

**AEC**

Australian Electoral Commission

Electoral Commissioner

The Hon Tony Smith MP
Speaker of the House of Representatives
Parliament House
CANBERRA ACT 2600

Dear Mr Speaker

I thought it prudent to update my earlier advice (17 May) regarding factors for consideration when setting a date for the current round of by-elections. This letter should be read in conjunction with that earlier communication. At the outset, allow me to reiterate that the date for the by-elections is, within legislative parameters, at your discretion. The Australian Electoral Commission (AEC) stands ready to conduct those events in accordance with your instructions on any legislatively appropriate date, and the information in this letter is provided by way of advice.

As at today, the next legally possible date for the by-elections is 30 June 2018: for this to occur you must issue the Writ by 6 pm, 28 May 2018. In the absence of any other relevant considerations, the AEC is ready and would be able to conduct the by-elections on that date. However, there are two issues canvassed in my earlier letter (changes to the nominations process and school holiday periods in each of the affected states) which you may care to weigh when selecting a polling day.

Nominations Process

As mentioned, I endorse the changes contained in the recent bipartisan report of the Joint Standing Committee on Electoral Matters (JSCEM). Strengthening the nominations process will provide citizens with an additional level of assurance about the electoral process. Since my previous letter, the mooted changes to the nomination process have firmed. I have been informed by the Department of Finance that the Special Minister of State has signed the proposed Regulation enshrining changes to the nomination process with the aim of ensuring candidates comply with their obligations under section 44 of the Constitution. I am further informed that the Opposition were provided with the opportunity to view those documents.

The Regulation is currently scheduled for Federal Executive Council consideration on 29 May 2018. Regardless of the date of submission to the Federal Executive Council, the AEC will require time to implement, fully and lawfully, the proposed changes to the nominations process. Given that candidates can nominate from the date of Writ issue, the changes should be in place and functional before that time to ensure applicability to all candidates.

Without pre-empting the outcome of the Federal Executive Council, the AEC is already planning the implementation of the changes. To that end, I have established a 'Nominations Modernisation Taskforce' to drive this relatively straightforward but nonetheless multi-step process. For example, the AEC needs to develop a form which will be made available online that is comprehensible to all candidates, whilst still being legally compliant with the Regulation. As an aid to transparency, relevant information from those forms will need to be capable of being extracted and published. Additionally, the AEC is required to develop educative materials for candidates and parties.

The changes will need to be communicated to all relevant stakeholders, including responding to enquiries, as well as advertising the changes in the affected states. Importantly, prospective candidates will need adequate time to digest the changes and prepare their nomination material. Independent candidates, without access to the resources of a political party, are especially likely to require additional time to comply. Rushing the process may risk providing an advantage to the major parties and disenfranchising independent and minor party candidates.

The AEC estimates that it requires approximately two weeks to implement these changes. Of course, should you desire, we will respond to a shorter period of time, although I note the potential impact on the ability of candidates to comply if implementation is significantly truncated.

School Holidays

My earlier advice contemplated the impact of diverse school holiday dates across the four states where by-elections are to occur. In brief, 30 June marks the start of the school holiday period in two of the affected states (WA and Qld) and 7 July is the start of school holidays for the two remaining states (SA and Tas). In that advice, I pointed out that elections can be held in school holiday periods (and have been held previously) and the AEC stands ready and willing to conduct by-elections in that period if you so direct. However, it should be noted school holiday elections do create additional difficulties for voters who travel during the election period. This is particularly the case for by-elections where there are not the same number of alternative voting options available as at a full election: this creates an attendant risk of disenfranchisement and possible lower turnout.

Possible Date

In my view, the combined factors outlined in this letter are substantially different from the three recent by-elections the AEC conducted (where Writs were able to be issued relatively soon after the resignations of each of the Members). Accordingly, whilst the AEC would not normally advocate for a specific date, I have suggested one here in recognition of these unique circumstances.

In order to enable proper implementation of the changes, and avoid the entire school holiday period in each of the states, a delay to Writ issue and polling day is necessary. This would accomplish three things: it provides sufficient time for the AEC to implement the changes; enables prospective candidates to comply with the new requirements; and ensures that voters are not disenfranchised. To achieve these outcomes, a 28 July poll date is optimal. I also note that selection of this date should enable the new Members to be in Parliament in time for the August sittings – depending on possible recounts (there are no sitting days in July or early August).

If you agree with 28 July, a Writ could be issued between 8–25 June. As you are aware, you also have the option to issue a Writ with the maximum period for nominations, to allow more time for candidates to understand the changes and fully comply with their obligations. Given the permutations for associated dates, I again suggest the AEC's Chief Legal Officer liaise with the Clerk of the House regarding timings for Writ issue, close of nominations and other significant dates.

My aim in providing this advice is not to become involved in the politics associated with the by-elections (or, indeed, any election): that is a matter for candidates, parties and the press. Rather, the

AEC's role is to provide you with advice on key factors for consideration as you decide on an appropriate date for the by-elections. As is always the case, the AEC's advice has a voter and candidate centric focus to ensure that the franchise is maintained. The AEC remains ready to respond to any date you select, and I am happy to provide any additional advice required.

Yours sincerely

Tom Rogers

23 May 2018