

Joint Standing Committee on Electoral Matters
REFERENDUM (MACHINERY PROVISIONS) AMENDMENT BILL 2022

RESPONSE TO QUESTION ON NOTICE
Australian Electoral Commission

Subject: Consultation of draft legislation
Question date: 19 December 2022
Question type: Hearing Proof Hansard, page 15
Response date: 9 January 2023

Question

Senator CADELL: Okay. I will now get onto the process questions. When was the AEC first consulted on the changes to the *Referendum (Machinery Provisions) Act*?

Mr Rogers: We've been part of the interdepartmental committee. I don't have in front of me when that process first started. I'm happy to take that one on notice, unless the deputy has that to hand.

Mr Pope: I don't have the date when we first saw the draft bill. Is that the focus of your—

Senator CADELL: I have a feeling there'll be lots of on-notice questions. That's fine. We'll get that date. When did you first get a draft of legislation? Could you have a look at that for me.

Mr Rogers: Again, we'll take that on notice.

Response

The Australian Electoral Commission (AEC) was first provided with a draft of the Referendum (Machinery Provisions) Amendment Bill 2022 on 26 September 2022 by the Department of Finance.

Joint Standing Committee on Electoral Matters
REFERENDUM (MACHINERY PROVISIONS) AMENDMENT BILL 2022

RESPONSE TO QUESTION ON NOTICE
Australian Electoral Commission

Subject: Foreign donations
Question date: 19 December 2022
Question type: Hearing Proof Hansard, page 22
Response date: 9 January 2023

Question

Senator CADELL: Thanks very much. These referendum changes are not yet law. There may be organisations that have taken foreign donations in the past without knowing this was coming prior to exposure. You will be in charge of going back. What would happen to an organisation that has taken funds and has no ability to repay those funds now? Are they in breach?

Mr Rogers: I will have to look at the legislation when it comes out. I would have to think about that. I'll take that on notice and come back to you with an answer.

Senator CADELL: Is there a time limit on the breach of the foreign donations? Could an organisation exist today that took funds 12 months ago to promote the idea of a voice even before the legislation came out?

Mr Rogers: I will take that on notice.

Senator CADELL: Also, while we're on the notice page, how will you deal with an entity that took foreign donations that has shut down since that period?

Mr Rogers: We'll take that on notice. I would point out that it's also not completely unusual that that sort of thing occurs. We'll come back to you on notice.

Response

If the offence provisions relating to foreign donations in the Referendum (Machinery Provisions) Amendment Bill 2022 are passed, the new definitions of 'referendum expenditure' and 'referendum expenditure period' will apply. The latter starts 'on the day which is 6 months before the writ for a referendum is issued'.

If enacted, these legislative changes will require an extensive education campaign to inform people or entities who may engage in electoral expenditure about the financial disclosure requirements. The Australian Electoral Commission (AEC) cannot comment in advance on the compliance action that could be taken, which would depend on the particular circumstances. Generally, like other regulators, the AEC takes into consideration the surrounding circumstances when considering whether a person or entity has taken sufficient measures to comply.

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RESPONSE TO QUESTION ON NOTICE
Australian Electoral Commission

Subject: Appointment of scrutineers
Question date: 19 December 2022
Question type: Hearing Proof Hansard, page 24
Response date: 9 January 2023

Question

Senator CADELL: Is there any way a private citizen not part of the political process or knowing a political MP can be appointed a scrutineer to oversee this if they take an interest?

Mr Rogers: In the referendum?

Senator CADELL: People from lands councils, people from other things that have an active interest?

Mr Rogers: I'm presuming, if those individuals are particularly from some of those large entities like land councils, they would be appointed by political parties or others in any case. As to private citizens, I might just take that on notice. I'm not sure about—

Mr Pope: Maybe it's a process to go through with the governor of the state or territory.

Mr Rogers: I'll take that on notice and have a think about it.

Response

For a person to act as scrutineer for a referendum, in accordance with the *Referendum (Machinery Provisions) Act 1984* (Referendum Act) they must be appointed by the Governor-General, the Governor of a State, the Chief Minister for the Australian Capital Territory, the Administrator of the Northern Territory (or a person authorised by any of these), or the registered officer of a registered political party.

The number of scrutineers a registered political party may appoint at each counting centre must not exceed the number of people engaged in the scrutiny. The Governor-General, Governor of a State, Chief Minister of the Australian Capital Territory or Administrator of the Northern Territory may appoint one person per counting centre.

The *Commonwealth Electoral Act 1918* (Electoral Act) requires the appointment of scrutineers to be “in writing” (ss 200DA and 217) and to sign an undertaking in the “approved form” (s 202A). The current Referendum Act has no similar provision for appointment, but sections 2, 6 and 7 of the Referendum (Machinery Provisions) Amendment Bill 2022 will bring the Referendum Act into alignment with the Electoral Act.

The AEC's approved *Scrutineer appointment and undertaking form* is available on the AEC website at <https://www.aec.gov.au/Elections/candidates/files/scrutineers-appointment-form.pdf> and will be updated to apply to referendums as well as elections if the Referendum (Machinery Provisions) Amendment Bill 2022 is passed.

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RESPONSE TO QUESTION ON NOTICE
Australian Electoral Commission

Subject: Indigenous engagement
Question date: 19 December 2022
Question type: Hearing Proof Hansard, page 20
Response date: 9 January 2023

Question

Senator WATERS: I hear your strong proposal for enrolment on the day. It's something my party supports as well, and we could take that into consideration. In relation to the datasets that you've referenced to track Indigenous enrolment statistics, what are the consequences of using one dataset for your denominator, which I understand is your ABS Indigenous voting age population estimate, and a different dataset for your numerator, which I understand is Services Australia data? What are the consequences for using different datasets and the veracity of the conclusions you can draw?

Mr Rogers: I might take that on notice, if you don't mind, Senator, and I'll come back with a comprehensive answer for you.

Response

The *denominator* for Indigenous enrolment rate is the latest available Australian Bureau of Statistics (ABS) projected Indigenous population.

The *numerator* is the estimated number of First Nations people on the Roll. There is no indicator of indigeneity on the roll, so the Australian Electoral Commission (AEC) needs to estimate the number of First Nations people on the roll.

While Services Australia data is used in the calculation of the numerator, it is not used in its raw form. The Services Australia data set includes around 9 million Centrelink records of eligible electors of which around 430,000 have self-identified as Indigenous. All Centrelink records are *matched* to the electoral roll to obtain matching rates for Indigenous and other (non-Indigenous) Centrelink clients.

Since not all Indigenous or non-Indigenous people are Centrelink clients, the AEC applies the Centrelink-roll matching rates to Indigenous and non-Indigenous enrolment eligible population projections (calculated using ABS population projections) to calculate preliminary estimates of all enrolled Indigenous and non-Indigenous people. The preliminary estimates do not equal actual enrolment, so the preliminary estimates for each state and territory (Indigenous plus non-Indigenous) are scaled to equal actual total enrolment for that jurisdiction.

This method of calculating the numerator involves the assumption that any *bias* in Centrelink clients being enrolled is equal for Indigenous and non-Indigenous clients.

The Centrelink-roll matching rates therefore underpin the Indigenous enrolment estimates. Furthermore, the ABS projected Indigenous population is used in calculation of *both* the numerator and as the denominator for the Indigenous enrolment rate.

The AEC's methodology uses survey weighting ('benchmarking') which is a standard statistical technique in applying sample data (the Centrelink-roll matching results) to a full population. The same methodology has been used since 2017 and over that period has demonstrated an increase in the estimated Indigenous enrolment rate of 10 percentage points.

The AEC has conducted analysis to assess the potential impact of ABS 2021 Census-based data, which showed it may produce a very small increase in the estimated Indigenous enrolment rate. This is due to the primary driver of the estimated Indigenous enrolment rate being the calculated proportion of Centrelink clients found on the roll (as described above). ABS 2021 Census-based Indigenous population projections are expected to become available in mid-2024 and will be incorporated into AEC calculations at that time.

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RESPONSE TO QUESTION ON NOTICE
Australian Electoral Commission

Subject: Referendum expenditure
Question date: 19 December 2022
Question type: Hearing Proof Hansard, page 22
Response date: 9 January 2023

Question

Ms CHANEY: The Human Rights Law Centre has raised an issue that I'd love to get your response to. The referendum act includes a need to disclose referendum expenditure, which includes producing referendum matter. In the Electoral Act's equivalent clause relating to electoral matter, there's a note indicating that it doesn't include education, raising awareness or encouraging debate on a public policy issue, but there is no equivalent exclusion in the current bill. The effect of this is that disclosure of expenditure on neutral education material is also required. Can I have your thoughts on the impact or rationale for that difference between the referendum act and the Electoral Act?

Mr Rogers: I think that is more properly a question for government. I'm not sure I could provide you an answer on that, and I'm not sure why that was not included. We will take that on notice the bits of that we can, and the other bits might be a matter for government, because it's actually a policy question about the process.

Response

If the amendments currently in the Referendum (Machinery Provisions) Amendment Bill 2022 are enacted, matter communicated for a dominant purpose that is educative will not be referendum matter that will need to be authorised. This is similar to electoral matter under the *Commonwealth Electoral Act 1918* (Electoral Act), which also excludes educative matter.

Section 4AA(5)(b) of the Electoral Act and proposed section 3AA(6)(b) of the *Referendum (Machinery Provisions) Act 1984* (see Schedule 3, item 2 of the Referendum (Machinery Provisions) Amendment Bill 2022) provide that matter with a dominant purpose of being educative is not electoral matter or referendum matter respectively.