistered electoral material in any public place on election day. Any unregistered electoral material may be confiscated by an election official.
- No electoral material can be distributed within six metres of the entrance to a voting centre.
- Electoral material handed out prior to election day at early voting centres, declared facilities or any other location, does not need to be registered with the NSW Electoral Commission but must comply with the legislative requirements described below.

Non-complying electoral material

During the regulated election period (from the issue of the writ until 6pm election day) electoral material must comply with the requirements of the *Electoral Act 2017*.

Electoral material will not comply if it:

- contains voting directions intended or likely to mislead or improperly interfere with an elector in or in relation to the casting of his or her vote.
 - This could include directing that two candidates each be given a first preference vote or that a ✓ or X be used instead of number(s).
 - Any electoral material displayed during the regulated election period must only instruct electors to use number(s) and must not contain instructions asking electors to mark their ballot paper using ticks and/or crosses.
 - Electoral material cannot advise electors to place number(s) outside a voting square on the ballot paper.

- contains an untrue statement intended or likely to mislead or improperly interfere with an elector in or in relation to the casting of his or her vote.
 - This refers to the act of voting itself, i.e. marking a ballot paper, not the truth of political statements and judgments. For example, irrespective of whether the following statements are true, they will not be considered to mislead or improperly interfere with voters in the casting of their vote:
 - a. Party X will introduce a new tax.
 - b. The policies of party X will lead to a rate of inflation of 20 per cent.
- Contains information that is incorrect or misleading about whether a person is or is not:
 - a candidate for the election; or
 - a candidate for a particular electoral district; or
 - a member of a registered political party or a group; or
 - nominated or endorsed by a registered political party.
- Uses the name, an abbreviation or acronym of the name or a derivative of the name of a registered political party (or a name or abbreviation resembling such a name, abbreviation, acronym or derivative) in a way that is intended or likely to mislead any elector.
 - For example, a group of persons calling themselves Locals Against Building Orbital Roads cannot be abbreviated to Labor. A candidate is not permitted to distribute electoral material marked with the printed logo of a registered political party in a fashion which could lead electors to think the candidate was nominated by the registered political party if that is not the case.
- Uses the word 'Independent' and the name or an abbreviation or acronym of the name or a derivative of the name of a registered political party in a way that suggests or indicates an affiliation with that party. For example, independent candidates cannot describe themselves as 'Independent Liberal' or 'Independent Labor'.
- Contains voting directions contrary to the requirements of the *Electoral Act 2017* or that are contrary to the directions or instructions contained in the relevant ballot papers, including (for example) a direction:
 - to leave the ballot paper blank, or
 - to write or draw unauthorised matter on the ballot paper, or
 - to repeat or leave out a number when indicating preferences, or
 - that could result in an elector casting an informal vote, or
 - express or implied to the effect that voting is not compulsory.
- Contains a statement intended or likely to mislead an elector that the electoral material is an official communication from the Electoral Commissioner or the Electoral Commission.

Ballot paper representation

On the days following the ballot paper draw the NSW Electoral Commission will arrange for ballot paper templates to be available on the NSW Electoral Commission website.

When including a sample of the ballot paper on electoral material, the details of the ballot paper must be an accurate representation i.e. candidate names, party name and the inclusion and exclusion of the word Independent must appear exactly as they will on the ballot paper for the election. Partial representations of the ballot paper are acceptable.

Printing of electoral material

It is strongly advised that you do not print electoral material for distribution on election day until it is registered by the Electoral Commissioner.

Registration of third-party campaigners

If you incur more than \$2,000 in expenditure, to promote or oppose a party or candidate or influence the vote, you may need to be registered as a third-party campaigner. This does not apply to candidates, or political parties, elected members and their associated entities.

There are strict rules that apply at NSW elections to political donations, fundraising and electoral expenditure. Third-party campaigners must have an official agent, a campaign account and make disclosures to the NSW Electoral Commission.

Third-party campaigners must be registered by the Friday two weeks prior to the election. For more information about registering for the election and the rules for third-party campaigners go to elections.nsw.gov.au or call 1300 022 011.

Authorisation and printed by statements

Authorisation

During the regulated period, electoral material must legibly show the name and address of an individual on whose instructions the material was printed, published or distributed.

An individual is a natural person, not a corporation or other entity. The address is a full street address at which the individual can usually be contacted during the day. It cannot be a PO Box.

If the electoral material was produced on behalf of a registered political party for registration with the NSW Electoral Commission for distribution on election day, the authorisation must include the name of the individual, the name of the registered political party and the address of the party as it appears on the Register of Parties.

Printer details

If the electoral material has been printed, in addition to the authorisation, the name of the printer and address at which it was printed must also be shown on the material. It cannot be a PO Box.

Social media

Social media posts by “electoral participants” containing electoral matter where no amount is paid to the platform*.

For social media posts containing electoral matter posted by an electoral participant, where no amount was paid to the social media platform provider in connection with publishing the post, the name and address of the electoral participant must be included in or directly linked to the post.

This includes posts made on behalf of an electoral participant by an officer, employee or agent of the electoral participant. ‘Electoral participant’ means a party, candidate, member of parliament, third-party campaigner or associated entity. ‘Third-party campaigner’ and ‘associated entity’ have the same meanings as in the *Electoral Funding Act 2018*.

Including in or directly linking to the post may include the name and address being:

- In the text of the post, or
- In a photograph or image attached to or embedded in the post, or
- In the ‘about’, ‘bio’ or ‘impressum’ part of the webpage or profile of the person who made the post.

Political parties, candidates, members of parliament, third-party campaigners and associated entities should ensure their staff are aware of the authorisation requirements in relation to electoral material, particularly when posting publicly on social media accounts during the regulated period.

Social media posts containing electoral matter where an amount paid to the platform *

All social media content containing electoral matter where an amount was paid to the social media platform provider in connection with the post must include the requirements described above under ‘Authorisation’. This includes all forms of content, including text, voice, images and video.

If a post contains a combination of content, for instance, text, an image and a video, each item of content that contains electoral matter must include the authorisation. If some of the content is not electoral matter, that element of the post does not require the authorisation.

Other than for Twitter, it is not sufficient to provide the authorisation only in the ‘about’, ‘bio’ or ‘impressum’ sections of a social media site or application, or at a separate URL. With the limited number of characters available for Twitter, if the authorisation would be too long to include, the authorisation may be provided at a URL link included in the post. Any authorisation provided via a URL link must remain active until the end of the regulated period. Alternatively, the authorisation may be included in the ‘bio’ section of the relevant account if it remains in place until the end of the regulated period. Other content such as images and video containing electoral matter that may be attached to a Twitter post must include the authorisation.

Social media posts containing electoral matter not made by “electoral participants” where no amount is paid to the platform *

Social media posts not made by or on behalf of an electoral participant, if no amount was paid to the social media platform provider in connection with the publication of the post, do not require an authorisation.

SMS

SMS communication containing electoral matter must include the authorisation.

If the authorisation would be too long to include in an SMS, the authorisation may be provided at a URL link included in the SMS. Any authorisation provided via a URL link must remain active until the end of the regulated period.

Phone calls*

A telephone call that is a recorded message containing electoral matter, for example a 'robocall', should include the authorisation.

Letters and emails*

Letters or emails containing electoral matter sent as part of a bulk or multiple sending of letters or emails must include the authorisation. It is not sufficient to provide the authorisation at a separate URL link included in the email.

A letter or email sent to a person in reply to a letter or email from that person, or a letter or email sent for personal purposes, do not require the authorisation.

Other forms of electronic media and advertising

Other forms of electronic media and advertising containing electoral material must include the authorisation. This includes material that may appear surrounding, in the background of, or laid over the website or application content.

If the authorisation would be too long to include in search text advertisements, such as Google Ads, the authorisation may be provided at a URL link included in the search advertisement. Any authorisation provided via a URL link must remain active until the end of the regulated period.

Electoral advertising broadcast on television and radio

Election advertising broadcast on television and radio are regulated under the federal *Broadcasting Services Act 1992*. There are similar requirements to broadcast who authorised an advertisement on television and radio, referred to as the 'required particulars'. Enquiries or complaints about broadcast advertising should be referred to the Australian Communications and Media Authority (ACMA).

Websites, including persons or organisations publishing electoral material*

Political parties, candidates, associated entities, third-party campaigners, and other political participants will often have their own website on which electoral material is published.

A single authorisation on such a website will be sufficient, subject to the requirements for social media. The requirements for social media content containing electoral material apply to social media embedded on the websites of political parties and other participants.

Authorise your content and advertising if there's any doubt

A common-sense approach is to authorise your content and advertising if you believe it may be electoral material.

Assistance

A Candidate Helpdesk will be available to assist with any queries regarding the preparation and lodgement of electoral material. They can be contacted by calling 1300 022 011 between the hours of 9-5pm, Monday to Friday or by emailing candidates@elections.nsw.gov.au.

You may report electoral material you think breaches the Act

An allegation that electoral material breaches the Electoral Act should be made in writing to candidates@elections.nsw.gov.au

An allegation should include a copy of the electoral material. For electoral material published on the internet, a URL link or the name of a social media account should be provided.

The NSW Electoral Commission conducts elections in accordance with the law and in a transparent, fair and impartial way. While your allegation will be acknowledged, we may decide not to discuss our response with you, for instance, regarding any investigation or other action that has been taken. We will not discuss our response with others, for instance, to confirm or deny that an allegation has been received.

The Commission reviews complaints about electoral material

The NSW Electoral Commission will consider its compliance and enforcement policies when reviewing complaints about electoral material. Relevant principles include:

- a. Proportionality: Any action decided upon by the NSW Electoral Commission will be proportionate to the seriousness of potential breaches of the *Electoral Act 2017* and the surrounding circumstances.
- b. Prioritisation: Complaints are prioritised according to a number of considerations, including but not limited to legislative timeframes and the known or foreseeable impact of potential breaches of the *Electoral Act 2017*.
- c. Use of resources: Decisions are made about allegations, including potential investigation and enforcement action, in a way that uses the resources of the NSW Electoral Commission appropriately.

*Updated text following the *Electoral Amendment (Exemptions) Regulation 2019*

How to vote card templates

Note: Templates have been provided for guidance only and are not recommendations for the design of how to vote cards.

How-to-vote cards must:

A	Clearly identify the person, political party, organisation, or group on whose behalf the card is to be distributed.
B	Contain voting directions that either suggest an order of voting preferences for one or more candidates listed on the card, or suggest a statement that a number be placed against the name of one or more candidates. However, any voting directions given on a how-to-vote card must not contradict any voting instructions given on a ballot paper.
C	Display the order of candidates and representation of their political party or independent status in the same order as appears on the ballot paper.
D	Electoral material must contain: <ul style="list-style-type: none"> the name and address of an individual on whose instructions the material was printed, published or distributed. if the material has been printed, the name of the printer and address at which it was printed. Electoral material registered for election day must contain: <ul style="list-style-type: none"> the name of an individual on whose instructions the material was produced; and the address of that individual or, if the material was on behalf of a registered political party, the name and address of the registered political party as it appears on the register of parties. if the material is printed material, the name of the printer and the address at which it was printed. Note: the address of an individual means: A full street address and suburb or locality, that is located in Australia and at which the individual can usually be contacted during the day, but does not include a post office box.

The full requirements of electoral material can be found under section 17 of the candidate handbook.

Sample 1 – Registered political party

Party Name Party Logo **A**

Legislative Assembly Election

B Number the squares as shown

Ballot Paper
District Name
Held on Date

▶ DIRECTIONS FOR VOTING
PLEASE READ CAREFULLY

CANDIDATES

4 Candidate Name
Party Name / Independent status

2 Candidate Name
Party Name / Independent status

5 Candidate Name
Party Name / Independent status

1 Candidate Name
Party Name / Independent status

3 Candidate Name
Party Name / Independent status

C

D Authorised by [Name of individual][party name] [Party Address]
Printed by [Name] [Address]

This is general guidance only. We encourage you to seek independent legal advice about how the legislation applies to your particular situation.

Sample 2 – Independent candidate

How to vote

Candidate name
Legislative Assembly Election

Number the square as shown below

Ballot Paper
District Name
Held on Date

▶ DIRECTIONS FOR VOTING
PLEASE READ CAREFULLY

CANDIDATES

- Candidate Name
Party Name / Independent status
- Candidate Name
Party Name / Independent status
- Candidate Name
Party Name / Independent status
- Candidate Name
Party Name / Independent status
- Candidate Name
Party Name / Independent status

Authorised by [Name] [Address]
Printed by [Name] [Address]

Checklist for registering electoral material	
1	<input type="checkbox"/> Do not print your electoral material until it has been registered by the Electoral Commissioner
2	<input type="checkbox"/> Translation attached if text included in a language other than English
3	<input type="checkbox"/> Clearly identifies the person, political party, organisation, or group on whose behalf the material is to be distributed
4	<input type="checkbox"/> Reference to the ballot papers should be exact, including candidate names, their independent or party affiliation
5	<input type="checkbox"/> The order of the candidates on my how to vote card is the same order as the ballot paper
6	<input type="checkbox"/> Electoral material is in no way misleading electors into casting a formal vote
7	<input type="checkbox"/> Does not encourage an elector to vote using a tick or cross
8	<input type="checkbox"/> Does not contain any name, abbreviation or acronym of the name of a registered political party or candidate in a way that is intended or likely to mislead any elector
9	<input type="checkbox"/> Voting instructions do not contravene the instructions on the ballot paper
10	<input type="checkbox"/> Does not look as though my electoral material has been produced or communicated by or from the NSW Electoral Commission or the Electoral Commissioner
11	<input type="checkbox"/> Authorisation is displayed, including name of an individual on whose instructions the material was produced, and the address of that individual or, if the material was produced on behalf of a registered party, the name and address of the registered party as it appears on the Register of Parties (no PO Box)
12	<input type="checkbox"/> Includes the name and address of the printer (no PO Box)
13	<input type="checkbox"/> I am satisfied with the digital quality of the electoral material and am aware it will be displayed online to the public from Monday preceding the election day.

This is general guidance only. We encourage you to seek independent legal advice about how the legislation applies to your particular situation.