

Electoral Commissioner

The Hon Tony Smith MP
Speaker of the House of Representatives
Parliament House
CANBERRA ACT 2600

Dear Mr Speaker

In accordance with standard procedure, you have sought my advice regarding the conduct of by-elections to be held following the resignation of the Member for Longman in Queensland; the Member for Braddon in Tasmania; the Member for Mayo in South Australia; the Member for Fremantle and the Member for Perth in Western Australia. I am conscious that the choice of date is (within legislative parameters) at your absolute discretion and the AEC stands ready to deliver those events in accordance with your instructions on any legislatively appropriate date which you select.

As long as the strictures of the *Commonwealth Electoral Act 1918* are complied with, including timeframes for Writ issue and other statutory milestones in the election timetable, the by-elections are able to be held on any Saturday starting, as at today's date, from 23 June 2018. The AEC is able to conduct the by-elections at any point from that date. However, there are some factors that may impact on election delivery that you may care to consider when selecting a date, which are set out below.

Firstly, I note that this series of by-elections will be, as I understand it, the largest number of by-elections conducted at any one time since federation. There is additional complexity by the events being spread across four states. This fact does not prevent the AEC from conducting the by-elections at the next legally available date (23 June), but I am nonetheless conscious of the size of the task confronting the AEC and the associated risks to successful delivery. To that end, I note there is currently some media speculation about a 'Super Saturday', which would see the AEC conducting all of the by-elections on one date to account for various state issues. The other option is that these by-elections could be conducted individually, on separate dates.

The AEC believes conducting all by-elections on the one date is, by far, the preferred option—to do otherwise is likely to cause significant confusion among electors regarding dates and responsibilities. As a related aside, there is also an increased risk of coinciding with a proposed WA state by-election if the federal by-elections are held on separate dates. These observations are not provided as a matter of convenience for the AEC; we are able to conduct the by-elections on different dates if that is what you desire. However, it should be noted that the confusion generated from not using a single date risks disenfranchising electors.

Secondly, a significant factor the AEC has considered in framing this advice is our interactions with Government over the last seven days regarding community expectations of the by-elections not being beset by further technical issues relating to section 44 of the Constitution. As a result, I am aware that

the Government is currently considering urgent changes, through regulation, to the nomination process to ensure candidates are aware of their obligations under section 44 of the Constitution. I support this desire to ensure that future election outcomes, including these by-elections, are not clouded by allegations of ineligibility. You may be aware that I specifically addressed this issue in my evidence to the Joint Standing Committee on Electoral Matters (JSCEM) on 8 December 2017 when I suggested several steps the AEC could take to assist Parliament in this matter.

Whilst I am not fully aware of the details of the proposed changes, I do know that if changes to current processes are to be implemented in time for the by-elections the AEC will need a period of time to consider, adapt, test and implement the regulatory changes in a methodical and planned manner. I suspect more will be known about those changes over the next few days. To that end, I note the JSCEM report into section 44 of the Constitution, which was tabled today, also canvasses changes to the nomination process for candidates. The Special Minister of State's (SMOS) media release welcoming the report confirms the Government intends to move now to progress changes to the existing nomination process in accordance with the JSCEM recommendations. I also note the Shadow SMOS has issued a media release welcoming the JSCEM report.

Considering the factors I have outlined, I am concerned that the next legally available date for the by-elections (23 June) may not provide the AEC, or indeed parties and candidates, with sufficient time to fully implement the proposed changes. Furthermore, I am also conscious that the next available date after the 23 June (30 June) marks the start of the school holiday period in two of the affected states (WA and Qld) and that 7 July marks the start of school holidays for the other two affected states (SA and Tas). It is, of course, possible to hold elections during school holiday periods, and the AEC is able to do this if that is what you desire. However, it should be noted that school holiday elections do create additional difficulties for voters with an attendant risk of disenfranchisement and low turnout. For example, voters travelling for school holidays outside their Division do not have the same number of alternative voting options that are available at a full election, and some voters therefore may not be able to access voting services.

Should you wish to account for all these factors, including waiting until the completion of the school holiday period in all of the affected states, the next available date for the by-elections would be Saturday 28 July 2018.

Once you have decided on which day you propose for the by-elections (or days if you decide to select different dates for each event), I suggest that the AEC's Chief Legal Officer liaise with the Clerk of the House regarding the associated dates for writ issue, close of nominations and other significant dates. There are a number of permutations for these other key dates depending on the day of the by-elections, and this is best dealt with once the date for the by-elections is decided.

I am happy to provide you with more detail, should you seek further advice.

Yours sincerely

Tom Rogers

17 May 2018