

Joint Standing Committee on Electoral Matters

Inquiry into Referendum (Machinery Provisions) Amendment Bill 2022

Department of Finance

Response to Question on Notice

Hearing of 19 December 2022

Question on Notice 1 (Proof Hansard page 1)

Senator McGRATH: When was the department asked to develop policy options for amendments to the Referendum Machinery Act?

Mr Williamson: I don't have the exact date, but, not long after the election of the government, we began work on looking at updating the referendum act to bring it into line with the Electoral Act.

Senator McGRATH: Perhaps, on notice, you could find out the exact date. Who asked you to develop the policy options?

Response

The Department of Finance refers to its supplementary submission dated 9 January 2023.

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Question on Notice 2 (Proof Hansard Page 2)

Senator McGRATH: But someone would have asked you to undertake this work. I take your answer that you were doing some work based on the government's position, but I want to know who instructed you to undertake this work.

Mr Williamson: I'll have to take that on notice.

Response

Refer to question 1.

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Question on Notice 3 (Proof Hansard page 2)

Senator McGRATH: Did this decision stem from a decision of Cabinet or of a subcommittee of Cabinet?

Mr Williamson: The matter has been considered by Cabinet, but I can't go any further into it than that.

Senator McGRATH: Do you know on what date?

Mr Williamson: No.

Senator McGRATH: On notice, could you advise on what date?

Mr Williamson: Yes, I'll take that question on notice.

Senator McGRATH: Just to clarify, the work that you've undertaken did stem from a request from the Special Minister of State?

Mr Williamson: I would have to go back and look at exactly how it unfolded. I wouldn't want to mislead the committee. As I said, the government had a very clear policy position on this. On their election, we begin working on all election commitments, including this particular election commitment where we have the direct responsibility for the machinery of the referendum. We then had ongoing conversations. It would be very difficult to say, 'On this day at this time this person commissioned this work,' because it's been a rolling series of conversations.

Senator McGRATH: There would have been a brief of some form that the minister would have signed off on authorising the work to be undertaken.

Mr Williamson: There were many briefings on this matter.

Senator McGRATH: But there would have been a formal brief, though. I'm not asking you to go into the details of the brief. I'm saying there would have been a brief in relation to this and there would have been a decision of the minister. Is that correct?

Mr Williamson: There've been many formal briefs on this matter.

Senator McGRATH: Okay. On notice can you list the dates of those briefs?

Mr Williamson: I'll take that on notice.

Response

The *Referendum (Machinery Provisions) Amendment Bill 2022* (the Bill) represents the decisions of Government.

Matters covered by the Bill have been considered by the Cabinet and its subcommittees (the Constitutional Recognition Committee and the Expenditure Review Committee). It has been longstanding recognised practice not to disclose information about the operation and business of the Cabinet and Cabinet Committees, as to do so could potentially reveal the deliberations of the Cabinet, which are confidential.

The Department of Finance provided written briefings on referendum related issues to the Special Minister of State on the following dates:

- 2 June 2022;
- 4 July 2022;
- 22 August 2022;
- 27 September 2022;
- 28 September 2022;
- 30 September 2022;
- 14 October 2022;
- 26 October 2022;
- 14 November 2022;
- 21 November 2022; and
- 23 November 2022.

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Question on Notice 4 (Proof Hansard page 2)

Senator McGRATH: When was the department first tasked with undertaking the drafting of this legislation?

Mr Williamson: I need to take that on notice.

Response

Refer to question 1.

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Response to Question on Notice

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Question on Notice 5 (Proof Hansard page 2)

Senator McGRATH: And can you state who tasked you to undertake the drafting of the legislation, and did it stem from a decision of cabinet or a subcommittee of cabinet?

Mr Williamson: I'll take that matter on notice.

Response

Refer to questions 1 and 3.

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Question on Notice 6 (Proof Hansard page 2)

Senator McGRATH: And on what date? To clarify, in terms of the drafting of the legislation, if it did come from a minister's office if you could state on which date and which minister and whether their request came through following approval from the Prime Minister. If you could take those on notice, please.

Response

Refer to questions 1 and 3.

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Question on Notice 7 (Proof Hansard Page 3)

Senator McGRATH: When would you have first consulted the Australian Electoral Commission?

Mr Williamson: I'd have to take that on notice, again, but it would have been many months ago.

Response

The Department of Finance first consulted the Australian Electoral Commission in June 2022.

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Department of Finance

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Question on Notice 8 (Proof Hansard page 3)

Senator McGRATH: Okay. Is the department aware of any bodies or organisations that have been established with the sole purpose of organising electoral activities for the referendum?

Mr Williamson: Not off the top of my head, but I'll take that on notice.

Response

No.

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Question on Notice 9 (Proof Hansard Page 4)

Senator McGRATH: Can I go back to the previous answer in relation to the involvement of the Prime Minister's office in relation to consultation. Just to clarify: you said you'd had no conversations with the Prime Minister's office.

Mr Williamson: Correct.

Senator McGRATH: Has anyone in the department had conversations?

Mr Williamson: I believe the Prime Minister's office have been involved in some of those broader discussions that have occurred between departments and the government.

Senator McGRATH: So the Prime Minister's office has had conversations and meetings?

Mr Williamson: Yes. As I said, there have been a number of discussions and meetings along the way. Ministerial offices have been involved in some of those discussions.

Senator McGRATH: If you can list the dates on when those meetings took place with the ministers' offices and the Prime Minister's office, and the attendees—can you take that on notice, please?

Response

Department of Finance officials and officials of other entities attended two meetings with staff from ministers' offices and the Prime Minister's office, which included discussion on amendments to the Referendum Act. The meetings occurred on 20 October 2022 and 4 November 2022.

Finance did not organise these meetings and does not have a list of attendees.

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Department of Finance

Response to Question on Notice

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Question on Notice 10 (Proof Hansard page 4)

Senator McGRATH: Is the department aware of any polling or research that has been undertaken by the government?

Mr Williamson: I'm not. I will take that on notice. If it's been undertaken, it has not been undertaken by the Department of Finance and I don't want to speak for others. I will take that question on notice to determine it.

CHAIR: Deputy Chair, I don't want to cut you short but I have a number of members waiting to ask questions. I put you on notice that I'm going to cut you off soon.

Senator McGRATH: The opposition have quite a lot of questions in this area. We might need to have another hearing, if that's the case, to ensure our questions are all put. In relation to research, you've said the department hasn't undertaken any research and you're going to take on notice whether other departments have undertaken polling or research. If you could—

Mr Williamson: For example, we would speak to NIAA. I'm not exactly sure what they've done but they may have done something. That's what I mean.

Senator McGRATH: If you could take on notice what research the department is aware of and by which agency, and, if copies of that research have been supplied to the department, to table a copy of that research before the committee.

Mr Williamson: Yes.

Response

The Department of Finance has not commissioned any polling or research in relation to the referendum.

As part of their work, the Australian Electoral Commission (AEC) and the National Indigenous Australians Agency (NIAA) have advised that they have commissioned research. Questions relating to the scope, purpose and conduct of that research should be directed to the AEC or the NIAA.

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Question on Notice 11 (Proof Hansard page 9)

Senator McGRATH: Following on from some questions asked by Senator Cadell and also by Senator Waters on the pamphlet, where did the request to insert the disapplication of section 11 of the Referendum (Machinery Provisions) Act 1984 originate? This is the suspension of section 11 that has been asked about previously. Where did that come from? Did that originate from a minister's office?

Mr Williamson: As I said earlier, there has been a range of advice put forward to government. There have been a number of discussions and consultations; it's an iterative process. I will take on notice if we can find that exact part. But there have been a number of options put forward to government and discussed with government, and questions coming back, so it's very hard to be able to signal one point where that has occurred. But I'll take it on notice.

Senator McGRATH: You can take it on notice, which minister made the decision and on what date. You have touched on it to an extent, but was the request made in consultation with any other ministers' offices?

Mr Williamson: By us?

Senator McGRATH: Yes.

Mr Williamson: It's come through the work of the last few months. As I said, ultimately the bill presents the government's position. Advice has gone to cabinet, which I've acknowledged. I can't go to the nature of that advice.

Response

The *Referendum (Machinery Provisions) Amendment Bill 2022* (the Bill) represents the decisions of Government. This includes the provision relating to the temporary suspension of section 11 of the *Referendum (Machinery Provisions) Act 1984*.

Matters covered by the Bill have been considered by the Cabinet and its subcommittees (the Constitutional Recognition Committee and the Expenditure Review Committee). It has been longstanding recognised practice not to disclose information about the operation and business of the Cabinet and Cabinet Committees, as to do so could potentially reveal the deliberations of the Cabinet, which are confidential.

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Question on Notice 12 (Proof Hansard page 10)

Senator CADELL: So when referendum questions went through with bipartisan support, were they the ones where only a yes pamphlet was provided?

Mr Williamson: Presumably, yes, but we'll have to take that on notice as we're going back a number of years.

Response

There are two instances where only a 'yes' argument was included in the pamphlet provided to voters. These were in 1967, in relation to the *Constitution Alteration (Aboriginals) Act 1967*, and in 1977, in relation to the *Constitution Alteration (Retirement of Judges) Act 1977*. In both cases, the Bills were passed unanimously by all members and Senators, and as such only a 'yes' pamphlet could be provided.

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Question on Notice 13 (Proof Hansard page 10)

Senator McGRATH: Has the department costed the provision of a pamphlet to all electors?

Mr Williamson: We need to take that on notice. That would be a departure from the households, as you mentioned, so I'm not sure that we would have. But I'll take that on notice.

Senator McGRATH: In relation to the costings for households and for all electors, can you table those costings or provide the figures?

Mr Williamson: I'll take that on notice.

Senator McGRATH: Did the department provide those figures to the government?

Mr Williamson: I'll take that on notice.

Senator McGRATH: The Australian Competition and Consumer Commission has reported that 92 per cent of respondents to its new survey had some concern about the quality of news and journalism they were consuming. Last month it said that analysis had identified concerning consumer and competition harms across a range of digital platform services that are widespread, entrenched and systemic. Noting this, did you provide an option to government to produce a pamphlet outlining the yes and no case to electors at the referendum?

Mr Williamson: That goes to the nature of the advice we provided to government. I will take that on notice.

Senator McGRATH: You can take that on notice, and also: if not, why not?

Response

The Department of Finance provided advice to Government, including on the costs of delivering the referendum. This included advice relating to the pamphlet. This advice was provided in the context of matters considered by the Cabinet and its subcommittees (the Constitutional Recognition Committee and the Expenditure Review Committee). It has been longstanding recognised practice not to disclose information about the operation and business of the Cabinet and Cabinet Committees, as to do so could potentially reveal the deliberations of the Cabinet, which are confidential.

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Question on Notice 14 (Proof Hansard page 11)

Senator McGRATH: I've got a small area I could go to. How does the current scheme for appointing scrutineers and managing electoral workers operate?

Mr Williamson: We'll see if we've got a bit of information there. Some of it has a bit of crossover with the practicalities of the AEC on the day. We'll take that on notice. We're not going to be able to do it quickly for you, I'm sorry.

Mr Powney: I'll make one very quick comment. Scrutineers can be appointed by political parties. There are some particular provisions in the referendum act around the Governor-General appointing a scrutineer and each of the governors of the states. We can give a more fulsome answer to you on notice.

Senator McGRATH: On notice then: how does that scheme differ from the one proposed for the referendum, because we won't have an official 'yes' and 'no' case.

Mr Powney: There's no interaction between the official 'yes' and 'no' case and the appointment of scrutineers. I might also add that the bill presented to parliament doesn't change those requirements.

Senator McGRATH: I think it's quite important that you do take on notice, to assist the deliberations of this committee, answers to that question. Also: under the current scheme, registered political parties will provide for the authorisation of scrutineers beyond those allowed for through appointments made by governors, as you alluded to. I think you've touched upon this: does the proposed legislation seek to change that arrangement? Could you take that on notice, considering the time?

Mr Powney: I could very quickly answer that. The only change that the bill makes to scrutineers at all is just that scrutineers must be appointed in the prescribed form. That's in alignment with the Electoral Act so that scrutineers are appointed in writing.

Senator McGRATH: To assist me, could you take on notice how a citizen of Australia who wishes to scrutineer for this referendum, either at the opening of the ballot boxes or for the actual counting, can become a scrutineer if the changes as proposed by this bill are accepted by parliament?

Mr Williamson: We'll take that on notice.

Response

The *Referendum (Machinery Provisions) Act 1984* provides that the Governor-General, the Governor of a State, the Chief Minister for the Australian Capital Territory, the Administrator of the Northern Territory (or persons authorised by these individuals) may each appoint scrutineers at each place where voting is being conducted, a pre-poll voting office, and a counting centre in Australia (within their relevant jurisdictions).

The registered officer of a registered political party may also appoint persons to act as scrutineers at each place in Australia where voting is being conducted, a pre-poll voting office and a counting centre.

Scrutineers are to be appointed in writing. The only change to current scrutineer arrangements proposed by the *Referendum (Machinery Provisions) Amendment Bill 2022* is that scrutineers must be appointed in the approved form. This aligns the *Referendum (Machinery Provisions) Act 1984* with the *Commonwealth Electoral Act 1918*.