Submission to the Inquiry on the future conduct of elections operating during times of emergency situations

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Dear Secretary,

The COVID-19 pandemic upended every facet of Australian life, and elections have been no exception. By their nature, elections are events at which people congregate in order to perform their civic right and duty. However, the highly communicable nature of the virus which causes COVID-19 disease has rendered large scale public gatherings generally unsafe for voters, election workers and campaigners. Even when the COVID-19 pandemic is contained, epidemiologists and others have long warned that other flu crises might follow.[1]

In spite of the challenges that the COVID-19 virus has caused, the AEC, along with several other state and territory electoral commissions, managed to administer safe, robust and efficient elections in 2020. The commissions did so *primarily* by scaling up safety measures at voting venues and expanding access to early in-person voting.

But this pandemic has underscored the need to modernise our remote voting capabilities. This will best ensure minimal disruption to the election timetable, provide peace of mind to anxious voters, protect election workers and increase the prospects of a robust turnout even if we are confronted by a pandemic, or some other form of emergency.

In light of this, I wish to make the following recommendations to the Committee:

Modernise remote voting capabilities

- At best, postal voting is an adequate remote voting option. While postal voting has a long history of use in Australia, it has well-known deficiencies. These deficiencies become even more challenging to manage during a crisis. A key concern is the timely and reliable conveyance of postal votes to electors, especially inter-state, overseas, remote and regional voters.
- Remote internet voting eliminates the need to send voters a physical ballot and, in doing so, can help to ensure that votes are cast in a timely manner to be safely included in the count.

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[1] Woolaston, K., Fisher, J. (2020) UN report says up to 850,000 animal viruses could be caught by humans, unless we protect nature, *The Conversation*, 30 October; MacIntyre, R., Chughtai, A. and Bui, C. (2017) The number of new flu viruses is increasing, and could lead to a pandemic, *The Conversation*, 7 April;

- Of course, significant risks have been identified with internet voting. Such concerns have led to several leading computer scientists in Australia to repudiate internet voting on security and verifiability grounds.[2]
- However, the risks associated with internet voting must be balanced against other important election goals that might be placed under strain during a crisis or emergency, such as voter access, ballot timeliness and the physical safety of the voter.
- Remote internet voting eliminates the need for the voter to leave their home to cast their vote if it is unsafe for them to venture outdoors, it alleviates the supply chain challenges associated with conveying a physical ballot paper, and it permits a speedy tabulation of votes.[3]
- In light of this, investment in the creation of a *national* remote internet voting platform is warranted.[4]
- In order to balance the risks associated with internet voting, access to this modality should only be granted to restricted categories of voters, namely (i) those for whom in-person voting during a pandemic, for example, imposes unacceptably high risk to their health (ii) voters for whom geography renders postal voting extremely unreliable; (iii) voters with physical challenges; and those voters specified in Schedule 2 of the *Commonwealth Electoral Act 1918*.

Improving certain aspects of current postal voting practices

- The development and implementation of a robust and secure internet voting system is not something which should or can be achieved quickly. [5]
- Of the forms of remote voting presently used at elections in Australia, postal voting is the channel which the AEC can radically scale up for universal use if circumstances require.
- And even if an internet voting option was made available to voters, there are likely to be some electors who will prefer postal voting, because they do not trust internet voting, might not have home internet, or their internet service is unreliable.
- However, there are several issues associated with postal voting that should be addressed:

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[2] See, for example, Vanessa Teague, Blom, M. Culnane,C., Vukcevic,D., Conway, A., Gore, R., Stuckey, P. (2019) *Inquiry into and report on all aspects of the conduct of the 2019 Federal Election and matters related thereto*, Submission 80.

[3] See, Miragliotta, N. (2020) *Remote voting under COVID-19*, Electoral Regulation Research Network/Democratic Audit of Australia Joint Working Paper Series, No. 72.

[4] As the Committee is aware, remote e-voting is not a foreign voting technology in Australia, available to a restricted group of voters at NSW state elections, trialed at the 2017 Western Australian state election (but not for the 2021 state election) and, more recently, the 2020 ACT state election, in the form of the Overseas e-voting (OSEV) for electors who are overseas during the election. There is, however, a view that if internet voting is to be seriously pursued it should be in the form of a "national platform that could be used in any jurisdiction" and which should be "jointly owned and maintained" (Wilkins 2018 p. 2). A national approach will reduce the start-up and maintenance costs associated with the development of a new platform and it will allow "better utilisation of knowledge at a national level about cyber security – both the threats and positive mitigation. It also has the advantage of creating national standards on security and integrity that would be observed uniformly across all Australian elections". A nation-wide approach has been endorsed by *Electoral Council of Australia and New Zealand* (ECANZ) since 2013. See: Wilkins, R. (2018) *Report on the Security of the iVote System* (May). Report prepared for the NSW Election Commission. url: https://www.elections.nsw.gov.au/NSWEC/media/NSWEC/Reports/iVote%20reports/Report-on-the-Security-of-the-iVote-System.PDF; Electoral Council of Australia and New Zealand [ECANZ] (2013) *Internet voting in Australian election systems*, 10 September. url: https://www.ecanz.gov.au/sites/default/files/internet-voting-australian-election-systems.pdf?acsf_files_redirect

[5] In their submission to the NSW iVote 2019 Inquiry, Ronald Wen and Richard Buckland estimated that to build a more robust internet voting platform to replace NSW's existing iVote system that: "a minimum of four years needs to be scheduled for developing the system so that there is adequate time to achieve reasonable system maturity and high assurance, including extensive testing and small-scale pilot deployments" (2018, p. 5). Wen, R. and Buckland, R. (2018) *Inquiry concerning the NSW iVote system*, Submission 10, NSW Electoral Commission.

- End the practice of permitting parties to issue and handle postal vote applications. This can interfere with the elector's right to receive their postal ballot in a timely manner.
- Permit the AEC to commence counting early and postal votes on the morning of Election Day in order to expedite the count. A less optimal alternative to the previous recommendation is to permit the AEC to conduct a preliminary scrutiny of postal votes on the Friday before Election Day whereby the declaration certificate and ballot paper is separated, and the ballot papers sorted by division (but not counted).

I also endorse Michael Maley's recommendation (submission 1) that the *Commonwealth Electorate Act 1918* should be amended to afford the AEC some flexibility to respond to crises when such events require adjustment to the business as usual model of conducting elections. The Electoral Act is highly prescriptive and bureaucratic,[6] a quality which has certain advantages for reducing arbitrariness in the interpretation and application of the rules. But during times of crisis, and for the reasons noted by Michael Maley (see clause 8, page 3) it would be prudent to empower the AEC to make *necessary, reasonable and proportionate* adjustments to procedural aspects of the electoral process in emergency situations.

My thanks to the Committee for the opportunity to contribute to this Inquiry.

Yours sincerely

Narelle Miragliotta

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[6] See, Maley, M. and Orr, G. (2019) *Developing a Legislative Framework For A Complex and Dynamic Electoral Environment-Discussion Paper,* , Electoral Regulation Research Network/Democratic Audit of Australia Joint Working Paper Series, No. 64.