



Electoral Commissioner

Senator Dean Smith
Senator for Western Australia
Parliament House
CANBERRA ACT 2600

Dear Senator Smith

I refer to our discussions last week about a number of issues concerning the conduct of the referendum on recognition of local government in the Constitution, including the history of referendums in Australia and questions surrounding the date on which a combined election and referendum or a standalone referendum can be put.

A number of copies of a CD produced by the Australian Electoral Commission *Australian Referendums 1906-1999* have been provided to your office. The CD contains useful information on the conduct of past referendums, including layout of the pamphlets.

There were questions raised concerning referendum timing. Consideration of this issue involves the interaction of section 128 of the Constitution with the machinery provisions contained in the *Referendum (Machinery Provisions) Act 1984* (the RMP Act). In addition, where the referendum is conducted at the same time as a federal election, there is also interaction with the provisions of the *Commonwealth Electoral Act 1918* (Electoral Act). As the Australian Electoral Commission (AEC) does not administer the Constitution, I am unable to provide advice on its interpretation and you will need to obtain your own legal advice. However, the following sets out the AEC's understanding of the effect of the above legislation on the timing of the proposed referendum.

In short, the AEC's understanding is that the earliest date on which polling day could occur for a combined election/referendum is 14 September 2013. However, for a standalone referendum the earliest date on which polling day could occur is 28 September 2013. Let me set out the basis of the above conclusion.

The Constitution Alteration (Local Government) 2013 Bill (the Bill) was passed by Parliament on 24 June 2013. Section 128 of the Constitution requires that the proposed law for the alteration of the Constitution must be "submitted" to electors "not less than two nor more than six months after its passage". Accordingly, no ballot papers for a referendum can lawfully be issued by the AEC until after the two month period has elapsed on 24 August 2013.

The AEC has advice that the sending of ballot papers to electors for early voting results in the proposed law having been submitted to electors. This means that it is not just the general polling day for the voting in the referendum that must be within the time period specified by section 128 of the Constitution, but that the commencement of early voting must also be within this time period.

Section 58 of the RMP Act states that the AEC "shall send" out the referendum ballot papers to registered general postal voters for a standalone referendum at the time of the public announcement of the referendum or the issuing of the referendum writs whichever is earlier. As the Bill containing the proposed law passed the Senate on 24 June 2013, this means that the AEC would be unable to comply with the two month rule contained in section 128 of the Constitution if the referendum writs or the announcement occurs prior to 24 August 2013. Referendum writs issued on or after 24 August 2013, and which specify a minimum 33 day period in accordance with section 9 of the RMP Act would result in a 28 September 2013 polling day for a standalone referendum.

However, in a joint election/referendum, section 59 of the RMP Act applies. This section states that the section 58 requirement for the AEC to send out ballot papers to registered general postal voters does not apply and that the timeframes contained in the Electoral Act regulate the start of early voting. For registered general postal voters this means that the ballot papers are only sent out in week 3 after the issuing of the writs for the election. Week 3 in an election timetable follows the close of rolls, the declaration of the nomination of candidates and the printing of the election ballot papers. Accordingly, for election/referendum writs issued on 12 August 2013 for a combined election/referendum, and which specify a minimum 33 day election period, would result in a polling day on 14 September 2013. In this scenario, the referendum and election ballot papers would be sent out by the AEC for early voting after the two month minimum deadline that arises from the operation of section 128 of the Constitution has passed.

As advised to your Electorate Officer, Ms Orrell, we will respond to issues as they arise through updates to the frequently asked questions on the AEC's website [Referendum booklet frequently asked questions - Australian Electoral Commission](#).

Yours sincerely
Signature removed

Ed Killesteyn

1 July 2013