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22 May 2023

Referendum ballot paper formality issues

1. The Australian Electoral Commission (AEC) has requested advice about issues relating to the formality of ballot papers under the *Referendum (Machinery Provisions) Act 1984* (RMPA).

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Q3

Are ticks in relation to one question (as opposed to the four that were considered in the '88 advice) formal?

Q4

Are crosses in relation to one question (as opposed to the four that were considered in the '88 advice) formal?

4. A referendum ballot paper posing only one question:
- marked with a tick should be treated as formal, and
 - marked with a cross should be treated as informal.

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(h) where there is an 'X' in the box, but with an affirmative statement elsewhere on the paper

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10. As for (h), the content of the affirmative statement and its juxtaposition to the 'X' in the box would be significant to determining the formality of the ballot paper. If the affirmative statement made it clear that the 'X' in the box was intended to convey approval for the constitutional alteration, the ballot would likely be formal.

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Q3

Are ticks in relation to one question (as opposed to the four that were considered in the '88 advice) formal?

Q4

Are crosses in relation to one question (as opposed to the four that were considered in the '88 advice) are formal?

23. We address Questions 3 and 4 together.
24. A referendum ballot paper posing only one question marked with a tick should be treated as formal. This is because it is equivalent to a ballot paper marked 'Yes'. However, a ballot paper posing only one question marked with a cross should be treated as informal because it provides no clear indication of the voter's intention. This is because a cross may be used, by itself, variously to denote approval or disapproval. We note that AGS has advised in the past that a cross will not be informal where used in juxtaposition to a tick on a multi-question ballot paper.

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(h) where there is an 'X' in the box, but with an affirmative statement elsewhere on the paper

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36. For (h), and assuming that the ballot paper was only asking 1 question, we think that the content of the affirmative statement and its juxtaposition to the 'X' in the box would be significant to determining the formality of the ballot paper. If the affirmative statement made it clear that the 'X' in the box was intended to convey approval for the constitutional alteration, the ballot would be formal.

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