

Digital Elections Pty Ltd

Parliament of Australia

Submission by Digital Elections Pty Ltd

Date of Public hearing: 18th November 2020

Future Conduct of Elections Operating During Times of Emergency Situations

1. Introduction

Digital Elections Pty Ltd provides voting and electoral management systems and has an interest in aspects of this Inquiry.

We have provided comments below under the subject heading of “alternative voting methods including early, remote and postal voting”. Our comments focus on postal voting in particular, and whether privacy and the risk of coercion could be reconsidered in the light of recent experiences with postal voting. Refer 3 below.

In addition we have included comments of a more general nature, to do with postponement of elections. This could be considered part of contingency planning for emergencies and it maybe that this Inquiry is able to facilitate greater significance being placed on this aspect of managing unforeseen disruptions to elections. Refer 2 below.

For convenience, a reference to States includes a reference to Territories.

In summary our submission;

- (a) Recommends reviewing arrangements and legislative scope for postponing elections.
- (b) Recommends a review an aspect of postal voting, hitherto considered detrimental to the integrity of the vote to do with privacy and coercion, and
- (c) Provides some suggestions to guide decision makers when faced with a particular emergency situation.

2. General comments: Postponing elections due to an emergency.

This Inquiry seeks to address all sorts of emergencies. Not just health pandemics, but Earthquakes; Fires; Floods; Tsunamis and even civil unrest.

Australia’s vast landscape makes it unlikely that the whole nation would come to a standstill (in an election sense) from a natural disaster. Consider that across the 150 or so electorates, only a small number would simultaneously be impacted by the aforementioned types of disruptions.

This leads to the likely scenario of isolated polling disruptions in Australia rather than impacting an election event as a whole.

This is illustrated when considering, for example, that a similar sized cyclone that could engulf the whole or most of many smaller pacific island nations, may only impact one or two electorates in Australia.

We note that between February 21 and August 2020 of the COVID pandemic, “at least 70 countries across the globe had postponed some elections”¹.

Indeed the case for temporarily postponing an election becomes particularly relevant during an emergency or a major disruption impacting an election. If not fully prepared for this, Australia’s ability to effectively respond could be unnecessarily limited by legal restraints, potential court interventions and uncertainty around agreed principles and pre-requisites for implementing a postponement.

We would like to see a formal consensus between the Commonwealth and the States around key aspects and the legitimacy of postponement. This would overcome impediments where the criteria for postponement may vary between the States and the Federal governments and the voting public is left confused as to why criteria would vary, when it is, fundamentally, to do with the integrity of the voting process. Voters would expect uniformity when it comes to matters to do with democratic principles.

The criteria could address such things as;

1. Time limitations.
2. What alternatives have been considered for other forms of voting, such as postal or early voting or electronic.
3. An assessment of the threats associated with proceeding with the election or certain polling places.
4. A consensus on the legal framework required, with each jurisdiction adopting a consistent approach.
5. A clear statement that ensures postponements are not politically motivated and non-discriminatory.
6. Also use this process to identify what compromises may arise as a result of a postponement and reinforce the adherence to maintaining integrity of the election.

We note that adjourning an election is not uncommon, although historically these are limited to short durations, under existing legislation².

However, we submit that with the future in mind, and preparedness for emergency scenarios, postponement principles should be exhaustively and formally enunciated with a view to both Commonwealth and States principles being aligned and Electoral Commissions being provided with powers to postpone polling against clear guidelines and criteria. We envisage suitable legislation would state what matters need to be considered before invoking any powers to postpone, and also facilitate the tailoring of any postponement to meet unique circumstances.

It is important Postponement is distanced from any political agendas by having its own criteria and evaluation check list. Decisions to postpone an election must not only be objective, but must be seen to be objective.

¹ “When Is It democratic to Postpone an Election? Elections During Natural Disasters, COVID 19, and Emergency Situations. Toby S. James and Sead Alihodzic. Election Law Journal: Rules, Politics, and Policy, Vol 19, No3.

² The Electoral Act 1918 (As amended) Sections 241 and 242

3. Alternative voting methods including early, remote and postal voting

(a) General comment

No voting method is perfect, and ultimately favouring one over the other is a case of weighing up the pros and cons.

We submit that in an emergency situation, the weighing up of the pros and cons could become even more pronounced, and risk/vulnerability assessments will produce different results. Bare-in-mind, it's not just the vulnerability associated with a form of voting that is the issue; it's the ability to contain those vulnerabilities. All voting systems have vulnerabilities.

In the context of a health crisis (pandemic), processing a vote electronically will always present a lower contagion risk than handling paper. Against this are the well-publicised views on the merits and pitfalls of moving from paper based voting to electronic voting.

Vulnerabilities or risks in the voting process that may be unacceptable in normal circumstances, become acceptable in the context of an emergency. We have seen this amid COVID 19 with new levels of tolerance in postal voting, especially around the timeliness of Australia's postal service³.

(b) Postal Voting and Privacy/Coercion Issues

While our business focus is more to do with the mechanisms, tools and physical implementations, we would recommend the Inquiry takes this opportunity to examine particular issues associated with postal votes, and ways of even streamlining postal voting as a viable alternative during some types of emergency situations.

We say this in the context of an overall reluctance of Electoral Commissions in Australia, at this stage, to adopt online voting other than for various categories of absentee voters.

We expect that developing confidence in postal voting as a viable alternative (albeit in restricted circumstances) will assist Governments in assessing the real risk of having uncontrolled environments where voters effectively cast their vote without the oversight of an election official.

In this regard, the opportunity now arises to understand more fully the risks of voter secrecy and privacy, in particular any concerns of coercion that could be attributed to postal voting and uncontrolled environments. And if these concerns are proven, and significant, then factor this into the evaluation of other forms of unsupervised, remote and/or absentee voting, such as via the telephone or online.

We hope that now, given the new experiences of the States (including local government) with the expanded use of postal voting, this Inquiry could initiate a formal examination of the incidence of, or threat of, coercion occurring in postal voting, as this has been a long standing concern for non-advocates of postal voting.

Forward planning for postal voting during a pandemic would also warrant reinforcing the use of post offices and mail boxes as "essential services", as their closures (in Victoria), although temporary, were shown to cause considerable bottlenecks in the mail service.

³ Reference Australia Post web site as of 16th November 2020. (<https://auspost.com.au/about-us/news-media/important-updates/coronavirus>) *"We're working hard to deliver as safely and quickly as possible, but the impacts of the pandemic are causing significant delays. Thank you for your patience"*

4. Some suggestions to guide decision makers when faced with a particular emergency situation.

(a) Using a Decision Matrix

Ultimately we suggest an outcome of this Inquiry could be the creation of a “Procedures and Guidelines (for voting in a state of emergency or natural disaster)” as has been the case in one form or another in other jurisdictions⁴.

In addition, we see the development of a comprehensive matrix of scenarios being created, with possible solutions listed against each scenario. This could be a check list of what to do, and why.

This matrix would include such things as;

1. A ready statement of what assets and EMB has at its disposal.
2. Whether or not certain assets (systems) and platforms are easily mobilised and/or adapted to an emergency deployment.
3. A security check of the safety of data. Given the COVID crisis, perhaps a re-evaluation of the threats (or merits) of data being hosted by third parties (election rolls etc).
4. Possible consequences against adopting voting options of attendance voting, postal voting and electronic voting.

(b) Introduce trials

As with any major contingency planning, consider dress rehearsals to ensure preparedness for contingencies.

This could be done by selecting small individual electorates to adopt a Plan B (nominated back-up voting method) approach to voting, thereby evaluating first hand its effectiveness.

The evaluations could require third parties and service providers to demonstrate their ability to mobilise and adopt at short notice to an alternative voting methods.

A trial would also enable a practical assessment of the co-operation required across agencies and contractors and the obstacles that might arise.

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⁴ 1) State of California USA . The Office of the Secretary of State : PROCEDURES AND GUIDELINES FOR VOTING IN A STTE OF EMERGENCY OR NATURAL DISASTER 2020 OCTOBER.

2) Ministry of Justice New Zealand “Updating the provisions in the Electoral Act 1993 for managing polling disruptions.