

Australian Electoral Commission
Submission to the Inquiry into
the Administration of the
Referendum into an Aboriginal
and Torres Strait Islander Voice

April 2023

OFFICIAL

Classification: OFFICIAL

Introduction

The Australian Electoral Commission (AEC) is well progressed with preparations to deliver the proposed referendum in 2023 to establish an Aboriginal and Torres Strait Islander Voice. This will be Australia's first referendum in 24 years and much has changed since the last referendum in 1999. While the scale, logistics and delivery expectations of a referendum are broadly similar to a federal election, the operating environment can be unpredictable, with an associated information environment that can be febrile, contested and aggressive. Administration of this referendum will be complex, with significant concomitant logistic, procedural, participation, and information challenges.

This submission seeks to highlight some of the key challenges relevant to the Committee Terms of Reference, particularly: *a. protections against the potential for foreign actors to seek to influence the outcome or public debate on the referendum question, f. the ongoing integrity and assurance processes of the Australian Electoral Commission and g. any other related matters.*

Disinformation

The spread of disinformation is an increasing problem for electoral administrators globally. Malign actors constantly attempt to warp the broad electoral information ecosystem as a means of misleading voters and undermining democratic processes (thereby weakening community confidence in electoral outcomes). The AEC is well acquainted with such tactics and has already noted instances of disinformation about the referendum – including false assertions about the AEC's impartiality.

The AEC will implement the same measures that were successfully used in the 2022 federal election to help combat disinformation about the referendum process (noting that the AEC does not and will not deal with disinformation relating to the policy or purpose of the referendum). This approach is broadly consistent with the AEC's published 'Reputation Management Strategy' which underpinned our approach to defending Australia's electoral administration by, amongst other things, addressing misinformation at the 2022 federal election. The AEC has already launched a Disinformation Register for the referendum, actively monitors social media dialogue, and continues to have close engagement with social media companies. Additionally, the AEC's 'Stop and Consider' campaign will also be a key measure to enhance voter awareness about disinformation.

In addition to these measures, and closer to the referendum, the Electoral Integrity Assurance Taskforce (the EIAT) will be stood up to support the AEC's efforts to combat disinformation, as with all electoral events since its establishment in 2018. The EIAT and the Taskforce Board are constituted by relevant agencies across Federal Government, working together to provide information and advice to the Electoral Commissioner on matters that may compromise the real or perceived integrity of federal electoral events, including referendums. Each represented agency has capabilities and expertise relevant to the assessment and remediation of threats to the integrity of Australia's electoral systems and processes.

The EIAT focuses on threats and incidents that relate to the referendum process: not the referendum subject matter. These threats may be realised through various vectors, including a cyber or physical security incident, foreign interference and/or the spread of mis/disinformation. For the purposes of the EIAT, interference is characterised as an action intended to affect or disrupt electoral processes or outcomes which, in the case of foreign actors, is deceptive, clandestine, or coercive, or in the case of domestic actors, is illegal. The EIAT is collaborating to assess, understand and mitigate risks to the integrity of the referendum, including risks related to foreign actors.

OFFICIAL

Education and Awareness

One of the best defences against disinformation is education. The *Commonwealth Electoral Act 1918* (s 7) outlines the functions of the AEC which includes providing education and information to the public about electoral matters. The AEC has already commenced a referendum education campaign with the launch of foundational education products on the AEC website. These education products and services will expand over the coming months and will include a significant education and awareness campaign upon the passing of the *Constitution Alteration Bill* by Parliament.

Noting the decades since the last referendum, the AEC has established a dedicated taskforce to strengthen the public education offering. The taskforce is focused on enhancing the education efforts at the community level and through community organisations. This will include producing products in foreign and indigenous languages.

As outlined above the AEC also has a mandate to conduct public engagement and awareness activities to ensure all citizens have an equal understanding of their enrolment obligations and the voting process. This work is particularly important in the context of the referendum and has already commenced with much more to follow. The AEC also has a legislative obligation to actively increase enrolment and encourage Australians to comply with their requirement to enrol to vote and to keep their details current on the roll. These enrolment activities, critical to the AEC's role of maintaining an impartial and independent electoral system, are eternal rather than being episodically linked to a single electoral event such as a referendum. Accordingly, the AEC's continual focus on roll growth should not be confused with bias towards any particular electoral outcome, or attract opinions about the AEC's neutrality.

For many years now, the AEC has been focusing on enhancing First Nations enrolment and recognises the gap that exists between the national enrolment rate (97.1%) and the national estimated Indigenous enrolment rate (84.5%). The AEC has driven an increase in the estimated Indigenous enrolment rate every year for the past six years and continues to implement measures to further increase this rate into the future. This important work is facilitated through the AEC's Indigenous Electoral Participation Program (IEPP). The IEPP has received funding and support from Government for the last 10 years. This work will continue to be a priority for the AEC in the lead up to and beyond the referendum.

The AEC's Neutrality

Elections are now delivered in a contested information environment and, as noted above, disinformation with respect to the AEC's neutrality on the referendum is already circulating. The AEC has developed an extremely strong reputation over decades as a highly effective statutorily independent election management body. The AEC operates within a well-established legislative and policy authorising environment and has robust measures in place to ensure impartiality and independence is upheld during the delivery of every electoral event.

Despite the existence and application of such measures, the AEC is cognisant that the topic of this referendum may, at times, challenge the perception of the AEC's neutrality. For instance, the AEC may have no other viable alternative in small communities or in indigenous communities but to use a polling place, such as a town hall or school hall, that the lessor has also allowed to be used for campaigning for a particular referendum outcome. By not using such a polling place or service, delivery of the referendum could be compromised. This situation may prompt some members of the public to create false narratives about the AEC's neutrality. These kinds of scenarios and the broad issue of impartiality will need careful consideration and management by the AEC and all staff (including 100,000 temporary election workers, and contractors and suppliers) over the duration of the referendum.

OFFICIAL

The AEC is further developing measures to enhance and preserve AEC's neutrality to the greatest extent possible. This will be done in parallel to delivering a successful event to over 17 million Australians.

Pamphlet and Translation Services

A key communications deliverable for a referendum is the production of a pamphlet outlining both the Yes and No cases, as required by s 11 of the *Referendum (Machinery Provisions) Act 1984*. The Parliament is responsible for producing the Yes and No cases, which must not exceed 2,000 words each. The AEC is responsible for the typesetting, printing, and distribution of the pamphlet to addresses on the electoral roll. This process requires managing a multi-stage production process on a complex document with considerable timeframe constraints as set out in legislation.

Communications products for the referendum will involve the translation of documents that are lengthy and complex in nature. Producing these translations to a proficient standard in numerous languages within the time pressures of the legislation creates considerable risk. Further, in many languages there are no direct equivalent words for key concepts or English phrasing, with the risk that a translation may not be precise.

The production of written translation for Aboriginal and Torres Strait Islander languages is very rare. Aboriginal and Torres Strait Islander languages are primarily oral languages, and most translation services are only provided as oral. This is a result of both the complexity of these translations and the very few accredited translators available to provide this service. Advice to the AEC is that when a written Indigenous translation is rarely sought, most documents are first simplified in English by a linguist before then being translated into a written form in the relevant Indigenous language.

There is high demand for translators and very few accredited Aboriginal and Torres Strait Islander translators with capacity to translate the volume of materials expected in limited timeframes. Many of the accredited translators are committed to providing language translations to the justice system and other government services that require a timely service (such as health). It is anticipated that this will be an ongoing challenge in the context of the referendum.

Challenges with translation services add additional risk to the production of AEC's communication during the referendum. The AEC is currently reviewing its approach to translated languages for both culturally and linguistically diverse (CALD) and Aboriginal and Torres Strait Islander languages, and the accompanying assurance processes.

To assist with insights into this complex area, the AEC has established a Translation Advisory Group (TAG) with relevant industry professionals and government partners. The TAG will assist with providing advice and guidance on current translation options. It will also support further exploration of the key translation complexities and risks, such as the nuanced understanding of key words when translated, and other options for providing translation services to communities in an effective and timely manner.

Remote Voter Services

Feedback from voters and other stakeholders following the 2022 federal election is that the remote mobile polling service offering provided is no longer meeting the expectations of some communities. The AEC is committed to continuous improvement and will be delivering an expanded voter service offering in remote and very remote locations for the upcoming referendum and events thereafter. The expanded service and approach to polling in remote locations will be developed iteratively and consultatively, and will require a sizeable financial and human resource investment to be delivered successfully.

OFFICIAL

Delivering voter services in remote locations has historically been a highly complex endeavour and the challenges will be exacerbated with an expanded footprint. Recent changes to the *Referendum (Machinery Provisions) Act 1984* allow the AEC to conduct polling in remote locations up to 19 days prior to polling day. This will assist in navigating the complexities of delivering services to remote areas, although the following operational challenges and delivery risks remain:

- extreme weather conditions
- travel distances
- transport and accommodation availability
- safe, secure, and vacant premises
- availability of staffing resources
- transient populations
- natural disasters.

If referendum delivery occurs in conjunction with wet season in Northern Australia, the following additional risks may arise:

- inability to access remote locations and communities to provide voter services
- closure of airstrips due to weather
- reliance on helicopters, which may also be unavailable if the weather is too dangerous, and will have budgetary implications
- transportation unavailability or delays, leading to late polling scheduling changes
- safety risks for staff and voters working or voting in extreme heat.

Budget

As part of the October 2022–23 Budget, the Government provided the AEC with funding over two years from 2022–23 as part of the *Delivery of a First Nations Voice to Parliament Referendum – preparatory work* measure to prepare for the delivery of a referendum. This includes \$50.2 million in 2022–23 to commence preparations and support work and \$16.1 million over two years from 2022–23 to increase First Nations enrolment and participation in future electoral events.

While a referendum delivered in a similar manner to a federal election will have similar costs, there are differences that will need to be accounted for. There is additional cost associated with increased communications and translation services and the expansion in remote voter services as discussed. For the AEC to meet stakeholder and community expectations in delivering a referendum, adequate resourcing will be crucial.

Conclusion

As the AEC prepares to deliver the first referendum in nearly a quarter of a century, it is faced with new and complex challenges that are unique to referendum delivery. This submission seeks to broadly raise some of these challenges to the Committee for consideration as part of this Inquiry. The AEC looks forward to working with the Committee as this Inquiry progresses.