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AEC Submission to the Senate Legal and Constitutional Affairs Committee

Criminal Code Amendment (Protecting Commonwealth Frontline Workers) Bill 2024

This submission highlights the Australian Electoral Commission's (AEC) key remarks on the Criminal Code Amendment (Protecting Commonwealth Frontline Workers) Bill 2024 (the Bill) and notes the increasingly challenging environment in which AEC staff work to deliver safe and trusted Australian federal electoral events.

AEC staff are frontline Commonwealth workers playing a critical role in Australian democracy

The AEC welcomes the Bill's proposal to place Commonwealth frontline workers on the same footing as Commonwealth judicial officers and Commonwealth law enforcement officers and bring them within the aggravated forms of both offences to which higher maximum penalties apply. This appropriately recognises the important roles these workers play in servicing Australians and responds to the heightened risks to safety faced by Commonwealth workers in government service delivery, compliance and other public facing roles such as election service delivery.

The safe and trusted delivery of Australian federal electoral events are fundamental to Australian democracy. AEC staff play a critical role in delivering Australian federal electoral events and maintaining the Commonwealth electoral roll. The Commonwealth electoral roll is also used by state and territory electoral management bodies (EMB). The administration and application of electoral roll as a data source is a large contributor to the AEC's public facing interactions. For example, AEC staff respond to concerns from electors who attend our offices to question why they have been added to the electoral roll as part of the legislated Federal Direct Enrolment and Update Program. The AEC is often also mistaken here for taking actions attributed to a state or territory EMB.

Attracting and retaining staff is critical for the AEC to continue to deliver high quality electoral events which are trusted by Australians. The AEC workforce, which is drawn from all corners of the Australian community, swells to over 100,000 during the polling period. These staff are placed in polling places, mobile polling teams, in logistics roles and in counting centres – interacting with millions of Australians across the country to help deliver the best election possible. They are fundamental to the delivery of the election and to its integrity.

The nature of the AEC as a service delivery agency is such that there are staff who perform frontline work as their regular duties. However, all AEC staff may perform frontline work at different times. This is most common during federal electoral events where any AEC staff member might be deployed at short notice to perform public-facing work. In each case, it is important that our staff are supported to undertake any public facing duties.

The AEC notes the proposed definition of the term 'Commonwealth frontline worker' focuses on the nature of the role being performed, specifically the requirement for the Commonwealth public official to deal directly (whether or not in person) with the public, or a class of the public, as a primary function of their role. Given the nature of our workforce and federal electoral event delivery, the AEC would welcome, for the avoidance of doubt, that all AEC workers be specifically prescribed as a category in the regulations, assuming passage of the Bill. This would appropriately recognise the environment in which AEC staff work and the way in which all AEC staff might be deployed to public-facing roles. This inclusion would make the penalty proportional to the harm to Australian democratic systems, and appropriate to achieve deterrence in relation to senior or high-profile electoral officers

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who may be subject to threats or harm, but are not always primarily performing a frontline role in their day-to-day duties.

The security environment for electoral workers is deteriorating

The electoral integrity environment and the security environment in which electoral workers perform their duties has deteriorated in recent times both in Australia and in other democracies overseas.

There has been a marked increase in those questioning elements of democracy, legitimacy of government agencies and electoral processes and in turn undermining trust in electoral officials and workers.

In the United States, there are recent examples of prosecutions and convictions against persons who have threatened violence against electoral workers. These have included threats against senior electoral officials who did not necessarily have a 'frontline' role as part of their work¹ as well as temporary electoral workers having 'mobs' visit their homes².

In Australia at the 2023 state election in New South Wales, NSW Election Commission workers were harassed while performing their duties and accused of interfering with votes, with the interactions being filmed and circulated on social media platforms³.

These worrying cases highlight the environment in which electoral workers now perform their duties and the need for the policy makers, legislators and law enforcement to continue to do all they can to prevent, deter and disrupt such behaviours. These threats can have an effect both on current AEC staff as well as prospective AEC staff and the community at large, from where the AEC draws its critical and very large temporary workforce to deliver a federal election.

Information environment leading to real world harms

Online false or misleading information about electoral processes invariably does not stay online. It can and does result in real world action and harm. As noted, there has been an increase in the targeting and harassment of Temporary Election Workers (TEW) across Australia who are being exposed to a more polarised environment where they are being filmed, yelled at and harassed in the course of their duties. Some have also been identified and harassed online as a direct result of their work for an electoral management body.

Online platforms are seemingly increasingly averse to moderating content unless specific pieces of criminal legislation are breached. EMBs are therefore finding it progressively more challenging to protect our workers from anything other than the most serious threats to their health and safety. Not only does this put the physical and psychological safety of our people at risk, but it will jeopardise the AEC's ability to recruit our invaluable temporary election workforce and continue to deliver high-quality and trusted elections.

¹ <https://thehill.com/regulation/court-battles/4555454-20-have-been-charged-for-threatening-election-workers-around-the-country-feds/>

² <https://www.reuters.com/world/us/georgia-election-worker-terrorized-by-threats-after-2020-election-2023-12-13/>

³ <https://au.news.yahoo.com/nsw-election-workers-harassed-by-conspiracy-theorists-in-shocking-video-030054116.html>

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Threats that undermine the safety of electoral workers might not meet current thresholds

It is important to note that not all threats that undermine the safety of electoral workers and/or the public's trust in Australian elections might meet the definitions of 'causing harm' or 'threatening to cause serious harm' in the current legislation.

Given the deteriorating environment, the AEC welcomes the Parliament's continued consideration of whether the current offences related to Commonwealth officials, including electoral workers, remain fit for purpose and commensurate with the risks facing electoral workers and maintaining a safe and high-performing electoral workforce.

This is particularly important in a context where online platforms might only remove threatening or harmful content towards electoral workers when the conduct is an unequivocal breach of Australian law, including the Criminal Code. This type of harm is amplified and increased the more that it is shared and publicly available. As a result, there is an important link between the information environment and the Criminal Code even ahead of any possible action taken to prosecute offences. For example, an AEC worker was filmed and harassed in the course of their duties at a counting centre. The filming, posted to social media, targeted the person as being in charge of the centre and also filmed their personal details from their AEC identity card. This harassment or intimidation might not rise to the level of harm currently set out in the Criminal Code, but it still has a serious effect on the staff member involved and other AEC staff, particularly if the social media platform concerned is not willing remove the content in the absence of a clear breach of Australian law, including the Criminal Code.