

Parliament of Australia
Joint Standing Committee on Electoral Matters:

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

**Submission of the International Institute for Democracy and Electoral
Assistance (International IDEA)**

13 November 2020

On 13 October 2020, the International Institute for Democracy and Electoral Assistance (International IDEA) was invited by the Joint Standing Committee on Electoral Matters of the Parliament of Australia to lodge a submission to the inquiry on the future conduct of elections operating during times of emergency situations.

International IDEA is an intergovernmental organization that supports sustainable democracy around the world. Comprised of, and governed by, its thirty-three member states, including Australia as one its founding members, the Institute's mission is to support sustainable democratic change through the provision of comparative knowledge, assisting in democratic reform, and influencing policies and politics. It is based on this expertise that the attached paper is submitted for consideration by the Joint Standing Committee on Electoral Matters.

SUMMARY: International IDEA's submission refers largely to comparative data and experiences on the conduct of elections during times of emergency situations. Natural and human-made catastrophes, climate crisis, and political events can invariably affect the timely and smooth implementation of electoral processes in all parts of the world. Given the crucial importance of the successful conduct of credible elections, being prepared to efficiently respond during a crisis is therefore key. While the challenges that arise and the appropriate response measures would vary depending on context, this submission attempts to draw upon the various lessons from different parts of the globe and find the common threads that may be noted by specific countries, Australia in particular. International IDEA concludes that strong legislation is necessary to set out principles for conducting elections during emergencies, providing the electoral management body, the Australian Electoral Commission, the mandate and agility to respond in a quick and measured manner. Australia is also seen as a frontrunner in its conduct of COVID-19 elections and should share its knowledge and skills internationally while investing in research and tracking of good practices.

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Planning for the Unforeseeable

2020 has been an extraordinary year, beginning with the bushfires in Australia, then in California, followed by the COVID-19 pandemic. The world is reminded once again, of the importance of preparedness for times of emergency. Much of the focus of emergency planning is often around the kinds of crises that have already occurred. It is, for example, now known that future pandemics are possible or even likely. Similarly, a country like Australia is likely to experience possibly devastating bushfires in the future. A more difficult challenge is to plan for the unpredictable.

Whatever the future crises, states and their electoral management bodies (EMBs) need to be prepared to deliver safe and credible elections. EMBs need to be equipped with sufficient skills and resources, including staff, to swiftly take the appropriate actions. This requires having a robust risk management system in place and a legal mandate to efficiently operate in emergency situations.

I. International IDEA's Assessment on Electoral Emergencies

COVID-19 has proven to be not only a health and economic crisis, but also a governance one. The crisis has exposed pre-existing democratic ills – inefficient governance, leadership deficits, an erosion of trust in political governance structures, and polarization. Further, authoritarians, under the guise of pandemic safety measures, are tightening their grip on power, silencing critics, and overriding democratic processes. International IDEA's Global Monitor <https://www.idea.int/gsod-indices/#/indices/world-map?covid19=1> tracks the impact of the pandemic on democracy and human rights in 162 countries. In many places, we have seen further democratic backsliding with executive over-reach and restrictions on speech, access to information, and assembly.

The virus has also disrupted democratic elections, with countries scrambling to determine whether to postpone or hold scheduled elections in 2020, and how to do so legally, legitimately, and safely. International IDEA maintains a “Global Overview of COVID-19: Impact on Elections,”¹ which serves as a repository of knowledge and information about elections held, postponed and ‘postponed and then held’. Various risk mitigation measures taken by different countries are presented succinctly along with the credible sources of data and information. This submission is based on this online resource.

The COVID-19 pandemic has affected elections in more than 70 states globally, placing tremendous pressure on decision-makers and election authorities and challenging public trust. Organizing an election is difficult enough under ordinary circumstances, from the efficient operation of polling stations and ruthless deadlines, to inexperienced frontline officers and intense political pressure. 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.

In response, we have seen examples of resilient and resourceful decision-makers and election authorities adapting to radically new conditions at breakneck speed, resulting in high voter turnout, the acceptance of close results, and remarkably quick resolution of obstacles through

¹ IDEA, International Institute for Democracy and Electoral Assistance 2020, *Global Overview of COVID-19: Impact on Elections*, <https://www.idea.int/news-media/multimedia-reports/global-overview-covid-19-impact-elections>, Stockholm: International IDEA.

interagency cooperation. Most importantly, in these countries, electoral decisions were based on political consensus and public trust maintained through clarity of mission and unified communication. The successfully conducted legislative elections in the Republic of Korea, for example, served as a model for subsequent elections in the region, such as the gubernatorial race in Tokyo and legislative elections in Mongolia and Singapore

COVID-19 is one of many possible crises to impact an election process, see Figure 2 below.

CATEGORIES	EMERGENCY	EXAMPLES
Health pandemic	COVID-19	Global 2020
	Ebola	West Africa 2013–2016
	Nuclear meltdown effects	Fukushima 2011
Natural Disasters	Bush/forest fires	Australia 2019–2020
	Cyclones	The Philippines 2013
	Floods	Bosnia and Herzegovina 2014
	Volcanic eruptions	Hawaii 2018
	Earthquakes	Nepal 2015
	Tsunamis	Aceh 2004
Civil and political unrest	Boycotts on elections	Thailand 2014
	Violent protests	Mexico 2015
Wars and terrorism (and their consequences)	Civil wars	Myanmar 2015
	International wars	Yemen 2014–present
	Cyberthreats	USA 2016
	Terrorist attacks	Tunisia 2019

Figure 2. Categorisation and examples of hazards that may affect electoral operations.

Whether a natural disaster or violent insurgency, holding an election becomes a significant challenge. Emergencies may limit freedom of movement and assembly, pose health and safety risks for voters and officials, and create operational complications and delays. Often the crisis at hand leads to a decision to postpone, suspend, or annul all or part of the election process. Generally, the electoral process is resumed after measures have been taken to address, or mitigate effects of, the crisis.

II. Challenges Faced by Elections in Emergency Situations

1. Integrity Challenges

In its 2012 report, the Global Commission on Elections, Democracy, and Security defined elections with integrity as “any election that is based on the democratic principles of universal suffrage and political equality as reflected in international standards and agreements, and is

professional, impartial and transparent in its preparation and administration throughout the electoral cycle”². Holding elections in emergencies poses inevitable challenges to these electoral integrity ideals. How does an electoral commission ensure universal suffrage during a bushfire? How do voters safely register in a cyclone? What does ensuring political equality look like during an insurgency? How do electoral officers remain professional, impartial and transparent when suddenly all of the ordinary rules and conditions are knocked out of play? 2020 has put these questions into clear relief.

2. Voter Turnout Issues

The constraints that crises pose upon electoral processes may also result in lower voter turnouts. This often has to do with the inability of voters to reach their designated polling stations. Sometimes the polling stations themselves are damaged by an act of nature or tampered with by political agitators. Compulsory voting may have reduced low turnout in the case of Australia, but as can be seen in Figure 1 above, the Queensland local elections in March 2020 still saw a decline, albeit not as bad as the French local or Iranian legislative elections.

While overall turnout is lower than normal for these “pandemic elections,” in many places people have voted in surprising numbers considering the risks and confusing, frequently changing conditions (Figure 1).

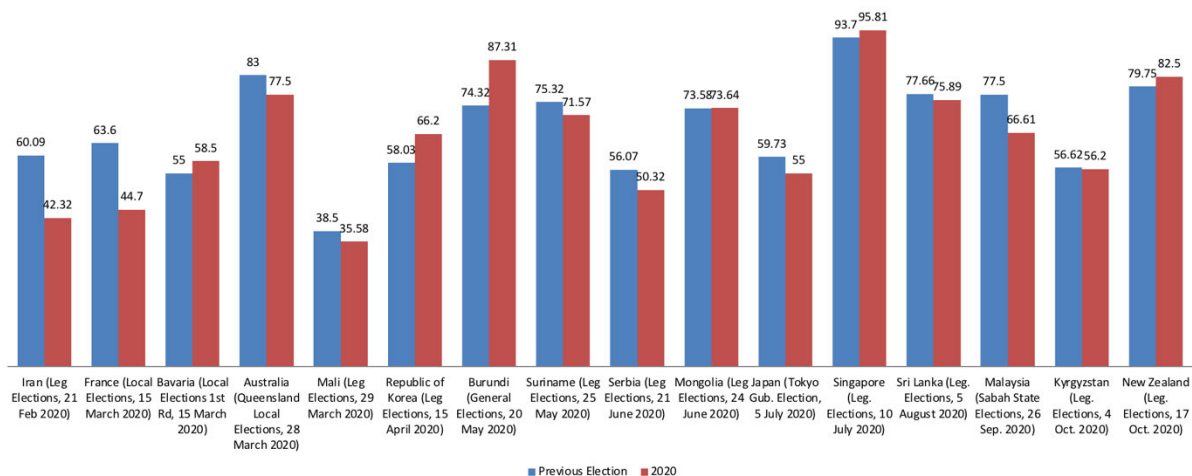


Figure 1. Voter turnout of major elections held during the COVID-19 pandemic compared to their respective previous elections (Source: International IDEA)

3. Finance and Administration Issues

Elections are the costliest and most administratively and logistically burdensome operation that a democracy can undertake during peacetime. In a crisis, these burdens multiply.

² Global Commission on Elections, Democracy, and Security 2012, *Deepening Democracy: A Strategy For Improving The Integrity Of Elections Worldwide*, Stockholm: International IDEA.

Recently, Asplund, James and Clark (2020) provided a summary of some of the public estimates of the additional costs for running elections during COVID-19, converted to US dollars (see Figure 3)³. The authors report that “a considerable hike in the investment needed – which varies according to the extent that additional measures are necessary (and purchasing parity)”.

Jurisdiction	Additional costs cited	Estimated additional cost quoted (US \$)	Voting age population	Additional cost per voter (US \$)
Australian Territory	Capital Early voting; staff hours; public information campaigns	\$1.6 million	283,162	5.65
Canadian province of Saskatchewan	Face masks and thousands of litres of hand sanitiser and disinfectant	\$0.3 million	815,000	0.38
Indonesia	Health measures	\$ 98.8 million	191,671,984	0.52
South Korea	Personal protective equipment	\$ 16 million	43,814,504	0.37
Sri Lanka	Hand sanitisers and additional works	\$32–37 million	15,262,770	2.26
Uganda	Train polling officials; temperature checks;	\$14.6 million	17,110,660	0.85

³ Asplund, Erik, James, Toby and Clark, Alistair 2020, *Electoral officials need more money to run elections during Covid-19*, Democratic Audit.

Jurisdiction	Additional costs cited	Estimated additional cost quoted (US \$)	Voting age population	Additional cost per voter (US \$)
	hands sanitisers			
Ukraine	Unspecified	\$46 million	<u>35,723,124</u>	1.29
USA	Postal voting; in-person voting; online registration; public education	\$2 billion	<u>255,152,703</u>	7.84

Figure 3. Estimated additional costs for elections conducted or to be conducted during the COVID-19 pandemic⁴

Additional costs are also involved if disruption took place in the middle of voting, forcing a suspension of the process and a repeat exercise.

Other costs are associated with recruiting new or additional polling staff during a crises. This is especially true in countries that use volunteer poll workers – as in the United Kingdom – rather than civil servants or those on civic duty (akin to ‘jury duty’) like in India and Germany respectively⁵. Given the volunteer nature of the work, polling staff may be hard to find or decide at the last minute not to show up, especially if their safety is not guaranteed.

4. Transparency Issues

The Global Commission on Elections, Democracy and Security placed transparency of election management as one of the key characteristics of elections with integrity. In relation to election operations in emergency situations, the following tensions exist:

- Quick vs. consultative decision-making—in an emergency situation, things are moving fluidly and quick reactions to the rapid-changing situation are necessary. However, transparency and common understanding of the problems and the ensuing solutions among electoral stakeholders are necessary for maintaining integrity of the electoral process.
- The need to ensure physical safety vs. monitoring access for election observers and contestants—some emergencies like violent unrest, volcanic eruptions, and indeed a

⁴*Ibid.*

⁵ Birch S, Buril F, Cheeseman N, Clark A, Darnolf S, Dodsworth S, Garber L, Gutiérrez-Romero R, Hollstein T, James T S, Mohan V, Sawyer K 2020, *How to hold elections safely and democratically during the COVID-19 pandemic*, The British Academy, London

pandemic, pose physical danger to humans. Therefore, if elections were to be held with various safety precautions, including physical distancing, it might limit the ability of election observers and contestants from adequately monitoring the electoral process. This balance is unresolved in some places, and the source of lawsuits in the United States, for example.

5. Legitimacy Issues

Ultimately, whether or not a country proceeds with election operations in an emergency, legitimacy of the EMB, the process, and results must be ensured. Contingency measures should not jeopardise legitimacy.

First, the EMB may or may not have the right mandate to take needed action to address the challenges posed by crisis. If it does not, it would be difficult to proceed without raising concerns.

Secondly, if the elections held under emergency situation do not conform with either the letter of the law or international principles, the legitimacy of the electoral process is at risk. Shortcomings and circumstances caused by the emergency might require different or even new measures for elections to proceed, however, legal basis for such measures need to exist. For example, special voting arrangements, such as early or mail-in voting, are often only feasible in places where some form of such arrangements previously existed and could be expanded. Or the ability to postpone an election might not be legally possible without legislative action.

Thirdly, the results of an election held under an emergency situation might not be considered legitimate by the election contestants or the general public. This could be the result of low voter turnout. As Figure 4 shows, a majority of the elections held during the COVID-19 pandemic had turnouts lower than the average of elections held between 2008-2019 in the respective countries.

Further the decision about whether to hold or postpone an election in the first place has triggered political discord in many places, particularly when it was taken unilaterally without consultation with other political actors and was viewed as an attempt to maintain grip on power and/or disadvantage the opposition. Many elections held during COVID, for example, appear to have been influenced by politics, rather than health considerations, and controversies surrounded such decisions from Serbia, Guinea, Bolivia, Ethiopia, and Venezuela to Indonesia, Tajikistan, and Hong Kong.

III. Recommendations for Addressing the Challenges

For addressing the above challenges, International IDEA puts forward five recommendations. Robust and unambiguous legislation is important to allow for efficient, decisive, and unquestioned actions by EMBs and other stakeholders during a crisis.

1. Establish clear criteria on what qualifies as an emergency & authorities for handling them

It should not be ambiguous as to when and how an emergency situation is triggered. Specific authority needs to be given by law to a certain state agency to declare the emergency. Such clarity would enable quick and efficient preparation and implementation. For elections, the

EMB needs clear authority and the legal mandate to organize accordingly. Absence of such a mandate may result in confusion and could lead to a different, less-equipped state agency taking over the election process.

2. Build anticipative abilities through careful planning and establishment of an Electoral Risk Management System

A robust electoral risk management system⁶ employed by the EMB in coordination with state security agencies and elements of civil society is essential. Electoral risk management is a systematic effort undertaken to improve knowledge about and situational awareness of both internal and external risks to electoral processes in order to initiate timely preventive and mitigating action. Having such a systematic effort in place during ordinary times would only benefit election management in extraordinary times.

It must be noted that Australia, through the actions of the Australian Electoral Commission (AEC), has advanced far in this regard. The 2020-21 Corporate Plan combines elements of strategic planning and risk management. Based on International IDEA's research and observation, this is still a rarity among EMBs of the world. We recommend that Australia actively shares this knowledge internationally in collaboration with international assistance providers. The AEC's role as the global secretariat for the BRIDGE⁷ professional development tool as well as their bilateral peer-to-peer support for EMBs in Asia and the Pacific are steps in the right direction that could be enhanced.

3. Provide for an agile EMB

EMB that are prepared and agile will mitigate, withstand, and resolve emergency situations most effectively. EMBs that operate with independence and receive a reliable stream of funding, combined with the requisite number of adequately trained staff were previously seen as sufficient for the conduct of credible elections. However, the COVID-19 pandemic has demonstrated that to deliver elections in line with international standards and accepted practice during emergency situations require an EMB to receive appropriate legislative support.

An example of an agile EMB is the National Election Commission (NEC) of Korea, that managed the first successful national election during the COVID-19 pandemic. The NEC did not require any legislative reforms to do so. Existing legislation was enough, providing the flexibility required to make the necessary adjustments for a 'COVID-safe' election. Measures to mitigate the contagion of COVID-19, such as early voting, the ability to vote at any polling station across the country, to allowing COVID-19 patients to vote from home or from hospital by mail, existed in the current legislation; although the latter required an interpretation of the law by the NEC showing their agility. Furthermore, the NEC had the authority to devise a "Voter Code of Conduct" that contained additional rules for how voters act throughout the electoral process. A further example of EMBs exercising agility to deliver an election legally

⁶ IDEA, International Institute for Democracy and Electoral Assistance 2016, *Risk Management in Elections*, Stockholm: International IDEA.

⁷ Building Resources in Democracy, Governance and Elections (BRIDGE) is a modular professional development program with a particular focus on electoral processes. BRIDGE represents a unique initiative where five leading organisations in the democracy and governance field have jointly committed to developing, implementing and maintaining the most comprehensive curriculum and workshop package available, designed to be used as a tool within a broader capacity development framework (www.bridge-project.org).

during the COVID-19 pandemic were the German State of Bavaria for the second-round of a two round local election, and several US states for the 3rd November Presidential Election.

Australia has a prescriptive electoral legislation. Moving towards a more principles-based electoral legislation, would allow for greater agility and an ability to adapt better during emergency situations, such as the COVID-19 pandemic. For example, legislation specifically requires the use of a pencil for marking ballots, which has been in electoral legislation since the early 1900s.

To this end, the AEC noted the following in their 2020-21 Corporate Plan, “The highly prescriptive process for conducting elections outlined in the *Commonwealth Electoral Act 1918* (the Electoral Act) must be balanced with evolving technological, demographic and stakeholder demands for error free, transparent, modern and efficient electoral events. Increased scale, changing voter expectations, 24-hour social media, security concerns—and now a global pandemic—are some of the factors adding further difficulty to an evolving electoral environment. The AEC’s regulatory role must also mature to keep pace with these changes.”⁸

The extent to which authority is enshrined within an EMB or the extent electoral legislation should stretch to is not contained with any norms. However, it is essential for an EMB to have more agility than under normal circumstances.

Financial sustainability is further prerequisite for an EMB to execute its mandate effectively during an emergency. As illustrated in Figure 3, a number of jurisdictions globally, including Australian states have required additional funding during the COVID-19 pandemic. It is difficult to ascertain whether the integrity of an election would be jeopardised if an EMB did not receive adequate funding, however an inability to mobilise funds within a limited time period would.

4. Provide Alternative Voting Methods (a.k.a Special Voting Arrangements)

Voting at polling stations requires people to gather under the same roof at the same time. In the current pandemic, health authorities have been advising against this type of voting. Many election authorities are now exploring alternative ways of ensuring that votes can be cast in a safe and secure way, also for those with COVID-19 or in quarantine. These special voting arrangements (SVAs), which enable people to vote early or over an extended period of time, or to vote through different means, such as mobile polling, e-voting or postal voting, have become the hot topic of 2020. Participation has, of course, been the driving force for the introduction for these measures.

Globally, we see the use of SVA increasing, at a rapid pace. In the April 2020 South Korean parliamentary election, provisions were made to encourage early voter turnout so that polling stations were not too busy on polling day, and a record 26.7 percent of voters voted early⁹. In New Zealand, early voting increased by 60% in the 2020 elections compared to previous elections in 2017. In Vienna City Council Elections, requests for postal ballots doubled from 200,000 in 2015 to 400,000 in 2020 – representing 40% of the electorate.

The current pandemic has forced legislative and electoral management bodies to rapidly assess and provide citizens with special voting arrangements, resulting in both expected

⁸ AEC, Australian Electoral Commission 2020, *op. cit.*

⁹ Spinelli, Antonio 2020, *Managing Elections under the COVID-19 Pandemic The Republic of Korea’s Crucial Test*, Stockholm: International IDEA

controversies and unexpected success stories. Some of the key insights stemming from the adoption of Special Voting Arrangements highlight that:

Political consensus is important. Inherent tensions must be navigated to ensure the convenience for voters (‘the participation dividend’) – and counteract the genuine risks to electoral integrity that arise when voting moves away from the controlled environment of the polling stations.

Early voting requires further resourcing because of the cost of additional staff and hire of premises, and the capacity of the state to deliver this might not be available. However, it is a “low-tech” solution that could often be easily upscaled

A multipronged approach is needed to ensure high voter turnout and electoral integrity. This can be achieved through transparent, clear and timely information to the general public, political consensus, coordination and consultation, a general acceptance of the set rules and regulations, and finally, attention to procedural and operational details that can make all the difference between a system that is easy or difficult to use or misuse.

5. Allow sufficient stakeholder engagement and deliberation as well as inter-agency cooperation

As the COVID-19 pandemic continues to unfold, decisions made by EMBs and governments are constrained less by existing timelines, available resources, and current laws and regulations. Rather, they increasingly balance risks of continuing based on convention against adopting alternative approaches. Since the impact on political stability and democracy is considerable, such decisions require broad consultation that highlight the competence and harness effectively the credibility of different agencies.

Governments often establish task forces during emergencies to address the situation. EMBs should strive to obtain advisory, logistical, and operational support from other groups while maintaining political neutrality and communicating transparently to citizens¹⁰. This is evident from the New Zealand parliamentary elections held on 19th October 2020, and the successful holding of Australian Capital Territory Legislative Assembly elections and the Queensland State elections in Australia this year.

Regarding cyberthreat hazards, while adversaries are free to choose any attack vector, defence strategies are more fragmented. Depending on the country context, managing cyberthreats may fall under the authority of an EMB, or other state agencies. The ensuing network of jurisdictions, competences and responsibilities is what makes a cross-government approach and interagency collaboration on cybersecurity in elections essential¹¹.

Trust is the most valuable asset for a state institution, and it is highly correlated with the previous fulfilment of citizens’ expectations.

- It invests the authorities with the power to rapidly adopt and smoothly implement the necessary decisions.
- It helps their voice be heard above the (virtual) crowds, thus reducing the spread of false information and its potentially devastating consequences.

¹⁰ Birch S, Buril F, Cheeseman N, Clark A, Darnolf S, Dodsworth S, Garber L, Gutiérrez-Romero R, Hollstein T, James T S, Mohan V, Sawyer K 2020, *How to hold elections safely and democratically during the COVID-19 pandemic*, The British Academy, London

¹¹ IDEA, International Institute for Democracy and Electoral Assistance 2019, *Cybersecurity in Elections: Models of Interagency Collaboration*, Stockholm: International IDEA.

- It makes people accept the limitations to their rights¹² more easily based on the certainty of gaining them back once the danger has been overcome.

Unfortunately, in many countries state institutions found themselves involved in this global crisis while facing a significant deficit of trust, with no contingency plans in place and with limited resources. It is also the case for EMBs.

An external mechanism of collaboration and communication with the relevant state agencies, including public health authorities, should be integrated and operationalized to ensure a scrupulous analysis of the implications of each of the possible scenarios on health and security, as well as on democracy.

Collaboration with online platforms and media is an essential element for tackling attempts of manipulation and the spread of disinformation related to electoral processes (either domestic or as part of external information operations) and should be developed in parallel.

All of the above recommendations hinge upon the availability of strong legislation that provide normative, executive and adaptive legal grounding for EMBs to conduct election operations in emergency situations quickly and accordingly, yet responsibly. Such legislative grounds are expected to provide:

- i. Clear principles of holding elections in emergency situations;
- ii. Unequivocal authority for the EMB to take necessary measures based on the principles set by law; and
- iii. Leeway and executive powers for the EMB to react as necessary once the criteria for the emergency situation have been met.

IV. Conclusion

There is no “one-size-fits-all” answer to how to hold elections during a crisis. Nor is there one precise mechanism or regulation to ensure elections are safe and credible. Key ingredients, however, have proven to be trust and consensus through due process and inclusive decision-making. Building public trust requires not only operational excellence, but also fostering a sense of shared purpose and meeting people’s needs for security and predictability through clear rules and avenues of redress. Only stable and well-resourced electoral institutions – able to work independently - can hope to manage these complex dynamics.

If electoral authorities fail to deliver elections that people believe in, if they fail safeguard the elections from harm, they lose legitimacy. And once lost – legitimacy is almost impossible to regain. A contested election has critical consequences. As we see in Belarus, elections without trust can be the tinderbox that ignites underlying problems of past injustice or deep-seated social grievances.

International IDEA believes Australia is already ahead of the world in terms of its preparedness proven by successful elections in the ACT, Queensland and Victoria. We encourage Australia to actively share its knowledge and skills with others through training and peer-to-peer exchanges in collaboration with international assistance providers.

¹² Ahmed, Dawood & Blumer, Elliot 2019, *Limitation Clauses (International IDEA Constitution-Building Primer 11)*, Stockholm: International IDEA