

Draft submission to the Joint Standing Committee on Electoral Matters

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

November 2020

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Introduction

Local Government NSW (LGNSW) is the peak body for local government in NSW, representing NSW general purpose councils and related entities. LGNSW facilitates the development of an effective community-based system of local government in the State.

LGNSW welcomes the opportunity to make a submission to the Australian Parliament's Joint Standing Committee on Electoral Matters Inquiry on the future conduct of elections operating during times of emergency situations, noting Committee Chair Senator James McGrath's interest in hearing of lessons learnt and electoral contingencies from jurisdictions across Australia.¹

The terms of reference establishing the inquiry provide that 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.

The Committee will report its findings by 30 June 2021.

LGNSW's submission will focus primarily on consideration of alternative voting methods including postal voting and the importance to democracies of maximising voter participation. While this submission's focus is on local government elections, key principles elaborated throughout relate to elections generally.

This submission remains in draft form until endorsed by the LGNSW Board. Any revisions made by the Board will be forwarded to the Committee.

1. Background to local government elections in NSW

The *Local Government Act 1993* (NSW) provides the legislative basis for local government elections in NSW, which are ordinarily held every four years. Traditionally, a clear majority of electors have cast their ballots by voting in person at a polling place. Electors who meet certain criteria (such as being outside the ward or council areas on polling day, having a disability or being unable to attend a polling place on election day) may be eligible to vote in person at a pre-poll venue, or alternatively may be eligible to apply for a postal vote.

Section 310B of the *Local Government Act 1993* (NSW) also permits universal postal voting to be used for local government elections in the City of Sydney local government area (LGA) and

¹ Parliament of Australia, Media Release: Elections in emergency situations: Are we ready?, 9 October 2020, available at: https://www.aph.gov.au/About_Parliament/House_of_Representatives/About_the_House_News/Media_Releases/Elections_in_emergency_situations

any LGA declared by the NSW Minister for Local Government in a Regulation, in limited circumstances.

These circumstances include that:

- a) The Minister for Local Government must have made a Regulation authorising the council to conduct an election solely by postal voting, and
- b) The council must, 18 months prior to the date of the election, pass a resolution that it will conduct its election solely by postal voting.

As at 10 November 2020, the NSW Minister for Local Government has not authorised any councils to conduct their elections solely by postal voting.

As the COVID-19 pandemic caused widespread disruption, in March 2020 the NSW Government made the decision to postpone local government elections scheduled for 11 September 2020. LGNSW welcomed this decision as it provided certainty to Australian communities during extraordinary times, while noting that caution was always warranted for any action that has the potential to weaken democracy or diminish the right of the community to have a say in their own lives.²

In June 2020, the NSW Minister for Local Government announced that the local government elections would take place on 4 September 2021. In announcing this new date, a media release from the Minister made clear that the postponement was intended to ensure the health and safety of candidates, voters and NSW Electoral Commission staff.³

2. Use of alternative voting methods including postal voting

Subsequently, the NSW Minister for Local Government publicly stated in June 2020 that she was considering introducing universal postal voting for the 2021 local government elections.⁴

It is a long-held position of LGNSW that local government elections should be conducted in a matter as similar as possible to state and federal elections. Consistency in elections and a common standard of voting methods encourages voter participation through reducing the risk of voter confusion.

Further, local government must not be considered any less significant and vital to the wellbeing of our communities than any other tier of government, and any changes to voting options should be considered across the board rather than targeting local government only.

Despite the extraordinary circumstances of 2020, council elections can and should be conducted in accordance with COVID-safe practices that allow for attendance voting, as has been successfully managed for local and state government elections in Queensland, territory

² Local Government NSW, Media release: LGNSW welcomes certainty of council elections postponement, 25 March 2020, available at: https://lgnsw.org.au/Public/News/Articles/2020-media-releases/0325_elections_postponed.aspx

³ Minister for Local Government, New date set for Local Government elections, 12 June 2020, available at: <https://www.olg.nsw.gov.au/media-releases/new-date-set-for-local-government-elections/>

⁴ Sydney Morning Herald, Blow to democracy: Fury at plan for postal-only council elections, 4 June 2020, available at: <https://www.smh.com.au/national/nsw/blow-to-democracy-fury-at-plan-for-postal-only-council-elections-20200604-p54zhh.html>

government elections in the Northern Territory and a federal government by-election in Eden-Monaro. All jurisdictions have safely managed their elections in accordance with detailed COVID-safe plans and preparations.⁵

It is also the position of LGNSW that communities must retain a choice of voting options, including attendance voting, pre-poll, postal voting and iVote (electronic voting) if available. Democracy is too important to place at risk by removing voting options. Already, local communities are making responsible decisions every day about how they manage safety during the pandemic. Voters across NSW must be offered a range of voting options for the local government elections to ensure they can continue to exercise their democratic right to vote.

Introducing universal postal voting would represent a fundamental change to local democracy that may have seriously adverse impacts on voter participation.

At the 2018 LGNSW Annual Conference, councils resolved not to support universal postal voting. However, councils have also resolved to support postal voting and electronic voting as alternatives that are offered alongside attendance voting

3. Importance of choice for electors in strengthening democracy

Public participation and citizen engagement are a fundamental tenet of democracy and open government. In line with international best practice, citizens should be given access to a range of ways to participate in decision making in order to maximise participation and minimise marginalisation.

Voting should be convenient and easily accessible to ensure the greatest turnout possible in support of local democracy. Postal voting and online voting as options for electors alongside attendance voting would encourage more people to participate in the electoral process. The Electoral Regulation Research Network commissioned a 2018 report, Implications of Changes to Voting Channels in Australia, which found that:

*Voter convenience is greatest when multiple voting channels are available to all citizens at all times and places that allow for easy access. It is smallest when there is a single voting channel for all citizens accessible at restricted times and places.*⁶

With choice for electors, the pressure on attendance polling places will be reduced, ensuring that elections can be conducted in a COVID-safe way if necessary.

⁵ See for example the Northern Territory Electoral Commission's COVID-19 plans and guidelines (available at: <https://ntec.nt.gov.au/elections/NT-Legislative-Assembly-elections/Past-elections/results-general-elections/2020-territory-election/covid-19>) and the Queensland Electoral Commission's COVID-19 protection measures (available at: <https://www.ecq.qld.gov.au/elections/election-events/2020-local-government-elections-covid-19-protection-measures>).

⁶ Smith et al, Implications of Changes to Voting Channels in Australia: A research report commissioned by the Electoral Regulation Research Network, December 2018, available at: law.unimelb.edu.au/centres/errn/research/research-projects/implications-of-changes-to-voting-in-australia-project

4. Comparison of local government participation rates

Of the three Australian states with compulsory voting for local government elections (NSW, Queensland and Victoria), Victoria is the only state with universal postal voting and also the state with the lowest turnout rates.

As set out in the table below, in the last round of local government elections⁷, NSW had far higher turnout rates than Victoria. It is the view of LGNSW that NSW should not seek to emulate an interstate model with lower voter participation.

Election	Turnout
2016 Victorian local government elections (72 postal voting elections and 6 attendance voting elections)	72.15% ⁸
2016 NSW local government elections (81 attendance elections)	79.27% ⁹
2017 NSW local government elections (46 attendance elections)	79.58% ¹⁰
2020 Queensland local government elections (58 attendance elections, 16 postal elections, 3 hybrid elections)	77.71% ¹¹

More generally, to bolster democracy and continue to encourage voter participation, governments must ensure that voters have choice in their method of voting.

Recommendation 1: 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.

Recommendation 2: Governments must ensure that electors retain choice in their method of voting and avoid measures that will have an adverse impact on voter participation rates.

LGNSW would welcome the opportunity to assist with further information during this inquiry. To discuss this submission further, please contact LGNSW Strategy Manager Damian Thomas ■■■■■

⁷ As at 10 November 2020, participation rates for the wholly postal voting 2020 Victorian local government elections are not yet available.

⁸ Victorian Electoral Commission, Report on the conduct of the 2016 Local Government Elections, 2017, available at: <https://www.vec.vic.gov.au/-/media/a331918f89d94211bfab629f502547cc.ashx?la=en>

⁹ NSW Electoral Commission, Report on the 2017 Local Government Elections, 2018, available at: [https://www.elections.nsw.gov.au/NSWEC/media/NSWEC/Reports/Election%20reports/2017-local-government-elections-report-\(PDF-3-5-MB\).pdf](https://www.elections.nsw.gov.au/NSWEC/media/NSWEC/Reports/Election%20reports/2017-local-government-elections-report-(PDF-3-5-MB).pdf)

¹⁰ NSW Electoral Commission, Report on the 2017 Local Government Elections, 2018, available at: [https://www.elections.nsw.gov.au/NSWEC/media/NSWEC/Reports/Election%20reports/2017-local-government-elections-report-\(PDF-3-5-MB\).pdf](https://www.elections.nsw.gov.au/NSWEC/media/NSWEC/Reports/Election%20reports/2017-local-government-elections-report-(PDF-3-5-MB).pdf)

¹¹ Queensland Electoral Commission, Queensland 2020 Local Government Elections, : Report on the Elections, 2020, available at: https://www.ecq.qld.gov.au/data/assets/pdf_file/0025/17836/2020-Local-Government-Elections_Report-on-the-Elections.pdf