



Australian Government

Australian Government response to the Joint Standing Committee on
Electoral Matters report:

Excluded: The impact of section 44 on Australian democracy

MAY 2024

Introduction

On 17 May 2018, the Joint Standing Committee on Electoral Matters (JSCEM) tabled a report titled *Excluded: The impact of section 44 on Australian democracy*.

On 28 November 2017, the Prime Minister referred matters relating to section 44 of the Constitution for inquiry and report to the JSCEM, after a number of serving Senators and Members of Parliament were disqualified under section 44.

The Government's response to the recommendations of the Report follows below.

**Government Response to the Joint Standing Committee on Electoral Matters report:
Excluded: The impact of section 44 on Australian democracy**

#	Recommendation	Government Response
1	<p>The Committee recommends that the Australian Government prepare a proposed referendum question to either:</p> <ul style="list-style-type: none"> • repeal sections 44 and 45 of the Constitution; or • insert into sections 44 and 45 the words: ‘Until the Parliament otherwise provides...’ 	<p><u>Noted</u></p> <p>The Government notes the recommendation. Given the passage of time, a substantive government response is no longer appropriate.</p>
2	<p>If the referendum passes, the Committee further recommends that the Australian Government further engages with the Australian community to determine contemporary expectations of standards in order to address all matters of qualification and disqualification for Parliament through legislation under section 34 of the Constitution.</p>	<p>Refer to recommendation 1.</p>
3	<p>In the event that a referendum does not proceed or does not pass, that the Australian Government consider strategies to mitigate the impact of section 44 as outlined in this report.</p>	<p>Refer to recommendation 1.</p>
4	<p>The Committee recommends that the Government consider the implications of this report in the context of the upcoming by-elections, in particular the options outlined in Chapter 4.</p>	<p>Refer to recommendation 1.</p>

Minority report by the Member for Tangney

The Government notes the recommendations made by the Member for Tangney in the Minority report.

#	Recommendation	Government Response
1	That the Australian Government establish the Foreign Citizenship Renunciation Advice and Support Office to assist potential candidates in understanding their constitutional obligations and to provide support in the renunciation of foreign citizenship.	Refer to recommendation 1 of the Majority Report.
2	That the Department of Foreign Affairs and Trade enter into Memoranda of Understanding with foreign nations to establish a process where applications for renunciation made through or with the support of the Foreign Citizenship Renunciation Advice and Support Office can be fast tracked.	Refer to recommendation 1 of the Majority Report.
3	That the Australian Government consider ways that that would allow APS and ADF members to draw down additional leave entitlements prior to them resigning to contest an election, or after the election in the event they were unsuccessful.	Refer to recommendation 1 of the Majority Report.
4	That the Australian Government put in place a requirement for candidates to disclose, at the time of nomination, all information that may be relevant to potential disqualification under Section 44.	Refer to recommendation 1 of the Majority Report.

5	That the Senate and the House of Representatives agree to only make a referral to the Court of Disputed Returns after a recommendation from the Privileges Committee if the breach arises from information that was not publicly disclosed or arose after nomination.	Refer to recommendation 1 of the Majority Report.
6	Only in the event that the Government considers that the administrative and procedural changes alone are not sufficient, should the Government consider constitutional change to move the point at which the disqualification of Members of Parliament takes place, from prior to nomination, to a point prior to being sworn in as a Member of Parliament, to resolve the issues identified by this Committee, while retaining the important Constitutional objectives and principles.	Refer to recommendation 1 of the Majority Report.