



Joint Steering Committee on Electoral Matters
Committee Secretary
Ngunnawal country
PO Box 6021
Parliament House
Canberra ACT 2600

By email: em@aph.gov.au

15 December 2022

Dear Committee Members,

RE: Referendum (Machinery Provisions) Amendment Bill 2022

The Central Land Council (CLC) welcomes the opportunity to provide input to the Joint Standing Committee on Electoral Matters' (JSECM) Inquiry into the Referendum (Machinery Provisions) Amendment Bill 2022 (**Referendum Bill**). This submission largely reflects the CLC's recommendations to the JSECM as part of its Inquiry into the 2022 Federal Election.

As stated in our submission to that inquiry, the persistent and widening gap in electoral participation of Aboriginal people compared to non-Aboriginal people provides increased urgency given a referendum on an Indigenous Voice to Parliament will be held in 2023. In this context, and given the question posed at next year's referendum directly affects and concerns Aboriginal and Torres Strait Islander people, it is vital that the Committee ensures that the changes made through these legislative amendments maximise the participation of these communities.

As the JSECM is reviewing the content of the Referendum Bill, we have limited our recommendations to those that could or would be included in that bill. This means, for example, we have not included recommendations around ensuring the availability of interpreters at remote polling stations. We still believe this and other non-legislative policy change is essential to increasing the enfranchisement of Aboriginal and Torres Strait Islander people, and we hope will be addressed in preparation for the referendum. We would welcome the opportunity to discuss these matters and our recommendations with the JSECM and the government.

Recommendations

1. Amend the *Referendum (Machinery Provisions) Act 1984* to allow on-the-day enrolment of voters in referendums.
2. Extend the period during which mobile polling can take place under section 51(5) of the *Referendum (Machinery Provisions) Act 1984* from 12 days to 26 days, enabling greater access to booths for remote voters.
3. That the Parliament repeal section 93(8AA) of the *Commonwealth Electoral Act 1918* which prevents prisoners from voting and disproportionately affects Indigenous people.
4. Maintain the requirement of a hard copy pamphlet about the referendum being sent to voters, but alter the contents, such that the pamphlet:
 - a. explains the meaning and effect of the proposed constitutional change;
 - b. is no more than four pages;

- c. is written by an independent referendum panel or senior public servants; and
- d. is written in simple English and (in areas where Aboriginal languages are spoken) is also sent out in a version translated into local Aboriginal languages.

Allowing on the day enrolment

The *Referendum (Machinery Provisions) Act 1984* designates that the rolls close seven days after the issuing of the writs for a referendum.ⁱ This short timeframe is prohibitive to Aboriginal and Torres Strait Islander people, particularly in our jurisdiction, being able to enrol in time to participate in a referendum. For people in remote areas of the CLC region there are multiple barriers to enrolling to vote, including:

- a digital divide and information disadvantage due to a lack of access to phone and internet services, described further below;
- a lack of in-person support services in remote communities to assist people to complete often complex paper forms;ⁱⁱ and
- cultural activities such as men's and women's business taking people away from their communities for periods longer than seven days.

Allowing people to enrol on the day of voting has worked to boost enrolment and enfranchisement in the NT. In 2021, amendments to the *Local Government Act 2019* (NT) allowed the NT Electoral Commission (NTEC) to enrol eligible voters on the day of voting, and for that voter to cast a declaration vote.ⁱⁱⁱ Once the newly-enrolled voter's enrolment is processed by the AEC (immediately after election day), their vote is added to the count.^{iv} In the 2021 local council elections this saw around 1700 additional votes across the Northern Territory.^v

We recommend amending the *Referendum (Machinery Provisions) Act 1984* to allow on-the-day enrolment of voters in referendums, through a solution similar to that used by the NTEC in the 2021 council elections.

Extending voting times in communities

To cast their ballot in elections and referendums, voters in remote communities in the NT rely on the AEC's mobile polling teams travelling to their community in the lead up to voting day. The *Referendum (Machinery Provisions) Act 1984* only allows mobile booths to be open in the 12 days prior to voting day.^{vi} Analysis by Dr Francis Markham and Dr Morgan Harrington of the AEC's remote mobile polling schedule for the electorate of Lingiari (which covers the entire CLC region) in the 2022 Federal Election shows that AEC teams were present for four hours or less at 154 of the 205 mobile polling locations. This includes 95 locations where they were present for a single hour. One to four hours is not enough time for all voters in a community to be made aware that booths are open, let alone cast a vote.

This reflects the experiences of constituents in our region, some of whom missed the short opportunity to vote in community due to poor communication, language barriers, clashing cultural obligations, community sports days, meetings, sorry business or remote work. In the APY lands, many people didn't realise there was an election on or that they had to vote until they saw AEC staff arrive in their community.^{vii} If people miss the opportunity to vote in community, their only other option to vote is to drive potentially hundreds of kilometres into a major town, such as Alice Springs, Tennant Creek or Katherine.

Extending the period that mobile polling teams can operate from 12 to 26 days would reduce restrictions on the AEC's team, and enable them to spend more than one to four hours in remote communities, giving people living there a better chance to cast their vote.

Increasing enfranchisement of prisoners

In 2004, amendments were made to the *Commonwealth Electoral Act 1918* to prevent prisoners from voting in federal elections and referendums if they were serving a term of imprisonment of more than three years.^{viii} This disproportionately impacts Aboriginal Territorians who made up 84 per cent of the prisoner population in 2018.^{ix} It is estimated that 0.6 per cent of Indigenous people were disenfranchised by these amendments, while just 0.075 per cent of non-Indigenous people.^x

Consequently we recommend the Referendum Bill be amended to also repeal section 93(8AA) of the *Commonwealth Electoral Act 1918* which prevents prisoners from voting and disproportionately affects Indigenous people.

Maintain the requirement of a pamphlet being sent to voters, alter its contents

The Referendum Bill in its current form suspends the requirement for a pamphlet with the ‘yes’ and ‘no’ case to be sent to all voters before the referendum. This is justified on the basis that the next referendum will take place in the ‘digital age’ and that ‘[m]odern technology allows parliamentarians to express their views to voters directly and regularly through a wide range of sources, such as television, email and social media, that did not exist when the pamphlet was introduced in 1912’.^{xi}

But not all voters have equal access to the platforms used to communicate in the digital age, especially those in remote parts of Australia. Research from Telstra and the ARC Centre of Excellence for Automated Decision-Making and Society in 2021 found that people living in Aboriginal communities are among the most-digitally excluded in Australia.^{xii} Aboriginal people who live in remote parts of the CLC region can be subject to regular phone and internet outages,^{xiii} and are often only able to get reception in and around communities. This leaves people living at outstations or travelling outside of communities without phone or internet access. In areas where there are no mobile phone towers, people can only access the internet and phone via satellite. Satellite services are often prohibitively expensive and limit the amount of data users can access each month.

In our 2021 submission to the National Indigenous Australians Agency’s discussion paper on Indigenous Digital Inclusion Plan, we highlighted how this digital divide creates information disadvantage in remote communities:^{xiv}

In an age when there is a rapidly growing need for information, and an increasing reliance of digital media to access this, those who have less opportunities for accessing this are profoundly disadvantaged. In this context, the growing speed at which information is delivered and distributed, including essential and urgently needed information has significant impact in terms of Indigenous digital disadvantage and information poverty.

In this context, we are concerned that suspending the requirement of a physical pamphlet entirely will leave Aboriginal and Torres Strait Islander people in remote parts of the country without reliable access to information about the referendum. As this referendum question directly concerns Aboriginal and Torres Strait Islander people, and conducting it without any pamphlet would be detrimental to those it would most greatly affect, particularly older people and Elders. The pamphlet should be posted to all voters, and displayed prominently in appropriate publicly accessible places in the community – in remote communities this could be the store, the clinic, the school and the shire office. Identifying and rolling out the pamphlet in communities, as part of the suite of educative strategies in the lead-up to the referendum, will require the AEC to work in partnership with Aboriginal organisations and land councils, and the CLC would be pleased to assist in this work.

The content of the pamphlet, however, should be altered so that it no longer includes ‘yes’ and ‘no’ cases as written by politicians. Instead, the pamphlet should be simple, short and accessible to all voters. The most recent referendum pamphlet in 1999 was none of these things – it contained complex language, was confusingly structured, was 38-pages long and the interpreting services listed did not include any Aboriginal languages.^{xv}

To ensure the pamphlet properly and impartially educates all voters about the referendum proposal, it we recommend that it:

- a. explains the meaning and effect of the proposed constitutional change;^{xvi}
- b. is no more than four pages;
- c. is written by an independent referendum panel or senior public servants; and
- d. is written in simple English and (in areas where Aboriginal languages are spoken) is also sent out in a version translated into local Aboriginal languages.

Aboriginal language translations should be made into audio recordings that are published on government websites and sent to partner organisations, so they can be used when doing educative work around the referendum and at voting booths.

With a referendum on an Indigenous Voice to Parliament imminent, the need for increased enrolment and participation of Aboriginal and Torres Strait Islander people in the referendum process is more urgent than ever. The CLC believes our recommended amendments to the Referendum Bill will help achieve that aim.

Yours sincerely,



Les Turner
Chief Executive Officer

ⁱ *Referendum (Machinery Provisions) Act 1984*, s 9.

ⁱⁱ Maggie Kavanagh, 2022, ‘Getting the engagement right’ – Report on NPY Women’s Council project with the AEC.

ⁱⁱⁱ Northern Territory Electoral Commission, *2020-2021 Annual Report* ([weblink](#)) 5, 13.

^{iv} Northern Territory Electoral Commission, *2020-2021 Annual Report* ([weblink](#)) 5, 13.

^v Commissioner Loganathan, Northern Territory Estimates Committee, 14 June, 2022, ([weblink](#)) 6.

^{vi} *Referendum (Machinery Provisions) Act 1984*, s 51(5).

^{vii} Maggie Kavanagh ‘Getting the engagement right’ – Report on NPY Women’s Council project with the AEC 2022, 14.

^{viii} *Electoral and Referendum Amendment (Prisoner Voting and Other Measures) Act 2004* (Cth).

^{ix} Australian Bureau of Statistics, *Prisoners in Australia 2018* ([weblink](#)).

^x Martin Churchill, *Voting Rights in Prison: Issues Paper*, The University of Queensland, 15 July 2020 ([weblink](#)).

^{xi} Assistant Minister to the Prime Minister, Hansard (1 December 2022) p13, ([weblink](#)).

^{xii} Digital Inclusion Index, First Nation ([weblink..](#)).

^{xiii} Lee Robinson and Samantha Jonscher, *Phone, internet outages in remote Central Australia leave residents without access in emergencies*, ABC News, 9 June 2022 ([weblink](#)); Samantha Dick, *Remote Northern Territory community of Wadeye hit by second Telstra mobile service outage in a fortnight*, ABC News, 14 February 2022 ([weblink](#)).

^{xiv} Central Land Council, *Indigenous Digital Inclusion Discussion Paper Submission from the Central Land Council*, November 2021, 8 ([weblink](#)).

^{xv} AEC, *Yes/No Referendum ’99* ([weblink](#)).

^{xvi} For more on how this could be achieved, see Dr Paul Kildea, *Submission into the Inquiry into constitutional reform and referendums*, 6 August 2021, p 5-7 ([weblink](#)).