

Response to Joint Standing Committee on Electoral Matters

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



Questions on Notice for the Electoral Commission of Queensland

1. *The onset of the Covid pandemic coincided with Qld's transition to fixed term State government elections. Do you think that ECQ's response to election planning during the pandemic would have been different if the election date wasn't fixed?*

Response

The ECQ would have sought to deliver the 2020 State general election in much the same manner even if the election date was not fixed. However, the fixed date of the election meant that there were limited options to delay or move the election date due to concerns about the impact of the COVID-19 pandemic. This, in turn, ensured the ECQ was able to undertake its planning and preparations with more certainty and secure resources in advance of the election, and ensure that a full suite of voting methods was available to all Queensland electors regardless of their residence at that time.

2. *Have you noticed any difference in the way parties and candidates reported their election expenditure as a result of Covid? For example, did the reduced ability to door-knock or host public events result in parties spending more on other campaign initiatives?*

Response

The ECQ is unable to draw any conclusions based on the data it currently holds. Election summary returns that outline electoral expenditure are due on 15 February 2021. Once this information is received, it is made publicly available through the Electronic Disclosure System. Additionally, there may be difficulties separating the impacts of the pandemic from the introduction of electoral expenditure caps and restrictions on signage for the 2020 State general election. The registered political parties and candidates may be better positioned to respond to this question.

3. *Your submission notes a significantly higher workforce employed to manage health restrictions etc at polling booths. Were those additional costs offset in savings in other areas? If so, to what extent?*

Response

As elections are essential services that ensure the continuity of government, the ECQ was resourced appropriately to ensure all health and safety measures for the State general election could be delivered. The ECQ delivers elections efficiently and expects there to be some savings found, for example, when demand for some services was not as high as anticipated. Having said this, it is important to note that lower service demand in one area usually translates into higher demand in another.

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4. *There has been a general trend across the country towards early voting. Do you think the significant increase in pre-poll voting between 2016 and 2020 will continue, even in a non-pandemic environment?*

Response

The ECQ has observed a general trend towards increased early voting over several elections. In Queensland, the proportion of early votes increased from approximately 10 per cent to 26 per cent between 2012 and 2017. The pandemic accelerated this trend with almost 50 per cent of voters in the 2020 local government elections and 43 per cent of voters in the 2020 State general election utilising early voting services. However, at this stage it is likely too early to tell if this level of early voting will be sustained in the 2024 elections. The ECQ will observe the voting patterns in elections occurring in other jurisdictions, as well as any by-elections it conducts over the coming years, to determine if this level of early voting will be sustained.

5. *Do you expect the number of postal and telephone votes to remain high in future elections?*

Response

Postal voting - As with early voting, the ECQ will be monitoring elections in other jurisdictions as well as any by-elections it conducts to assist with planning for the 2024 elections. In the October 2020 State general election, the ECQ received approximately 900,000 postal vote applications, which is a significant increase over previous events. Anecdotally, the COVID-19 pandemic was a significant reason in electors choosing to postal vote. Additionally, there were major postal ballot campaigns run by registered political parties and a longer application period, which also impacted voter behaviour. The reduction, or absence of these factors may reduce demand for the service in the future.

Telephone voting – Telephone voting is a restricted service that is provided to eligible electors only, and typically includes distance electors and those suffering from an impairment or with a low level of literacy. Eligibility for telephone voting during the State general election was extended to include electors that were overseas or interstate, or that had been directed to quarantine or self-isolate under the *Public Health Act 2005*. From 28 October 2020 to election day, eligibility also included those who had undergone a COVID test and were awaiting results. It is unlikely that use of the telephone voting service would fall back to pre-2020 levels, however the ECQ does not anticipate the unprecedented demand to be replicated in 2024. Declines were already observed between the 2020 local government elections and the 2020 State general election, with the number of telephone votes declining from 37,000 in March to 15,000 in October.

6. *Is the significant difference between the number of postal votes requested and the number of postal votes received common, or was it higher as a result of delayed postal service during the pandemic?*

Response

The number of postal votes not returned, as a proportion of all postal votes issued, is not uncommon. The reasons for postal votes not being returned are wide and varied, and for example can include delays in postage. However, those electors who applied for postal votes are not limited

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in the voting channels available to them. For example, in the 2020 State general election approximately 100,000 electors who applied for a postal vote, cast a ballot at a polling place or used the telephone voting service instead of the postal vote issued to them.

7. *ECQ didn't allow how to vote cards to be handed out at polling stations during the council elections, instead having static HTV cards in the booths. In contrast, how to vote cards were able to be handed out at the State election. Was there a view that not handing out how to votes had an impact on the outcome of the council elections?*

Response

The ECQ made its decision on the distribution of how-to-vote cards (HTV cards) at both elections based on the advice from health authorities. There is no evidence available that suggests the prevention of handing out HTV cards in the 2020 local government elections had an impact on the outcomes.

The decision to allow the distributions of HTV cards at the State general election was again based on advice from health authorities that this activity could be undertaken safely if certain conditions were applied.

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1. **Senator CAROL BROWN:** For both commissioners: essentially, this inquiry's about holding elections during a crisis, which your organisations have done, and they did a fantastic job. Did you require any legislative or regulatory changes to your role to enable you to put in measures to ensure that the election was conducted in safety?

Legislative amendments to facilitate election delivery

The delivery of the 2020 State general election is supported by a special legislative framework enacted through amendments to the *Electoral Act 1992* (the Act). A new [part 12B](#) of the Act changed the regulatory framework for the election and provided the Electoral Commission of Queensland (ECQ) a range of special powers including:

- ability for the ECQ to issue notices to change timeframes for postal vote applications and expand eligibility for telephone voting, and
- power for the ECQ to issue directions regulating the handing out of election materials or how-to-vote cards near polling place and the activity of scrutineers.

Additionally, the legislation allowed further flexibility for the Government in the way the election was to be conducted, including the ability to:

- change dates for election milestones contained in the writ, and
- declare by regulation certain classes of voters or electorates to automatically receive a postal vote.

The ECQ considered the ways in which these provisions should be operationalised for the election, having regard to health advice and the whole-of-government response to the pandemic. Key changes that were implemented included the early opening of postal vote applications, declaration of additional categories of electors eligible for telephone voting (while maintaining strict eligibility requirements) and special arrangements for postal voting in aged care facilities which would usually receive a mobile polling service as a 'declared institution'.

Specific provisions

Cut-off days (s392N)

Normally, the days for the close of the electoral roll must be within five to seven days from the issue of the writ and the cut-off for nominations must be within eight and eighteen days of the issue of the writ (section 84 of the Act). However, s392N of the Act allowed for an earlier day for these election milestones in the [writ](#).

In the 2020 State general election, the close of roll and candidate nominations occurred earlier than would usually be allowable under the Act – the writ was issued on 6 October, and the cut-off dates for the electoral roll and candidate nominates were 10 October and 11 October respectively. This allowed the ECQ to commence printing and distributing postal votes earlier.

Procedures for voting (s392O)

Section 392O of the Act allowed for a regulation to be made which would expand postal voting for certain electors. This regulation had the flexibility to apply to:

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- all electors
- electors in certain electoral districts
- electors of a stated class, or
- electors of a stated class in a certain electoral district.

The regulation would also allow the electors for whom the declaration applies to use other voting methods, such as electronically assisted voting.

This power would have been exercisable by the Government, taking advice of health authorities and the ECQ, if the public health situation had necessitated an expansion of postal voting either to the whole state, or to specified areas of the state. It was not necessary to operationalise these provisions in the delivery of the 2020 State general election in view of the public health situation in Queensland at the time of conduct of the election.

Pre-poll ordinary voting (s392P)

Section 392P of the Act explicitly provided that the early voting period commenced 12 days before polling day as opposed to being determined by reference to three days after the close of nominations, and ending at 6pm on the day before polling day.

The ECQ significantly expanded services during the two-week early voting period from Monday, 19 October to Friday, 30 October 2020 to provide electors with increased opportunities to vote. More early voting centres were established; approximately 200 across Queensland. Additionally, opening hours at most early voting centres were extended:

- 9.00am to 6.00pm on Mondays, Wednesdays and Fridays
- 9.00am to 9.00pm on Tuesdays and Thursdays, and
- 9.00am to 5.00pm on Saturday, 24 October, a week before the ordinary election day.

The ECQ also expanded the hours of the telephone voting service to align with these hours.

Postal vote applications (s392Q)

Section 392Q allowed for the ECQ, by notice published on the ECQ website, to open and close applications for postal votes earlier or later than would ordinarily occur. Normally, applications open at the issue of the writ and must close at 7pm, 12 days prior to polling day.

For the 2020 State general election, the ECQ issued a [notice](#) which opened postal vote applications on 14 September 2020, three weeks prior to the issue of the writ, to provide additional time for electors to submit their applications. The driver for this was to ensure electors who held safety concerns had ample opportunity to select this safe and effective voting method. Applications were closed on 16 October 2020, three days earlier than in a normal election allowing more time to process applications and print and distribute the postal votes.

Electoral visitor voting (s392R)

The ECQ normally provides electoral visitor voting to electors (and their carers) prevented from attending a polling place due to being ill, have a disability or are in the advanced stages of pregnancy. This service is provided by request and involves election staff attending the elector's home.

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Section 392R granted the ECQ the ability to withdraw this voting option if satisfied that it could pose a risk to the health and safety of an issuing officer. However, practicable efforts must be made to find alternatives.

The Electoral Commissioner issued a [Direction about electoral visitor voting](#) providing that this service was not to be offered to protect health and safety, but requiring that Returning Officers make alternative arrangements for affected electors to use other voting channels.

Electronically assisted voting (s392S)

The ECQ provides electronically assisted voting in the form of telephone voting services. Eligibility is usually limited to electors who cannot vote at a polling place due to an impairment, low levels of literacy or voters living more than 20km from the nearest polling place.

Section 392S granted the ECQ the ability to declare additional classes of electors as eligible to use the telephone voting system. For the 2020 State general election, the ECQ issued a [notice](#) providing that, in addition to those already eligible, the following classes of electors were also eligible to access telephone voting:

- electors who during the election period, were located interstate or overseas
- electors who, during the election period, were required to quarantine or isolate, for example those diagnosed with COVID-19, because of a direction issued under sections 362B or 362H of the *Public Health Act 2005*, and
- electors who had undergone a COVID-19 test between Wednesday, 28 October and 12pm (noon) Saturday, 31 October 2020 and have been asked to quarantine or isolate until advised of the outcome of their test result.

The expansion of telephone voting to overseas electors was particularly well-received given limitations on their ability to access other voting options such as in-person voting at consulates or postal voting. The eligibility for electors awaiting the outcome of a COVID-19 test was only introduced through an amendment to the notice on 28 October in order to manage additional demand on the service.

Distribution and display of election material and conduct of candidates, volunteers, and scrutineers (s392T - s392V)

Sections 392T, 392U and 392V allowed for the ECQ to regulate the activities of candidates, volunteers and scrutineers. There were three directions the ECQ could give in this area.

- Distribution or display of how-to-vote cards or other election material.
 - Allowed the ECQ to limit or prohibit the distribution or display of how-to-vote cards or other election material at polling places.
- Directions about candidates or scrutineers at a particular place.
 - Allowed the ECQ to give a direction regulating the number of scrutineers a candidate may have at a polling place or other places they would otherwise be entitled to attend, or prohibiting scrutineers and candidate from being at polling places or other place they would otherwise be entitled to attend.
- Directions about movements of candidates or scrutineers

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- Allowed the ECQ to give a direction regulating the movement of candidates and scrutineers at the places where they are entitled to be present.

The ECQ issued two such directions. The [Direction about the distribution and display of how-to-vote cards and election material](#) required any person distributing how-to-vote cards and election material:

- not to re-use how-to-vote cards
- to abide by social distancing rules, including staying 1.5m away from other people
- maintain hygiene standards
- not to shake hands, or attempt to shake hand, with electors
- not to go near people coughing or sneezing, and
- wear a face mask where possible

The [Direction about the movement of candidates or scrutineers](#) required that candidates or scrutineers:

- abide by the current social distancing rules, including staying 1.5m away from other persons where possible
- where it was not possible to maintain a distance of 1.5m from other persons, it was recommended that face masks be worn
- maintain hygiene standards, in accordance with Queensland Health guidelines and directions, and
- not shake hands or attempt to shake hands with persons at polling booths or at places declaration envelopes are being scrutinised and/or votes counted.

The content of the Directions was developed in close consultation with Queensland Health and the Chief Health Officer and other Queensland Government agencies.

Counting of votes (s392W)

Section 392W provided that Returning Officers could direct a member of ECQ staff to count votes at a stated place and allowed the counting of votes to be filmed. This provision would have allowed the filming of vote counting to be undertaken, if it had been necessary to exclude scrutineers from the count.

Regulation making powers (s392Y - s392Z)

Sections 392Y and 392Z provided a broad regulation-making power about any matter to facilitate the holding of the election to minimise serious risks to the health and safety of persons caused by the COVID-19 emergency.

Section 392Y also provided additional powers to make a regulation about classes of electors eligible for postal voting. A regulation was made under this provision which specified that certain 'general postal voters' under section 184A(2)(b) to (k) of the *Commonwealth Electoral Act 1918* were designated as 'special postal voters' under the Queensland *Electoral Act*, so they would automatically receive postal votes without the need to apply. These provisions were included in a new [part 6A](#) in the *Electoral Regulation 2013*.

No other regulations were required to be made to facilitate the conduct of the election.