

POSTAL SURVEY SAFEGUARDS FACT SHEET

What are safeguards and why do we need them?

The *Marriage Law Survey (Additional Safeguards) Act 2017* provides safeguards in advertising, broadcasting, campaigning and communications for the Australian Marriage Postal Survey campaign.

THESE SAFEGUARDS ARE DESIGNED TO:

1 Ensure public communications are **clearly authorised** (so people know who they are communicating with and whether that person is legitimate).

2 Introduce **protections against hate speech** during the postal survey based on someone's views on the survey because of their sexual orientation, gender identity, intersex status or religious conviction.

3 Prevent **undue influence** through bribery, threats or misleading or deceptive publications.

4 Allow the **expression of free and informed views** and **prevent misleading and deceptive information** from affecting a person's survey response.

The survey safeguards will be in effect from 14 September 2017 until 15 November 2017.



Thanks to the Human Rights Legal Centre for helping prepare this fact sheet.

*This fact sheet is not legal advice. Authorised by A. Greenwich 6 Macquarie Street Sydney NSW 2000 for The Equality Campaign.

What does it mean for supporters of marriage equality and people working on the campaign?

AUTHORISATIONS

All communications or campaign material relating to the marriage law postal survey must be authorised. This is intended to minimise anonymous and harmful political speech.

Individuals can be fined up to \$25,200 and companies fined up to \$126,000 by the Electoral Commissioner for not including authorisation on communications or campaign materials. Usually, the Electoral Commissioner issues a warning and requires the content to be removed for the first offence.

Campaign material and communications that **NEED** to be authorised includes any material about marriage equality or the postal survey, such as:

- Printed materials (posters, stickers, flyers, etc)
- Voice calls
- Text messages
- Radio and TV advertisements
- Any online communication (emails, websites, paid social media posts, etc)
- Any other communication intended to affect a person's response to the postal survey

Authorisation is **NOT** required for:

- Clothing (e.g. t-shirts)
- Campaign materials or communications where it's not practical to print an authorisation (e.g. small stickers, sky writing)
- Personal communications (e.g. calling your gran to ask her to vote YES, Facebook posts to friends)
- Internal emails within your organisation
- Events where the speakers are clearly identifiable
- News and current affairs reporting
- Communications for genuine satirical, academic or artistic purposes
- Opinion polls



WHAT ARE THE RULES?

There are rules about what level of information you need to provide depending on what type of campaign material it is. **The authorisation needs to appear at the end of the communication – except for phone calls, where it must be at the beginning.** Text messages and small online ads such as Google Adwords can contain a link to a website that is authorised, rather than the authorisation itself.

If you or your organisation is posting about the postal survey on **social media** and it is not for personal purposes, your Facebook account or Twitter bio must **state the true name of the account owner and their town/city.** You do not have to write 'authorised by'.

PRINTED MATERIAL

(including stickers, fridge magnets, leaflets, flyers, pamphlets, notices, posters)

Name, street address (not PO Box) and organisation

For example:

Authorised by A. Greenwich, 6 Macquarie Street Sydney NSW 2000, for the Equality Campaign.

ALL OTHER COMMUNICATIONS

(including websites and Internet advertising large enough to contain an authorisation)

Name, town/city and organisation

For example:

Authorised by A. Greenwich, Sydney, for the Equality Campaign.

PHONE CALL SCRIPT

Who authorised the script and town/city

For example:

Hi, my name is Ian and I'm calling on behalf of the Equality Campaign in Sydney. (if the script was approved by the Equality Campaign) or: Hi, my name is Ian and I'm calling on behalf of Jane Bloggs in Sydney (if the script was approved by Jane Bloggs)

TEXT MESSAGES AND CERTAIN ONLINE ADVERTISING

(i.e. Snapchat, Google Adwords etc)

Link to a website which is authorised by the same person or entity that authorised the ad

For example:

For more information, go to www.equalitycampaign.org.au.



EXTERNAL MAILS

from individuals acting in their capacity as members of an organisation that is part of the campaign

A signature block that identifies the full name of the individual, the organisation and contact details

For example:

Jo Bloggs, The Equality Campaign A: PO Box Q1914, Queen Victoria Building NSW 1230

If you have already printed campaign materials but you have not 'communicated' them (i.e. you have not put the leaflet in a letterbox or stuck the poster on a pole), the survey safeguards still apply. This means that **you will need to add the authorisation on the materials before they go public** (you can do this by hand or by adding a sticker).

For printed materials, if you need to include an address, **it has to be a street address** – not a PO Box. It may be safer to use a secure address at a building with security, rather than your private home address.

You do not need to have your campaign materials authorised by the Equality Campaign. Your organisation can still authorise your own campaign materials.

OFFENCES

The survey safeguards include fines for offences which are similar to offences during an election or referendum or protections against hate speech.

Individuals can be fined up to \$12,600 and companies can be fined up to \$63,000 by the Electoral Commissioner for committing an offence under the survey safeguards.

COMPLAINTS TO THE ATTORNEY-GENERAL

Protections against hate speech – It is an offence to vilify, intimidate or threaten to cause harm to someone else relating to their views on the marriage law survey based on their sexual orientation, gender identity, intersex status or religious conviction.

However, it is not an offence if it is done reasonably and in good faith and is:

- Reporting of news, media, reporting or current affairs
- Solely for genuine satirical, academic or artistic purposes (e.g. cartoons)
- Subject to the defence of absolute privilege in defamation (e.g. politicians' speeches in Parliament)

Interference with postal survey response - It is an offence to engage in conduct that hinders or interferes with any person providing a survey response (e.g. stopping another person from posting their survey response or removing another person's survey from their post box without their knowledge).

Discrimination on basis of donation – It is an offence to discriminate against another person because they have made a donation to an organisation for the YES or NO campaign.



COMPLAINTS TO THE AUSTRALIAN ELECTORAL COMMISSIONER

Bribery – It is an offence to give or receive a bribe. If you ask for, receive or obtain any property or benefit (or offer to do one of these) understanding that this will influence or affect an enrolled voter's decision about whether to provide a survey response or what response to provide, this is an offence. This includes where the bribe is for another person.

Threats – It is an offence to make a threat to an enrolled voter to cause detriment to them or someone else, intending to influence or affect their decision about whether to provide a survey response or what response to provide.

There are already criminal laws that protect you from serious threats to your safety. If someone threatens to harm you or someone you know and you believe that you are in danger, please contact your local police station immediately. If it is an emergency, please call 000.

Misleading and deceptive publications – It is an offence to print, publish or distribute any matter or thing that is likely to mislead or deceive an enrolled person about responding to the postal survey. This includes if you cause, permit or authorise the campaign material to be printed, published or distributed.

This doesn't apply to the expression of opinions about the survey or the question. For example, it is aimed at deliberately misleading someone about when they can post their survey by or telling someone that voting 'Yes' will retain the current definition of marriage.

WHAT ABOUT BROADCASTERS' RESPONSIBILITIES?

There are also survey safeguards which are aimed to make sure that broadcasters give reasonable opportunities to broadcast opposing views. Unlike elections, this does not need to be 'equal time'.

This obligation does not apply to a community radio broadcaster that represents a religious community interest (e.g. a Catholic radio station) or another community interest including a gay and lesbian community interest (e.g. Joy FM).

If a campaign spokesperson is interviewed on radio, the broadcaster should introduce them at the start of the interview using their full name, the campaign or organisation they are from and the location of their campaign or organisation's headquarters. For example: And now we're joined by Jane Bloggs from the Equality Campaign in Sydney.

More information on the obligations of broadcasters can be found at: acma.gov.au/theACMA/About/Corporate/Structure-and-contacts/contact-the-acma-acma-1.



What do I do if I think the survey safeguards apply?

MAKE A COMPLAINT

Depending on what survey safeguard has been breached, you will need to make a complaint to the Attorney-General, the Australian Electoral Commissioner or the Australian Communication and Media Authority.

You can make a complaint at:

- Vilification (hate speech), interference and discrimination by sending an email to: surveysafeguards@ags.gov.au
- Authorisations, bribery, sale of survey forms, threats or misleading or deceptive publications - www.aec.gov.au/About_AEC/Contact_the_AEC/feedback.htm
- Complaints about broadcasters - www.acma.gov.au/Citizen/TV-Radio/Broadcasting-complaints2/Broadcast-complaints/broadcasting-complaints.

Make sure your complaint includes:

- Your name, role and organisation
- The communication that you are making a complaint about
- Details about when and where you saw or heard the communication (and any evidence of this, including photos, screenshots, audio recordings, videos, etc.)
- Why you think the communication is a breach of the survey safeguards
- Your contact details

You can email the Equality Campaign at allofus@equalitycampaign.org.au so we can keep tabs on offensive or misleading campaign material.

APPLY FOR AN INJUNCTION

If you are an organisation that has approved content for an advertisement (or a member, agent or officer of one of these organisations), you can apply to the Federal Court for an injunction. The injunction would restrain other people from engaging in (or proposing to engage in) any conduct that would breach the survey safeguards.

The Electoral Commissioner can also apply to the Federal Court for an injunction.

You should obtain legal advice before applying for an injunction about whether the safeguards apply, your prospects of success and any costs risks to your organisation

REPORT IT TO THE SENATE INQUIRY

Even if the survey safeguards don't apply, you can report any offensive, misleading or intimidating material or behaviour to the Senate Inquiry into the postal survey. The Senate Inquiry is looking into the types of campaign materials that are being distributed and will prepare a report on the impact of these campaign materials to the Australian Government.

You can report any offensive, misleading or intimidating campaign materials to the Senate Inquiry by sending an email to fpa.sen@aph.gov.au.

Please include information about you, when and where you saw the materials and the impact that it had.



Where do I find more information?



For more information on the survey safeguards, go to:
<https://marriagesurvey.abs.gov.au/safeguards>.



If you have questions about the postal survey, you can get information from the Australian Bureau of Statistics at:
<https://marriagesurvey.abs.gov.au/> or 1800 572 113.



If you have questions about this fact sheet, you can email:
claire@equalitycampaign.org.au.



LET'S GET THIS DONE

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