Prof Patrick Dumont
Professor of Political Science

ANU School of Politics & International Relations

13 November 2020

Committee Secretary
Joint Standing Committee on Electoral Matters

(by e-mail)

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

To the Committee,

Thank you for the opportunity to contribute this submission to the inquiry on the future conduct of elections operating during times of emergency situations.

The Australian National University has run *smartvote*, a candidate-based voting advice application, for the 2019 Federal election and the 2020 ACT election. The project is run within the context of the Australian Election Study, providing non-partisan and impartial information to voters about the candidates standing for election in their electorate. Not only does *smartvote* offer a sophisticated tool for voters, it also provides an opportunity for candidates and parties to convey their policy preferences in a context where online campaigning is the main avenue for the dissemination of information.

The attached submission responds to the terms of reference with a focus on the problems faced by the electorate, political parties, and candidates when information access and dissemination is restricted by emergency situations.

We would be happy to discuss the issues raised further.

Yours faithfully

Patrick Dumont
Professor of Political Science

VOTING ADVICE APPLICATION: *SMARTVOTE*

To make an informed and rational choice, citizens need to know the positions of the candidates seeking to be elected. For the 2019 Federal election and the 2020 ACT election, the Australian National University in collaboration with Australian media partners produced *smartvote*, building on the success of a Swiss tool that has been in operation since 2003. In 2019 Australian voters had two main voting advice applications at their disposal during the federal campaign: *smartvote* and Vote Compass. Overall 20% of voters declared in the post-electoral Australian Election Study survey that they use at least one of those voting advice applications, putting those instruments among the most frequent sources of online information regarding the election.

Through a short survey, *smartvote* lets voters know which candidate is most closely aligned to their policy preferences by comparing their answers to the answers of each candidate up for election in their electorate. Unlike other online voting advice tools in Australia, *smartvote* is based on the answers of candidates themselves. The questionnaire covers a broad range of policy issues, allowing candidates to communicate their preferences and even write short comments explaining their answers, adding greater depth to the information provided to voters.

The data obtained by the Australian National University informs our understanding political behaviour of voters, candidates, and parties during elections and in the period of forming government after an election. The tool yields information about voters that has been historically difficult to obtain.

INFORMATION BARRIERS

Even during periods not affected by emergency situations, the availability of information for voters about candidates is narrowing. In the 2020 ACT election, there were a handful of candidates where there was very little (or no) publicly available information about who they were or what policies they were advocating.

In anticipation of this problem, the ACT Legislative Assembly introduced s 110A of the *Electoral Act 1992* (ACT): following the declaration of candidates, candidates were permitted to give information about themselves to the ACT Electoral Commissioner to be published on the Elections ACT website.

This process did not appear to be optimal, with the availability of (limited) information on the website not well known by the public.

During emergency situations, the availability of information tightens further. In the ACT 2020 election, doorknocking and corflute signs remained the two most prominent methods of information flow about candidates standing for election. If doorknocking is restricted during emergency situations, information availability is restricted further.

Although it is assumed that most candidates will opt for online methods of information communication, information dissemination remains difficult. Candidates rely upon media outlets to broadcast their policy issues and propositions to the electorate. For very obvious and rational reasons, it is much easier for major parties to secure media attention than minor parties and independents.

For those reason, initiatives like *smartvote* provide opportunities to facilitate the dissemination of information about candidates during elections.

LEGISLATIVE BARRIERS

Although initiatives like *smartvote* are desirable for disseminating information about candidates during elections, there are potential legislative barriers to doing so.

The lack of uniformity across jurisdictions limits the ability of researchers and other civic-minded parties to facilitate greater dissemination of non-partisan information. Further, expenditure caps that might reasonably be applied to 'third-party campaigners' can result in discouraging these initiatives.

State and Territory jurisdictions do not have a consistent definition of the sort of material that Electoral Acts are seeking to regulate.

Section 4AA of the *Commonwealth Electoral Act 1918* (Cth) has a narrow scope of application: electoral matter is matter 'communicated or intended to be communicated for the dominant purpose of influencing the way electors vote in an election'. Importantly, the Commonwealth provision expressly excludes material 'whose dominant purpose is to educate their audience on a public policy issue, or to raise awareness of, or encourage debate on, a public policy issue'.

Despite a history of narrowing the scope of the ACT legislation, there is still room for very broad interpretations of its scope. Section 4 of the *Electoral Act 1992* (ACT) defines electoral matter as material 'that is intended or likely to affect voting at an election', but it then includes a provision that matter is 'taken to be intended or likely to affect voting at an election if it contains an express or implicit reference to […] the election'. Although 'reference to' is clearly intended to be read narrowly, it is still open to the interpretation that a person who does as little as put a sign in their shop advertising only the date of the election potentially commits an electoral offence if they do not include an authorisation statement.

The NSW *Electoral Act 2017* (NSW) is broader again, including any matter that 'is intended or calculated or likely to affect or is capable of affecting the result of any election held or to be held'.

These differences present a real obstacle for initiatives to disseminate information needed by electors when there is a narrowing of electoral information during a pandemic. Researchers in one jurisdiction cannot take it for granted that the same electoral supports provided in a local election will be compliant with the requirements of another jurisdiction. This is a significant disincentive to producing these initiatives.

Because the scope of the Electoral Acts differs across jurisdictions, the applicability of expenditure caps similarly differs. The *smartvote* team discussed options for translating materials for the ACT 2020 election; however the cost involved is significant. Although we are of the view that we do not meet the definition of a 'third-party campaigner' for technical reasons, if we had decided to make materials available in different languages, we would very easily have exceeded the expenditure cap had we not been exempt. This is a serious issue during ordinary elections, exacerbated further during emergency situations.

CONCLUSION

Emergency situations invariably restrict the ability of candidates and parties to disseminate information about their policies and platforms. Voters are similarly constrained in their ability to access information.

This submission showed that initiatives like *smartvote* can fill this gap, but there are legislative barriers in place that disincentivise or even outright restrict them from occurring. In our view, the Committee should recommend the harmonisation of the Electoral Acts across jurisdictions to ensure that legislative barriers are not exacerbating the problems of conducting elections during emergency situations.

We are happy to assist the Committee further, if needed.

On behalf of the *smartvote* team,

Prof Patrick Dumont   Mark Fletcher
Professor of Political Science   PhD student

ANU School of Politics & International Relations
Australian National University
Canberra, ACT