

JOINT STANDING COMMITTEE ON ELECTORAL MATTERS – REVIEW INTO THE REFERENDUM (MACHINERY PROVISIONS) AMENDMENT BILL 2022

DEPARTMENT OF FINANCE: OPENING STATEMENT

9 January 2023 Public Hearing

Under the Administrative Arrangements Order (AAO), the Department of Finance (Finance) is responsible for electoral matters, which includes the *Commonwealth Electoral Act 1918* (Electoral Act) and the *Referendum (Machinery Provisions) Act 1984* (Referendum Act). Finance undertakes this responsibility by providing policy advice to government. This includes advice on the framework for conducting referendums.

The Government has committed to implementing the Uluru Statement from the Heart in full, including holding a referendum to constitutionally enshrine a First Nation’s Voice to Parliament. Since May 2022, Finance has been providing advice to the Government on electoral and referendum matters.

Finance first provided briefing that referred to referendum matters to the Special Minister of State (the Minister), in his capacity as Minister responsible for electoral matters, on 2 June 2022. Subsequently, the Minister asked Finance to progress options on amendments to the Referendum Act. This work was framed in terms of updating the Referendum Act to align, where appropriate, with the Electoral Act and to ensure that the legislative framework could support a referendum conducted during the 47th Parliament.

Since the first briefing there have been a number of written briefings provided to the Minister on referendum related issues including:

- 4 July 2022;
- 22 August 2022;
- 27 September 2022;
- 28 September 2022;
- 30 September 2022;
- 14 October 2022;
- 26 October 2022;
- 14 November 2022;
- 21 November 2022; and
- 23 November 2022.

In addition, there have been a series of meetings and discussions on referendum related issues with the Minister and/or his staff.

The *Referendum (Machinery Provisions) Amendment Bill 2022* (the Bill) represents the decisions of Government. Matters covered by the Bill have been considered by the Cabinet and its subcommittees (the Constitutional Recognition Committee and the Expenditure

Review Committee). To this point I note that it has been longstanding recognised practice not to disclose information about the operation and business of the Cabinet and Cabinet Committees, as to do so could potentially reveal the deliberations of the Cabinet, which are confidential.

Modernising the Referendum Act is important given it has not been used since 1999. The amendments in the Bill support the conduct of a referendum in a contemporary setting that is consistent with people's experience of federal elections, including integrity and transparency measures.

In drafting the Bill, consideration was given to past parliamentary committee inquiries and reports, including those of the Joint Standing Committee on Electoral Matters (JSCEM) and the House of Representatives Standing Committee on Social Policy and Legal Affairs.

In particular, the Bill addresses some past recommendations of JSCEM, including:

- Limiting the pre-poll period (*JSCEM Inquiry into the 2019 federal election*). The Bill aligns the Referendum Act pre-poll period with the Electoral Act period at a maximum of 12 days.
- Granting the Electoral Commissioner the authority, in the event of emergency being declared, to take decisions to facilitate the safe conduct of an electoral event (*JSCEM Inquiry on the future conduct of elections operating during times of emergency situations*). The Bill aligns the Referendum Act with the Electoral Act.

Further, the Bill addresses recommendations from the House of Representatives Standing Committee on Social Policy and Legal Affairs' 2021 *Inquiry into constitutional reform and referendums*, including:

- Implementing a financial disclosure framework, consistent with relevant provisions in the Electoral Act (Recommendation 8).
Modernising the Referendum Act machinery provisions and aligning it with the Electoral Act (Recommendation 10).

Developing the Bill has been a collaborative and iterative process. From the outset Finance has had regular discussions with stakeholders, often multiple contacts on a daily basis. Finance has been undertaking its work in regular and close consultation with relevant entities including:

- the Australian Electoral Commission (AEC). The AEC has operational responsibility for delivering a referendum.
- the National Indigenous Australians Agency (NIAA). The NIAA has policy responsibility for the Voice to Parliament. Also, through NIAA, First Nations leaders have been consulted as part of the Referendum Engagement Group and Referendum working Group.
- the Attorney-General's Department (AGD). AGD is responsible for constitutional law.

- the Department of the Prime Minister and Cabinet (PM&C). Under the Administrative Arrangements Order, PM&C has portfolio responsibility for 'Commonwealth Aboriginal and Torres Strait Islander policy, programmes and service delivery' and 'Promotion of Reconciliation'.

As part of their work, the AEC and the NIAA have commissioned research. Questions relating to the scope, purpose and conduct of that research should be directed to the AEC or the NIAA.

As previously noted, regular consultation has also been undertaken through briefings and discussions with the Minister and/or his staff during the development of the Bill.