

Joint Standing Committee on Electoral Matters INQUIRY INTO THE 2022 FEDERAL ELECTION

RESPONSE TO QUESTION ON NOTICE Australian Electoral Commission

Hearing date: 6 September 2023

Disability Advisory Committee

Question 1

When did the AEC's Disability Advisory Committee last meet? Who are the peak disability organisations that are involved in the Committee? What are the key priorities and focus areas for this committee?

Response

For over a decade the Australian Electoral Commission (AEC) has led a Disability Advisory Committee (DAC) which includes representatives from disability peak organisations. The committee last met on 28 August 2023. The role of the Committee is to consult with the disability sector to ensure greater accessibility, inclusion and participation in the electoral process by people with disability.

The priorities and focus of the DAC are to:

- seek feedback from relevant Australian peak disability organisations on the programs and services the AEC delivers
- understand new and emerging issues of concern for people with disability
- collaborate with Electoral Council of Australia and New Zealand (ECANZ) partners in the delivery of accessible electoral services across jurisdictions
- learn about initiatives being developed in other sectors for people with disability
- promote relevant AEC initiatives to their members.

The DAC comprises:

- Australian Electoral Commission (Chair)
- Disability peak bodies:
 - Australian Federation of Disability Organisations
 - Australian Human Rights Commission
 - Blind Citizens Australia
 - Council for Intellectual Disability
 - Deaf Australia
 - National Disability Insurance Agency
 - National Ethnic Disability Alliance
 - Vision Australia
- Electoral Commission Australia and New Zealand:
 - Elections ACT
 - Electoral Commission of Queensland
 - Electoral Commission South Australia
 - New South Wales Electoral Commission
 - New Zealand Electoral Commission

- NT Electoral Commission
- Tasmanian Electoral Commission
- Victorian Electoral Commission
- Western Australian Electoral Commission

Unsound mind

Question 2

From the AEC's perspective, what are the issues with the unsound mind provision in the Electoral Act?

Response

The *Commonwealth Electoral Act 1918* (the Electoral Act) states that only a person who 'by the reason of unsound mind, is incapable of understanding the nature and significance of enrolment and voting' can be removed (objected) from the electoral roll.

This provision does not apply to any other medical or mental health condition or other form of disability. It is important to note that an objection must be supported by a certificate from a medical practitioner, and that electors subject to an objection, have a right to respond. In addition, any time after being removed from the roll, a person may re-enrol with the provision of a certificate from a medical practitioner stating they are no longer 'by the reason of unsound mind, incapable of understanding the nature and significance of enrolment and voting'.

This provision does not apply to people who may not understand the significance of enrolment and voting due to a lack of electoral education/awareness. The AEC cannot instigate an objection under the unsound mind provision.

The AEC appreciates that the terminology 'unsound mind' as described in the Electoral Act may unsettle, offend and distress some citizens and the AEC endeavours at all times to be sensitive in its communications. The terminology is often the subject of complaints from people who are offended and believe it is outdated language. The AEC and the Disability Advisory Committee request and would like to see legislative reform to change this terminology.

Australians abroad

Question 3

What approaches is the AEC considering to continue supporting the capacity of Australians overseas to vote in Australian elections? What are the constraints on these?

Response

Electoral events are tremendously complex and are Australia's largest peacetime logistical exercises. Enrolment now exceeds 17 million people. Reaching voters in all corners of the country and across the globe within the required legislative timeframes is a formidable task.

Voting in a federal election is not compulsory for Australians overseas. While not compulsory, the AEC endeavours to provide voting services to eligible Australians overseas who choose to do so. To be eligible to enrol to vote from overseas, a person must be an

Australian citizen aged 18 years or older and intending to return to Australia within six years. Australians overseas who wish to participate in a federal election or referendum, must take additional action to enrol and then access their vote.

The AEC is responsible for delivering Australia's federal electoral events, including referendums, in accordance with our electoral and referendum machinery laws. Voting options available for Australians living or travelling overseas include in-person voting, where possible, and postal voting.

In-person voting services for Australians overseas are delivered through strong cooperation between the AEC, the Department of Foreign Affairs and Trade (DFAT) and Austrade. Voting services are dependent on the local environment and may be subject to many constraints including security, health and logistic challenges.

Australians are informed of voting options through various channels including the AEC website, Smartraveller, and social media. Diplomatic posts communicate to people in their local area. Overseas services may be subject to change at short notice and voters are encouraged to visit the AEC website regularly for up-to-date information.

Postal voting applications and the distribution and receipt of postal votes can only occur in accordance with legislated and operational timeframes. For example, distribution can only occur after the rolls have been closed and finalised and ballot papers are available; voting must be undertaken by polling day; and votes must be returned by the 13th day after polling day in order to be counted. This creates some risk with overseas voters being able to receive and complete a postal vote.

Prior to the 2022 federal election, it was identified that standard postal services would not be able to meet AEC requirements and legislated timeframes. The AEC initiated the use of a point-to-point international courier service to ensure overseas voters received their postal votes as swiftly as possible. To further reduce potential international postage delays, overseas voters were able to return or mail their completed postal votes to nominated overseas posts. The returned votes were transported by DFAT's diplomatic mail service, providing an expedited return service to Australia. The AEC is also implementing these measures for the 2023 referendum.

Question 4

Does the AEC have any views they'd like to share on how we can improve access and participation in elections by Australians overseas?

Response

Secure Telephone Voting

The AEC maintains an intense focus on enfranchisement. Australia's electoral system is frequently internationally lauded for the wide array of voting options available to citizens including: pre-poll, postal, mobile, telephone (for certain categories), and domestic and international in-person voting.

There is, of course, a limit on the extent to which the AEC can accommodate the individual circumstances of more than 17 million electors. There will always be unique circumstances that prevent individuals from voting. This can include people in transit overseas, travelling

from city to city, or cruising on water. Electoral legislation currently acknowledges the specific difficulty of overseas voting by rendering absence from Australia on voting day as one of the few valid and sufficient reasons for not voting.

In Submission No. 18 made to the Joint Standing Committee on Electoral Matters inquiry into the Referendum (Machinery Provisions) Amendment Bill 2022, the AEC noted the options available to Parliament to expand telephone voting to enfranchise other categories of voters including those who are overseas and do not have ready access to postal voting or in-person voting at an Embassy or High Commission. The submission stated Secure Telephone Voting could be a useful voting safety net for these voters. Eligibility requirements for this service would need to be strictly defined and enforced to ensure that it does not become a voting channel for citizens who simply do not want to attend a polling place. In addition, operational constraints such as time differences would need to be navigated. Legislative change is a matter for the Parliament.

Overseas elector registration

Section 94 of the *Commonwealth Electoral Act 1918* (the Electoral Act) contains the provisions for enrolment and voting for Australians who are living or working overseas. Electors may register as an eligible overseas elector if they will be overseas for up to six years but intend to return and reside in Australia no later than six years after departure. An eligible overseas elector may remain overseas longer if an extension has been applied for and approved.

An unlimited number of one-year extensions of registration may be approved if the elector originally intended to resume residing in Australia not later than six years after ceasing to reside in Australia, and they still intend to return to reside in Australia in the future.

Each month, the AEC undertakes a review of eligible overseas electors. There are two parts to the review:

- a. Review electors whose registration expiration date is coming up – Electors with an email address are sent a reminder email.
- b. Review electors whose registration has expired and have not requested an extension – These electors' registration/enrolment is cancelled.

Where an elector has been advised that their registration is due to expire and a response is not received by the expiry date, their registration as an eligible overseas elector would be cancelled and their name removed from the electoral roll. The decision to cancel an overseas elector registration enrolment is made under section 94(14)(b) of the Electoral Act and is not reviewable under section 120(1) of the Act. The Committee may wish to consider appropriate review mechanisms and valid reasons that might trigger such a review.

Question 5

Does the AEC support consideration of an expansion of this kind for elections?

Response

Please refer to the response to Question 4.

Size of the Parliament

Question 6

Some witnesses have suggested increasing the size of the Parliament, in a range of ways and for a variety of reasons. Are there impacts from the AEC's perspective that should be part of considerations of these suggestions?

Response

For significant change to occur to the size of the Parliament, the Parliament must exercise its powers under the Constitution and pass legislation to increase the number of senators for each of the states. This then leads to a change in the number of members of the House of Representatives, via the calculation of the number of members that each state and territory is entitled to, which may trigger a redistribution of that state or territory where the entitlement has changed. Any required redistributions would be conducted in accordance with the legislative requirements in place at the time.

The Electoral Act does not prescribe how long a redistribution should take but does prescribe the duration of certain activities. The total length of time that an individual redistribution may vary could be from 11 to 16 months, with this length of time influenced by several factors, including but not limited to:

- the number of redistributions which are underway at any one time
- overlap with any federal and/or state/territory electoral events
- the occurrence of public holidays, especially when multiple distributions are underway.

Redistributions are frequently conducted concurrently which requires careful planning and preparation. This is due to both decision-making bodies, being the Redistribution Committee for a state/territory and the augmented Electoral Commission for a state/territory, requiring the participation and significant time commitment from legislatively specified Commonwealth and state/territory agency heads. The need for careful planning is further compounded when redistributions start on the same day or very close together as the Electoral Commissioner is a member of all decision-making bodies. The Chair of the Electoral Commission and the non-judicial member, currently the Australian Statistician, are members of all augmented Electoral Commissions.

An increase to the size of the Parliament via an alteration of the number of senators most recently occurred in 1984 following the increase in the number of senators per state from 10 to 12. Consequently, 148 electoral divisions were contested at the 1984 general election compared to the 125 which were contested at the 1983 election.

The time to conduct the seven redistributions in 1984 ranged from between six months for the redistribution of the ACT to seven and a half months for the redistribution of New South Wales. The writ for the 1984 general election was issued 15 days after the determination of the New South Wales redistribution.

Redistributions tend to take longer now than in 1984 as a result of ongoing refinements to the Electoral Act and with the redistribution processes having expanded the opportunities for interested individuals and organisations to contribute to and participate in a redistribution, for example:

- the inclusion of the comments on objections process, and

- provision of enrolment and projected enrolment data prior to the first period for inputs. Some individuals and organisations will use this data to develop inputs to the redistribution which meet the numerical requirements of the Electoral Act.

Redistributions

Question 7

When will all data be supplied to enable submissions for the proposed redistribution?

Response

Redistributions of New South Wales, Victoria and Western Australia formally started on Wednesday 9 August 2023 following publication in the Gazette of the Electoral Commission's directions for commencement.

The number of electors as of Wednesday 9 August 2023 and the number of projected electors will be released on the same day as interested individuals and organisations are invited to make suggestions to each of the redistributions. Access to this data will allow those wishing to contribute to the redistributions to make suggestions which meet the two numerical parameters of the Electoral Act. While those wishing to contribute are not required to ensure they meet these requirements, doing so can assist with the development of the eventual redistribution of the state or territory.

The redistribution timetables and guidelines to assist people or organisations interested in submitting suggestions are available on the AEC's website at www.aec.gov.au/Electorates/Redistributions/.

Service delivery and voting

Question 8

Can the AEC please provide additional information on:

- the Remote Area Mobile Polling Program
- current Indigenous engagement programs and strategies
- engagement and voting in aged care facilities (particularly during the 2022 federal election)
- lowering the voting age to 16 (the benefits and challenges and how many potential additional voters would there be if lowered)?

Response

- **Remote Area Mobile Polling program**

The delivery of remote voter services is unique and complex. Logistics arrangements can be impacted by changes in community advice, unexpected weather events and premises availability. Mobile voting teams visiting remote communities is not a legislated requirement. However, it has long been an essential part of the AEC's delivery of electoral events.

For the 2022 federal election, 38 mobile polling teams visited 348 remote locations across Australia. The overall service offering to remote communities was equivalent to that of the 2019 federal election.

Where possible, the AEC employs members of local communities to perform a role in assisting community members to understand, and be comfortable with, the voting process. For the 2023 referendum, the AEC is planning to visit approximately 35 per cent more locations and spend in total around 80 per cent more time in locations. The first votes cast in the 2023 referendum will be from remote locations as the *Referendum (Machinery Provisions) Act 1984* was amended in March 2023 to allow for early voting in remote communities to commence three weeks prior to polling day.

- **Indigenous engagement programs and strategies**

The AEC is committed to improving the enrolment of First Nations people and to increasing levels of referendum and electoral awareness and participation, particularly in remote communities. This is important work not only in preparation for the referendum, but for future electoral events.

Figures released by the AEC show the highest ever level of estimated Indigenous enrolment at 94.1 per cent as of 30 June 2023 – up from 84.5 per cent just six months ago and 74.7 per cent in 2017.

It is a phenomenal success story and an area where the gap is closing. The success comes from sustained and dedicated efforts and innovative new solutions and partnerships. This work began before the 2023 referendum was planned and will continue in years to come. The gains have outpaced the growth of the national electoral roll, and the AEC is continuing with targeted strategies to achieve alignment with the national enrolment rate (97.7 per cent as at the close of rolls for the referendum).

Through the October 2022-23 Budget, the Government provided \$16.1 million over two years from 2022-23 to the AEC to increase First Nations enrolment and participation in future electoral events, including the referendum. This measure is focused on investments to:

- expand enrolment initiatives to increase the number of First Nations people enrolled to vote
- increase community engagement activities, including partnering with First Nations organisations, government agencies, and other service providers, and working with local community members to support referendum and electoral participation
- increase targeted and culturally appropriate information on enrolling and voting in referendums and elections
- expand the AEC's diverse workforce, including recruiting local Indigenous Community Electoral Participation Officers in regional and remote communities.

Recent work by the AEC to improve the reach of Federal Direct Enrolment and Update (FDEU) program to First Nations people has been further accelerated, especially for those living in remote areas. This initiative saw around 62,300 First Nations people added to the electoral roll in the 2022-23 financial year.

The AEC delivers targeted and culturally appropriate information and services to engage Aboriginal and Torres Strait Islander peoples. We work with key stakeholders, including with

First Nations organisations around Australia, state and territory electoral commissions, the National Indigenous Australians Agency and other government agencies.

Electoral participation is further supported through the Indigenous Electoral Participation Program (IEPP). The IEPP focuses on engaging with local partners to deliver community-led electoral participation initiatives to their communities. IEPP partners lead, co-design, and champion localised, culturally appropriate engagement in their communities. This includes collaboration with the AEC on the development of programs, outreach events, and the creation and dissemination of engagement materials.

The AEC is focused on its in-language information offerings as appropriate for the needs of First Nations voters. We have expanded our materials in-language based on consultation and an evidence-based approach of communication requirements.

The AEC has produced a series of in-language videos in various Aboriginal and Torres Strait Islander languages. Topics include how to enrol, cast a formal vote, and temporary election workforce opportunities with the AEC.

For the 2022 federal election:

- videos were produced in 24 First Nations languages
- advertising for the Remote Area Mobile Polling Program was placed in 20 languages
- the AEC entered into a paid partnership with NITV to produce five short TV vignettes, a 'microsite' hosted on NITV website, banners and content on main NITV website.

These efforts continue for the 2023 referendum. Specific Aboriginal and Torres Strait Islander information resources have been produced and the official Referendum Booklet—which contains the Yes/No cases—is available in 13 First Nations languages as audio files.

Additional videos have been produced in 21 First Nations languages to assist First Nations voters when accessing remote voter services during the referendum, and additional in-language videos have been produced on voting in referendums.

In addition, referendum education was delivered in over 140 First Nations communities around Australia.

- **Engagement and voting in aged care facilities**

Mobile polling is an important component of election service delivery. The primary purpose of mobile polling is to provide a voting service to electors who do not have other viable voting options. The AEC has established an Aged Care Advisory Working Group to discuss approaches to providing elector services to electors in the aged care sector. Approaches will balance enfranchisement with health and wellbeing in the context of COVID-19 and more broadly.

For the 2022 federal election, the AEC put a range of measures in place to support the safety of voters, particularly residents of aged care facilities. These measures were developed with relevant health authorities and the Australian Health Protection Principal Committee (AHPPC). The AEC wrote to all aged care facilities in advance of the election to advise of voting options.

The AEC received advice from the Department of Health and Aged Care and conducted a detailed risk assessment to determine the proposed approach to mobile polling in aged care facilities. In late December 2021, all Chief Health Officers endorsed a modest offering of mobile polling in aged care facilities.

The decision was based on careful consideration of the risk of elector disenfranchisement against the safety of residents, facility staff, and AEC staff contracting or transmitting COVID-19. Aged care facilities which met the agreed criteria were offered mobile polling and an establishment was able to accept or decline the service. Facilities which did not meet the criteria or did not accept mobile polling were supported by dedicated AEC staff across the country. These staff provided facilities with information, materials and support to ensure residents knew their voting options and were able to vote this election.

In accordance with health advice and a detailed risk assessment, 59 mobile polling teams visited over 80 residential aged care facilities across Australia. This approach balanced enfranchisement with risks to the health and safety of vulnerable cohorts.

All registered aged care facilities were provided with extra help to access voting services including postal voting through dedicated AEC support cells across the country, both in the lead up to and during the election period. Many residents are registered general postal voters, and there was no change to this service.

For the 2023 referendum, the AEC will provide mobile polling services at approximately 2,300 aged care facilities. The service will be delivered in accordance with advice from the federal Department of Health and Aged Care and with the support of the facilities.

- **Lowering the voting age to 16**

The AEC does not have a view on lowering the voting age as that is a matter for Parliament.

With respect to potential additional electors, the best estimate may be to use the national enrolment rate estimate for 18-year-olds (as at 30 June 2023) and apply this to the estimated population forecast (being 620,000). This would put the potential additions to the roll at between 400,000 and 430,000 people.