

LEX4349

The Proper Officer

Google LLC

1600 Amphitheatre Parkway, Mountain View, California 94043

Attn: Legal Department

Dear Sir or Madam

NOTICE UNDER SECTION 110E OF THE REFERENDUM (MACHINERY PROVISIONS) ACT 1984

I, s47F, a delegate of the Electoral Commissioner, have reason to believe that Google LLC, as the operator of the email service Gmail, has information and documents relating to assessment of compliance with section 110C of the Referendum (Machinery Provisions) Act 1984 (**Referendum Act**).

Assessment of compliance with section 110C of the Referendum Act

The Australian Electoral Commission (AEC) is assessing the compliance of flyers that constitute referendum matter (as defined in section 3AA of the Referendum Act) distributed in the electorates of Kooyong, Hawke and Menzies between 5 July 2023 and 9 July 2023 and in the electorate of Indi on 26 August 2023, which do not contain authorisation particulars required by section 110C of the Referendum Act.

I have reason to believe that the production and/or distribution of the flyer was undertaken by the individual responsible for the Gmail account s47F.

Information and documents to be produced

As a delegate of the Electoral Commissioner, I require Google LLC to produce the information in Schedule 1 to this notice under section 110E of the Referendum Act. The information and documents are to be provided in native electronic form and must be sent by email to: authorisationsection@aec.gov.au by no later than **26 September 2023**. It is an offence under section 110E(4A) of the Referendum Act not to comply with this notice or not to comply in full.

For your reference I have attached the relevant parts of sections 110C and 110E of the Referendum Act (Attachment A).

It is a criminal offence under section 137.1 and 137.2 of the *Criminal Code Act 1995* to provide, in answer to this notice, false or misleading information or documents.

Yours sincerely,

s47F

s47F

Senior Government Lawyer
Legal Services Branch

Schedule 1: information to be provided

1. Provide basic subscriber information (as defined by Google LLC) for the S47F [REDACTED] account.
2. To the extent not captured by the response to paragraph 1 and 2, provide the following information for the S47F [REDACTED] account referred to in paragraph 1 above:
 - a. The name of the account holder; and
 - b. The email address(es), phone number(s), postal address(es), IP addresses and MAC addresses of the account holder.

Attachment A – Referendum (Machinery Provisions) Act 1984

110C Authorisation of certain referendum matter

- (1) This section applies in relation to referendum matter that is communicated to a person if:
- (a) all of the following apply:
 - (i) the matter is an advertisement relating to a referendum;
 - (ii) all or part of the distribution or production of the advertisement was paid for;
 - (iii) the content of the advertisement was approved by a person (the *notifying entity*) (whether or not that person is a person who paid for the distribution or production of the advertisement); or
 - (b) both of the following apply:
 - (i) the matter forms part of a sticker, fridge magnet, leaflet, flyer, pamphlet, notice, poster or how-to-vote card;
 - (ii) the content of the matter was approved by a person (the *notifying entity*); or
 - (c) the matter is communicated by, or on behalf of, a disclosure entity (the *notifying entity*) (and the matter is not an advertisement covered by paragraph (a), nor does the matter form part of a sticker, fridge magnet, leaflet, flyer, pamphlet, notice, poster or how-to-vote card).

.....

Notifying particulars

- (5) The notifying entity must ensure that the particulars set out in the following table, and any other particulars determined under subsection 321D(7) of the *Commonwealth Electoral Act 1918* for the purposes of this subsection, are notified in accordance with any requirements determined under that subsection.

Required particulars		
Item	If ...	the following particulars are required ...
1	the communication is a sticker, fridge magnet, leaflet, flyer, pamphlet, notice, poster or how-to-vote card authorised by a disclosure entity that is not a natural person	(a) the particulars of the name of the entity required by subsection (5A); (b) the address of the entity; (c) the name of the natural person responsible for giving effect to the authorisation
2	the communication is any other communication authorised by a disclosure entity that is not a natural person	(a) the particulars of the name of the entity required by subsection (5A); (b) the relevant town or city of the entity; (c) the name of the natural person responsible for giving effect to the authorisation
3	the communication is a sticker, fridge magnet, leaflet, flyer, pamphlet, notice, poster or how-to-vote card authorised by a disclosure entity who is a natural person	(a) the name of the person; (b) the address of the person
4	the communication is any other communication authorised by a disclosure entity who is a natural person	(a) the name of the person; (b) the town or city in which the person lives
5	the communication is a sticker, fridge magnet, leaflet, flyer, pamphlet, notice, poster or how-to-vote card authorised by an entity that is not a disclosure entity or a natural person	(a) the name of the entity; (b) the address of the entity
6	the communication is any other communication authorised by an entity that is not a disclosure entity or a natural person	(a) the name of the entity; (b) the relevant town or city of the entity
7	the communication is a sticker, fridge magnet, leaflet, flyer, pamphlet, notice, poster or how-to-vote card authorised by a natural person who is not a disclosure entity	(a) the name of the person; (b) the address of the person

**AEC**

Australian Electoral Commission

Required particulars

Item	If ...	the following particulars are required ...
8	the communication is any other communication authorised by a natural person who is not a disclosure entity	(a) the name of the person; (b) the town or city in which the person lives

Note 1: This provision is a civil penalty provision which is enforceable under the Regulatory Powers Act (see section 140AAA of this Act).

Note 2: A person may contravene this subsection if the person fails to ensure that particulars are notified or if the particulars notified are incorrect.

Note 3: For the application of this provision to a notifying entity that is not a legal person, see subsection (6).

Civil penalty: 120 penalty units.

110E Electoral Commissioner may obtain information and documents from persons

- (1) This section applies to a person if the Electoral Commissioner has reason to believe that the person has information or a document that is relevant to:
 - (a) assessing compliance with section 110C; or
 - (b) investigating a possible contravention of section 110CA.
- (2) The Electoral Commissioner may, by written notice given to the person, require the person:
 - (a) to give to the Commissioner, within the period and in the manner and form specified in the notice, any such information; or
 - (b) to produce to the Commissioner, within the period and in the manner specified in the notice, any such documents; or
 - (c) to make copies of any such documents and to produce to the Commissioner, within the period and in the manner specified in the notice, those copies.

Matters to which regard must be had before giving notice

- (3) Before giving a person a notice under subsection (2), the Electoral Commissioner must have regard to the costs, in complying with any requirement in the notice, that would be likely to be incurred by the person.
- (4) Subsection (3) does not limit the matters to which regard may be had.
- (4A) A person or entity commits an offence if:
 - (a) the person or entity is given a notice under subsection (2); and
 - (b) the person or entity does an act or omits to do an act; and
 - (c) the act or omission contravenes the notice.

Penalty: 200 penalty units.

Content of notice

- (5) A notice given to a person under this section must set out the effect of subsection (4A) of this section and sections 137.1 and 137.2 of the *Criminal Code* (false or misleading information or documents).

Copying documents—reasonable compensation

- (6) A person is entitled to be paid by the Commonwealth reasonable compensation for complying with a requirement covered by paragraph (2)(c).