

AUGUST 2011

Media Handbook

2011 General Election
and Referendum



August 2011

Dear Media publisher/broadcaster

2011 General Election and Referendum on the voting system

The Electoral Commission is responsible for conducting parliamentary elections and referenda and providing advice to parties, candidates and others on the election and referendum advertising rules.

We have prepared this booklet to explain your obligations in the general election and referendum on New Zealand's voting system to be held on 26 November 2011.

Please study these requirements carefully before publishing or broadcasting any advertising for the general election or referendum campaign. There are serious consequences for non-compliance including prosecution.

A detailed timetable of all key dates for the election and referendum is set out in Appendix A and on www.elections.org.nz

If you need any assistance, we are happy to help.

Yours sincerely

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INTRODUCTION

This booklet is part of a series produced by the Electoral Commission.

The booklets are a general guide and reflect the Electoral Commission's interpretation of the law and how it intends to apply the law. The Electoral Commission welcomes the opportunity to discuss any areas that require clarification.

The booklets do not cover every aspect of electoral law and procedure. For further information, publishers and broadcasters should consult the Electoral Act 1993, the Electoral Referendum Act 2010, the Broadcasting Act 1989, or seek legal advice. The Electoral Commission is also happy to discuss any specific questions that you have.

Other information is available

Other booklets available for 2011 from the Electoral Commission or from www.elections.org.nz are:

Party Secretary Handbook – 2011 General Election and Referendum

Candidate Handbook – 2011 General Election and Referendum

Third Party Handbook – 2011 General Election and Referendum

Guidance for MPs - Election Advertising Rules

Information for Scrutineers

Voting in the 2011 General Election – The Easy Way

Going to be overseas on Election Day?

Unable to Get to a Polling Place on Election Day?

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PART 1: ELECTION ADVERTISING

1.1 Introduction

There are detailed rules in the Electoral Act 1993, and the Broadcasting Act 1989 on what political parties, candidates, and third parties can and cannot do when campaigning. Some of those rules impose obligations on both promoters of election advertisements and the publisher/broadcaster. This means that both the publisher/broadcaster and the promoter commit an offence if certain rules are not complied with. Publishers and broadcasters should familiarise themselves with these rules in order to avoid breaching the law.

The key messages are:

- Publishers and broadcasters must ensure that election advertisements or election-related advertisements contain a promoter statement.
- Publishers and broadcasters must ensure that any election advertisement that promotes any candidate and/or party has been authorised in writing by the candidate and/or party secretary(s) before it is published/broadcast.
- 'Editorial content' of a periodical, radio or television programme, or news media Internet site is excluded from the definition of an election advertisement.
- Special rules apply to candidate and party election advertising on radio and television.
- Third parties cannot broadcast election advertising on radio and television.
- Campaigning on polling day is a criminal offence.

This part of the Handbook provides an overview of these rules. Further information is available in the Party Secretary, Candidate, and Third Party Handbooks.

Part 2 provides an overview of the referendum advertising rules.

Part 3 explains the rules for broadcasting election programmes on radio and television.

Part 4 outlines the restrictions that apply on election day.

Part 5 provides a brief overview of the complaints process, and gives contact details for the relevant industry bodies.

1.2 All election advertising must contain a promoter statement

All election advertisements irrespective of when they are published must state the name and address of the person that has initiated or instigated them ("the promoter") [see section 204F of the Electoral Act].

The Electoral Act provides that only the following can promote an election advertisement:

- a party secretary,
- a candidate,
- a registered promoter, or
- an unregistered promoter.

Registered and unregistered promoters are also referred to as third party promoters throughout this guidance.



To meet the requirements of the Electoral Act, promoter statements must include the name and address of the promoter and make it clear who has initiated or instigated the advertisement.

The form of words recommended by the Electoral Commission is:

“Promoted or Authorised by [promoter’s name], [promoter’s relevant full street address]”.

If the promoter is unregistered, and is an incorporated or unincorporated body, the promoter statement must also include the name of a member of the body who is the duly authorised representative of the promoter. For example:

“Promoted or Authorised by [duly authorised representative’s full name], [promoter’s name], [promoter’s relevant full street address]”.

For an incorporated or unincorporated body the address can be the full street address of the body’s principal place of business or head office.

For registered promoters this should be the same address as shown on the Register of Registered Promoters. A Post Office box or website address is insufficient.

For an individual, the address can be the full street address of either the place where the promoter usually lives or any other place where the promoter can usually be contacted between the hours of 9am and 5pm on any working day.

The Electoral Act does not define what is meant by ‘any other place where he or she can usually be contacted between the hours of 9am and 5pm on any working day’. The Electoral Commission’s view is that this can include for example:

- the individual’s campaign office address, or
- the individual’s work address,

provided that this is where he or she can usually be contacted between the hours of 9am and 5pm on any working day. The individual does not always have to be physically at this address during these hours but it must be an address from where he or she can be contacted within a reasonable period of time. An individual may need to consult their employer before including a work address on any election advertising.

Publishers and broadcasters need to be aware that because it is an offence to publish or cause or permit to be published an election advertisement that does not comply with the promoter statement requirements, (independent of any offence committed by a promoter), the publisher/broadcaster is subject to a maximum fine of \$10,000 for publishing an election advertisement without a promoter statement.

The requirement for a promoter statement applies to all forms of election advertising in any medium. If the election advertisement is published in a visual form, the promoter statement must be clearly displayed in the advertisement. If the election advertisement is published only in an audible form, the promoter statement must be no less audible than the other content of the advertisement.

Whether a promoter statement has been clearly displayed will need to be determined on a case by case basis taking into account the type of advertisement that is published. In the Commission's view, this does not require that a person be able to read the promoter statement from where an election advertisement is intended to be viewed, for example on a billboard while driving. However, if a person inspects an election advertisement he or she should be able to read the promoter statement.

Given that most websites allow the user to change the font size, as long as the promoter statement is included and is readable, the size is unlikely to mean that the promoter statement is not clearly visible.

Where the website or webpage is an election advertisement, a promoter statement does not need to be included in each picture, article or entry on the site, provided the promoter statement is contained on the home page or the page that contains the election advertising.

1.3 Election advertisements promoted by political parties and candidates

Party advertisements promoted by a party need to include the party secretary's name and address. The party may promote one or more of its electorate candidates with the written authorisation of each candidate. If a party promotes an advertisement that is both a party and a candidate advertisement, only one promoter statement is required. In this case, the party is the promoter and the advertisement will only need to include the name and address of the party secretary.

Electorate candidates can also promote their own election advertisements, or a joint candidate and party advertisement (with the written authorisation of the party secretary). If an electorate candidate promotes an advertisement that is both a candidate and party advertisement, only one promoter statement is required. In this case, the candidate is the promoter and the advertisement will only need to include the name and address of the candidate.

1.4 Election advertisements promoted by third parties (registered and unregistered promoters)

Election advertisements promoted by a registered or unregistered (“third party”) promoter need to include a promoter statement that features the promoter’s name and address.

An unregistered promoter can spend up to \$12,000 (including GST) in relation to election advertisements published during the regulated period. A promoter who spends or intends to spend more than \$12,000 (including GST) on election advertisements must register with the Electoral Commission. A registered promoter can spend up to \$300,000 (including GST). There are some restrictions on who can be an unregistered or registered promoter (see Appendix C for further details).

1.5 Advertisements promoting a candidate or party must be authorised in writing

Party and candidate election advertisements that may be reasonably regarded as encouraging or persuading voters to vote for an electorate candidate or a party must be authorised in writing by the candidate (in the case of a candidate advertisement) or the party secretary (in the case of a party advertisement). If more than one candidate is featured in a candidate advertisement, written authorisation must be obtained from each candidate. A separate authorisation is not required where an electorate candidate is promoting his or her own candidacy or a party secretary is promoting his or her own party.

Publishers and broadcasters are advised to request and retain a copy of any written authorisation(s) required for a candidate or party advertisement, or a referendum advertisement that also promotes a party or candidate.

Publishers and broadcasters need to be aware that because it is an offence to “publish or cause or permit to be published” an election advertisement that promotes a party and/or candidate without prior written authorisation, (independent of any offence committed by a promoter), the publisher/broadcaster is subject to a maximum fine of \$10,000 for publishing or broadcasting this type of election advertisement where written authorisation has not been given.

1.6 What is an election advertisement?

An election advertisement is an advertisement in any medium that may reasonably be regarded as encouraging or persuading voters to:

- vote or not to vote for an electorate (“constituency”) candidate (whether or not the name of the candidate is stated),
- vote or not to vote for a party (whether or not the name of the party is stated),

- vote or not to vote for a type of candidate or party described by reference to views or positions that are, or are not, held or taken (whether or not the name of the candidate or party is stated).

[See section 3A of the Electoral Act]

The Electoral Act does not define “advertisement” but because the definition of ‘election advertisement’ covers an advertisement “in any medium” the Electoral Commission considers that the term “advertisement” should be interpreted broadly. For example, it is not limited to traditional forms of advertising such as newspapers, posters, billboards, leaflets and radio and TV broadcasting. The Electoral Commission’s view is that if material is open to an interpretation that it is an “election advertisement”, a promoter statement should be included.

The test is whether the advertisement can “reasonably” be regarded as encouraging or persuading voters to vote, or not to vote, for a party or candidate. This is an objective test. It is based on content and context regardless of whether the advertisement includes the name of a party or candidate, or whether the encouragement or persuasion to vote, or not to vote, is direct or indirect.

The definition of “election advertisement” does not require an explicit statement (eg, “Vote for X”, or “Don’t vote for Y”). The complete advertisement needs to be considered, in context. It is not enough to consider the words or visual images used in isolation.



Example 1: Newspaper “advertorial” announcing the launch of a new political party

The party secretary for a newly registered political party pays for the publication of an “advertorial” that highlights the names and qualifications of its office-holders. The text includes several references to the new party, and language that promotes the party in a positive way including:

- “We have the people to protect families and promote local businesses”;
- “The [Name] Party will help all parents who want the best for their children”.

In addition, there is a photo of the party leader handing an over-sized “cheque” to a local community group as a donation to its child-care initiative. A billboard with the party’s logo features prominently in the photo.

This example is likely to be considered a party election advertisement. It should include a promoter statement.

Example 2: *Flyer inserted in, and delivered with, local morning newspaper*

A group (which is not a registered political party) prints a flyer, and makes arrangements with the publisher of a metropolitan daily newspaper for the flyer to be included as an insertion so it is delivered with the paper to every subscriber.

The flyer presents “questions and answer” about a number of topical issues, along the lines: “Q: Do you want [A]?” or “A: Do you want [B]?”

The “questions” are framed in negative language, and include a checkbox with a cross. The “answers” are framed in positive language, and include a checkbox with a tick.

The flyer does not identify any party or candidate by name, but the “questions” and “answers” reflect policy positions clearly identifiable with one or more parties or types of parties. In addition, the “questions” and “answers” are printed in colours identified with particular parties.

This example is likely to be considered a party election advertisement. It should include a promoter statement.

All requirements in respect of election advertisements apply to:

- election advertisements published in New Zealand even if the promoter is outside of New Zealand, and
- election advertisements published outside of New Zealand where the promoter is in New Zealand.

[See section 3F of the Electoral Act]

Publish means to bring to the notice of a person in any manner excluding addressing one or more persons face to face *[see section 3D of the Electoral Act]*. It includes but is not limited to print media, broadcast media, and the Internet.

1.7 What is not an election advertisement?

The legislation makes it clear that the following are not election advertisements:

- editorial content,
- personal political views online,
- a member of Parliament’s contact details.

Editorial content

There is an exemption for the editorial content of a periodical, a radio, or television programme, or news media Internet site. The Electoral Act does not define ‘editorial content’ but the Electoral Commission’s view is that it includes any part of the publication except advertising or

advertorial. A periodical is a newspaper, magazine, or journal established for purposes unrelated to the election, that has been published at regular intervals and that is available to the public.

Personal political views online

There is an exception for the publication of personal political views by an individual on the Internet or other electronic medium, provided the individual does not make or receive payment for publishing those views. Individuals expressing personal political views on social media such as Facebook and Twitter are covered by this exemption and will not need to include a promoter statement. This exception does not extend to political views expressed on behalf of a group because the exemption is restricted to the publication of personal views by an individual. Where content posted on a Facebook or Twitter page that is an election advertisement is 'liked' or 'retweeted' by another person, it is the Electoral Commission's view that the individual content appearing elsewhere on Facebook or Twitter will not require a promoter statement if it appears on those other pages as the expression of personal political views by an individual who does not make or receive payment in respect of the publication of those views.



Member of Parliament's contact details

There is also an exemption for the publication by members of Parliament of contact information. For the exemption to apply, contact information published within the regulated period must:

- be published by the member in the course of performing his or her duties as a member of Parliament,
- have been funded by the Parliamentary Service,
- have been routinely published in the same medium, no more often, and to no greater extent than, and in the same form and style as it was published before the regulated period, and
- not be combined or associated with an election advertisement.

The contact information must include all of the following:

- the member's name,
- the member's contact details, which can be a telephone number, physical or postal address, and/or e-mail address, and
- the name of the electoral district that they represent or the fact that they are a list member.

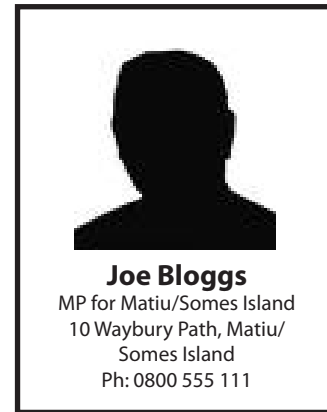
The contact information may also include one or more of the following:

- a photo of the member,
- a party name,
- a party logo,

- the member's constituency clinic times,
- the website address for the member or the member's party.

To fit within the exemption the proposed publication cannot include anything other than 'contact information' as outlined above. This exemption is only available to current MPs.

Advertising by an MP, that does not satisfy the contact information exemption must be considered under the general test of whether or not it is an election advertisement.



1.8 References to websites

If advertising encourages people to visit a website, consideration needs to be given to whether the website contains material that could be election advertising. Depending on how the website is being used in the advertisement, the content of the website may be considered in determining whether the advertisement is an election advertisement for the purposes of the Act.

1.9 Requesting an advisory opinion from the Electoral Commission

You can ask the Electoral Commission for advice on whether, in its opinion, an advertisement constitutes an 'election advertisement' under the law. The advisory opinion will be provided as soon as is reasonably practicable. The opinion of the Electoral Commission is not legally binding but reflects the Commission's interpretation of the law. A court of law may reach a different view. The Commission's view is that relying in good faith on an advisory opinion is likely to be relevant to determining whether a person had acted wilfully or taken all reasonable steps to ensure an offence was not committed but that, of course, would be a matter for the Courts to determine. You may wish to seek your own legal advice.

To request an opinion you will need to provide the Commission with a copy of the advertisement and any relevant background information such as the details of when and how it is to be published.

The Commission will treat the proposed advertisement, any supporting material, and the advice given to the requestor as confidential until the day after the day for the return of the writ for the election. Advisory opinions will then be made available on request, subject to the Official Information Act 1982. This does not prohibit the requestor from releasing the advice at any time.

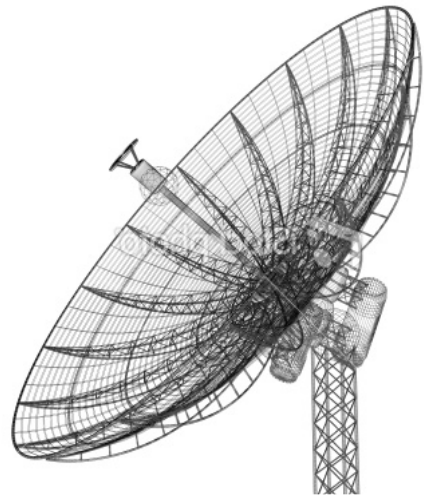
1.10 An advertisement 'relating to an election' *[Section 221A of the Electoral Act]*

Even if an advertisement does not come within the definition of an 'election advertisement', it must still contain a promoter statement if it is 'advertising relating to an election' that is published in any newspaper, periodical, poster or handbill or broadcast on radio or television.

For example, a poster promoted by a third party that encourages the public to vote or not to vote at the election or encourages voters to think about a particular issue when they vote may not fulfil the definition of an election advertisement because there is no direct or indirect reference to a candidate or party or type of candidate or party. However, the advertisement will still need to have a promoter statement on it to comply with section 221A because it is 'election related'.

1.11 Radio and television advertising

There are separate rules applying to radio and television advertising as distinct from other forms of advertising [see *Part 6 of the Broadcasting Act*]. See Part 3 for more detail, including specific rules for broadcasters.



PART 2: REFERENDUM ADVERTISING

2.1 Introduction

The Electoral Referendum Act 2010 sets out the rules for advertising in the 2011 Referendum.

The key messages are:

- Publishers and broadcasters must ensure that referendum advertisements published from 1 January 2011 until 25 November 2011 include a promoter statement.
- Anyone (including political parties, candidates, individuals, and groups) publishing referendum advertisements will be “promoters” under the Electoral Referendum Act.
- Broadcasters broadcasting referendum advertisements promoted by parties need to consider the broadcasting rules (see Part 3).
- Editorial content of a periodical, radio or television programme, or news media Internet site is excluded from the definition of referendum advertisement.
- A referendum advertisement cannot be published on polling day.

This part of the Handbook provides an overview of these rules. Further information is available in the Party Secretary, Candidate, and Third Party Handbooks.

2.2 All referendum advertisements must contain a promoter statement

The Electoral Referendum Act does not restrict who can be a promoter, but different expenditure limits apply to registered and unregistered promoters (*see Appendix C for further information*).

All referendum advertisements published from 1 January 2011 until 25 November 2011 (the day before polling day) must state the name and address of the person that has initiated or instigated it (“the promoter”) [*see section 42 of the Electoral Referendum Act*]. The rules for the content of the promoter statement are similar to that for election advertisements (see Part 1).

Publishers and broadcasters need to be aware that because it is an offence to publish or cause or permit to be published a referendum advertisement that does not comply with this requirement, (independent of any offence committed by a promoter), the publisher/broadcaster is subject to a maximum fine of \$40,000 for publishing a referendum advertisement without a promoter statement.

2.3 Referendum advertisements promoted by a party

The form of the promoter statement that must be included in a referendum advertisement promoted by a party is different than for an election advertisement. It must also include the name of the party. If a party secretary promotes a referendum advertisement on behalf of a

party, and the party is not registered as a promoter, the Electoral Referendum Act requires the promoter statement to include the party secretary's name, the name of the party, and the address of the party. If the party is registered as a promoter for the referendum, the promoter statement is required to include the name and address of the party.



For referendum advertisements promoted by the party the promoter statement will usually be the party secretary's name, party name and address. However, it could be the name and address of another person duly authorised to represent the party in relation to referendum advertising.

A party may promote the party vote in combination with a referendum advertisement.

Similarly, a referendum advertisement the party promotes may also promote one or more of the party's electorate candidates with the written authorisation of each candidate.

2.4 What is a referendum advertisement?

A referendum advertisement is an advertisement in any medium that:

- is published in the period from 1 January 2011 until 25 November 2011 (the close of the day before polling day), and
- may reasonably be regarded as encouraging or persuading voters to vote, or not to vote, in a particular way in the referendum.

[See section 31 Electoral Referendum Act]

The legislation makes it clear that the following are not referendum advertisements:

- editorial content (see Part 1),
- personal political views online (see Part 1),
- statements that do not promote a particular option in Part A or B of the referendum voting paper.

The Electoral Referendum Act does not define "advertisement" but because the definition

of “referendum advertisement” covers an advertisement “in any medium”, the Electoral Commission considers the term “advertisement” should be interpreted broadly.

For example, it includes but is not limited to traditional forms of advertising such as newspapers, posters, billboards, leaflets, and radio and TV broadcasting. The Electoral Commission’s view is that if an advertisement is open to interpretation that it is a “referendum advertisement”, then a promoter statement should be included.

The Electoral Commission is happy to discuss any questions that arise in respect of referendum advertisements.

Publish means to bring to the notice of a person in any manner excluding addressing one or more persons face to face [see section 3D of the Electoral Act]. It includes but is not limited to print media, broadcast media, and the Internet.

2.5 Radio and television advertising

The Electoral Referendum Act and the Broadcasting Act do not restrict the broadcasting of referendum advertisements. However, all promoters will need to carefully consider whether any broadcasting that they undertake about the referendum falls under the definition of an election programme (“election broadcast advertising”) for the purposes of the Broadcasting Act.

See Part 3 for more detail, including specific rules for broadcasters.

PART 3: ELECTION BROADCASTING

3.1 Introduction

Both Part 6 of the Broadcasting Act 1989 and the Electoral Act 1993 govern how and when political parties, electorate candidates, and third party promoters can use radio and television advertising in election campaigns.

News, comment and current affairs programmes are governed by the usual broadcasting standards. The Broadcasting Standards Authority is also responsible for deciding complaints about broadcast election advertising.

This information is provided for general guidance and is not a full or final statement of what is complicated law in the Broadcasting Act and the Electoral Act. The key messages are:

- **Election programmes** (“election broadcast advertising”) can only be broadcast between 26 October 2011 (writ day) and midnight on 25 November 2011 (the day before election day).
- **Registered parties** may only use funds allocated by the Electoral Commission to advertise for the party vote, together with any free time allocated for party opening addresses and closing addresses.
- **Electorate candidates** may buy broadcast advertising, and their party may fund it from its broadcasting allocation within the candidate’s campaign expense limit. A candidate cannot share their radio or television advertising with another candidate. Candidates may not promote the party vote.
- **Unregistered parties and registered parties** not allocated funds, may only use radio and television to promote their electorate candidates’ campaigns.
- **Third parties** may be able to run broadcast advertising as long as it does not encourage or persuade or appear to encourage or persuade voters to vote, or not to vote, for a party or candidate.
- **Broadcasters** are required to ensure advertising complies with the law and to file returns after an election.

3.2 Broadcast election advertising terms

The Broadcasting Act refers to “election programmes”.

An “election programme” is defined as “a programme that—

- (a) encourages or persuades or appears to encourage or persuade voters to vote for a political party or the election of any person at an election; or

- (b) encourages or persuades or appears to encourage or persuade voters not to vote for a political party or the election of any person at an election; or
- (c) advocates support for a candidate or for a political party; or
- (d) opposes a candidate or a political party; or
- (e) notifies meetings held or to be held in connection with an election”.

It includes “visual images, whether or not combined with sounds, that consist predominantly of alphanumeric text.”

This Handbook uses the term “broadcast election advertising” to refer to advertising by political parties, candidates or other groups on radio or television with an election-related message.

Broadcast election advertising includes:

- parties’ and candidates’ opening and closing addresses;
- advertisements relating to parties, or candidates, or both;
- “positive” and “negative” messages, e.g., “Vote for X” and “Don’t vote for Y” (but candidates may not run negative advertising);
- advertisements of election meetings;
- broadcast visual images, whether or not combined with sounds, that consist predominantly of alphanumeric text (e.g., teletext).

Broadcasters are advised to check the legal definitions and their applications when appropriate.

“**Broadcasting**” covers radio and television, including subscription services but not pay-per-view channels, or internet podcasts. A “**broadcaster**” is someone who broadcasts programmes, but does not include a transmission service supplier unless they have some control over what is broadcast. The “**broadcaster**” will generally be a station or network manager.



3.3 Broadcasting allocation

Registered parties can apply to the Electoral Commission for consideration for an allocation of funds to buy broadcast election advertising and for free time for campaign addresses provided by Television New Zealand and Radio New Zealand. There is no allocation for a by-election, nor directly to electorate candidates.

Appendix B sets out the Electoral Commission’s broadcasting allocation for the 2011 General Election.

It is illegal for a registered party to spend its own funds on buying radio or television time for party broadcast election advertising whether or not it is eligible for or has received an allocation. A registered party can spend its own funds on production costs.

Broadcasting election advertising relating to an electorate candidate may be funded from a party's broadcasting allocation or the candidate's own campaign funds (within the candidate's \$25,000 election expense limit).

Unregistered parties, and registered parties not allocated funds under Part 6 of the Broadcasting Act, may only use radio and television to promote their electorate candidates.

It is an offence for anyone (including a broadcaster) to arrange for a party's election advertisement to be broadcast in contravention of Part 6 of the Broadcasting Act.

3.4 Party broadcast election advertising

Registered parties' broadcast election advertising can only be broadcast between 26 October and 25 November and may advocate for or against a party and can attack a candidate.

Registered parties may also advocate for an electorate candidate, with the candidate's written authority.

3.5 Candidate broadcast election advertising

Electorate candidates' broadcast election advertising can only be broadcast between 26 October and 25 November and must only promote a candidate's own election. Although the party name and policies may be mentioned, an electorate candidate's advertisement must not encourage a party vote or promote the party list. Electorate candidates cannot run advertising that attacks other parties or candidates, or their policies. All advertising must be paid for (although an advertising schedule may contain bonus airtime contingent on a spend level).

Electorate candidates may buy broadcast advertising, and their party may fund it from its broadcasting allocation within the candidate's campaign expense limit. A candidate cannot share their radio or television advertising with another candidate (unlike non-broadcast advertising).

3.6 Other election-related advertisers

Individuals or organisations who are not parties or candidates (including third parties) may broadcast an advertisement which relates to an election at any time, such as advocating for or against a policy, but it must not encourage or persuade or appear to encourage or persuade voters to vote, or not to vote, for a party or candidate.

Non-partisan, community service, station announcements (e.g., free listings of candidate meetings, encouragement to enrol or vote) may be broadcast, but must contain a promoter statement.

3.7 Broadcaster requirements

Broadcasters are responsible for ensuring any broadcast election advertising, and news, comment and current affairs that they carry are within the law and broadcasting standards. Election broadcast advertising may only be broadcast during the “election period” (defined in section 69 of the Broadcasting Act as between 26 October (writ day) and midnight on 25 November 2011 (the day before polling day). Election broadcast advertising is prohibited on television between 6 am and noon on Sundays.

Broadcasters need to be aware that the “election period” is not the same as the “regulated period” during which party and candidate election expense limits apply. The regulated period for election (and referendum) advertising commences on 26 August 2011.

There is no restriction on when broadcasters may begin to accept bookings for broadcast election advertising, but broadcasters should check that any bookings made by parties are within the amount and any conditions of allocation under Part 6 of the Broadcasting Act.

The Electoral Commission has made the following conditions on the manner in which any political party or group of related political parties is to expend its allocation:

- only registered parties may enter into contractual commitments to use money or time that has been allocated to them in this decision; and
- eligible parties must comply with the requirements set out in the letters, which have been supplied to eligible parties separately, from TVNZ and RNZ of 15 March, 16 March 2011 and 20 May 2011 respectively, relating to production standards for opening and closing addresses.

Bookings should record clearly whether it is for a party or a (named) electorate candidate.

By law, the same rate card and terms (including any volume discounts and bonus allocation) must be offered to all parties and the same rate card and terms (including any volume discounts and bonus allocation) must be offered to all candidates. Party (not candidate) broadcast election advertising is eligible for Government Volume Incentive Discount.

Broadcast election advertising must comply with applicable broadcasting standards but are exempt from the need to provide balance.

Broadcasters must provide a return to the Electoral Commission detailing all broadcast election advertising by candidates and parties (see section 3.12 for more details).

3.8 News, comment and current affairs

The broadcast election advertising rules do not apply to a broadcaster’s bona-fide news, comment or current affairs programmes. Such a programme may come within the definition of election broadcast advertising if it appears to encourage voters to vote for or against particular

parties or candidates. Whether it then comes within the exception for news, comment, or current affairs programmes is a question of fact. For example, a broadcaster's live coverage of an announcement of national significance (where the broadcaster does not have prior knowledge of the content of the announcement), or coverage of a party political event for the purpose of informing the public, is likely to come within the exception.

Example 1: *News, comment, or current affairs programme*

A television network, using the normal host and graphics for its programme, describes how to enrol, where to vote and how MMP works. The next part of the programme:

- includes footage following two local candidates as they attend meetings, deliver leaflets etc;
- shows the host talking to some voters about how interested they are in the election;
- mentions the names of all candidates standing locally.

This example falls clearly into the news, comment or current affairs category.

In terms of the Broadcasting Act, if the programme can clearly be seen as news, comment and current affairs then the programme itself needs to be judged against the relevant codes of the Broadcasting Standards Authority, such as a requirement for truth, accuracy, and balance.

However, if the programme is partisan to the extent that it is clearly advocating for or against a party or candidate then the programme may activate the appropriate requirements in relation to election broadcast advertising, and possible offence provisions.

Example 2: *Party election broadcast programme*

A new group seeks a weekly slot on a local television channel four months before the election. Their proposed programme has a magazine style, current affairs format. They say they will only interview people and present views from a particular political perspective. At the end of the election campaign the broadcaster discovers that the key people involved in creating the programme were also the campaign organisers for a political party.

Here the facts that campaign organisers for a party determined the format and paid for the programme mean that it is no longer clearly a current affairs programme.

If a question arises about whether a programme is an election programme, and whether it is or is not protected by the exception for bona-fide news, comment, or current affairs programmes, factors the Electoral Commission will consider include:

- the format, nature, and content of the programme, e.g.:
 - whether the format is chosen by the broadcaster;

- the extent to which the broadcaster retains control over the content of the programme;
- are candidates and political parties subject to question and challenge?;
- is the reporting objective and impartial?;
- does the programme aim to inform the public by presenting a range of viewpoints (not encourage or persuade)?;
- whether the format, nature, or content of the programme has changed;
- who initiated the programme, and when;
- who has control of the programme production;
- whether payment been made to the broadcaster for the broadcast time, or production costs;
- if the programme has a regular schedule, and if that schedule is being maintained.

3.9 Talkback radio

There is no general exemption from the definition of “election programme” for programmes where members of the public are invited to express their views (e.g., talkback radio). Relevant considerations include whether a presenter is stating their own views, or if the presenter is simply answering a caller’s question. Partisan statements by a presenter may constitute an election programme. On the other hand, the Broadcasting Standards Authority has ruled previously that: “[O]ne situation in which a talkback programme amounts to ‘current affairs’ is when a host makes unqualified statements of material fact that set the basis for the discussion.”



3.10 Presenters and on-air hosts

Broadcasters will be responsible for the content of a broadcast made with its authority. If conduct or statements from a presenter or an on-air host come within a programme’s general brief, a broadcaster cannot avoid responsibility by arguing that a specific statement was not authorised. For example, if a presenter (whether or not that person is an employee) makes a statement in the context of a broadcast that encourages or appears to encourage a vote for, or against a particular candidate, that statement may be an election advertisement.

If all, or part of a programme is deemed to be an election advertisement, the broadcaster will commit an offence if it is broadcast outside the election period, or if it does not include a promoter statement.

Example 3: Candidate election broadcast advertising

A local radio station has a regular community slot in which guest hosts are able to talk about issues of local interest. The broadcaster approves the topic in advance, and the host must comply with the broadcaster's brief about the general programme format.

In the week before the election the guest host is a candidate standing in the local electorate. After talking about the election and the importance of voting the candidate says: "Make sure you go to vote next Saturday and vote for me."

Through the last statement the candidate is likely to have moved this from a current affairs programme to an election programme.

There is no legal requirement for a broadcaster's on-air employee who is a candidate to stop presenting their programme during the election campaign. Broadcasters and their employees should use their own judgement taking into account ethical, legal and employment considerations. The advice for community access broadcasters below may also be useful. If a candidate plans to continue in his or her broadcasting role during his or her candidacy, then both the broadcaster and the candidate would need to carefully manage their responsibilities under the Broadcasting Act and the Electoral Act.

3.11 Community access broadcasting

Community access broadcasters and their programme providers should consider and be clear as to whether a programme falls under the provisions applying to news, comment or current affairs, or to those applying to broadcast election advertising. As noted above, factors that will influence this judgement will include who is paying for the programme, who determines the format, and its character and content. The following guidelines will help avoid breaches of election broadcasting rules:

- ensure no candidates are hosts during the election period,
- do not feature party or candidate logos, posters, billboards, etc other than incidentally;
- ensure an emphasis on information for voters,
- list other candidates and parties if they are not all interviewed,
- pay particular attention to who pays for the programmes and who determines the format (this includes regular sponsors),
- ensure all programmes during the election period are paid for by regulars who are not associated with parties or candidates,
- offer election programmes to all parties at the same rates,
- do not offer appearances in 'current affairs shows' on the basis of the party or candidate buying paid advertising time.

3.12 Election broadcasting returns

After each election, every broadcaster must give the Electoral Commission a complete and accurate statement of election advertising broadcast by that broadcaster during the three months before polling day (26 August to 25 November in 2011). The returns are used to reconcile party broadcasting invoices received for payment and with election expense returns. In addition, the Electoral Act requires the returns to be made available for public inspection at the Commission's offices within 3 working days of receipt.

The return must be signed by or on behalf of the broadcaster and received by the Electoral Commission no later than 10 working days after the end of the month in which an election is held (Wednesday, 14 December for the 2011 General Election). Broadcasters who did not broadcast any election programmes must still complete a nil return.

Return content

The return must set out the following information in relation to each election broadcast advertisement:

- the candidate or political party it was for,
- duration, time and date of broadcast,
- rate applied,
- amount charged (specifying whether GST is included).

To help reconciliations the Electoral Commission would appreciate each entry including the:

- stations/package/network on which it was broadcast,
- client name as shown on the invoice,
- number of the associated invoice, or an order number that will appear on the invoice.

Broadcasters should retain the computer and documentary records used to compile their returns, as well as the written authorities received from or on behalf of each party or candidate.

Form of the return, and submission

A hard copy return is mandatory. In addition (to assist with reconciliation of returns) the Electoral Commission would appreciate receiving an electronic copy of the return data as an MSExcel or MSAccess spreadsheet, or .rtf file. Electronic copies should be sent to: enquiries@elections.govt.nz at the same time the hardcopy is sent or delivered to the Electoral Commission.

The hard copy should be accompanied by a signed and dated covering letter stating the broadcasters covered by the return. A spreadsheet containing the information detailed above, in a readable form, should be attached. It



must be printed out landscape, single-sided on white A4 paper. Any standard output from a broadcaster's systems that meets these requirements will be accepted, even if it includes extraneous information. Each page of the spreadsheet should be initialised by the person who signs the covering letter.

The Commission will accept consolidated or centrally-produced returns from networks on behalf of their individual broadcasters provided that the covering letter clearly states the station names of the broadcasters included in the return. Networks and broadcasters should ensure that their systems do not lead to duplicate returns for a single advertisement to occur, nor for an advertisement to be omitted from a return.

3.13 Offences

The Broadcasting Act provides that the following are offences subject to a maximum fine of \$100,000:



- broadcasting election advertising of a type that is not permitted, or which is broadcast outside the election period (s 70),
- failing to provide the same terms of trade or offers of free time to all parties (s 77(1)),
- broadcasting an election programme outside permitted days or hours (s 79A),
- not offering or giving identical terms of business to all parties (s 79B),
- not offering or giving identical terms of business to all candidates (s 79B),
- not completing a return on time or correctly (s 79C),
- arranging for the broadcast of, or to broadcast on behalf of a political party, any programme or advertisement other than those meeting the requirements of Part 6 of the Broadcasting Act (s 80).

3.14 Broadcasting of referendum advertisements

The Electoral Referendum Act and the Broadcasting Act do not restrict the broadcasting of referendum advertisements. Parties and candidates have been advised to consider carefully whether any broadcasting that they undertake about the referendum falls under the definition of "election programme" (broadcast election advertising) for the purposes of the Broadcasting Act.

The Electoral Commission advises that parties should assume that a referendum advertisement promoted by a party will be an "election programme". If so, it can only be broadcast between 26 October 2011 (writ day) and 25 November 2011 (day before polling day), and will be subject to the rules for broadcast of election programmes, including the prohibition on the party spending its own money to broadcast it.

3.15 Broadcast of joint election programme and referendum advertisement

A party can only use its broadcasting allocation of time and money to pay for broadcasting of election programmes. If a party broadcasts a joint election and referendum advertisement it will be an 'election programme' for the purpose of the Broadcasting Act and they can only use the broadcasting allocation to broadcast it. A party may use its own funds to pay for productions costs.

Part 2 of this Handbook provides further information on publishing referendum advertisements.

PART 4: ELECTION DAY

4.1 Introduction

The Electoral Act prohibits campaigning of any kind on election day. The Electoral Referendum Act provides that the restrictions in the Electoral Act also apply to coverage of the referendum.

The prohibition covers any statement that is likely to influence a voter as to which candidate(s) or party a voter should or shouldn't vote for, or which influences people to abstain from voting. The general intention is to leave voters alone from midnight until 7pm on election day so they can vote without interference. The key messages are:

- News items must not include any words or images likely to influence voters.
- Restrictions apply to photographing or filming voters or candidates at or near polling places on election day.

4.2 Election day publications

All election and referendum advertising and other statements, by anybody including the media, which could influence voters cannot be published or broadcast on election day until after the close of the poll at 7 pm. Newspapers published after 6 pm on the day before election day are treated as being published on election day [*Electoral Act, s 197(1)(g)*]. News stories posted on websites before election day can remain, as long as the website is not advertised on election day [*Electoral Act, s 197(2A)*].

News media may print or broadcast a statement having direct or indirect reference to the election or referendum [*Electoral Act, s 197(1)(c)(iii)*]. A "statement" is defined broadly in section 3 of the Electoral Act to include "not only words but also pictures, visual images, gestures, and other methods signifying meaning". A news item may note that an election (and referendum) is taking place, and when results will be available. Candidates' and party names can be mentioned, but the item must not include any words or visual images that are likely to influence voters about how they should vote.

It is not a defence to argue that an election day publication is balanced (e.g., it looks at the pros and cons of a particular issue that has featured during the election or referendum campaigns), or that it does not mention the name of a party or candidate, or that all candidates or parties are given equal coverage. The test is whether the publication is likely to influence a voter.

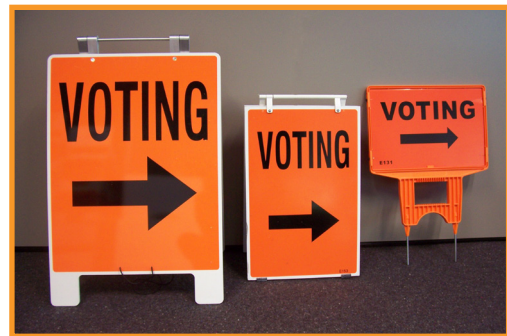
Broadcasters should take care with any items that feature candidates or parties, or include interviews with candidate or party officials. If in any doubt, broadcasters should delay broadcasting an election-related item until after the polls close at 7pm.

4.3 Photo/filming opportunities on election day

Candidates may only be in a polling place for the purpose of voting.

Media organisations can take photos or film at a polling place as long as:

- the prior approval of the Returning Officer has been obtained. **Media must contact the Electoral Commission before election day to arrange this;**
- no photographs or footage are taken of voters actually completing their ballot papers or showing how a person voted. Media cannot go behind the voting screens;
- photographers or camera crews do not disrupt voters from voting, or officials from their duties;
- no undue delays are caused to voters;
- no interviews are conducted in or near the polling place.



4.4 Offences

Section 197 of the Electoral Act provides that it is an offence to interfere with or influence a voter on election day. It is an offence subject to a maximum fine of \$20,000 to:

- broadcast any statement referring to the election or referendum that could influence voters (this could include coverage of election-related protest activity if that coverage “is likely to” influence a voter);
- publish or distribute (after 6 pm on the day before election day) a newspaper that includes any statement referring to the election or referendum that could influence voters.

[The “news” exemption in s 197(1)(c)(iii) does not apply to s 197(1)(g)].

PART 5: COMPLAINTS

6.1 Introduction

The rules in the Electoral Act, the Electoral Referendum Act, and the Broadcasting Act impose procedural requirements on publishers and broadcasters. The restriction on broadcasting election programmes outside the election period, and the requirement for all election advertising to contain a promoter statement are examples.

The legislation does not regulate the substantive content of election advertisements, and election programmes, but publishers and broadcasters may have a liability if election or referendum advertising or election-related material breaches a relevant industry code of practice.

6.2 Broadcasting Standards Authority



Election programmes on television and radio (which includes advertisements and opening and closing addresses) come within the jurisdiction of the Broadcasting Standards Authority (BSA). Election programmes must comply with the Election Programme Code which is available on the BSA website. Complaints are made directly to:

Broadcasting Standards Authority, PO Box 9213, Wellington 6141

Level 2, 54-56 Cambridge Terrace, Wellington 6001

Tel: 04 382 9508

Fax: 04 382 9543

Email: info@bsa.govt.nz

Website: www.bsa.govt.nz

6.3 Advertising Standards Authority



The content of election advertising in all media (including websites) other than television and radio comes within the jurisdiction of the Advertising Standards Authority (ASA). Advertising must comply with the ASA Codes of Practice. The codes are available on the ASA website. Complaints can be made directly to:

Advertising Standards Authority, PO Box 10 675, Wellington 6143

Ground Floor, 79 Boulcott Street, Wellington

Tel: 04 472 7852 or 0800 ADHELP (0800 234357)

Fax: 04 471 1785

Email: asa@asa.co.nz

Website: www.asa.co.nz

APPENDIX A:

Election sequence – 2011 general election and referendum

Wednesday 2 February	Prime Minister announces dates for 2011 General Election and Referendum
Monday 30 May	Launch of enrolment campaign and voter referendum information campaign
Friday 26 August	Regulated period for election and referendum advertising expenses begins
Thursday 20 October	Dissolution of Parliament
Wednesday 26 October	Writ Day Governor General issues formal direction to the Electoral Commission to hold the election Start of the period in which broadcast election advertising by parties and candidates is allowed
Wednesday 9 November	Advance and Overseas Voting starts
Friday 25 November	Advance Voting ends Last day to enrol for the election
Friday 25 November Midnight	Regulated period ends All election and referendum advertising must end and signs must be taken down Broadcast election advertising must cease
Saturday 26 November	Election Day Polling places open from 9.00am to 7.00pm Election Night Preliminary results released progressively from 7.00pm on www.electionresults.govt.nz
Saturday 10 December	Official results for general election and referendum declared (including special declaration votes)

APPENDIX B:

Broadcasting allocation decision for 2011 general election

Decision of the Electoral Commission on the allocation of time and money to eligible political parties for the broadcasting of election programmes for the 2011 General Election

Allocation decision

The following table sets out the allocation of time and money to eligible political parties for the broadcasting of election programmes for the 2011 General Election.

Parties	Monetary allocation (inclusive of GST)	Time allocation of opening addresses (in minutes) ²	Time allocation for closing addresses (in minutes
New Zealand Labour Party (Labour Party)	\$1,150,000	20	16
The New Zealand National Party (National Party)	\$1,150,000	20	16
The Green Party of Aotearoa/New Zealand (Green Party)	\$300,000	8	7
ACT New Zealand (ACT Party)	\$160,000	5	4
Māori Party	\$160,000	5	4
New Zealand First (NZ First)	\$100,000	3	2.5
United Future New Zealand (United Future)	\$100,000	3	2.5
The Alliance (Alliance)	\$20,000	1	1

Aotearoa Legalise Cannabis Party (ALCP)	\$20,000	1	1
Coalition of New Zealanders	\$20,000	1	1
The Kiwi Party (Kiwi Party)	\$20,000	1	1
Libertarianz	\$20,000	1	1
New Zealand Sovereignty Party	\$20,000	1	1
Pirate Party of New Zealand	\$20,000	1	1
World Peace Party	\$20,000	1	1
Radio New Zealand (RNZ) ³	\$3,250		
Total allocated	\$3,283,250	72	60
Total available	\$3,283,250	72	60

² The order for opening and closing addresses appears in paragraphs 53 and 54 of this decision available at www.elections.org.nz.

³ Allocated to RNZ in accordance with section 77A(5) of the Broadcasting Act.

APPENDIX C:

Further information about registered and unregistered promoters for the general election and referendum

THE GENERAL ELECTION

Unregistered promoters

An individual or group may be an unregistered promoter for the purposes of the general election provided that they do not incur advertising expenses exceeding \$12,000 (including GST) in relation to election advertisements published during the regulated period. For more information on what is an election advertisement see Part 1.

There is no requirement for an unregistered promoter to disclose how much has been spent on election advertising. However, unregistered promoters are required to keep records of the costs incurred in relation to election advertisements published during the regulated period for verification purposes until 26 November 2014.

The following cannot be an unregistered promoter:

- a constituency candidate,
- a list candidate,
- a party,
- a person involved in the administration of:
 - the affairs of a candidate in relation to the candidate's election campaign, or
 - the affairs of a party.

Constituency candidate

A constituency candidate includes any person who has made their intention to stand as a candidate at the general election publically known i.e. notifying their intention to the press or at a public meeting, or who has been nominated to stand as an electorate candidate and has not withdrawn their nomination.

Constituency candidates are not covered by the rules for third party promoters as there are separate rules for constituency candidates and election advertising in the Electoral Act. Information on the rules regarding candidates at the general election can be found in the Electoral Commission's *Candidate Handbook – 2011 General Election and Referendum*.

List candidate

A list candidate means any person whose name is specified in a party list submitted to the Electoral Commission in accordance with section 127 of the Electoral Act. As a list candidate is standing on behalf of a party and parties are subject to separate rules (see below), list candidates are not covered by the third party promoter rules.

Party

Party means for the purposes of the election advertising rules, a political party registered by the Electoral Commission in accordance with Part 4 of the Electoral Act.

As there are separate rules for registered parties regarding election advertising in the Electoral Act, registered parties are not covered by the third party promoter rules. Information on the rules for parties at the general election can be found in the Electoral Commission's *Party Secretary Handbook – 2011 General Election and Referendum*.

Unregistered political parties that promote election advertisements will be third party promoters for the purposes of the Electoral Act.

Person involved in the administration of the candidate or party's affairs

Election advertisements published or distributed by a person involved in the administration of a candidate or party's affairs must act under the authority of the candidate or the party secretary who is the promoter of the advertisement.

Registered promoters

Any individual or group who is a third party promoter who spends, or intends to spend, over \$12,000 (including GST) on election advertising during the regulated period must register with the Electoral Commission.

The following cannot be a registered promoter:

- a constituency candidate,
- a list candidate,
- a party,
- an overseas person,
- a person involved in the administration of:
 - the affairs of a candidate in relation to the candidate's election campaign, or
 - the affairs of the party.

The list of who cannot be a registered promoter is the same as that provided for unregistered promoters with the inclusion of an overseas person.

Overseas person

An overseas person means:

- an individual who resides outside of New Zealand and is not a New Zealand citizen or registered elector,
- a body corporate incorporated outside of New Zealand, or
- an unincorporated body that has its head office or principal place of business outside of New Zealand.

Since an overseas person cannot be a registered promoter for the purposes of election advertising, an overseas person may only spend up to \$12,000 (including GST) on election advertising during the regulated period.

THE REFERENDUM

Unregistered promoters

An individual or group may be an unregistered promoter for the purposes of the referendum provided that they do not incur referendum expenses exceeding \$12,000 (including GST) in relation to referendum advertisements published during the regulated period. For information on what is a referendum advertisement see Part 6.

Registered promoters

Any individual or group who spends, or intends to spend, over \$12,000 (including GST) on referendum advertising during the regulated period must register with the Electoral Commission.

An overseas person cannot be a registered promoter for the purposes of referendum advertising, therefore an overseas person may only spend up to \$12,000 (including GST) on referendum advertising during the regulated period.

The same meaning is attributed to an overseas person in the Electoral Referendum Act as applies to an overseas person under Part 6 of the Electoral Act

APPENDIX D:

Quick guides for publishers and broadcasters

Summary - candidate election advertising rules

Broadcast advertising	When broadcasts allowed	Must be authorised by ²
Promoting party, candidate and party, or attacking another party or candidate	Not allowed	Not applicable
Promoting electorate candidate only	From writ day to day before polling day	Electorate candidate
Party promoting both electorate candidate and party (using party's broadcast allocation)	From writ day to day before polling day	Party secretary and electorate candidate
Party promoting electorate candidate (using party's broadcast allocation)	From writ day to day before polling day Electorate candidate	Electorate candidate
Non-broadcast advertising	Period for which counted as election expense ¹	Must be authorised by ²
Promoting party or attacking party or candidate	Regulated period (26 August to 25 November 2011)	Party secretary
Promoting electorate candidate	Regulated period	Electorate candidate
Promoting both electorate candidate and party	Regulated period	Both the party secretary and electorate candidate

Summary: candidate referendum advertising rules

Referendum advertisements	Period for which counted as referendum expense	Must be authorised by ²
Broadcast referendum ad promoting an option or attacking an option. ³	Regulated period (26 August 2011 to 25 November 2011)	Candidate
Non-broadcast ad promoting an option or attacking an option	Regulated period	Candidate ⁴
Referendum ad and election ad promoting a candidate or attacking another candidate or party	Regulated period	Candidate
Referendum ad and election ad promoting party	Regulated period	Both the candidate ⁴ and party secretary
Referendum ad and election ad promoting party and electorate candidate	Regulated period	Both the candidate and party secretary

¹ There are no restrictions on when non-broadcast advertisements can be published.

² Authorisation must be in writing. In addition, the advertisement when broadcast or published must state the name and address of the person initiating or instigating the advertisement ('the promoter'). For a referendum advertisement promoted by a candidate this will be the candidate. A Post Office box or website address is insufficient. The address can be the full street address of either the place where the candidate usually lives or any other place where he or she can usually be contacted between the hours of 9.00am and 5.00pm on any working day.

³ However, candidates and broadcasters would need to carefully consider whether any broadcasting about the referendum would fall under the definition of an election programme for the purposes of the Broadcasting Act and an election advertisement for the purposes of the Electoral Act. If so, it can only be broadcast from 26 October (writ day) and subject to the rules for broadcast of election programmes. If it is also an election advertisement for the purpose of the Electoral Act production costs will also be both an election and referendum expense.

The Electoral Commission advises that if a candidate promotes a referendum advertisement you should assume the advertisement will also be deemed to be a candidate advertisement.

⁴ The Electoral Commission advises that if a candidate promotes a referendum advertisement you should assume the advertisement will also be deemed to be a candidate advertisement.

Summary: Party election advertising rules

Broadcast advertising using allocation of funds by Electoral Commission	When broadcasts allowed	Must be authorised by ¹
Promoting party or attacking party or candidate	From writ day to day before polling day (26 October 2011 to 25 November 2011)	Party secretary
Promoting electorate candidate only	From writ day to day before polling day	Both the party secretary and electorate candidate
Promoting both electorate candidate and party	From writ day to day before polling day	Electorate candidate
Broadcast advertising using private funding	When broadcasts allowed	Must be authorised by ¹
Promoting party, candidate and party, or attacking another party or candidate	Not allowed	Not applicable
Non-broadcast advertising	Period for which counted as election expense ²	Must be authorised by ¹
Promoting party vote or attacking party or candidate	Regulated period (26 August to 25 November 2011)	Party secretary
Promoting electorate candidate	Regulated period	Electorate candidate
Promoting both electorate candidate and party vote	Regulated period	Both the party secretary and electorate candidate

Summary: Party referendum advertising rules

Referendum advertisements	Period for which counted as referendum expense	Must be authorised by ¹
Broadcast referendum ad promoting an option or attacking an option ³	Regulated period	Party secretary ³
Non-broadcast ad promoting an option or attacking an option	Regulated period	Party secretary ⁴
Referendum ad and election ad promoting a party or attacking another party or candidate or party	Regulated period	Party secretary
Referendum ad and election ad promoting electorate candidate	Regulated period	Both the party secretary ⁴ and electorate candidate
Referendum ad and election ad promoting party and electorate candidate	Regulated period	Both the party secretary and candidate

¹ Authorisation must be in writing. In addition, the advertisement when broadcast or published must state the name and address of the person initiating or instigating the ad ('the promoter'). For a referendum ad promoted by a party where the party is unregistered the promoter statement will need to include the party secretary's name, the name of the party and the address of the party. See section 6.3 for more details. A Post Office box or website address is insufficient. The address can be the full street address of either the place where the party secretary/authorised person usually lives or any other place where he or she can usually be contacted between the hours of 9am and 5pm on any working day.

² There are no restrictions on when non-broadcast advertisements can be published.

³ However, parties and broadcasters would need to carefully consider whether any broadcasting about the referendum would fall under the definition of an election programme for the purposes of the Broadcasting Act and a party advertisement for the purposes of the Electoral Act. The Electoral Commission's advice is that you should assume that it will be 'an election programme'. If so, it can only be broadcast from 26 October (writ day) and subject to the rules for broadcast of election programmes including the prohibition on spending your own money etc. If it is also a party advertisement for the purpose of the Electoral Act, election expenses exclude the broadcasting allocation, but include any production costs funded by the party. For the referendum expenses, all of the costs of broadcasting the advertisement including the broadcasting allocation will need to be counted.

⁴ The Electoral Commission advises that if a party promotes a referendum advertisement you should assume the advertisement will also be deemed to be a party advertisement.

Third party referendum and election advertising rules

Topic	Third parties can
Election and referendum advertising - radio and television	<ul style="list-style-type: none"> • Broadcast an advertisement that relates to an election, such as for or against a policy (provided it is not an election programme), • Broadcast an advertisement that encourages voters to vote, or not to vote, in a particular way in the referendum (provided it is not an election programme).
Election and referendum advertising - (other than television and radio)	<ul style="list-style-type: none"> • Support a candidate or party with the written authorisation of the candidate or party, • Attack the policies of candidates or parties, • Support voting in a particular way in the referendum, • Attack voting in a particular way in the referendum, • Operate a website on polling day.

Topic	Third parties can't
Election and referendum advertising - radio and television	<ul style="list-style-type: none"> • Broadcast election programmes, • Support or attack candidates or parties, • Broadcast without including their name and street address, • Broadcast on polling day.
Election and referendum advertising - (other than television and radio)	<ul style="list-style-type: none"> • Publish without including their name and street address, • Publish on polling day, • Display in view of a public place on polling day, • Display on vehicles (including bumper stickers) in view of a public place on polling day, • Put new material on a website on polling day, advertise a website on polling day or use systems on polling day that make website advertising available to persons who have not voluntarily accessed the website.