



Introduction

A key hallmark of a thriving democracy is a diverse and active civil society. Charities play an important role in elevating issues affecting people on low incomes in public debate. With recent changes to the *Commonwealth Electoral Act 1918*, there are new questions to be answered about what activities charities can engage in during Federal election campaigns. ACOSS has considered how the legal changes impact on its own advocacy activities and has prepared this Briefing Note to inform ACOSS Members about the approach that ACOSS will be taking over the coming months in the lead up to the Federal Election. The Briefing Note may raise questions for ACOSS members about your own plans in light of the legal changes.

Please note that this **Briefing Note is not legal advice. Penalties apply for failing to comply with obligations under the Electoral Act and ACOSS Members may need to get their own legal advice.**

ACNC guidance for charities on elections and advocacy

Charities registered with the Australian Charities and Not-for-Profits Commission (ACNC) have a range of obligations in relation to advocacy, particularly around elections. In 2016 the ACNC published a guide about how the law in relation to advocacy and campaigning in the context of an election applies to charities, which is available [here](#). The guidance outlines:

- What the ACNC mean by “advocacy” and “campaigning”
- The difference between the activities of a charity and their purpose
- The meaning of “disqualifying purpose”
- How the ACNC responds to public concerns about a charity’s activities

The ACNC guidelines make it clear that charities must not pursue a purpose of promoting or opposing a political party or a candidate for political office. The [ACNC’s guide](#) has a useful Q&A section that points to some of the activities that charities should consider avoiding in order to ensure that they do not have such a disqualifying purpose. ACOSS members are encouraged to consider the ACNC’s advice for their own context and to ensure that they can confidently engage in public debates during the Election campaign.

For more information, you can contact the ACNC on 13 22 62, or via their [general enquiry form](#) on their website.

AEC guidance on election funding and disclosure

The *Commonwealth Electoral Act 1918* contains a number of provisions that apply to organisations involved in election-based advocacy: namely, communication that has the dominant purpose of influencing the way people vote in a federal election. Some organisations that are involved in election advocacy may need to provide returns to the Australian Electoral Commission (AEC) detailing their election based funding and expenditure, depending on the extent of that funding and expenditure. The AEC is developing a suite of materials for organisations that outline their obligations under the legislation. An introduction to the new legislation and an outline of organisation’s obligations

under the Act is available [here](#), and a fact sheet about “electoral expenditure” and “electoral matter” is available [here](#).

Some of the provisions of the Act came into force on 1 December 2018, and others came into force on 1 January 2019. In the 2018/2019 financial year, organisations may have obligations under both the old legislation (pre 1 December 2018) and the new legislation. If your organisation was involved in election advocacy prior to 1 December 2018, you may be interested in an ACOSS Briefing Note (available [here](#)) (developed in partnership with the Public Interest Advocacy Centre) that outlines how we implemented the *Commonwealth Electoral Act 1918* as it applied at that time.

ACOSS will not be lodging an Annual Return in the 2017-18 Financial Year, and is unlikely to lodge a return in the 2018-2019 Financial Year. ACOSS does not generally produce electoral matter or incur electoral expenditure as defined by the Act, therefore we do not believe that we are required to make a return.

If you have any questions about how the Funding and Disclosure elements of the Commonwealth Electoral Act 1918 applies to your organisation, you can contact fad@aec.gov.au, or alternatively call the Funding and Disclosure help desk on 02 6271 4552.

Authorisation of election related communications by charities and not-for-profits

The AEC has produced an [Electoral Backgrounder](#) to provide guidance on what material needs to be “authorised” under the *Commonwealth Electoral Act 1918*. The rules on authorisation changed in March 2018, and again in January 2019. The AEC’s backgrounder provides detailed information on the types of communications that require authorisation, how to authorise communications when that is required, and some key definitions, including electoral communication, electoral matter, disclosure entity.

Organisations should consider the new rules in their own context. ACOSS does not intend to change our approach to authorising material. We generally do not produce electoral matter i.e. “matter communicated or intended to be communicated for the dominant purpose of influencing the way electors vote in an election (a federal election)...”⁴ For example, ACOSS will not be authorising submissions to government, parliamentary or other inquiries; media releases; briefing notes or other policy documents. Where we do produce electoral matter, we will authorise it.

For more information about authorisation, you can contact the AEC via their [Online enquiry form](#) or call 13 23 26.

⁴ *Commonwealth Electoral Act 1918* Part 4AA