

**Joint Select Committee on the Constitutional Recognition of Local
Government**

Inquiry into the Majority Finding of the Expert Panel

PUBLIC HEARING, Wednesday 16 January 2013

ANSWER TO QUESTIONS ON NOTICE

Department/Agency: Australian Electoral Commission

Topic: Referendum timing

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Supplementary

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Question: Senator Bushby asked:

It does not really go to the heart of what we are looking at today, but I was curious. It does complicate matters if parliament decides to pass enabling legislation in coming months. The question is whether it can pass that and then cover off all possible dates for an election in the second half of the year or whether there need to be two bites of the cherry depending on particular dates that the election might be held on. I do not know whether you can check that and see whether there is a period of time when it can be passed that does not require a second bite of the cherry, depending on dates later on.

Answer:

Given the public statement by the Prime Minister on 30 January of the election date of 14 September 2013 with writs issued on 12 August, to allow for a referendum to be held at the same time as the election, the proposed Constitutional alteration bill would have to be passed by 25 June 2013. The reason for this timing is explained below.

The timing of a standalone referendum is determined by a combination of the Constitution and the *Referendum (Machinery Provisions) Act 1984* (the Referendum Act). If combined with a Parliamentary election, the timing is also impacted by the provisions of the *Commonwealth Electoral Act 1918* (the Electoral Act).

Section 128 of the Constitution provides in part that:

“The proposed law for the alteration thereof must be passed by an absolute majority of each House of the Parliament, and not less than two and not more than six months after its passage through both Houses the proposed law shall be submitted in each State and Territory to the electors qualified to vote for the election of members of the House of Representatives.”

The AEC is aware that the Government has obtained legal advice that indicates the following impact of the above section:

- (i) the commencement of the two month minimum period is when the proposed law has been passed by the second of House of Parliament in the same form (i.e. the vote on the third reading of the proposed law has been passed in the second House);
- (ii) while it may be possible for the writs for a referendum to be issued prior to the expiration of the two month minimum period, the ballots for the vote on the referendum are not legally able to be submitted to electors until after the two month minimum period has elapsed; and
- (iii) provisions of the Referendum Act (particularly those relating to early voting such as pre-poll voting and postal voting) are not to be construed as authorising the AEC to take actions that would result in electors being given the opportunity to vote on the proposed law before the end of the two month minimum period in section 128 of the Constitution.

On 30 January 2013, the Prime Minister publicly stated Saturday 14 September 2013 as polling day for the 2013 federal election. The Prime Minister further stated that later this year, the Prime Minister will advise the Governor-General to dissolve the House of Representatives with writs to be issued on Monday 12 August for an election for the House and half of the Senate, to be held on Saturday 14 September.

The Electoral Act sets various milestones in an election timetable. The Prime Minister's nomination of two key dates in the election timetable, being the date of the issue of writ and the date of polling day, creates a minimum timeframe election period which allows other dates to be determined.

On the basis of the writs being issued by the Governor-General, as indicated by the Prime Minister, on 12 August, and the election date being 14 September, the 2013 election timetable will be:

Issue of writ:	Monday, 12 August 2013
Close of rolls:	8pm, Monday, 19 August 2013
Close of candidate nominations:	12 midday, Thursday, 22 August 2013
Declaration of candidate nominations:	12 midday, Friday, 23 August 2013
Polling day:	Saturday, 14 September 2013

For a combined election and referendum held on 14 September 2013, which would require pre-poll voting to be available on 26 August 2013, the 'not less than two months' provision in the Constitution would require legislation containing the referendum proposal to be passed by both Houses of the Parliament by 25 June 2013.

The AEC notes that the Joint Select Committee's interim report recommended (under Recommendation 4) that temporary amendments be made to the Referendum Act. The AEC notes that any such amendments must be in place prior to the introduction of the Constitutional amendment bills if they are to be operational for the proposed referendum.

Date:	15 February 2013
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