



**THE HON PETER DUTTON MP  
LEADER OF THE OPPOSITION**

Mr Tom Rogers  
Electoral Commissioner  
Australian Electoral Commission  
10 Mort St  
CANBERRA ACT 2600

via email: s 47F

Dear Commissioner,

We are writing to express our serious concerns in relation to how the Australian Electoral Commission intends to assess the formality of votes at the upcoming referendum.

In the referendum, Australians will be asked to write 'yes' or 'no' on the ballot paper. A ballot paper will also be counted as a formal vote if the voter's intention is clear – for example, s 93(9) of the *Referendum (Machinery Provisions) Act 1984* makes clear that a "Y" will count as a yes and a "N" will be accepted as a no.

However, the *Scrutineers Handbook* published in July 2023 goes much further than the example provided above. The handbook indicates that while a tick will likely be treated by the AEC as a 'yes' vote, a cross on its own is considered by the AEC to be ambiguous, and therefore will be treated as informal.

With the greatest of respect, this approach is fundamentally lopsided. It risks distorting the national vote.

Australians expect the AEC to act fairly and impartially in the execution of its duties. Counting a tick as a formal vote while simultaneously excluding a cross as informal could artificially skew the count towards the yes vote, and fail to accurately reflect the will of the Australian people.

We understand that the AEC's current approach is broadly consistent with the approach that it has adopted in previous referendums. However, just because the AEC has adopted this approach before, does not mean that it is appropriate or legally correct.

Given the AEC's purported reliance on legal advice from the Attorney-General's Department in reaching this view, the AEC should release this advice so the Australian public can properly consider the AEC's position. We note that any legal professional privilege that existed in the legal advice has clearly been waived by the AEC through its public statements about the advice over many years.

More importantly, we call on you to reconsider the AEC's approach. If a tick counts for yes, a cross should count for no. To do otherwise gives the yes case an unfair advantage, and has the potential to undermine the impartiality and fairness of the referendum.

It is, after all, in the interests of every Australian to ensure that this basic standard of fairness is applied.

Yours sincerely

A black rectangular box containing the text 'S 47F' in a large, bold, red sans-serif font.

PETER DUTTON

MICHAELIA CASH

24 August 2023