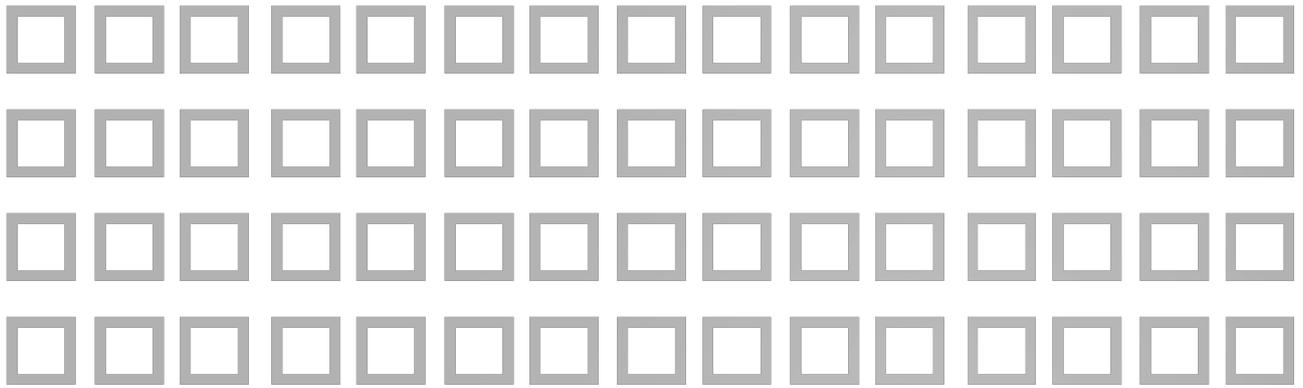


Elections ACT

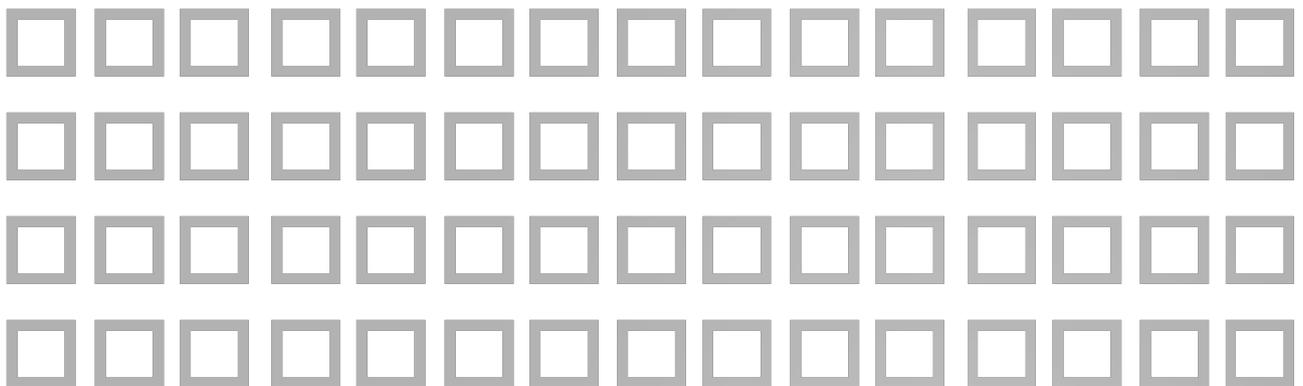
ACT ELECTORAL COMMISSION OFFICERS
OF THE ACT LEGISLATIVE ASSEMBLY



**Impact of the COVID-19 Pandemic on
the 2020 ACT Legislative Assembly
Election**

*A special report by the ACT Electoral
Commission*

May 2020



Ms Joy Burch MLA
Speaker
ACT Legislative Assembly
London Circuit
CANBERRA ACT 2601

Dear Madam Speaker

This report on the Impact of the COVID-19 Pandemic on the 2020 ACT Legislative Assembly Election is presented to you under section 10A of the *Electoral Act 1992*.

Section 10A(2) of the Electoral Act requires you to present a copy of this report to the Legislative Assembly on the next sitting day after the day you receive it.

Under Section 10A(3) of the Electoral Act the Minister must present a written response to this report to the Legislative Assembly within three months after the day the report was presented to the Legislative Assembly. However, noting the urgent nature of the issues described in this report an early response would be greatly appreciated.

Yours sincerely



Dawn Casey
Chairperson

25 May 2020



Damian Cantwell AM
Electoral Commissioner

25 May 2020



Philip Moss AM
Member

25 May 2020

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Recommendations

The ACT Electoral Commission (the Commission) makes the following recommendations in this Special Report to the ACT Legislative Assembly:

1. **Note** the assumed enduring impact of the COVID-19 pandemic and related community restrictions on the planning and conduct of the 2020 ACT Legislative Assembly election.
2. **Note** the intended delivery model of the election by the Commission as the most appropriate option to mitigate the assumed ongoing health and safety risks to the ACT community and electoral staff.
3. **Amend** the *Electoral Act 1992* to facilitate all electors being eligible to vote early under the intended risk mitigated model.
4. **Agree** to provide additional funding to the Commission as verified by Treasury to enable the delivery of the election under the intended risk mitigated model.

Introduction

The varying community restrictions introduced through necessity by government in response to the COVID-19 pandemic have caused significant uncertainties to electoral planning and have delayed time critical decisions and actions by the ACT Electoral Commission (the Commission) in preparing for the 2020 ACT Legislative Assembly election. These restrictions have also impacted political campaigning by parties and candidates for the election. Due to the unknown nature of the virus it must be assumed that the threat of contamination outbreaks and health related restrictions will continue throughout the election period, impacting upon all election stakeholders.

The problem confronting the Commission is the need to commit urgently to an election delivery model under persistent and varying community restrictions that best mitigates expected health risks to community and staff whilst ensuring electoral integrity. Proactive contingency planning by the Commission informed by health and legal advice has settled on expanded early voting with targeted preventative health measures as the most appropriate and adaptive risk mitigated election model under these uncertain conditions.

This report identifies the essential legal amendments and financial supplementation urgently required by the Commission to deliver the intended risk mitigated election model in a timely fashion.

Aim

The aim of this Special Report is to outline the impact of the COVID-19 pandemic on the planning and conduct of the 2020 ACT Legislative Assembly election, and propose amendments to the *Electoral Act 1992* and seek additional funding to facilitate delivery of the election under the intended risk mitigated election model.

This special report and the included recommendations are based upon health advice provided by the ACT Chief Medical Officer of ACT Health, and legal advice provided by the Solicitor-General for the ACT.

Scope

The scope of this Special Report encompasses:

- an outline of the impacts of the COVID-19 pandemic on the planning and conduct of the 2020 ACT Legislative election;
- potential options considered by the Commission to address these impacts;
- expanded early voting with targeted preventative health measures as the intended risk mitigated election delivery model;
- proposed legislative amendments to the *Electoral Act 1992* to facilitate all electors being eligible to vote early under the intended model; and
- additional funding requirements to support implementation of the intended model.

The Impact of the COVID-19 Pandemic on Planning and Conduct of the 2020 Election

Background and Assumptions

Under the *Electoral Act 1992*, the next ACT Legislative Assembly election is due to be held on 17 October 2020 by attendance ballot. Under typical electoral conditions around 300 000 electors would pass through approximately 82 polling places over a three-week early voting period and on election day. Around 20 000 postal votes and three mobile polling services would also be planned to provide eligible electors unable to attend a normal polling place with the opportunity to vote. The early voting period is due to commence on 28 September 2020.

On 16 March 2020, the ACT Minister for Health declared a Public Health Emergency under the *Public Health Act 1997* in response to the COVID-19 pandemic. The ACT Chief Health Officer has made a series of directions intended to limit the spread of the virus, including restrictions on non-essential gatherings and non-essential business gatherings or undertakings. These restrictions have recently been eased as the apparent threat of contamination has moderated, however it is unclear whether and when restrictions will be fully lifted.¹ Given the recent statement by the Australian Deputy Chief Medical Officer that development and production of a COVID-19 vaccine is 12-18 months away, **it must be assumed that the threat of virus outbreaks and at least some of the health-related directions will remain in place for an indefinite period.**²

Impact on Planning and Conduct of the Election

The ACT Electoral Commission (the Commission) is very mindful of the enduring impact of the COVID-19 pandemic and assumed ongoing community restrictions on long term planning for the conduct of the election under normal attendance ballot arrangements. The Commission has considered these impacts in terms of health and safety and electoral integrity from the perspective of government, political parties and candidates, the ACT electoral staff and the wider ACT community.

Assuming a continued risk of virus outbreaks and associated restrictions, and learning from the recent experience of the Electoral Commission of Queensland in the conduct of local government elections on 28 March, the following considerations have impacted the planning for the conduct of the election under normal attendance ballot arrangements.

- With approximately 300 000 electors expected to take part in early voting, election day, and mobile polling activities, there are clear concerns for the health and safety of ACT electors, political party members, candidates and workers. Similarly, there are significant risks to election staff in all facets of election operations through contact with numerous community members, candidates, party members and vendors, through the necessary handling of election materials and the necessary requirement to conduct an election in project teams. There are high risks of infection to electors and staff handling election materials such as pencils, voting booths, computer voting terminals, ballot papers or postal votes. For example,

¹ The Prime Minister's Statement of 8 May 2020 states that 'National Cabinet's goal is to have a sustainable COVID safe Australia in July 2020', with Step 3 seeing 'gatherings of up to 100 people permitted'. See <https://www.pm.gov.au/media/update-coronavirus-measures-08may20>

² <https://7news.com.au/lifestyle/health-wellbeing/coronavirus-australia-leading-doctor-believes-vaccine-to-eliminate-virus-18-months-away-c-946815>

an individual pencil and cardboard voting booth may be touched by up to 400 individuals across polling day. This will require dedicated and targeted health preventative measures such as strict social distancing between booths and electors, provision of hand sanitisers, surface wipes and where appropriate face masks for staff exposed to large numbers of people. Such measures and regular cleaning will however delay the voting process at each polling location and cause queues to form, prolonging the exposure time of electors to possible contamination and likely discourage some electors from voting in the interests of personal safety.

- There is a reduced ability of political parties and candidates to conduct electioneering and other election related community engagements, with limitations on being able to reach constituents by traditional campaigning methods such as campaign meetings, candidate door-knocking and multi-party/candidate forums as an important part of inclusive democracy, especially impactful for smaller parties and non-party candidates with relatively small budgets and lower public profiles.
- There are likely to be increased levels of voter anxiety and a potential inability or reluctance of electors to vote, with resultant low participation rates and potential challenges to results by parties or candidates reacting to services impacted by the virus, and the implications for the normal non-voter process.
- The efforts by Elections ACT to confirm polling locations, progress ICT upgrades, acquire essential equipment and supplies under degraded supply lines, recruit and train additional staff, and develop a community information campaign, have been impaired through the effects and inefficiencies of remote working arrangements and like impacts on vendors. There is a growing risk that a lack of capacity and certainty in enacting long-term planning milestones will compound into serious capacity and timing issues in the later months of electoral preparations.
- There is likely to be a surge in postal vote applications, enquiry calls and social media messages, placing additional demands on electoral and contractor staff. Postal voting also carries health risks to postal staff in the transmission of the virus through handling of postal votes to be sent to and from electors located across the country and the world. Counting the ballot papers, within a polling place or delayed until later, requires a team of electoral staff overseen by teams of party workers. All of this must be performed in proximity to other staff and continuous handling of material and exposure to working surfaces.
- The conduct of mobile polling within nursing homes and hospitals during the week prior to election day will expose residents and staff of these facilities, already at the highest risk of serious COVID-19 complications, to even further risks. Should current restriction on visitations to these facilities be eased over time, risks in the transmission of the virus may remain, with the alternative form of postal voting still presenting significant public safety concerns. These issues are the same for delivery of mobile polling to the Alexander Maconochie Centre.
- Although mitigated by stringent preventative staff health measures, absence of key members of Elections ACT staff through the effects of the virus will result in additional pressures on remaining staff and increased operational complexity in the delivery of the election. There may be difficulties in party and candidate nomination processes, delays in hiring of temporary contract staff, late variations to vendor requirements, and any shifts in information campaign key messages.
- Efforts by Elections ACT to engage, train and deploy approximately 700 polling official staff may be diminished from July 2020. Although mitigated by an expanded list of potential casual employees, there is a risk that some more experienced polling officials may decline the offer of employment due to the increased infection potential brought about by sustained contact with the public. A significant outbreak of the virus amongst polling staff through face-to-face

training could impact election delivery through short notice reduced polling place management levels; longer queuing times and greater elector exposure to infection risks; and an increased risks to the reputation of the Commission through delayed results, potential errors and complaints.

Problem Statement

The problem confronting the Commission is the need to commit urgently to an election delivery model under persistent and varying community restrictions that best mitigates expected health risks to community and staff whilst ensuring electoral integrity. To await clarity on the duration and impact of the pandemic and easing community restrictions over the next few months risks being too late to enact the essential preparations required to deliver the election effectively in the legislated timeframe.

Planning Response

To address this problem the Commission established an Elections Contingency Planning Team (ECPT) to assist in development of options for the conduct of the election. The ECPT consisted of the ACT Electoral Commissioner and Deputy, senior representatives from ACT Health, the ACT Solicitor-General's office, ACT Government Shared Services ICT, the Australian Cyber Security Centre and the ACT A/Chief Police Officer.

The Commission has considered the outcomes of the ECPT and impacts of COVID-19 on the election in the areas of health and safety of the public and Elections ACT staff, and the integrity of the electoral process. The Commission also invited and received advice from parties and prospective non-party candidates regarding their concerns about the preparation for and conduct of the election under continuing pandemic conditions.

Potential Options to Address the Impact of the Pandemic on the Election

Through a structured planning process, the Commission has considered six options to deliver the election:

- **No change to date or attendance ballot format.** This option accepts the extreme risks to the health and safety of the electors and staff as outlined above and disregards the very high likelihood of low voter turnout and disputed results. In relying on preventative health measures during the election period this option does not address the possibility and impact of a second or third wave of pandemic effects on the community in the intervening period. The Commission considers this option poses extreme risk for the health, safety and electoral integrity reasons outlined above and does not consider it as a suitable option.
- **Universal online voting.** There are substantial complexities and extremely high risks, including significant cyber risks, associated with the legislative and procedural adjustments required to meet the demands of online voting. The Commission does not consider this is a suitable option.
- **A universal postal ballot.** A universal postal election in the ACT would entail the creation, delivery, return and count processing of approximately 300 000 postal vote packs. This is a significant increase from the 2016 ACT Legislative Assembly election which involved the issue of 17 000 and the return processing of approximately 15 550 postal votes. Ballot pack production is a highly coordinated activity involving Elections ACT officers, large scale printing operations, a mail house and Australia Post to ensure ballot packs covering all of the ACT and

some interstate and overseas locations are prepared and dispatched to voters over only a small number of days. A decision to implement a universal postal ballot in time for the October 2020 election would raise significant health risks to large number of staff required to process ballot paper and packs; large scale inadmissible votes due to degraded Australia Post services; considerable operational complexities for the ACT Electoral Commission; electoral integrity issues through vote loss and fraud; delays in results and substantial legislative amendment. The Commission does not consider this is a suitable option.

- **Extend the election as per extant legislation.** This option sees the election extended under Section 159 of the Electoral Act which enables the Executive, by written notice, to make provision for extending the time for holding the election or meeting any difficulty that might otherwise interfere with the due conduct of the election. However, this option does not properly address the public health and safety issues owing to a lack of clarity of the period of extension required or appropriate, and simply extends (rather than shifts) the electoral period in which pandemic effects will need to be addressed. Such an uncertain extended electoral period carries may give rise to questions of the standing of the extended caretaker government, increased and undefined costs, and a sense of disenfranchisement of the electors through a delay in a final determination and announcement of results. The Commission does not consider this is a suitable option.
- **Defer the election through amended legislation.** This option sees the election deferred to a point in time where the impacts of the pandemic and the community health restrictions no longer impact the preparations and conduct of the election. However, the period required for such a deferral is unclear and also carries significant risks to the standing of the caretaker government, budget uncertainties in delivery of community services over time, and increasing disenfranchisement of electors. Lastly no legislation exists for deferral of the election requiring significant work to frame and table the new legislation in the limited sitting days prior to October. The Commission does not consider this is a suitable option.
- **Expanded early voting** (Intended delivery model). This option sees the election delivered within existing legislated timeframes but with a significantly expanded number of early voting locations. The only voting locations available on polling day will be those utilised during the early voting period, to prevent large concentrations of electors gathering on polling day as is normally the case. It is envisaged that 15 early voting centres would be established, open between 8 am to 8 pm daily for 20 days across the ACT, as opposed to the standard five early voting centres from 9 am to 5 pm and extended hours on the final Friday. Targeted preventative health measures would be in place at each polling location throughout the election to further mitigate health and safety risks. **The Commission considers this the most appropriate and adaptive option to successfully deliver the election** due to its advantages in the key focus areas of the Commission as described below.
 - **Public health and safety.** This option best addresses the key concerns of health and safety of the community and electoral staff by spreading the voter load across all polling locations over the duration of the polling period rather than on a single polling day. This option provides a greater number of opportunities to vote over extended periods in the absence of crowds and associated risks of potential contamination through breaching of social distancing requirements. Additionally, selected periods of preferential access to the early voting centres could be established for those community members considered at risk such as the elderly or medically vulnerable, akin to the dedicated access hours established by supermarkets for a period of time recently to permit vulnerable people to shop with smaller crowds, less risk and reduced anxiety.
 - **Electoral staff health and safety.** The health and safety of the electoral staff would also be enhanced in this option through reduced exposure to the number of voters at any

one point and time. The two shifts of electoral staff required across the extended access hours would also reduce the period of exposure to staff of voters or other staff members who may be contagious. The reduction in ballot paper and the associated significant increase in electronic votes taken at early voting centres would also provide substantial decreases in the health risks to electoral staff due to the near removal of the need to sort and count ballot papers on election night. Similar benefits would be experienced after election day, with a significant reduction in the number of staff and party workers required to congregate in numbers to oversee a paper ballot scrutiny.

- **Electoral integrity.** This option provides assurance of continued electoral integrity and an adaptive response where possible to the variation of community restrictions related to the pandemic over the period leading up to the election, including an increase in restrictions as a result of a second wave of infections. This approach would be reinforced by a deliberate media and community information campaign to highlight the opportunities and safety benefits of expanded early voting locations whilst provisioning for other forms of voting if required, as normal. Lastly this approach requires minimal legislative amendment on advice from the Solicitor-General for the ACT. Importantly as this option is an expanded version of a well-established and proven procedure, it is uncomplicated in implementation and messaging to all stakeholders and inherently flexible.

Most Appropriate Risk Mitigated Election Model

From the above analysis and comparison of suitable options, the Commission considers the option of **expanded early voting** with targeted preventative health measures as the most appropriate and adaptive risk mitigated election model under prevailing pandemic conditions and assumed continued community restrictions.

This expanded early voting model best assures continued electoral integrity, requires minimal legislative amendments, and provides a responsible and adaptive response to mitigate the community health risks of the virus as currently known, and importantly guards against a possible second or further waves of outbreaks that might occur over the period leading up to the election.

Implementation

This model requires minimal legislative amendment to the *Electoral Act 1992* to facilitate all electors being eligible to vote early under the intended risk mitigated model. The Electoral Commission already has legislative authority under the *Electoral Act 1992* to vary the number of early voting centres or to expand the operating hours in delivery of the election for the Legislative Assembly.

Additional funding is required to enable the delivery of the election under the intended risk mitigated model.

Legislation

With respect to the need for potential legislative amendments to the Electoral Act to enable Expanded Early Voting, the Commission's position based on advice from the Solicitor-General for the ACT is that the only legislative provision that needs attention is s136B(1) which defines eligibility for early voting. We offer that the ACT Executive may facilitate all electors being eligible to vote early by expanding the eligibility for early voting to encompass all electors.

Further, also based on advice from the Solicitor-General for the ACT, we offer this could be provided for through one of two ways:

- Through a notifiable instrument under s159(2) using the s159(1)(b) power of the Executive to override s136B(1), so that any elector is taken to be an eligible elector for the purposes of s136B in relation to ordinary or declaration voting before the required polling day (and framing the expiration of the instrument so that it doesn't extend into later elections); or
- Through an amendment bill that would essentially do the same thing.

Noting the short period of time remaining prior to the 18 June sitting of the Legislative Assembly it may be more timely to address this matter through a notifiable instrument. This would certainly assist the Commission in moving forward with confidence in identifying and securing additional funding, equipment, supplies and staff to best enable expanded early voting.

Financial

In order to implement the expanded early voting model, the Electoral Commission is seeking \$2.5 M in additional operating costs funding and \$120 000 in capital funding. These costs are based on advice provided by the ACT Chief Medical Officer in the assessment of the community health risks and necessary mitigation measures.

The Commission does not propose any flexibility in the amount of financial supplementation requested to enact the expanded early voting model, as costs are directly attributable to the measures necessary to mitigate the assumed continuation and potential spiking of health and safety risks to the community, electoral staff and political stakeholders. Most importantly the amount of funding requested safeguards against the assumed continued impact of the pandemic and related community restrictions but also mitigates against the community health risks associated with a possible second or further waves of outbreaks as restrictions are eased. The amount of additional funds requested is inversely proportional to the degree of assumed risk to public health and safety and electoral integrity. That is, any reduction proposed to the amount requested by the Commission must be considered in terms of the resultant increased risks to public health and safety and assured electoral integrity.

The Commission offers that there is some financial flexibility however in the way the additional requested funds are provided, through the Commission drawing down from the total requested appropriation as the expanded early voting model is enacted over the electoral period. Should any funds remain at the end of the election these funds would remain available for other purposes as determined by the ACT Government.

Conclusion

There is an urgent need for the ACT Electoral Commission to commit to an election delivery model appropriate and adaptive to the assumed continuing impacts of the COVID-19 pandemic and related community restrictions whilst assuring electoral integrity. To await clarity on the duration and impact of the pandemic and easing community restrictions over the next few months risks being too late to enact the essential preparations required to deliver the election effectively in the legislated timeframe.

Proactive contingency planning by the Commission informed by health and legal advice has determined the most appropriate option is to deliver the election with a significantly expanded number of early voting locations. Voting locations on polling day will only be available in the same locations where early voting centres had been located during the early voting period. Targeted preventative health measures will be in place at each polling location throughout the election to mitigate continuing health and safety risks to the both the community and the electoral staff. A robust and persistent communication plan will be enacted to ensure that the ACT Community is

informed of the safety of casting a vote at any one of the early voting centres, and is provided with up to date information as to the voting services available.

This option, described as **expanded early voting**, best addresses the key concerns around health and safety of the community and electoral staff, provides assurance of continued electoral integrity, and requires minimal legislative amendments. It also provides a responsible and adaptive response to mitigate the community health risks of the virus as currently known, and importantly guards against a possible second or further waves of outbreaks that might occur over the period leading up to the election.

This Special Report outlines the Commission's considerations and recommends urgent legislative amendments and funding required to deliver the most appropriate risk mitigated election model under prevailing pandemic conditions and necessary ongoing community restrictions in a timely manner.