Agenda Paper cover sheet

AEC Australian Electoral Commission

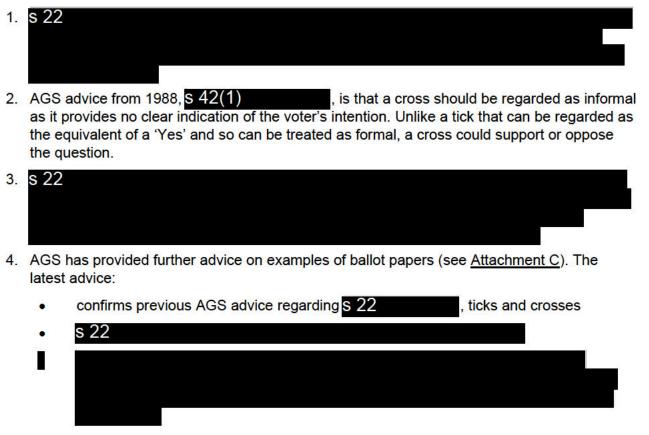**Meeting date:** 7 August 2023

Executive Leadership Team (ELT)

Referendum ballot paper formality

Purpose

For information

The purpose of this paper is to seek approval to update the referendum formality guidelines and training to ensure they are fit for purpose for the referendum noting updated legal advice.

Background

1. s 22 ██

2. AGS advice from 1988, s 42(1) ████████████, is that a cross should be regarded as informal as it provides no clear indication of the voter's intention. Unlike a tick that can be regarded as the equivalent of a 'Yes' and so can be treated as formal, a cross could support or oppose the question.

3. s 22 ██

4. AGS has provided further advice on examples of ballot papers (see Attachment C). The latest advice:

   • confirms previous AGS advice regarding s 22 ████████, ticks and crosses

   • s 22 ████████████████

   ▮ ██

Key issues

Current situation

5. Decisions on whether a ballot paper is formal or informal are made by:

   • the officer-in charge, in static polling places on polling night

- the count supervisor, for pre-poll and mobile counts on polling night

- the Divisional Returning Officer, during fresh scrutiny

- the Australian Electoral Officer, for recounts.

6. Staff are instructed to refer to the Ballot Paper Formality Guidelines when making decisions on formality. This document is publicly available on the AEC website, and relevant sections are replicated in the Scrutineers Handbook and Election Procedures Handbook (for polling staff). The guidelines list the principles to be applied when making formality decisions, along with some specific examples of formal and informal ballot papers.

7. The guidelines state:

   If a voter marks a ballot paper with words, symbols or figures or a language other than English, the ballot paper can be accepted if it is established that the voter's intention is clear to the DRO as the decision maker.

   s 42(1)

8. Training materials include:

- Divisional Returning Officers and other identified staff undertake the Operational Leaders Program (OLP). As part of this training, staff complete training exercises covering ballot paper formality including practical simulations using examples of formal and informal ballot papers.

- Polling staff complete mandatory training including content on ballot paper formality, with examples of formal and informal ballot papers.

- Count supervisors complete online training and receive a briefing, both of which include content on ballot paper formality.

- Standard operating procedures, election procedures handbooks, task briefings and staff briefs include instructions for staff to apply the Ballot Paper Formality Guidelines.

9. Education and communication materials include:

- Campaign advertisements and website content which say "To vote, write either 'Yes' or 'No' inside the box on your ballot paper".

- Translated fact sheets which include the additional line "Your answer should be written in English".

- A "Practise voting – Referendum" tool on the AEC's website that allows voters to submit an answer to a referendum ballot paper and see if it will result in a formal vote.

- Media talking points (delivered by an AEC spokesperson) including:

  – voting instructions for a referendum are to write either 'yes' or 'no' in English in the box opposite the question

  – s 22

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Key risks

s 22

s 22

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Consultation

Electoral Law Section

National Training Unit

Communications Section

Strategic Communications and Education Taskforce

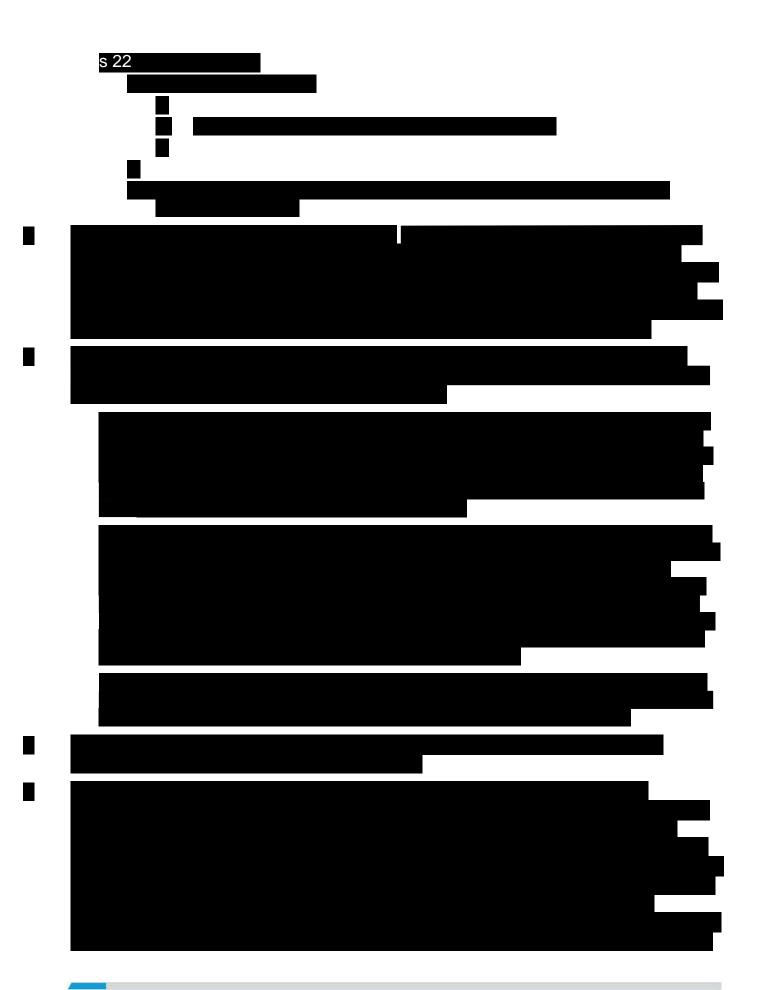Indigenous Electoral Participation Program

Recommendations

1. Amend the Ballot Paper Formality Guidelines as described above.

2. Retain the operational procedures that decision makers refer to the Ballot Paper Formality Guidelines and apply the principles when making decisions on ballot paper formality, including referring to the specific examples.

3. NTU to deliver a training session to DROs on making formality decisions.

s 22

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███

Prepared by: s 47F ██████████ , Assistant Director, Doctrine Planning and Quality

                                25 July 2023

Cleared by: s 47F ██████████ Doctrine Planning and Quality

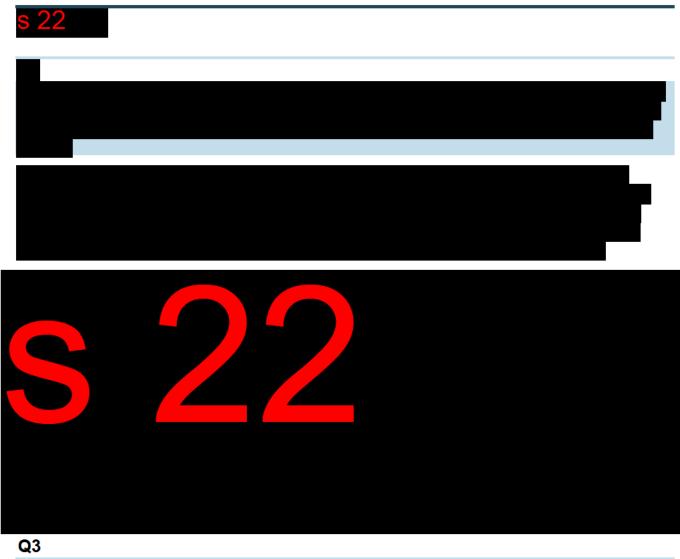|	25 July 2023
Cleared by:	Tania Wilson, AC Service Design and Foundations
	28 July 2023
Cleared by ELT:	Kath Gleeson, FAC and NEM
	Select date

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Attachment C – AGS advice May 2023

Referendum ballot paper formality issues

1. The Australian Electoral Commission (AEC) has requested advice about issues relating to the formality of ballot papers under the *Referendum (Machinery Provisions) Act 1984* (RMPA).
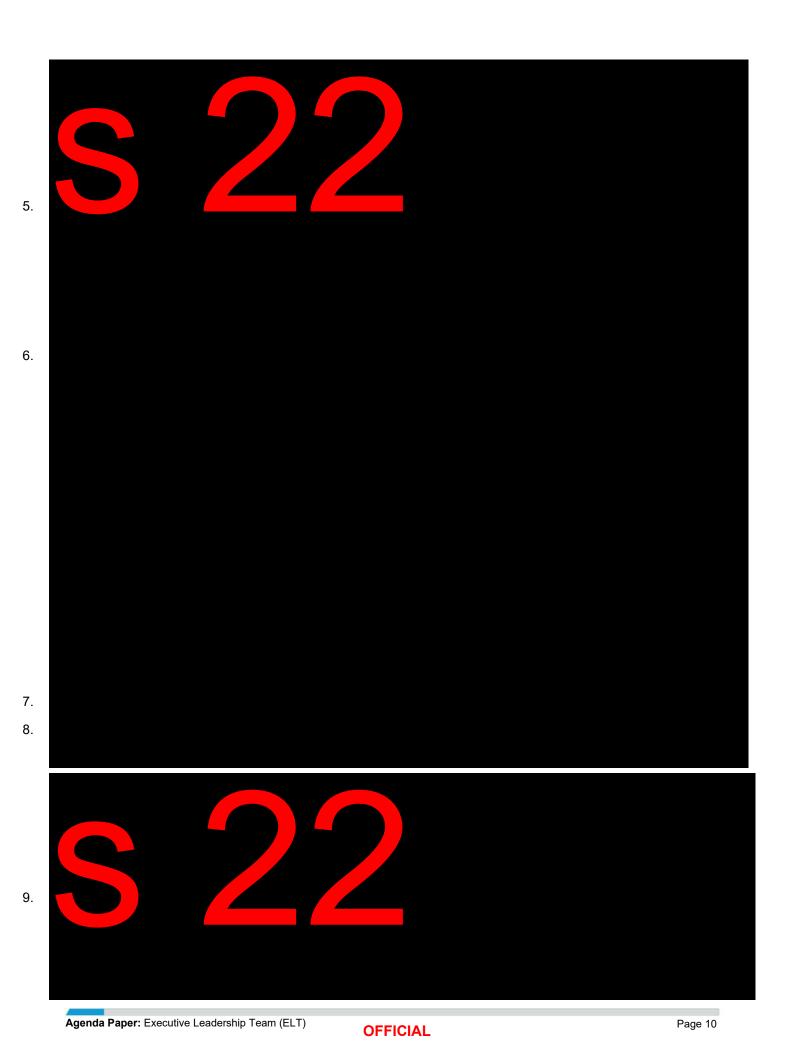
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3.

Q3

Are ticks in relation to one question (as opposed to the four that were considered in the '88 advice) formal?

Q4

Are crosses in relation to one question (as opposed to the four that were considered in the '88 advice) formal?

4. A referendum ballot paper posing only one question:

- marked with a tick should be treated as formal, and

- marked with a cross should be treated as informal.

5. s 22

6.

7.

8.

9. s 22

s 22

10. As for (h), the content of the affirmative statement and its juxtaposition to the 'X' in the box would be significant to determining the formality of the ballot paper. If the affirmative statement made it clear that the 'X' in the box was intended to convey approval for the constitutional alteration, the ballot would likely be formal.

s 22