



**NORTHERN
LAND COUNCIL**

**Submission to the Joint Standing Committee
on Electoral Matters**

Inquiry into the 2022 Federal election

October 2022

1. Introduction

The Northern Land Council (NLC) welcomes the Inquiry into the 2022 Federal election and in particular consideration of ‘encouraging increased electoral participation and lifting enfranchisement of First Nations People’, which is the subject of this submission.

The submission focuses on remote Aboriginal communities for the following reasons:

- In stark contrast to every other Australian jurisdiction, the majority (77%) of Aboriginal people in the NT live in remote or very remote areas;¹
- This demographic is the most disenfranchised in terms of electoral participation; and
- They face unique barriers to increasing electoral participation.

The NT has just two Australian electoral divisions: Solomon, which covers Darwin and much of Palmerston, and Lingiari, which covers the remainder of the NT. Of all Australian electoral divisions, Lingiari has by far the highest proportion of its population being Aboriginal (41.7% according to the 2016 census), two and a half times that of the next highest.² Hence, more than anywhere else in Australia, the Aboriginal population of remote NT has the potential to have electoral power.

This power remains under-utilised. The Australian Electoral Commission (AEC) estimates almost 14,000 eligible Aboriginal people in the NT are not on the electoral roll;³ given the Aboriginal population has historically been undercounted in the Census, the NLC anticipates the real rate is higher. However, the need to increase the rate of enrolment only reflects part of the story. Lingiari consistently has the lowest turnout of enrolled voters in the country, just 67% in 2022.⁴ Taking into consideration both lower enrolment and lower voting, Australian National University research concluded: ‘It is possible to suggest that perhaps only half of eligible Aboriginal citizens in Lingiari may be utilising their right to vote’.⁵

With the Prime Minister committing to hold a referendum on the Voice to Parliament within the current term of government, the need to address Aboriginal disadvantage in electoral participation – in terms of both enrolment and voting – has taken on a new urgency. It is imperative that all eligible Aboriginal people have the opportunity to have their say.

The disenfranchisement of Aboriginal people from electoral participation is longstanding and won’t be resolved with quick fixes. It requires a concerted effort and long-term commitment to address barriers and overcome the mistakes of the past, while also ensuring policy and legislative changes don’t serve to further the divide (for example, the proposed 2021 ‘voter ID laws’).

Under the National Agreement on Closing the Gap Priority Reform 3, the Commonwealth has committed to transforming its organisations, including eliminating racism and improving

¹ NT Government 2022, ‘Northern Territory economy’, <https://nteconomy.nt.gov.au/population>, 10 October 2022.

² Sanders, W. 2019, *Electoral administration and Aboriginal voting power in the Northern Territory: Reality and potential viewed from the 2019 Federal election*, Australian National University.

³ AEC 2022, ‘Indigenous enrolment rate’, https://www.aec.gov.au/Enrolling_to_vote/Enrolment_stats/performance/indigenous-enrolment-rate.htm, accessed 10 October 2022.

⁴ AEC 2022, ‘Tally room 2022 Federal election’, <https://results.aec.gov.au/27966/Website/HouseDivisionPage-27966-306.htm>, accessed 4 October 2022.

⁵ Sanders, op cit.

engagement with Aboriginal and Torres Strait Islander people.⁶ In the case of the AEC, this should mean removing any structural racism in the electoral process, which includes understanding and addressing differences between remote Aboriginal communities and other demographics.

The NLC has been in discussions with the AEC about establishing a formal partnership between the two organisations and looks forward to working in close collaboration to reduce the barriers to Aboriginal electoral participation.

1.1 Recommendations

1. Provide adequate resourcing to develop and implement electoral participation programs for Aboriginal people across the NT.
2. Roll out civic and electoral education programs designed for different cohorts, including 12 to 18 year olds.
3. Indigenous Electoral Participation Program should work with land councils and local Aboriginal organisations to develop innovative, place-based, participatory approaches, including local workforces.
4. AEC make publicly available the development, monitoring and assessment methodologies and rationale for the Federal Direct Enrolment and Update trial, to inform future efforts.
5. Amend the Commonwealth Electoral Act 1918 to enable eligible unenrolled voters to be enrolled and have their votes admitted during the scrutiny process.
6. Conduct a trial of extended voting services for Federal elections through community-staffed voting centres that provide access to ballot boxes over a period of weeks.
7. Consider introducing optional preferential voting.
8. Consider removing the restriction on prisoners voting.

1.2 About the Northern Land Council

The NLC was established in 1973. Following the enactment of the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth), the NLC became an independent statutory authority responsible for assisting Aboriginal people in the northern region of the Northern Territory to acquire and manage their traditional lands and seas.

The Land Rights Act combines concepts of traditional Aboriginal law and Australian property law and sets out the functions and responsibilities of the Land Councils. A key function of the NLC under the Act is to express the wishes and protect the interests of Aboriginal people throughout its region.

The NLC is also a Native Title Representative Body under the *Native Title Act 1993* (Cth).

⁶ <https://www.closingthegap.gov.au/national-agreement/priority-reforms>, accessed 3 October 2022.

The NLC represents more than 51,000 Aboriginal people. Within its jurisdiction, it assists Traditional Owners⁷ by providing services in its key output areas of land, sea and water management; land acquisition; minerals and petroleum; community development; Aboriginal land trust administration; native title services; advocacy; information and policy advice.

The NLC's vision is for a Territory in which the rights and responsibilities of every Traditional Owner are recognised and in which Aboriginal people benefit economically, socially and culturally from the secure possession of their lands, seas, waters and intellectual property. Our mission is to ensure Aboriginal people in the NLC's region acquire and manage their traditional lands, seas and waters, through strong leadership, advocacy and management.

2. Encouraging increased electoral participation

Concerns about barriers to the participation of remote Aboriginal people have been raised by NLC's constituents, discussed by our Council members, and brought to the attention of the Special Minister of State, the Hon. Don Farrell, by our Chairman.⁸

Prior to this year's Federal election the NLC actively encouraged our Council members and constituents to both enrol and vote, including raising awareness through an extensive social media campaign.

In August 2022, the Executive Councils of the four NT Land Councils passed a joint resolution to work with the AEC and the NT Electoral Commission (NTEC) to establish a working group with the role of identifying actions and making recommendations to address the key issues impacting Aboriginal participation in elections.

Without pre-empting the findings of that working group, the remainder of this submission outlines a number of areas the NLC believes should be addressed to support the increased electoral participation of Aboriginal people in the NT.

2.1 Indigenous Electoral Participation Program (IEPP)

Funding for the AEC's IEPP was substantially cut following the 2017 Federal budget, with staff numbers in the AEC Darwin office reduced from sixteen to three and the field enrolment program disbanded. This was despite a report on the 2016 Federal election identifying that the division of Lingiari had the lowest voter turnout in Australia at every House of Representatives election since 2001.⁹ Since then, turnout in Lingiari has continued to fall – from 73.7% in 2016, to 72.85% in 2019¹⁰ and 66.83% in 2022¹¹. Given the IEPP was established to 'close the gap in Indigenous disadvantage in

⁷ For the purposes of this submission, the term Traditional Owner includes traditional Aboriginal owners (as defined in the *Aboriginal Land Rights (Northern Territory) Act 1976*, native title holders (as defined in the *Native Title Act 1993*) and those with a traditional interest in the lands and waters that make up the NLC's region.

⁸ Letter of 5 September 2022.

⁹ AEC undated, *Voter turnout: 2016 House of Representatives and Senate elections*, p12, https://www.aec.gov.au/about_aec/research/files/voter-turnout-2016.pdf, accessed 4 October 2022.

¹⁰ AEC 2019, 'Tally room 2019 Federal election', <https://results.aec.gov.au/24310/Website/HouseDivisionPage-24310-306.htm>, accessed 4 October 2022.

¹¹ AEC 2022, 'Tally room 2022 Federal election', <https://results.aec.gov.au/27966/Website/HouseDivisionPage-27966-306.htm>, accessed 4 October 2022.

electoral participation’,¹² the reduction of its services in the NT was disappointing. Concerns were raised by both sides of politics as well as the NTEC.¹³

The NLC notes that prior to the 2022 Federal election the IEPP was provided modest additional funding, and that subsequent to the election further funding has been provided.

It is important to recognise the effect of the long-term (since at least the mid-1990s) under-provision of electoral education and information to remote communities; anecdotal reports indicate there are generations of community members who have never received adequate – or any – electoral or civic education services. This is not due to lack of interest. Research into electoral engagement and education in three remote Aboriginal communities in the NLC’s region, undertaken by Charles Darwin University, found that: ‘A good majority of those interviewed see participation in electoral processes as an important aspect of being an Aboriginal Australian’.¹⁴ It also noted: ‘Voters’ concerns around how to better understand the purpose of voting, the “underneath stories” of parties and policies and how to effectively judge the achievements of past or incumbent politicians, emerged as just as significant as concerns around literacy and numeracy at the ballot box’.

While this submission focuses on the needs of Aboriginal people living in the more remote parts of the NT, issues of enrolment and participation also affect populations in larger towns, and their service requirements need to be considered.

Attention should also be paid to those community members not yet eligible to enrol, with services and programs targeted to the 12 to 15 and 15 to 18 year-old cohorts rolled out as a priority. The Charles Darwin University research noted ‘an emphasis on finding ways of inducting young people into the rationale and processes of democratic elections’.¹⁵

Recommendation 1: Provide adequate resourcing to develop and implement electoral participation programs for Aboriginal people across the NT.

Recommendation 2: Roll out civic and electoral education programs designed for different cohorts, including 12 to 18 year olds.

2.2 Solutions specific to remote Aboriginal communities

Close attention should be paid by the AEC to establishing partnerships with local organisations that can act as cultural brokers and provide appropriate and informed assistance. A report commissioned by the Ngaanyatjarra Pitjantatjara Yankuntjatjara Women’s Council identified the need for bespoke services that recognise and are tailored to the particular cultural, linguistic and demographic circumstances of Aboriginal communities.¹⁶

¹² AEC 2022, ‘Indigenous Electoral Participation Program’, <https://www.aec.gov.au/indigenous/iepp.htm>, accessed 4 October 2022.

¹³ ABC News 2018, ‘NT politician blames AEC cuts for constituents being denied chance to enrol to vote’, <https://www.abc.net.au/news/2018-12-17/voter-participation-enrolled-lingiari-snowdon-jacinta-price/10620932>

¹⁴ Spencer, M. and Christie, M. 2020, *Remote Engagement Coordination – Indigenous Evaluation Research (REC-IER) Phase 2: Electoral Engagement and Education*, Northern Institute, Charles Darwin University.

¹⁵ Ibid.

¹⁶ Kavanagh, M 2022, ‘Getting the engagement right’ – Report on NPY Women’s Council project with the AEC.

This view was echoed in the Charles Darwin University research, which found what was considered good electoral engagement varied slightly in each community but consistently included the involvement of local people and local solutions.¹⁷

The research report recommended:

‘[Local electoral assistants] be employed to deliver voter education for days or weeks before polling, in local languages, with a focus on the actual polling process. This expanded role may include senior people engaged on the basis of their cultural authority, and their ability to work across and through different governance traditions in engaging community members around electoral participation and voting.

That the NTEC (and AEC) employ local voter education teams through local research organisations or language centres, and engage them for a few hours a week for a couple of months to alert people to forthcoming elections.’

It is important that communications material be culturally appropriate and designed to meet the needs of remote communities in the NT, where English is often a second, third or sixth language and literacy levels may be lower than in urban areas. Consideration should be given to presenting information in alternative formats, such as visual and oral representations.

Recommendation 3: IEPP should work with land councils and local Aboriginal organisations to develop innovative, place-based, participatory approaches, including local workforces.

2.3 Federal Direct Enrolment and Update (FDEU)

The *Commonwealth Electoral Act 1918* was amended in 2012 to enable FDEU, in order to improve the AEC’s capacity to maintain an accurate electoral roll.¹⁸ The program proved to be successful, accounting for more than 278,000 new enrolments between the 2013 and 2016 elections.¹⁹ However, the AEC’s decision to only apply FDEU in areas where mail delivery is to individual street addresses effectively excluded most remote Aboriginal communities in the NT, where mail is frequently delivered to post office boxes or in a single community mail bag.²⁰

In 2021, two of NLC’s constituents lodged a complaint to the Australian Human Rights Commission, saying the AEC’s application of FDEU ‘suppressed or inhibited’ Aboriginal people in remote communities and thereby amounted to discrimination.²¹

The recent announcement of the FDEU trial across 63 remote sites in the NT, Western Australia and Queensland is welcome, but advice that this program will be limited to 800 people is disappointing.

¹⁷ Spencer, M. and Christie, M. 2020, op. cit.

¹⁸ AEC, 2013, ‘Direct enrolment and direct update: the Australian experience’, https://www.aec.gov.au/about_aec/research/direct.htm, accessed 7 October 2022.

¹⁹ Commonwealth of Australia 2018, *Report on the conduct of the 2016 federal election and matters related thereto*, Joint Standing Committee on Electoral Matters.

²⁰ Sanders, W. 2019, op cit.

²¹ See, for example, ABC News 2021, ‘Indigenous voters lodge discrimination complaint against the Australian Electoral Commission’, <https://www.abc.net.au/news/2021-06-19/nt-voters-racial-discrimination-human-rights-commission/100227762>, accessed 7 October 2022.

The NLC understands the remote FDEU rollout is being run by the AEC's Enrolment section rather than the IEPP. There have been concerns in the past about the degree of effective cooperation and coordination across the AEC sections and between staff in regional offices and Canberra. The NLC urges the AEC to ensure improved collaboration in implementing the FDEU trial.

A related and key issue is the need to ensure external awareness of methodologies used by the AEC in the development, monitoring and assessment of these important programs. The NLC also has concerns that FDEU letters sent to a community mailbag may be returned if the intended recipient fails to collect it promptly, and that person will then not be enrolled.

The NLC supports the application of FDEU in remote communities, contingent upon protections being put in place to ensure punitive responses are not applied to community members who fail to vote.

Recommendation 4: AEC make publicly available the development, monitoring and assessment methodologies and rationale for the FDEU trial, to inform future efforts.

2.4 Provisional voting for unenrolled voters

The cuts to the IEPP and the failure of the FDEU to capture remote communities prompted the NTEC to seek changes to NT legislation to address inadequate enrolment of Aboriginal people in remote areas. The *Electoral Act 2004* (NT) was amended in 2019 to enable unenrolled voters who attend a voting centre to cast a declaration vote and have their enrolment assessed and processed during the scrutiny/count period. Those found eligible are enrolled and their vote admitted to the count. This differs from all other jurisdictions, where if a voter is found to be unenrolled, their enrolment is updated but their vote is rejected.²² This process was first implemented at the 2020 NT election and following similar amendments to the *Local Government Act 2019* (NT) is also in place for local government elections.

The NTEC's report on the 2020 NT election states: 'The high number of provisional declaration votes admitted to the count in 2020 demonstrates that the legislated changes to provide eligible voter the chance to vote have been effective'.²³ The report shows that in 2016, 83% of 2,806 declaration votes lodged were rejected because the voter was not found on the electoral roll. In the 2020 election, this fell to just 7% of 2,150 votes rejected due to voter ineligibility. The six NT divisions with the highest numbers of voters added to the electoral roll through this process were all remote, with a combined 978 remote voters added in those six divisions alone. The 2021 local government elections saw a further 1,197 enrolments added through the provisional voting process.

Recommendation 5: Amend the *Commonwealth Electoral Act 1918* to enable eligible unenrolled voters to be enrolled and have their votes admitted during the scrutiny process.

2.5 Concerns about mobile polling booths

The complaint to the Human Rights Commission cited earlier in this submission also raised concerns about access to ballot boxes for shorter periods of time in Aboriginal communities.²⁴

²² Northern Territory Electoral Commission, personal communication.

²³ Northern Territory Electoral Commission 2021, *2020 Territory Election Report*, p40.

²⁴ ABC News 2021, op. cit.

Researchers from the Australian National University found that of 205 AEC remote mobile polling booth locations in Lingiari during the 2022 Federal election, remote area polling teams were present at 154 locations for four hours or less. This included 95 locations in which polling booths were present for a single hour.²⁵

As noted by NLC's Chairman in the lead-up to the 2022 Federal election, 'This short window for voting does not take into account daily life in remote communities where people have other commitments, including work, childcare, travel as rangers and so on, as well as important cultural obligations'.²⁶

The lack of provision of interpreters at polling centres exacerbates this issue. As Dr Miriam Rose Ungunmerr Baumann told the ABC: 'The majority of people were confused and wanted someone to sit with them to explain the system'.²⁷

The NLC suggests the NTEC's approach of community voting centres could offer a useful model. This involves partnering with local councils to employ community officers who run all aspects of elections except the count, with council staff trained as electoral officers. In the 2021 NT local government elections, this allowed the NTEC to provide over 1000 additional hours of voting services than would otherwise have been the case, including early voting centres – this was the difference between having four hours to vote, and four days to vote.²⁸

Recommendation 6: Conduct a trial of extended voting services for Federal elections through community-staffed voting centres that provide access to ballot boxes over a period of weeks.

2.6 Additional barriers

The NLC believes the following additional barriers to full participation of Aboriginal people in the NT should be addressed:

- Lack of identification is a significant issue for many Aboriginal people in remote communities and presents a barrier to electoral enrolment. The NLC welcomes the current initiative of the IEPP working with the NT Government's Births, Deaths and Marriages office and DriveSafeNT to provide community members free birth certificates, access to driver training and electoral enrolment. On the limited information available this sounds like a useful approach but it remains to be seen how effective it will be.
- Rates of informal votes in remote Aboriginal communities are disproportionately high.²⁹ While education can go some way to addressing this issue, consideration should be given to optional preferential voting. This was briefly introduced by the NT Government for the 2016 election, in an attempt to reduce the level of informal voting, only to be removed again in

²⁵ Morgan Harrington and Francis Markham, personal communication.

²⁶ ABC News 2021, op. cit.

²⁷ ABC News 2022, 'Lack of interpreters and "unprecedented" challenges leave some remote NT voters in the lurch this election', <https://www.abc.net.au/news/2022-05-21/aec-no-interpreters-small-time-window-aboriginal-vote-election/101083240>, accessed 10 October 2022.

²⁸ Morgan Harrington and Francis Markham, personal communication.

²⁹ Harrington, M. 2022, 'Barriers to voting in remote First Nations communities', Australian National University <https://www.anu.edu.au/news/all-news/barriers-to-voting-in-remote-first-nations-communities>, accessed 10 October 2022.

2019 for consistency with local and federal election processes.³⁰ These changes have likely caused confusion for voters.

- Under the *Commonwealth Electoral Act*, a person serving a prison sentence of three years or longer is not entitled to vote. Given 84% of adult prisoners in the NT are Aboriginal³¹ and the NT has Australia's second highest rate of Aboriginal and Torres Strait Islander imprisonment,³² this restriction disproportionately affects Aboriginal people.

Recommendation 7: Consider introducing optional preferential voting.

Recommendation 8: Consider removing the restriction on prisoners voting.

³⁰ Parliament of Australia 2020, 'The 2020 Northern Territory election: a quick guide', https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp2021/Quick_Guides/2020NTElection, accessed 7 October 2022.

³¹ *Pathways to the Northern Territory Aboriginal Justice Agreement*, https://justice.nt.gov.au/data/assets/pdf_file/0010/728164/aim1-Reduce-reoffending-and-imprisonment.pdf, accessed 7 October 2022.

³² Australian Bureau of Statistics 2022, 'Corrective Services, Australia', <https://www.abs.gov.au/statistics/people/crime-and-justice/corrective-services-australia/latest-release>, accessed 7 October 2022.