

LETTER FROM THE CHIEF LEGAL OFFICER OF THE AEC TO THE AUSTRALIAN PRIVACY FOUNDATION

Our ref. LS3514

Mr. Nigel Waters
Australian Privacy Foundation and Privacy International

By email Board5@privacy.org.au

Dear Mr. Waters

Thank you for your letter to the Electoral Commissioner, Mr. Ed Killesteyn, in relation to the practices of political parties and postal voting arrangements. I have been asked to reply on his behalf.

The concerns raised in your letter do not appear to disclose any breach of the provisions contained in the Commonwealth Electoral Act 1918. Let me explain the basis for the AEC's conclusion.

The AEC is established by the Parliament pursuant to section 6 of the Electoral Act. Its functions and powers are set out in section 7 of the Electoral Act. The AEC has no power to take action in relation to the actions of prospective candidates and political parties otherwise than in the circumstances that are contained in the Electoral Act.

There are a number of sections in the electoral Act, which authorise political parties and candidates to issue Postal Vote Application form, to have them returned to their offices and then to forward these to the AEC for the issuing of the resultant postal vote itself.

Subsection 1184AA(1) of the Electoral Act provides that:

'An application form for a postal vote may be physically attached to, or form part of, other written material issued by any person or organisation.'

Subsection 184AA(1) was inserted in the Electoral Act by the Electoral and Referendum Act 1998 (the amending Act) The Explanatory Memorandum to the Bill, that became the Amending Act indicates that the intention of the Parliament was to ensure that political parties could issue and receive Postal Vote Applications. The Explanatory Memorandum stated that section 184AA was:

'to provide that the approved postal vote application may be incorporated into another document with material issued by a body or person other than the AEC such as a political party or a candidate'... The amendment will not affect the practice of completed postal applications being returned to a political party's or candidate's office before being forwarded to the relevant DRO for processing.

A further requirement that relates to Postal Vote Applications is contained in section 197 of the Electoral Act, which states that:

'A person to whom an elector entrusts

- (a) an application for a postal vote, or
- (b) an envelope apparently containing a postal ballot-paper

for posting or delivering to an officer shall post or deliver the application or envelope, as the case may be, as soon as practicable.

Penalty \$1,000

Accordingly the intention of the Parliament, and measures that they placed in the Electoral Act, make it clear that members of political parties and 'any person or organisation' is legally able to print Post Vote Applications and to add their own electoral advertisements.

Recently there was debate in Parliament on amendments to the Electoral Act designed to prohibit additional material being attached to a Postal Vote Application and to ensure that Postal Vote Applications were sent by voters directly back to the AEC.

Unfortunately the amendments, designed to achieve this, were omitted from Schedule 6 to the Electoral and Referendum Amendment (Moderation and other Measures) Bill 2010 during the debate in Parliament

I trust that the above information is of assistance

If you have any further queries regarding this matter, please contact me at the AEC on (02) 6271 4474.

Yours sincerely,

Paul Pirani
Chief Legal Officer

23 July 2010