

Shanaea Hamad

From: s 47F
Friday, 25 August 2023 10:17 AM
To: s 47F
Cc: Social Media; Public Engagement; s 47F Legal Services Mailbox; Rachael Spalding; Andrew Johnson
Subject: FW: Voice Ballot Paper Legal enquiry

Hi s 47F

Please see below (noting that the Leader of the Opposition has been copied to the email). We will consider what response to provide and when (for example, we could provide a copy of the response to the Leader of the Opposition if it's to be made public).

Has your team come across the video in question?

I'm not sure how my name is out there...

s 47F

s 47F | **Principal Government Lawyer**
Electoral Law Section | Legal Services Branch
Australian Electoral Commission
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From: s 47F
Sent: Thursday, August 24, 2023 7:02 PM
To: Legal Services Mailbox <Legal@aec.gov.au>
Cc: Peter.Dutton.MP@aph.gov.au
Subject: Voice Ballot Paper Legal enquiry

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mission

Locked Bag 4007
Canberra ACT 2601

Dear s 47F

The guide received in the mail from AEC showing how to complete the referendum ballot paper, details that writing either "Yes" or "No" in the applicable box will constitute a valid vote.

Today, I have learned from Hon Barnaby Joyce's social media video posting that the AEC will consider a tick in the Yes box a valid "Yes" vote, however a "X" recorded in the no box will be considered an invalid vote.

This is at odds in terms of:

1. Congruence in language and symbol association, where a tick is universally accepted as Yes and the X symbol is used for the concept of error and rejection. **Reference "The Subtle Influence of Check and X Marks: How Symbolic Markings Influence Judgment", Gunwoo Yoon, Patrick Vargas 30 March 2018, Journal of Consumer Psychology**
2. The concept of "intent of the voter" applied by the AEC (as witnessed as a scrutineer), that if the voter intent was clear a technical deficiency on the ballot paper did not invalidate the vote in the Federal election. Based on normal language concepts, an "X" in the No box is a clear indication of the voter intent to record a No vote.

I am seeking a formal response on the following:

1. Why is the AEC proposing an approach in the referendum that clearly ignores the "voter intent concept" that the AEC so readily applied in the general election for the Federal government?
2. Why has the AEC not included this requirement of a "tick" being acceptable in the Yes box, and a "X" not being acceptable in the No box in the referendum booklet distributed recently to the Australian public?
3. What legal basis has the AEC used to make the determination that a mark used in the No box must be a "tick" for the vote to be valid. Please provide copies of the legislative basis on which you rely in making that determination or the legal case present upon which you rely?

I look forward to your formal response.

Yours Faithfully

s 47F