

PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

Report of the inquiry on the future conduct of elections operating during times of emergency situations

Joint Standing Committee on Electoral Matters

June 2021
CANBERRA

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Terms of Reference

The Committee will inquire into the future conduct of elections operating during times of emergency situations. In conducting its inquiry, the Committee shall have particular regard to:

- restrictions arising from a health pandemic;
- access to polling places during times of natural disasters;
- other potential drivers of social restrictions, such as future civil unrest, or international conflict;
- Australia's emergency election plan;
- the introduction of safety mechanisms; and
- alternative voting methods including early, remote and postal voting.

List of Recommendations

Recommendation 1

3.58 The Committee recommends that the *Commonwealth Electoral Act 1918* be amended to grant the authority to the Electoral Commissioner, in the event of an emergency being declared by Commonwealth, state or territory law, and to facilitate the safe conduct of an electoral event, to:

- extend the reasons electors can vote by post or pre-poll;
- streamline application and/or declaration requirements for postal and pre-poll voting;
- extend operating or polling hours (pre-poll only);
- conduct scrutiny safely.

3.59 This authority must:

- be limited to circumstances in which all alternative avenues to conduct an electoral event without exercising emergency provisions have been deliberated and exhausted;
- be limited to the extent necessary to conduct an electoral event;
- be limited to the geographical area in which the emergency situation has been declared, noting that this may only be part of an electorate;
- be exercised by the Electoral Commissioner and cannot be delegated;

- be time limited only to the time necessary to respond to the emergency situation and conduct the electoral event.

3.60 To maintain transparency the Electoral Commissioner must, as soon as practicable:

- publish the decision to modify the electoral event and the modifications to be made; and
- inform the Joint Standing Committee on Electoral Matters of actions taken.

Recommendation 2

3.65 The Committee recommends that the *Commonwealth Electoral Act 1918* be amended to provide conditions to change the date of polling where an emergency situation prevents voting occurring on the date fixed for polling.

Recommendation 3

3.67 The Committee recommends that sections 240A to 243 of the *Commonwealth Electoral Act 1918* be reviewed to ensure that they are in line with the recommendations set out in this report.

1. Introduction

Overview

- 1.1 A federal election is the biggest peacetime logistical event in Australia. It involves all Australians, from those who vote, to the schools who host polling booths and run the ubiquitous sausage sizzle. In each electorate, hundreds of individuals – from candidates to party volunteers, to poll workers, are required to ensure that elections proceed in a free, fair and democratic manner.
- 1.2 It is essential that elections are conducted in a manner which assures public trust in the electoral and democratic process. Trust in our democracy and in governments at all levels can only be assured if there is trust in elections. States of disaster have the potential to significantly disrupt the conduct of elections and damage confidence in our democracy.
- 1.3 The bushfires of the 2019-20 summer followed by the COVID-19 pandemic disrupting the daily life of all Australians have focussed attention on the need for a strategy to deal with the conduct of elections during times of emergency which now must consider communicable disease outbreaks, natural disasters, and restrictions on movement and assembly.
- 1.4 This inquiry provided the Committee with an opportunity to examine Australia's electoral preparedness during challenging circumstances and whether there is flexibility within the *Commonwealth Electoral Act 1918* (Electoral Act) to adapt to these challenges.

About the inquiry

Objectives and Scope

- 1.5 On 22 September 2020 the then Minister for Finance, Senator the Hon Mathias Cormann, asked the Joint Standing Committee on Electoral Matters (JSCEM) to inquire into and report on the future conduct of elections operating during times of emergency situations.

Emergency situations

- 1.6 States of emergency are generally declared and managed by state and territory governments in response to states of emergency, most commonly natural disasters. Prior to 2020, the Commonwealth had a wide range of powers set out in various pieces of commonwealth legislation and the Australian Government Crisis Management Framework to respond to states of emergencies. These powers have now been consolidated and clarified by the *National Emergency Declaration Act 2020*, under which certain circumstances, the Governor-General (on advice from the Prime Minister) may declare a state of national emergency.
- 1.7 A state of national emergency may be declared where an event is causing, or likely to cause nationally significant harm defined as:
- harm to the health, including mental health, of an individual or group of individuals;
 - harm to the health of animals or plants;
 - damage to property, including infrastructure;
 - harm to the environment; and
 - disruption to an essential service.¹
- 1.8 Examples of nationally significant harm are:
- major natural disasters – such as, bushfires that spread across multiple jurisdictions and threatened significant danger to life and property, or a geomagnetic storm that causes, or threatens to cause, extensive disruption or damage to electricity, satellite and communications networks;
 - communicable disease outbreaks that pose a major threat to the health and life of Australians, including outbreaks that are spreading out of control overseas and are likely to reach Australia;

¹ Revised Explanatory Memorandum, *National Emergency Declaration Bill 2020*, p. 11.

- large-scale cyber incidents or terrorist attacks – such as malicious cyber-attack that causes a prolonged and widespread failure in the energy sector, resulting in shortages of essential medical supplies, impact on water supply and sanitation disruption to the supply of food;
- major chemical, biological or radiological incidents, whether accidental or deliberate;
- emergencies occurring overseas, to the extent that such emergencies cause, or are likely to cause, nationally significant harm within Australia – such as a natural disaster that causes extensive damage to major international maritime ports or disruption to critical shipping channels and disrupts the availability of essential services in Australia; and
- a combination of the above emergencies occurring concurrently or consecutively, that together has caused, or is causing, or is likely to cause nationally significant harm – such as multiple natural disasters occurring concurrently in different parts of the country, during a pandemic that complicated response and recovery efforts, and that collectively cause, or are likely to cause, nationally significant harm.²

1.9 Any of the above would cause significant harm to the electoral process. The capacity for the Governor-General to declare a national emergency provides clarity to national agencies, such as the Australian Electoral Commission (AEC), about when to trigger disaster response plans.

1.10 In the terms of reference for the inquiry, the then Special Minister of State asked the Committee to consider potential drivers of social restrictions, such as future civil unrest, or international conflict. Since that request, the *National Emergency Declaration Act 2020* was passed and the Committee considers that it adequately defines the circumstances of events that would harm the electoral process.

Inquiry conduct

1.11 A media release announcing the inquiry was issued on 9 October 2020 calling for submissions to be received by 13 November 2020.

1.12 The Committee also invited submissions from a large number of organisations and individuals, including registered political parties, constitutional experts, State and Territory governments and electoral management bodies, and academics.

² Revised Explanatory Memorandum, *National Emergency Declaration Bill 2020*, pp. 13-14.

- 1.13 The inquiry received 22 submissions and 13 exhibits, which are listed at Appendix A and B respectively.
- 1.14 The Committee held a public hearing on 18 November 2020. A list of witnesses is at Appendix C.

Report Structure

- 1.15 A number of elections were held over the course of 2020, at the local, State/Territory and Federal (by-election) level during the course of various emergency declarations. These elections have provided electoral management bodies nation-wide the opportunity to assess the legislative and logistical challenges to conducting elections in a state of emergency. Chapter Two discusses these challenges in detail.
- 1.16 Chapter Three examines what measures need to be put in place to manage elections in the event of future emergency situations.
- 1.17 The Chapter concludes by looking at specific reform proposals put to the inquiry and makes recommendations for legislative change that supports the AEC to continue to conduct safe, secure and trustworthy Australian elections.

2. 2020 elections experience

- 2.1 During 2020, a number of electoral events took place, affording the Australian Electoral Commission (AEC) the opportunity to examine the logistical and legislative challenges faced by diverse jurisdictions during a global pandemic, many while also recovering from the 2019-2020 bushfire season.
- 2.2 The AEC identified the following key logistical challenges that ‘could force significant compromises, delays or even render an election partially or fully undeliverable’¹:
- staffing recruitment and absenteeism challenges;
 - supply chain delays affecting materials and logistics;
 - voter turnout;
 - premises availability;
 - impacts on major service suppliers (i.e. postal votes, scanning and data capture of Senate ballot papers);
 - exacerbation of existing challenges providing electoral services for electors with disability, living or travelling overseas or in remote and regional areas, experiencing homelessness, hospitalised or in nursing care and the elderly.²

¹ Australian Electoral Commission (AEC), *Submission 17*, p. 4.

² AEC, *Submission 17*, pp. 4-5.

- 2.3 Despite these challenges, International Institute for Democracy and Electoral Assistance (International IDEA) found that between 21 February 2020 and 28 March 2021 that at least 113 countries and territories have held national or subnational elections despite concerns related to COVID-19, while only 78 had postponed elections due to COVID-19.³
- 2.4 The impacts of a pandemic may share similarities with impacts of other emergency situations, however there are likely specific requirements to operating services under a pandemic. For example, a natural disaster may be restricted to one geographic location, while a pandemic affects all communities. Specific to the COVID-19 pandemic, International IDEA stated:
- The pandemic added unique safety challenges, resource and infrastructure needs, and untested or scaled up voting measures, introducing new logistical and integrity challenges and vulnerabilities. Further it revealed gaps in legal and constitutional frameworks and accentuated deeply rooted partisan divisions and polarization.⁴
- 2.5 However, even with the challenges of the past 12 months, jurisdictions at the federal, state and local level in Australia all held successful elections. This next section provides an overview of the elections that were held at the federal, state/territory and local levels, and the actions that each jurisdiction took to ensure that elections were held safely, securely and fairly.
- 2.6 Australian electoral management bodies had a consistent approach to the planning of each election, training of their respective staff and volunteers, communication on the upcoming election, and implementation of practical measures such as hygiene and social distancing. Special consideration was also given to candidate nomination processes, canvassing, and the distribution of political matter and social distancing requirements at polling stations.
- 2.7 Although the plans covered similar issues, each of them were unique to their situation in terms of the current COVID-19 environment at that time and available legislative requirements. Specific plans created included:

³ International Institute for Democracy and Electoral Assistance (International IDEA), 'Global overview of COVID-19 impact on elections', viewed 8 April 2021, <<https://www.idea.int/news-media/multimedia-reports/global-overview-covid-19-impact-elections>>

⁴ International IDEA, *Submission 16*, p. 3.

- 'Local Government Elections Service Plan', a 'Statement of Intent' and the 'Election Service Plan'- Electoral Commission of Queensland (ECQ)⁵;
 - 'COVID-19 Management Plan' – Northern Territory Electoral Commission (NTEC)⁶;
 - 'Election Service Delivery Plan' – Elections ACT⁷; and
 - 'Safe Campaigning' – Victorian Electoral Commission (VEC).⁸
- 2.8 Common staff training programs included appropriate COVID-safe training for electoral staff and volunteers, videos and courses on hand hygiene, the appropriate use of personal protective equipment (PPE), cleaning surfaces in a polling place and ensuring that the physical distancing requirements were being met in each polling station environment.
- 2.9 Common social distancing safety measures implemented across jurisdictions for the actual day of voting included adhering to venue capacity limits, placing booths and voting screens the appropriate 1.5 metres apart, providing separate entrance and exits to polling stations, providing social distancing guidance to voters and participants and limiting access to voting venues for media representatives. Specific health measures included ensuring hand sanitiser and masks were available to staff and that hand sanitiser was available to voters.
- 2.10 In order to assist with physical distancing and overcrowding issues at polling stations, each jurisdiction expanded the number of pre-poll voting centres available and operated extended opening hours.

⁵ Electoral Commission Queensland (ECQ), '2020 Local Government Elections Service Plan', viewed 11 May 2021, <https://www.ecq.qld.gov.au/__data/assets/pdf_file/0020/7463/Local-Government-Election-Service-Plan-v1.3.pdf>; Electoral Commission Queensland, '2020 State General Election Statement of Intent', viewed 11 May 2021, <https://www.ecq.qld.gov.au/__data/assets/pdf_file/0017/11294/2020-State-General-Election-Statement-of-Intent.pdf>

⁶ Northern Territory Electoral Commission (NTEC), '2020 Territory Election COVID-19 Management Plan', viewed 11 May 2021, <https://ntec.nt.gov.au/__data/assets/pdf_file/0004/887206/NTEC-COVID-19-Management-Plan.pdf>

⁷ Elections ACT, 'COVID Safe Election Service Delivery Plan', viewed 11 May 2021, <https://www.elections.act.gov.au/__data/assets/pdf_file/0003/1619157/COVID-19-Election-Service-Delivery-Plan.pdf>

⁸ Victoria State Government, 'Campaigning for the 2020 council elections in Victoria', viewed 11 May 2021, <https://www.localgovernment.vic.gov.au/__data/assets/pdf_file/0023/482423/Safe-Campaign-Guidelines-July-2020.pdf>

2.11 This Chapter examines the delivery of the following electoral events:

- Queensland local government– 28 March 2020;
- Federal by-election–Eden Monaro–4 July 2020;
- Tasmania Legislative Council–1 August 2020;
- Northern Territory Legislative Assembly–22 August 2020.

2.12 The Australian Capital Territory Legislative Assembly and Queensland Parliament general elections were held in late October 2020. Voting trends in these electoral events followed similar trends to the above elections, with significant increase in postal and pre poll votes cast. Due to the similarity to the above events they are not discussed in this Chapter.⁹

Queensland local government elections

Pre-election

2.13 The Notice of Election marking the commencement of the Queensland local government elections was published on 22 February 2020 at a time when the full extent of the threat posed by COVID-19 was not fully known. The situation rapidly evolved: on 11 March 2020 COVID-19 was declared a pandemic by the World Health Organisation (WHO), less than a week before the early voting period was due to commence. By 22 March 2020 gatherings of 100 or more were banned.

2.14 In response to the public health measures recommended by Queensland’s Chief Health Officer, the ECQ:

- increased postal voting supplies in anticipation of increased demand;
- accepted email requests as a ‘one off’ postal vote application¹⁰;
- expanded telephone voting services to cater for those in higher risk categories such as the elderly, disabled, immunocompromised, as well as those advised to isolate or quarantine themselves during the election period.¹¹

⁹ See Elections ACT, ‘Impact of the COVID-19 Pandemic on the 2020 ACT Legislative Assembly Election’, viewed 13 May 2021, <https://www.elections.act.gov.au/__data/assets/pdf_file/0006/1556034/Special-Report-Impact-of-the-COVID-19-Pandemic-on-the-2020-ACT-Legislative-Assembly-Elections-25-May-2020.pdf>; and Electoral Commission of Queensland, *Submission 13*

¹⁰ There are not eligibility requirements for postal votes in Queensland. Electoral Commission of Queensland, ‘Voting options’, viewed 14 May 2021, <https://www.ecq.qld.gov.au/__data/assets/pdf_file/0015/16143/fact-sheet-voting-options-v1.2.pdf>

¹¹ ECQ, *Submission 13*, p. 2.

2.15 On 18 March 2020 the Queensland Parliament passed legislation aimed at providing additional flexibility to support the delivery of the election during the pandemic. The Queensland Government stated:

... the Queensland Parliament passed legislation regarding the conduct of the 2020 local government elections, in recognition of the extraordinary and rapidly evolving circumstances in which the elections were taking place. The [Qld] *Public Health and Other Legislation (Public Health Emergency) Amendment Act 2020* provided additional flexibility for the conduct and statutory processes supporting delivery of the 2020 local government elections. In addition, powers were conferred on both Queensland's Chief Health Officer and the Electoral Commissioner to issue directions to minimise public health risks during the elections.¹²

2.16 The directions issued by Queensland's Chief Health Officer and the Electoral Commissioner at that time included:

- On 20 March 2020, the Electoral Commissioner issued a direction that banned all canvassing for votes and distribution of how-to-vote cards or election material near polling places.
- On 22 March 2020, the Chief Health Officer issued a direction on the arrangements for the local government elections and State by-elections, outlining a range of social distancing and hygiene measures for the ECQ, political parties, candidates and their representatives, and members of the public, to observe during the election.
- On 26 March 2020, the Electoral Commissioner issued a direction that limited the number of scrutineers allowed in polling places during the counting of votes and the times they could attend those places. This direction was amended as voting and counting proceeded in response to emerging circumstances.¹³

The election

2.17 In addition to the general measures undertaken by all jurisdictions to administer an election during the pandemic, the ECQ implemented a number of actions which included:

- extended operating hours over the two-week early voting period;

¹² ECQ, *2020 Local Government Elections, Report of the Elections*, 2020, p. 8.

¹³ ECQ, *2020 Local Government Elections, Report of the Elections*, 2020, p. 8.

- established a central hub of Returning Officers in Cairns, as teams conducting remote area polling in 14 Indigenous local government areas were unable to remain in those communities due to heightened concerns about the impact of COVID-19;
- employed approximately 4,000 additional staff to assist with security, queue control and helping to maintain social distancing at polling places; and
- ensured health assessments were undertaken for election staff entering remote Indigenous communities.¹⁴

Post-election

2.18 In its post-election report, ECQ identified a significant shift in 2020 voting patterns compared with the 2016 local government elections.

Table 2.1 Key statistics: Queensland local government elections 2016 and 2020

Vote type	2016	2020
Pre poll votes	500 000	1.2 million
Postal votes returned	320 000	470 000
Telephone votes	500	37 000
Polling day votes	1.6 million	750 000

Source: Electoral Commission of Queensland¹⁵

2.19 In addition, there was a 5 per cent overall decrease in voter turnout:

Voter turnout at local government elections is typically lower than at State general elections. In March 2020, turnout for the local government elections was 77.71 percent, a decrease from the turnout rate of 83.04 percent at the last local government elections in 2016. While the ECQ strives to increase voter participation at elections, the extraordinary circumstances produced by the COVID-19 pandemic had an inevitable impact on the rate of participation at this election.¹⁶

¹⁴ ECQ, *Submission 13*, p. 2-3.

¹⁵ ECQ, *Submission 13*, p. 4; ECQ, *2020 Local Government Elections, Report of the Elections*, 2020.

¹⁶ ECQ, *Submission 13*, p. 5. ECQ, *2020 Local Government Elections, Report of the Elections*, 2020, p. 1.

Eden-Monaro by-election

Pre-election

2.20 The 2020 Eden-Monaro by-election was held on 4 July 2020 after the resignation of the Hon Mike Kelly AM on 30 April 2020. In addition to being held during the COVID-19 pandemic, many parts of the Eden-Monaro electorate had also sustained significant damage during the 2019-2020 bushfire season and recovery from this event remains ongoing.

2.21 The AEC noted that delivering a by-election in the COVID-19 environment and in an area that had been impacted by a natural disaster, required broader stakeholder consultation than previous elections. Consultations included:

- working with the NSW Minister for Health, Commonwealth Chief Medical Officer, NSW Chief Health Officer and ACT Chief Medical Officer and their respective Departments, as well as the Australian Federal Police and NSW Police;
- seeking approval or assistance from relevant stakeholders to use venues and locations as polling booths and places;
- hosting a walk-through by the Commonwealth health advisor of the counting centre used for the by-election and a polling place mock-up, to demonstrate COVID-safety measures in place;
- working with the NSW Police Commissioner and NSW Police in relation to the activities permitted by the Electoral Act [Cth] around distribution of how-to-vote material and the role of scrutineers, and the AEC approach to implementing the by-election;
- liaison with the National Bushfire Recovery Agency, Resilience NSW and Services Australia to facilitate access to networks and information involved in supporting bushfire impacted communities; and
- liaison with the Chief Executive of Australia Post to ensure there would be no disruption to the delivery of postal votes.¹⁷

2.22 To bolster community and stakeholder confidence, the AEC published a Service Plan outlining management of the by-election during the pandemic.¹⁸ The Service Plan addressed the AEC's approach to COVID

¹⁷ AEC, *Submission 17*, p. 10.

¹⁸ AEC, 'Service Plan', viewed 25 March 2021, <https://www.aec.gov.au/Elections/supplementary_by_elections/2020-eden-monaro/files/eden-monaro-service-plan.pdf>

safety measures at voting centres and throughout the entire by-election process ‘including the receipt and declaration of nominations, the management of election materials and at our counting centre.’¹⁹

2.23 The AEC also expanded its communications plan for the by-election, the key message was ‘plan ahead before you vote’, encouraging voters to consider the implications of the COVID-19 situation, including:

- limiting attendance at polling places to eligible voters only, and avoid socialising
- research candidates and preferences before you go to vote
- if you prefer bring your own pen or pencil to vote
- if you are feeling unwell or have any cold or flu symptoms in the lead-up to by-election day, don’t attend a polling place; and
- apply for a postal vote.²⁰

2.24 Particular to this election, mobile polling stations that would normally be established in aged care facilities and hospitals were halted and instead the AEC established a support team for these facilities and facilitated the provision of general postal vote application forms.²¹

2.25 The AEC also considered how the pandemic may affect the work of campaigners at polling places. Although the AEC has no legislative jurisdiction for campaigners outside six meters of the entrance to the polling place, it recognised that the current COVID-19 environment may impact on their ability to campaign and sought to offer details of all candidate’s official campaign website addresses at the time of nomination and provide links to the websites and candidate details on the AEC website.²²

¹⁹ AEC, ‘Service Plan’, viewed 25 March 2021,

<https://www.aec.gov.au/Elections/supplementary_by_elections/2020-eden-monaro/files/eden-monaro-service-plan.pdf>

²⁰ AEC, *Your official guide to the Eden-Monaro by-election including COVID-19 safety measures*, Saturday 4 July 2020, p. 3.

²¹ AEC, ‘Service Plan’, viewed 25 March 2021,

<https://www.aec.gov.au/Elections/supplementary_by_elections/2020-eden-monaro/files/eden-monaro-service-plan.pdf>

²² AEC, ‘Service Plan’, viewed 25 March 2021,

<https://www.aec.gov.au/Elections/supplementary_by_elections/2020-eden-monaro/files/eden-monaro-service-plan.pdf>

The election

2.26 In addition to general hygiene and social distancing measures, the AEC undertook a range of service measures during the election including:

expanding the number of pre-poll voting centres compared with the 2019 federal election (13, an increase of 5), had more centres open for the maximum pre-poll period, and adjusted polling places (71, an increase of 2) to spread the flow of voters and communicated these to the electorate, along with the option to postal vote.²³

Post-election

2.27 The pandemic did not impact turnout, with the rate remaining consistent at 89 percent, one of the best rates of turnout for a by-election, and only a slight drop from the 2019 federal election turnout of 93 percent for the Eden-Monaro electorate. Informality rates also remained consistent.

Table 2.2 Turnout: Eden-Monaro 2019 and 2020

	2019 federal election	2020 by-election	Per cent change
Eligible electors	114 147	114 178	0.03%
Turnout	93.31%	89.13%	-4.18%
Informality	6.80%	6.71%	-0.09%

Source: Australian Electoral Commission, Submission 17, p. 12

2.28 However, the AEC noted that despite eligibility requirements for postal and pre-poll voting remaining the same for the Eden-Monaro by-election, the number of postal votes counted was more than double than at the federal election, with a 123 percent increase. Pre-poll had also increased but only by fifteen percent. In person polling day votes were reduced by twenty percent.²⁴

²³ AEC, *Submission 17*, p. 11.

²⁴ AEC, *Submission 17*, p. 12.

Table 2.3 Key statistics: Eden-Monaro voting trends 2019 and 2020

Vote type	2019 federal election	2020 by-election	Per cent change
Pre-poll ordinary votes	37 808	43 701	15.59%
Pre-poll declaration votes	6 207	156	97.49%
Polling day votes	56 064	44 570	-20.50%
Postal votes	5 969	13 340	123.49%
Mobile votes	457	-	N/A
Total votes	106 505	101 767	-4.45%

Source: Australian Electoral Commission, Submission 17, p. 12

2.29 The AEC conducted surveys following the election of both voters and the temporary election workforce, which ‘highlighted their satisfaction with the voting service and safety measures implemented.’²⁵ In relation to voters being aware of the COVID-safety measures in place at the time of the election, the AEC stated that post-election public awareness survey results indicated that at least 85 percent of respondents were aware of the health measures in place and that all measures made at least three-quarters of respondents feel safer.²⁶

2.30 While the AEC provided positive examples of how they used their resources in the Eden-Monaro by-election, it cautioned against assuming those strategies could be deployed in a general election under existing legislation.

The resource intensive strategies implemented for Eden-Monaro and the Groom by-elections may not be sustainable or even practical for a full federal election.²⁷

²⁵ AEC, *Submission 17*, p. 9.

²⁶ AEC, *Submission 17*, p. 11.

²⁷ Mr Tom Rogers, Electoral Commissioner, AEC, *Committee Hansard*, 18 November 2020, p. 1.

2.31 Post-election analysis also showed that under COVID-19 conditions, the average vote issuing process took 16.5 seconds longer (46 per cent longer) than at the 2017 Bennelong by-election. The longer wait time could potentially have resource implications as well as possibly increase exposure times for voters to other voters and staff while at a voting centre. Factors noted included:

- the impact of using masks and screens on communication and efficient vote issuing;
- issuing staff sanitising hands between voters;
- having the main queue outside and reducing the ability to use ‘mini-queues’ at each issuing point;
- handing out single-use pencils; and
- cleaning of issuing points and voting screens.²⁸

2.32 The AEC identified a clear impact on the cost of the by-election event. Compared to by-elections held between 2016 and 2019, the cost almost doubled from approximately \$2 million to \$3.954 million.²⁹

2.33 The cost increase was primarily from additional polling locations throughout the pre-poll period and on polling day, additional staff required for sanitising, managing crowds and queues, vote issuing and counting, PPE and other hygiene materials and new communication and training packages.

2.34 Should these requirements be necessary for a full general election the AEC stated:

Having multiple additional staff necessary at every polling location would have a significant impact on cost, particularly when applied to a national electoral event. This equates to an estimated 30 percent increase in polling staff required, costing approximately an additional \$13 million.³⁰

Tasmanian legislative council elections

Pre-election

2.35 In 2020, periodic elections were scheduled to be held for the Tasmanian Legislative Council divisions of Huon and Rosevears. Following a declaration of a state of emergency on the 19 March 2020 due to the COVID-

²⁸ AEC, *Submission 17*, p. 13.

²⁹ AEC, *Submission 17*, p. 11.

³⁰ AEC, *Submission 17*, p. 14.

19 pandemic, a number of responses were initiated, including legislative and health responses.

- 2.36 Section 19(4) of the *Constitution Act 1934 (Tas)* (Tasmanian Constitution) provides for an election to be held on any Saturday in May in circumstances where the election is unable to be held on the first Saturday in May.³¹
- 2.37 However, due to ongoing tighter state restrictions and public health directions, it was considered that opening polling places would directly contradict the *Public Health Act 1977 (Tas)*. The Tasmanian Electoral Commission (TEC) held the view that a Tasmanian Parliamentary election ‘conducted solely by postal vote is not an election for the purposes of the *Electoral Act (Tas)*’ which meant that a 100 per cent postal vote was not a possible alternative and other solutions were required.³²
- 2.38 The Tasmanian Parliament passed the *COVID-19 Disease Emergency (Miscellaneous Provisions Act (No 2) 2020 (Tas)* on 5 May 2020, which extended the term of the current members until the declaration of the poll for the 2020 elections and provided the power for the Governor of Tasmania to appoint a new polling day on a Saturday in a month before 31 December 2020.³³ It also provided broad heads of power for the Premier, the Treasurer and the Attorney-General, or delegated Ministers, to make decisions in certain circumstances to adjust the operation of a range of requirements, on the basis that compliance may not be sensible, or even possible, in a pandemic response situation.³⁴
- 2.39 As the pandemic risk abated, the writ was issued on 22 June 2020 for a 1 August 2020 polling day.
- 2.40 The Commission outlined three main elements that they considered when planning for a future election during COVID-19 such as creating a COVID-safe voting environment, changing voting services to provide safer and more accessible voting options, and developing a new communication strategy to inform electors of the new timetable and new arrangements.³⁵

³¹ Tasmanian Government, Department of Justice, *Submission 21*, p. 4.

³² Tasmanian Government, Department of Justice, *Submission 21*, p. 7.

³³ Tasmanian Government, Department of Justice, *Submission 21*, p. 5.

³⁴ Tasmanian Government, Department of Justice, *Submission 21*, p. 5.

³⁵ Tasmanian Electoral Commission (TEC), ‘2019-20 Annual Report’, viewed 4 May 2021, <<https://www.tec.tas.gov.au/Info/Publications/AnnualReports/TEC-2019-20-Annual-report.pdf>>

2.41 Creating a safe environment included key elements such as social distancing, hygiene and staffing measures. Changing voting services included enhancing postal and pre-poll voting services by extending the election period, mailing out information packs containing a postal vote application, reply paid envelope and simple instruction card to every elector on the election rolls (postal vote eligibility did not change), extending the early voting period from three to four weeks and encouraging those in aged care and hospitals to apply for a postal vote rather than send out mobile polling teams.³⁶

The election

2.42 The Tasmanian Government's health response to the challenge of COVID-19 during the election period was informed by advice from WorkSafe Tasmania, the Tasmanian Electoral Commission and Public Health Services, and included additional cleaning and hygiene, physical distancing and specific guidance to assist candidates and their election agents.³⁷

2.43 The Tasmanian Government submitted:

The public health advice also covered general wellbeing, including testing, close contacts, isolation, door-knocking and vulnerable members of the community, together with information on physical distancing, hygiene and cleaning and record keeping. Such advice could also be adapted as appropriate for any election held in a pandemic situation.³⁸

2.44 The Tasmanian Government listed the specific measures it put in place to ensure the safety of the voters and electoral officials in relation to this election:

- voting screens taped off and positioned to increase the distance between voters;
- floor tape to guide physical distancing in each polling place;
- touch-free hand sanitisers at every entrance;
- perspex sneeze guards;
- single use pencils for each voter;
- regular cleaning;
- additional staff at polling place entrances to manage capacity;

³⁶ TEC, '2019-20 Annual Report', viewed 4 May 2021, <<https://www.tec.tas.gov.au/Info/Publications/AnnualReports/TEC-2019-20-Annual-report.pdf>>

³⁷ Tasmanian Government, Department of Justice, *Submission 21*, p. 6.

³⁸ Tasmanian Government, Department of Justice, *Submission 21*, p. 6.

- information and training to polling managers; and
- banning traditionally held fundraising stalls.³⁹

Post-election

- 2.45 The TEC monitored voter trends post-election and reported that the participation rate was at 85.2 percent, an increase from 83.3 percent when the divisions last went to election in 2014.⁴⁰ There was also a significant increase in early voting between Legislative Council elections held in 2019 and 2020:
- postal voting as a proportion of votes increased from 4.9 per cent in 2019 to 46.9 per cent in 2020;
 - while pre-poll voting as a proportion of votes decreased from 19.6 percent in 2019 to 10 percent in 2020.⁴¹
- 2.46 The cost to run the Legislative Council election during the pandemic in 2020 increased considerably compared to the 2019 Legislative Council Election. The cost per elector in 2019 was \$13.70 compared to \$21.93 in 2020. The TEC stated that the increased cost per elector as a result of COVID-19 was \$5.62. An additional \$43,507 was spent on election awareness as a result of COVID-19.⁴²
- 2.47 While the majority of submitters agreed that elections held over the last 12 months under emergency situations were conducted well, the Tasmanian Government noted ‘it may not always be possible to manage public health risks in a way that does not impact the conduct of an election.’⁴³
- 2.48 The Tasmanian Government recommended that in a pandemic environment an election should endeavour to maximise the use of remote voting options,

³⁹ Tasmanian Government, Department of Justice, *Submission 21*, p. 6-7.

⁴⁰ TEC, *2015-16 Annual Report*, p. 45; TEC, *2020 Legislative Council Elections Snapshot, Huon and Rosevears*, viewed 12 May 2021, <<https://www.tec.tas.gov.au/Info/Publications/ElectionSnapshots/2020-LC-snapshot.pdf>>

⁴¹ TEC, *2020 Legislative Council Elections Snapshot, Huon and Rosevears*, viewed on 12 May 2021, <<https://www.tec.tas.gov.au/Info/Publications/ElectionSnapshots/2020-LC-snapshot.pdf>>; TEC, *2019 Legislative Council Elections Snapshot – Montgomery + Nelson + Pembroke*, viewed 12 May 2021, <<https://www.tec.tas.gov.au/Info/Publications/ElectionSnapshots/2019-LC-snapshot.pdf>>

⁴² TEC, *2020 Legislative Council Elections Snapshot, Huon and Rosevears*, viewed on 12 May 2021, <<https://www.tec.tas.gov.au/Info/Publications/ElectionSnapshots/2020-LC-snapshot.pdf>>; TEC, *2019 Legislative Council Elections Snapshot – Montgomery + Nelson + Pembroke*, viewed on 12 May 2021, <<https://www.tec.tas.gov.au/Info/Publications/ElectionSnapshots/2019-LC-snapshot.pdf>>

⁴³ Tasmanian Government, Department of Justice, *Submission 21*, p. 7.

as allowed under the *Electoral Act 2004 (Tas)*, as remote voting is less likely to be directly impacted by changes in public health directions or to pose a health risk.⁴⁴

Northern Territory general election

Pre-election

- 2.49 The 2020 NT general election was held on 22 August 2020. The NTEC developed a COVID-19 strategy similar in scope to those outlined above, involving safety protocols for both electors and staff.⁴⁵
- 2.50 However, the Northern Territory also has a specific demographic which, coupled with Federal Government biosecurity zones restricting access to remote communities put in place to protect the health and wellbeing of residents⁴⁶, required specific remote area voting plans.
- 2.51 In addition to general social distancing guidelines, hygiene measures and approaches to health, specific to the NT environment and demographics, the NTEC sourced more outdoor mobile voting sites where suitable and developed procedures when traveling to remote communities that minimised contact with community members, which included:
- only NTEC staff entering remote locations where possible;
 - isolating support individuals such as pilots and additional drivers when at rest in a remote communities; and
 - minimising interactions with the community except for reasons such as purchasing and consuming meal.⁴⁷

⁴⁴ Tasmanian Government, Department of Justice, *Submission 21*, p. 7.

⁴⁵ NTEC, *Submission 9*, p. 1.

⁴⁶ Parliamentary Library, 'COVID-19 Legislative response – Human Biosecurity Emergency Declaration – Remote Communities', viewed 15 April 2021, <https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/FlagPost/2020/April/remote_communities>

⁴⁷ NTEC, *Submission 9*, p. 1-2.

2.52 The biosecurity zones also delayed the planned rollout of the remote enrolment field program, which commenced two months later than planned when the biosecurity restrictions were lifted. The remote enrolment field program was considered critical to increasing the accuracy of the electoral roll in remote communities.⁴⁸ The NTEC noted that should access to these remote areas be restricted in future emergency situations then an election may need to be delayed.⁴⁹

The election

2.53 Postal and pre-poll voting is universally available to NT electors. This supported the NT Management Plan by limiting crowds at polling places and limiting travel between communities. The impact on early voting trends resulted in 60 per cent of Territorians casting their vote early at one of the early voting centres, the majority of which were from urban areas (pre-poll voting was 36 per cent in 2016).⁵⁰

2.54 On-the-day enrolment provisions resulted in over 1,700 additional votes to be admitted, with the majority of these from remote divisions.⁵¹

Post-election

2.55 Voter turnout was marginally higher than the 2016 Territory Election (74.9 per cent up from 74 per cent). However, this was not even spread across regions. Five of the more remote electoral divisions only achieved turnouts in the low 50 percent range.⁵² In a more acute pandemic environment, this disparity would only increase.

2.56 Declining postal services due to the pandemic were identified as a potential challenge to being able to vote by post. Despite these challenges, the number of postal votes issued increased by nearly forty per cent, compared to the 2016 election.⁵³

⁴⁸ NTEC, *Submission 9*, p. 2.

⁴⁹ NTEC, *Submission 9*, p. 3.

⁵⁰ NTEC, *Supplementary submission 9.1*, p. 2.

⁵¹ NTEC, *Submission 9*, p. 4.

⁵² NTEC, *Submission 9*, p. 4.

⁵³ NTEC, *Supplementary submission 9.1*, p. 2.

- 2.57 However, when considering future elections, the NTEC noted that relying in future on postal voting in a pandemic situation should be cautionary as the timely delivery of postal services was severely impacted by the pandemic over the course of 2020, making it difficult to return some completed ballots in time.
- 2.58 In addition, the lack of reliable digital services in many remote parts of the NT was another logistical challenge that the NTEC advised should be considered in relation to alternative methods of voting. Any future online or internet voting options may be 'limited should a suitable system be developed in the future.'⁵⁴
- 2.59 The low levels of access to IT equipment in remote communities and general computer literacy levels were also quoted by the NTEC as another significant challenge should online internet voting be considered.⁵⁵
- 2.60 The NTEC identified a number of additional key issues that would need consideration to be able to deliver electoral services to remote communities in future times of emergency situations including accessible alternative voting options for remote Territorians; clear guidelines for NTEC voting staff to enter remote or restricted areas (such as designated biosecurity zones); a lack of reliable postal services to remote areas of the NT; the ethical considerations of electoral staff accessing communities at times when it may be against residents' wishes; and a need for clear strategies and protocols to inform about, to conduct, or delay elections in emergency situations.⁵⁶
- 2.61 The NTEC report summarised that the only viable option for delivering voting services to remote areas of the NT is remote mobile voting regardless of when the election was held, during a pandemic or otherwise, and that any emergency situation that impacted or restricted the ability of the NTEC to conduct remote mobile voting would mean that over a quarter of the electorate would be denied an opportunity to vote.⁵⁷

⁵⁴ NTEC, *Supplementary submission 9.1*, p. 3.

⁵⁵ NTEC, *Supplementary submission 9.1*, p. 3.

⁵⁶ NTEC, *Submission 9*, p. 4.

⁵⁷ NTEC, *Submission 9*, p. 4

3. Managing elections in future emergency situations

- 3.1 The elections held successfully in Australia throughout 2020 have provided valuable experience for election management bodies. Because of the different legislative settings for local, state, territory and federal elections, key lessons have been learned about improvements that can be made to the *Commonwealth Electoral Act 1918* (Electoral Act) to provide greater certainty to electors that future elections will be held safely and securely, including during emergency situations.
- 3.2 Submitters to this inquiry canvassed a number of issues and identified a number of possible challenges to running elections during times of emergency situations, including the use of different voting methods such as pre-poll, postal and telephone voting; accessibility, election communication and potential impacts on the perceived integrity of the electoral process.

Voting methods

- 3.3 Many submissions noted that in the event of an emergency it is essential to be flexible in terms of voting methods to encourage voter participation and encourage continued trust in the electoral process, and to provide safety to voters, electoral staff and candidates.
- 3.4 International Institute for Democracy and Electoral Assistance (International IDEA) noted that the increased use in alternative methods of voting internationally over the past 12 months is driven by the desire for countries to ensure the continued participation of voters in the electoral process noting

– ‘participation has, of course, been the driving force for the introduction for these measures.’¹

- 3.5 Local Government NSW (LGNSW) advocated for consistency to how votes are cast, traditionally or otherwise, across jurisdictions and recommended that governments should ensure that electors retain choice in their method of voting and avoid measures that will have an adverse impact on voter participation rates, adding that where possible, local, state and federal elections in the same location should be conducted in a manner as similar as possible to encourage voter participation and reduce the risk of voter confusion.²
- 3.6 The issue of alternative voting methods permitted under legislation for those that may be unwell on an actual election day was highlighted by the Department of Health (DoH) as part of a review of the Eden-Monaro by-election. During the pandemic those that were unwell were generally encouraged to stay away from polling stations, however legislation in its current form does not allow for alternative methods of voting on the day for that group of voters.³

Postal and in person pre-poll voting

- 3.7 For federal elections the Electoral Act sets out the following conditions for entitlement for postal and in person pre-poll voting:
- are outside the electorate where you are enrolled to vote;
 - are more than 8km from a polling place;
 - are travelling;
 - are unable to leave your workplace to vote;
 - are seriously ill, infirm or due to give birth shortly (or caring for someone who is);
 - are a patient in hospital and can’t vote at the hospital;
 - have religious beliefs that prevent you from attending a polling place;
 - are in prison serving a sentence of less than three years or otherwise detained;

¹ International Institute for Democracy and Electoral Assistance (International IDEA), *Submission 16*, p. 9.

² Local Government NSW, *Submission 6*, p. 6.

³ Dr Catherine Kelaher, Principal Medical Advisor, Department of Health, *Committee Hansard*, 18 November 2020, p. 16.

- are a silent elector;
- have a reasonable fear for your safety.⁴

3.8 Many submitters supported the extended use of pre-poll voting as a key way to ease the social distancing challenges of having one main polling day during a pandemic.⁵ In particular LGNSW noted that postal voting would reduce the pressure on attendance at polling places ‘ensuring that elections can be conducted in a COVID-safe way if necessary.’⁶

3.9 Others identified possible consequences such as:

- the increased resourcing costs associated with longer staffing times, venue hire and protective equipment;
- remote voters having unequal access to early voting centres and delayed postal services;
- postal votes are less robust than in person voting as the secrecy of the ballot cannot be assured;
- the challenge for campaigners in covering longer election campaigning periods; and
- the possible effect of a polling period rather than a polling day diminishing the deliberative character of the electoral process and affecting voter engagement.⁷

3.10 For in person pre-poll voting at an early voting centre, the Seniors United Party of Australia and People With Disabilities (WA)⁸ proposed that allocating dedicated days within the pre-poll period for seniors and disabled individuals and/or pre-booking voting times would distribute crowds more evenly and support social distancing measures.

⁴ Australian Electoral Commission (AEC), website, ‘Voting before election day’, viewed 28 May 2021, <https://www.aec.gov.au/Voting/ways_to_vote/>

⁵ Associate Professor Vanessa Teague, *Submission 11*, p. 1; Australian Electoral Commission, *Submission 17*, p. 7; International IDEA, *Submission 16*, p. 9; Robert Kennedy, Electoral Commissioner Western Australia, *Submission 3*, p. 12; Tasmanian Electoral Commission, *Submission 4*, p. 2; Northern Territory Electoral Commission, *Submission 9*, p. 2; Patrick Vidgen, Electoral Commissioner, Electoral Commission of Queensland, *Committee Hansard*, 18 November 2020, p. 22; Seniors United Party of Australia, *Submission 2*, p. 2; People With Disabilities (WA), *Submission 14*, p. 5.

⁶ Local Government of New South Wales, *Submission 6*, p. 5.

⁷ Mr Michael Maley, *Submission 1*, p. 2; NTEC, *Submission 9*, p. 3.

⁸ Seniors United Party of Australia, *Submission 2*, p. 2; People With Disabilities (WA), *Submission 14*, p. 5.

- 3.11 The Seniors United Party also noted that nursing homes were particularly impacted by lockdown measures which may prevent residents from applying for postal votes or attending an in person pre-poll voting centre.⁹
- 3.12 The Australian Electoral Commission (AEC) noted that it has the capacity to conduct an election by postal vote and that Australia Post has worked constructively with the AEC in the past to ensure the timely and secure delivery and return of postal ballots.
- 3.13 However, there is currently no power within the Electoral Act to provide for universal pre-poll, either in person or postal voting, for electorates impacted by emergency situations. The AEC stated that this would be a ‘very critical element of agility that would be required in emergency situations’.¹⁰
- 3.14 The AEC and the ECG noted measures to support transparent postal voting during emergency times, including:
- working closely with political parties in swift return rates of political materials from the parties;
 - working with Australia Post to ensure service and delivery;
 - streamlining online postal voting; and
 - communicating the benefits of online applications for postal voting as opposed to paper applications.¹¹

Committee comment

- 3.15 The Committee acknowledges the proposals to allocate voting times for vulnerable communities, however, it is concerned that this would undermine universal access to the vote. Even in emergency situations, the integrity of the electoral system must be paramount. The Committee can foresee situations where electors being turned away from voting centres reserved for special category electors would seriously undermine the integrity of the electoral process.

⁹ Seniors United Party of Australia, *Submission 2*, p. 4.

¹⁰ Mr Jeff Pope, Deputy Electoral Commissioner, Australian Electoral Commission, *Committee Hansard*, 18 November 2020, p. 4.

¹¹ Mr Patrick Vidgen, Electoral Commissioner, Electoral Commission of Queensland, *Committee Hansard*, 18 November 2020, p. 22; Mr Tom Rogers, Electoral Commissioner, Australian Electoral Commission, *Committee Hansard*, 18 November 2020, p. 6

- 3.16 As it has consistently noted in previous inquiries, the Committee remains concerned about the extended pre-poll period becoming the norm for federal elections due to the impact it can have on the deliberative character of elections.
- 3.17 However, the Committee does acknowledge the benefit of in person and postal pre-poll voting can confer during emergency situations. This is discussed further below.¹² The Committee notes that universal eligibility for postal votes provided significant benefits to Queensland electors in local government elections in early 2020 when the COVID-19 situation was largely unknown and rapidly evolving.

Telephone voting

- 3.18 Telephone voting in federal elections is available to electors who are blind or have low vision, and electors working in Antarctica.¹³
- 3.19 It was submitted that expanding telephone voting eligibility would benefit elderly Australians and those living with a disability who are vulnerable in a pandemic¹⁴ and those directed to quarantine or self-isolate.
- 3.20 Telephone voting was expanded in Queensland for the March 2020 local government elections and the October 2020 general election to include electors who had been directed to isolate or quarantine during the election period and the volume of votes cast through this system rose by 390 per cent.¹⁵

On the day voting

- 3.21 Attending a polling place on election day is still the primary way most electors vote in federal elections.
- 3.22 The Committee heard from a range of submitters, many supporting the continued use of polling centres even in a pandemic. However, many identified areas of concern and issues to be addressed in order to ensure that elections can be held in a safe and secure way to protect the community.

¹² Mr Jeff Pope, Deputy Electoral Commissioner, Australian Electoral Commission, *Committee Hansard*, 18 November 2020, p. 4.

¹³ Australian Electoral Commission, 'Telephone voting', viewed 5 May 2021, <https://www.aec.gov.au/voting/ways_to_vote/>

¹⁴ Seniors United Party of Australia, *Submission 2*, p. 4; People with Disabilities (WA), *Submission 14*, p. 4.

¹⁵ Electoral Commission of Queensland, *Submission 13*, p. 3.

- 3.23 In a pandemic environment, electoral management bodies need to consider a number of challenges such as:
- physical distancing requirements;
 - hygiene and the additional cleaning requirements;
 - crowd management and safety measures impact on queues and voter satisfaction;
 - the impact on campaigners and political parties;
 - additional resourcing requirements; and the
 - risk to vulnerable people not eligible for other means of voting.
- 3.24 As outlined in Chapter 2, the AEC was able to trial its response to these challenges during the Eden-Monaro by-election, which has led to recommended legislative changes, discussed below.

Mobile polling stations

- 3.25 Mobile polling is an important feature of the electoral system to reach isolated members of the community, such as the elderly, sick and those in remote communities.¹⁶ However, in a pandemic environment, external mobile polling teams entering vulnerable communities can potentially bring disease into those communities and during the various 2020 electoral events some mobile polling was suspended due to this risk.¹⁷ The ability of every Australian to easily access their right to vote and cast a ballot must be maintained as a priority. More work is required engaging with isolated populations, in particular remote communities, to find solutions that enable them to participate in elections in a pandemic environment.

Online voting

- 3.26 There has been a call of online voting over a number of years to provide a more convenient voting option for electors, provide a secret ballot for blind and low vision electors, for easier delivery of remote voting services and for faster provision of election results. A number of submitters again raised online voting as a possible solution to voting during emergency situations.
- 3.27 Dr Narelle Miragliotta, private capacity, suggested that internet (online) voting 'eliminates the need for the voter to leave their home to cast their vote if it is unsafe for them to venture outdoors'.¹⁸ Mr Ian Brightwell suggested

¹⁶ AEC, 'AEC mobile voting', viewed 6 May 2021, <www.aec.gov.au/Voting/ways_to_vote/>

¹⁷ AEC, *Submission 17*, p. 20; NTEC, *Submission 9*, p. 3; ECQ, *Submission 13*, p. 6, 20.

¹⁸ Dr Narelle Miragliotta, *Submission 10*, p. 2.

that the community sentiment surrounding internet or online voting was 'positive or at least without 'major calamity', and advocated for the establishment of a national body to 'both research and where appropriate provide systems and support online voting for all Australian jurisdictions.'¹⁹ Western Australia Centres peak body Linkwest suggested that its communities may feel safer using online voting.²⁰

- 3.28 Technology provider Scytl provided evidence of where electronic voting had already been used within Australia (in NSW in 2015 and 2019; Western Australia in 2017; and Victoria in 2006 and 2010)²¹, and made the recommendation:

That legislation be put in place to provide an online voting platform to facilitate the collection of votes from visually impaired voters and potentially other cohorts such as those overseas, as this provides a base which scales to collect ballots in the event of an emergency situation.²²

- 3.29 The AEC noted that if requested to implement such a system, there would need to be significant lead time in order to work through the many issues associated with online voting and would involve significant costs.²³

- 3.30 This Committee has previously rejected the development of a universal online voting portal stating that the proposal raised:

... significant questions over the capacity of an electronic voting solution to be both cost-effective and protect the security and sanctity of the ballot in the Australian context [and concluded that] there can be no widespread introduction of electronic voting in the near term without massive costs and unacceptable security risks.²⁴

¹⁹ Mr Ian Brightwell, *Submission 5*, p. 3.

²⁰ Linkwest, *Submission 20*, p. 2, 5.

²¹ Scytl, *Submission 13*, p. 4.

²² Scytl, *Submission 8*, p. 3.

²³ Mr Tom Rogers, Electoral Commissioner, Australian Electoral Commission, *Committee Hansard*, 18 November 2020, p. 14.

²⁴ JSCEM, November 2014 (44th Parliament), 'Second interim report on the inquiry into the conduct of the 2013 Federal election: An assessment of electronic voting options, p. 2, available at <https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Electoral_Matters/2013_General_Election/Second_Interim_Report>

- 3.31 These concerns do not appear to have resolved in the intervening years since that report was released. Cybersecurity expert Associate Professor Vanessa Teague submitted that recent work on current electronic voting systems ‘showed than even sophisticated cryptographic proofs of election integrity could be easily faked’.²⁵

Candidates, campaigning and scrutineering

- 3.32 Emergency situations also impact the ability for candidates to campaign in person or by representation at polling stations and party scrutineers to observe proceedings during the vote count.

- 3.33 Mr Benjamin Cronshaw, candidate in the 2020 Victoria local council elections submitted:

There were restrictions on candidates in being to door knock or promote themselves publicly in the community under the general COVID-19 rules. This did hamper the exercise of democracy, particularly for new and emerging candidates.²⁶

- 3.34 This is an issue that is outside the remit of Electoral Management Bodies (EMBs) to manage, however, the AEC noted that during the Eden-Monaro by-election it encouraged those campaigning to be aware of health directions and laws in place regarding social distancing. The AEC also provided opportunities for parties and candidates to have their official campaign website address available to voters on the AEC website.²⁷

- 3.35 The Tasmanian Government²⁸ and the Western Australian Government²⁹ had provided candidates with alternative ways to reach voters, such as including political material with postal vote applications and how to vote information and dedicated areas at polling stations in which to campaign from each early voting centre.

- 3.36 Scrutineering is also impacted by physical distancing, with the role of scrutineers being to stand close to those counting the votes. Health officials working with the AEC during the Eden-Monaro by election said:

²⁵ Associate Professor Vanessa Teague, *Submission 11*, p. 1.

²⁶ Mr Benjamin Cronshaw, *Submission 7*, p. 2.

²⁷ AEC, *Submission 17*, p. 27.

²⁸ Tasmanian Government, *Submission 21*, p. 6.

²⁹ Minister for Electoral Affairs, Western Australian Government, *Submission 3*, p. 3.

The scrutiny process requires scrutineers to be very close to the people counting the votes, and an array of things were considered as controls, such as video television, to have a look at the votes. That was found to be impractical, given the number of locations and the logistics in getting that organised. So they used an array of controls using distancing. They used barriers, such as perspex barriers. They also used PPE, where physical distancing and other barriers couldn't be used, and, obviously, respiratory hygiene and other hand hygiene behaviours.³⁰

- 3.37 Scrutineers were not permitted to observe the polling day counts in Queensland (March 2020) and the Northern Territory (August 2020) due to physical distancing requirements. Scrutineers were however permitted to observe the official counts which start on the Monday after polling day.³¹

Proposed legislative amendments

- 3.38 The Electoral Act is deliberately prescriptive and offers little flexibility for how an election can be conducted, and limited powers to extend flexible polling options (telephone or postal voting) to all electors. Existing provisions of the Electoral Act providing some flexibility are at the following sections:

Temporary suspension of polling (s240A)

- 3.39 Section 240A gives presiding officers³² the power to temporarily suspend polling at their polling place for physical or voter safety reasons. The section provides riots, storms, fires, and health hazards as specific examples.
- 3.40 This power only allows suspension of polling that has already commenced, and only allows for suspensions until later the same day.
- 3.41 At the 2019 federal election, polling at the Sydney Central pre-poll voting centre (PPVC) at Central Railway Station, Haymarket, was temporarily suspended after a bag was left unattended in the vicinity of the premises.

³⁰ Dr Catherine Kelaher, Principal Medical Advisor, Department of Health, *Committee Hansard*, 18 November 2020, p. 16.

³¹ Mr Iain Loganathan, Electoral Commissioner, Northern Territory Electoral Commission and Mr Patrick Vidgen, Electoral Commissioner, Electoral Committee of Queensland, *Committee Hansard*, 18 November 2020, p. 20, 21.

³² During polling officers-in-charge are known as 'presiding officers', this term does not refer to the Presiding Officers of the House of Representatives and the Senate.

Police attended promptly and polling resumed approximately fifteen minutes later.

Adjournment of polling (s241)

- 3.42 Section 241 gives presiding officers the power to adjourn polling at their polling place for physical or voter safety reasons. Like section 240A, section 241 provides riots, storms, fires, and health hazards as specific examples.
- 3.43 This power only allows for adjournment of polling from one day to the next. For an adjournment to continue indefinitely, the presiding officer would need to repeatedly adjourn polling each day.
- 3.44 At the 2019 federal election polling at the Crows Nest PPVC (NSW) a person died outside the PPVC shortly after voting. Polling was adjourned to the following day.

Adjournment of polling in other cases (s242)

- 3.45 Section 242 gives presiding officers the general power to adjourn polling if, for any cause, a polling booth at a polling place is not opened on polling day.
- 3.46 This power only allows for adjournment for up to 21 days.

Extension of time for holding an election (s286)

- 3.47 Section 286 gives ‘the person causing the writ to be issued’ (that is, depending on the electoral event involved, either the Governor-General, a state Governor, or the Speaker of the House of Representatives) the broad power to extend the time for holding an election in order for ‘meeting any difficulty which might otherwise interfere’ with the election.
- 3.48 This power has rarely been used and, whilst broad, is not held by any AEC officer. For these reasons the AEC advises it is unlikely that this power could be utilised at short notice.³³
- 3.49 As evidenced by the electoral events held through 2020, these measures are not adequate. To provide greater flexibility the AEC proposed that, in the event of an emergency situation the following be provided for:
- extend the reasons electors can postal or pre-poll vote;
 - conduct an election solely by postal vote;

³³ AEC, *Submission 17*, p. 6.

- streamline application and/or declaration requirements for postal voting and pre-poll voting;
- expand categories of electors who may utilise the electronic (telephone) voting method; and
- operate scrutiny more safely.

3.50 Electoral experts also support the AEC being given flexibility to act in emergency situations.³⁴

3.51 However, Professor Anne Twomey raised concerns about the Electoral Commissioner being able to act without the appropriate accountability to the Parliament. She stated:

There should be provision in the legislation to be able to deal with emergencies, including ones that come up very quickly. Again, my personal view is that it's not appropriate for the Electoral Commissioner to make that call. A decision to actually stop voting or to not proceed to voting on polling day is such a significant decision that it should be a decision for which there is political accountability. It should be a decision, in my view, that is formally given assent by the Governor-General and has ministerial responsibilities attached. It could be the Prime Minister or you could have someone else nominated, who is another minister, to be able to do that.

Now, I appreciate the fact that this would be done during the caretaker period. One consequence of that is that, because the government is no longer responsible to parliament because parliament has ceased to exist, there is a factor there where the Governor-General is not formally obliged to act on the advice of a minister who's no longer responsible. In nearly all circumstances, of course, the Governor-General does continue to act on the advice of ministers during the caretaker period, and appropriately so. But there could be a possibility that a prime minister could, for example, advise the Governor-General, under a provision in the act, to prevent voting in an election for purely political reasons that were not related to an emergency. The Governor-General, in a caretaker period, could say: 'No, in those circumstances it's not appropriate. I will not act upon your advice.' Now that's getting into extremes of unlikelihood, but, nonetheless, by having the Governor-General in that role, you have a further level of protection to prevent the politicisation of the action. There have been examples where Governors-General have refused to act on advice during the caretaker period if the action by the government was considered to be inappropriate or to breach caretaker conventions. So it wouldn't be completely unprecedented, and it's a good layer of extra protection to have.

³⁴ Mr Michael Maley, *Submission 1*, pp. 4-6; Dr Narelle Miragliotta, *Submission 10*, p. 3.

In my view, yes, there should be an ability to call off an election on the day and suspend voting for a future day, because that may be necessary, but it shouldn't be a call of the Electoral Commissioner, who is not a politically accountable officer. It should be the call of the Prime Minister in the circumstances to advise the Governor-General, while also conscious of the fact that the Prime Minister, during a caretaker period, is no longer responsible and that the Governor-General would have the capacity to refuse to accept the advice if it was inappropriate in the circumstances.³⁵

Committee comment

3.52 The Committee is of the view that the Electoral Commissioner needs to be granted greater authority to act in the interests of the conduct of a safe, transparent and timely election in the event of an emergency situation. The Committee therefore considers that the Electoral Act should be modified to provide the following authority within the below conditions.

3.53 In emergency situations, the Electoral Commissioner should be granted the authority to modify the conduct of an electoral event to:

- extend the reasons electors can vote by post or pre-poll;
- streamline application and/or declaration requirements for postal and pre-poll voting;
- extend operating or polling hours (pre-poll only)
- conduct scrutiny safely.

3.54 The Electoral Commissioner should have the flexibility to determine which of the above modifications are appropriate in the given emergency environment.

3.55 The Electoral Commissioner should only be granted these authorities where an emergency has been declared under Commonwealth, state or territory law. Further the authority must:

- be limited to circumstances in which all alternative avenues to conduct an electoral event without exercising emergency provisions have been deliberated and exhausted;
- be limited to the extent necessary to conduct an electoral event;
- be limited to the geographical area in which the emergency situation has been declared, noting that this may only be part of an electorate;
- be exercised by the Electoral Commissioner and cannot be delegated;

³⁵ Professor Anne Twomey, private capacity, *Committee Hansard*, 18 November 2020, pp. 29.

- be time limited only to the time necessary to respond to the emergency situation and conduct the electoral event.
- 3.56 To maintain transparency and accountability, on the exercise of any emergency declarations, the Electoral Commissioner must as soon as practicable:
- publish the decision to modify the electoral event and the modifications to be made;
 - inform the Joint Standing Committee on Electoral Matters actions taken.
- 3.57 Although the Committee is not fully constituted once the House of Representatives has been dissolved for a general election, it is the primary Parliamentary oversight mechanism for the AEC and as such must be able to review any emergency declarations made by the Electoral Commissioner immediately on resumption of its duties.

Recommendation 1

- 3.58 **The Committee recommends that the *Commonwealth Electoral Act 1918* be amended to grant the authority to the Electoral Commissioner, in the event of an emergency being declared by Commonwealth, state or territory law, and to facilitate the safe conduct of an electoral event, to:**
- **extend the reasons electors can vote by post or pre-poll;**
 - **streamline application and/or declaration requirements for postal and pre-poll voting;**
 - **extend operating or polling hours (pre-poll only);**
 - **conduct scrutiny safely.**
- 3.59 **This authority must:**
- **be limited to circumstances in which all alternative avenues to conduct an electoral event without exercising emergency provisions have been deliberated and exhausted;**
 - **be limited to the extent necessary to conduct an electoral event;**
 - **be limited to the geographical area in which the emergency situation has been declared, noting that this may only be part of an electorate;**

- **be exercised by the Electoral Commissioner and cannot be delegated;**
- **be time limited only to the time necessary to respond to the emergency situation and conduct the electoral event.**

3.60 To maintain transparency the Electoral Commissioner must, as soon as practicable:

- **publish the decision to modify the electoral event and the modifications to be made; and**
- **inform the Joint Standing Committee on Electoral Matters of actions taken.**

3.61 Given that the definition of ‘nationally significant harm’ is now set out in the *National Emergency Declaration Act 2020*, the Committee does not consider it necessary to further state these conditions in the Electoral Act as this could prove unnecessarily proscriptive and undermine the flexibility needed to respond to emergency situations.

3.62 There are currently no provisions in the Electoral Act to move a date for polling, however this is an obvious omission in the Electoral Act which should be addressed in circumstances where voting cannot occur on the date fixed for polling.

3.63 The appropriate authority to change the date fixed for polling would be the issuer of the writs being:

- the Governor of a State;
- the Governor-General; and/or
- the Speaker of the House of Representatives;

as the case requires.³⁶

3.64 The issuer should act on the advice of the Prime Minister, in line with the conditions set out in the *National Emergency Declaration Act 2020*. When the House of Representatives has been dissolved for a general election, the Prime Minister should also consult with the Leader of the Opposition and the leaders of any other parliamentary parties prior to providing advice to the Governor-General.

³⁶ Electoral Act, Part XIII.

Recommendation 2

- 3.65** The Committee recommends that the *Commonwealth Electoral Act 1918* be amended to provide conditions to change the date of polling where an emergency situation prevents voting occurring on the date fixed for polling.
- 3.66 In addition, existing provisions under sections 240A to 243 of the Electoral Act should be reviewed to ensure that decisions made under these sections are in line with the proposals in this report.

Recommendation 3

- 3.67** The Committee recommends that sections 240A to 243 of the *Commonwealth Electoral Act 1918* be reviewed to ensure that they are in line with the recommendations set out in this report.

Senator the Hon James McGrath
Chair

A. Submissions

- 1 Michael Maley PSM
- 2 Seniors United Party of Australia
- 3 Minister for Electoral Affairs, Western Australia
- 4 Tasmanian Electoral Commission
- 5 Mr Ian Brightwell
- 6 Local Government NSW
- 7 Mr Benjamin Cronshaw
- 8 Scytl Australia Pty. Ltd.
- 9 Northern Territory Electoral Commission
 - 9.1 Supplementary to submission 9
- 10 Dr Narelle Miragliotta
- 11 A/Prof Vanessa Teague
- 12 Prof Patrick Dumont
- 13 Electoral Commission of Queensland
 - 13.1 Supplementary to submission 13
- 14 People With Disabilities WA
- 15 Ms Daisy Norfolk
- 16 International Institute for Democracy and Electoral Assistance (IDEA)
- 17 Australian Electoral Commission
 - 17.1 Supplementary to submission 17

- 18** Department of Home Affairs
- 19** Digital Elections Pty Ltd
- 20** Linkwest
- 21** Tasmanian Government
- 22** Department of Finance

B. Exhibits

- 1 *Journal of Democracy, July 2019, Volume 20 Number 3 - Aspirations and Realities in Africa, Mr Michael Maley, (Sub 01)*
- 2 *The Secret Ballot in Australia: What does it mean and how secret is it really?, Mr Michael Maley, (Sub 01)*
- 3 *Electoral Regulation Research Network/Democratic Audit Of Australia Joint Working Paper Series. Electoral Management Under COVID-19, Mr Michael Maley, (Sub 01)*
- 4 *Excerpt from Statement for the Legislative Assembly Community Development and Justice Standing Committee 14 October 2020, provided by Electoral, Commissioner Robert Kennedy , Minister for Electoral Affairs, Western Australia, (Sub 03)*
- 5 *COVID-19 Guideline - Travel to remote areas NTEC staff , Northern Territory Electoral Commission, (Sub 09)*
- 6 *COVID-19 Incident Protocol - Suspected or confirmed case of COVID-19 for NTEC staff , Northern Territory Electoral Commission, (Sub 09)*
- 7 *COVID-19 Individual risk assesment - Travel to remote areas pre-departure form NTEC Staff , Northern Territory Electoral Commission, (Sub 09)*
- 8 *COVID-19 Procedure - Operating a voting centre NTEC staff , Northern Territory Electoral Commission, (Sub 09)*
- 9 *COVID-19 Response Plan - NTEC Staff - Internal , Northern Territory Electoral Commission, (Sub 09)*
- 10 *NTEC COVID-19 Management Plan , Northern Territory Electoral Commission, (Sub 09)*
- 11 *Electoral Commission of Queensland COVID-19 Safe Plan for Polling Place Supervisors , Electoral Commission of Queensland, (Sub 13)*

- 12 *Electoral Commission of Queensland COVID-19 Safe Plan for Returning Officers , Electoral Commission of Queensland, (Sub 13)*
- 13 *Network Support to COVID Crisis, Linkwest, (Sub 20)*

C. Public hearings

Wednesday, 18 November 2020

Committee Room 2R1

Canberra

Australian Electoral Commission

Electoral Integrity Assurance Taskforce

Department of Health

Electoral Commission Queensland

Northern Territory Electoral Commission

Australian Security Intelligence Organisation

Australian Cyber Security Centre

Department of Home Affairs, Emergency Management Australia division

Professor Anne Twomey

Australian Greens - Additional comments

The Australian Greens support the recommendations outlined in the Committee report to allow some flexibility for the conduct of elections impacted by emergencies, such as bushfires or pandemics. The experiences of States and local councils who conducted elections during the COVID pandemic have been instructive, and we thank the relevant electoral commissions, political parties and volunteers who were able to ensure that fair and democratic elections could still be held.

However, making provision for flexibility in emergency situations should not detract from the benefits of fixed term elections for the House of Representatives.

The Australian Greens maintain that fixed term elections remove the strategic advantage afforded to an incumbent government in exercising their discretion as to election dates. They restrict the government from calling an election when public opinion is most favourable to the government, riding out scandals, or strategically ramping up advertising on key issues ahead of a public announcement of the election date known only to the government.

Fixed term elections level the electoral playing field for minor parties, independents and third parties with less capacity to plan, prepare and fund election campaigns, and facilitate the introduction of electoral funding and spending caps.

These benefits can be achieved without compromising the need to provide for flexibility in emergency situations.

Senator Larissa Waters

Member