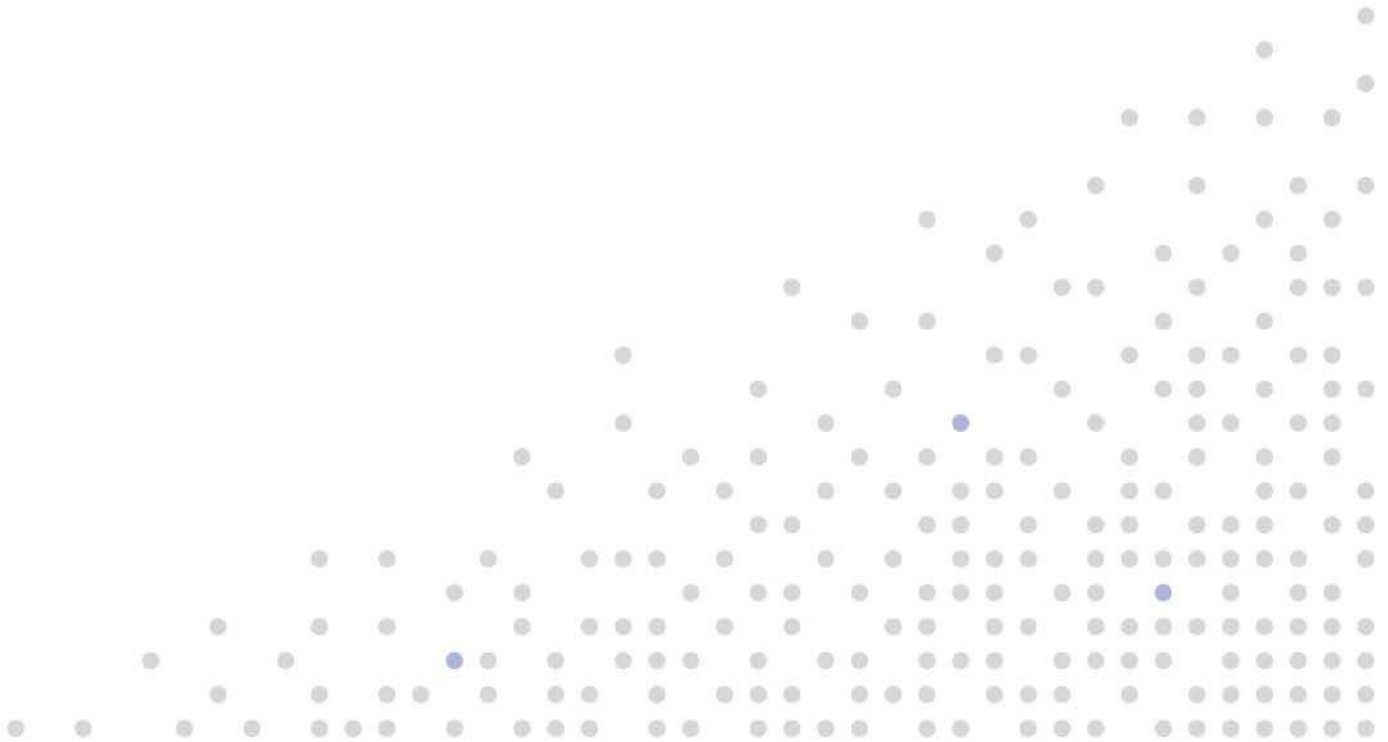




Australian Government
Department of Finance



Department of Finance

Submission to the
Joint Standing Committee on Electoral Matters
Inquiry into the *Referendum (Machinery Provisions)*
Amendment Bill 2022

December 2022

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1. The Department of Finance (Finance) welcomes the opportunity to provide a submission to the Joint Standing Committee on Electoral Matters (JSCEM) inquiry into the Referendum (Machinery Provisions) Amendment Bill 2022 (the Bill).
2. Under Part 7 of the Administrative Arrangements Order, Finance is responsible for electoral matters, including the *Referendum (Machinery Provisions) Act 1984* (Referendum Act).
3. Finance provides advice on the framework for conducting referendums pursuant to the Referendum Act. Finance does not advise on the issue and question that is the subject of a referendum.
4. The Australian Electoral Commission (AEC) is an independent statutory authority in the Finance portfolio that conducts elections and referendums.
5. The Referendum Act has not been used since 1999 and has not kept pace with recent efficiency, transparency, and integrity reforms in federal election processes.
6. The Bill will align the Referendum Act with the *Commonwealth Electoral Act 1918* (Electoral Act) meaning that the voting experience is consistent between elections and referendums. This will include safeguards such as financial disclosure requirements, authorisation of referendum matter and prohibiting foreign donations.
7. The Bill extends recommendations from previous JSCEM inquiries into the referendum context and implements recommendations from the 2021 Standing Committee on Social Policy and Legal Affairs' Inquiry into Constitutional Reform and Referendums.
8. The amendments focus on five areas:
 - a. enabling public education;
 - b. the 'official pamphlet';
 - c. financial disclosure for referendums;
 - d. integrity in referendums; and
 - e. technical and administrative alignment of the Referendum Act with the Electoral Act.

Enabling public education

9. The Bill temporarily lifts a funding restriction in the Referendum Act to enable funding of educational initiatives.
10. The restriction of Government funding under section 11(4) was introduced into the referendum framework in 1984. As a temporary measure, the proposed amendment will not apply to any referendum held in a future term of Parliament.

The Pamphlet

11. The Bill temporarily suspends the requirement for a pamphlet, which traditionally contains text authorised by Parliamentarians and is posted to all enrolled households in Australia.
12. It has been over 100 years since the introduction of the pamphlet and its form has changed little since 1912. At that time, it was the only official material provided to

electors prior to a referendum. Since then, the methods of communication and access to information have changed significantly.

13. Parliamentarians have the flexibility to express their views to voters directly and regularly through a wide variety of mediums, such as television, email, and social media, that did not exist when the pamphlet was introduced in 1912.
14. Academics, referendum entities (refer paragraph 17 for the definition) and the media will also be contributing to public discourse about the proposal throughout the referendum campaign using a wide variety of mediums.
15. The temporary suspension will last until the next federal election, which allows a future Parliament to consider the need for a pamphlet in future referendums.

Referendum Financial Disclosure Framework

16. The Referendum Act does not require any disclosure of funding and expenditure, or prohibit foreign financing. The Bill establishes a new financial disclosure regime for referendums, based on equivalent election returns in the Electoral Act.
17. The Bill will require an individual or entity that spends over the disclosure threshold (currently \$15,200) to report to the AEC all expenditure and donations received in the six-month period prior to the issue of the writ for the referendum by the Governor General, and continuing up until referendum voting day. These individuals and entities are referred to as 'referendum entities' in the Bill. Donors will also have to disclose details of donations above the disclosure threshold to referendum entities.
18. The Bill will link the disclosure threshold in referendums to the same thresholds in the Electoral Act. This ensures that the threshold will remain consistent across the Referendum Act and Electoral Act. As JSCEM is considering financial disclosure in a broader context in their Inquiry into the 2022 federal election, this Bill will allow any reforms to the Electoral Act to be automatically applied to the Referendum Act.
19. The Bill requires returns to be provided to the AEC within 15 weeks of voting day and published 24 weeks after voting day on the AEC's Transparency Register. This is consistent with the candidate returns requirements in the Electoral Act.
20. The Bill strengthens the integrity of Australia's electoral system by restricting foreign influence in referendums. Individuals and organisations meeting the new definition of 'referendum entity' will be prohibited from receiving donations from foreign sources – the same requirement as for federal elections. This is supported by the AEC investigation powers and anti-avoidance provisions, which are modelled on Electoral Act equivalents.
21. Establishing a simplified financial disclosure and foreign donation restrictions framework for referendum campaigning based on the Electoral Act was recommended by the House of Representatives Standing Committee on Social Policy and Legal Affairs' 2021 *Inquiry into constitutional reform and referendums* (Recommendation 8). The Bill responds to this recommendation by aligning the Electoral Act and Referendum Act financial disclosure regimes to provide a consistent framework for voters and electoral and referendum participants.

Integrity in referendums

22. The Bill amends the Referendum Act to provide a similar level of integrity and transparency to a referendum as for recent federal elections.
23. This includes replicating the offence and penalty for interference with political liberty with the equivalent offence in the Electoral Act, and with the Criminal Code. A Note is also included to clarify that violence, absence or discriminatory abuse, property damage and harassment or stalking are examples of interference with political liberty and may constitute an offence. This reflects the importance of integrity in referendums and protecting the rights of Australians in interacting with referendums and electoral events.
24. Authorisations requirements for the communication of referendum matter are also updated to align with the requirements for electoral matter, which means the same authorisation rules will apply for both electoral and referendum communications.
25. The Bill also ensures that there are consistent safeguards across federal election and referendum events against instances of multiple voting, in line with the ‘one vote, one value’ principle of Australia’s democracy by extending the “designated electors” framework from the Electoral Act into the Referendum Act.

Alignment with Electoral Act

26. Recent successive modernisations made to the Electoral Act have improved the efficiency, transparency and integrity of Australia’s electoral process. The Bill will extend these measures in the Electoral Act to the Referendum Act to support voter confidence in referendums.
27. These measures include:
 - a. allowing voters to apply for postal votes online rather than by paper form;
 - b. vote-savings measures, to ensure voters are not inadvertently disenfranchised if they make a minor spelling mistake; and
 - c. allowing the AEC to start sorting pre-poll votes from 4pm on voting day to fast-track counting.
28. The House of Representatives Standing Committee on Social Policy and Legal Affairs’ Inquiry into constitutional reform and referendums recommended that the Referendum Act, and the referendum process more generally, be modernised in advance of any future referendum (Recommendation 10). The Bill responds to this recommendation by aligning the Referendum Act with the current electoral machinery provisions of the Electoral Act.