

# Submission to Joint Standing Committee on Electoral Matters

## Inquiry into the Conduct of the 2024 House of Assembly General Election and 2024 Legislative Council elections

### PRIVATE

There are 8 sections to this submission relating to the improvement to processes or questions about current processes in relation to the recently conducted 2024 House of Assembly (HoA) and Legislative Council (LC) elections.

#### POSTAL RETURNS/COUNT

Currently the Tasmanian Electoral Commission (TEC) waits until close of poll to begin extraction, balancing and counting of postal ballot paper returns. This creates a bottleneck that delays results and has staff working into the early hours of Sunday after a long polling day, as seen in the 2024 House of Assembly elections where final for night results came through after 2am. This is not efficient and the Australian Electoral Commission (AEC) has changed their returns process to streamline postal counts.

There are significant work health and safety issues with the hours required to undertake this process and in some other states, such as NSW, they have processes to ensure the wellbeing of staff and work stops at midnight.

The AEC has a process where postal ballot papers are extracted, balanced and bundled into 50s in the lead up to polling day. This begins within a day or two of returned postal ballot papers being received and small teams of staff (between 4 to 6 per division) work on most week days (and polling day) in the early voting period to undertake this process. There are procedures in place to ensure the confidentiality of the ballot paper in this extraction process so that no one is seeing what is being put on the ballot.

What the AEC process facilitates is a very timely postal count on polling night. In the 2023 referendum for example, the counts were largely completed by 8 pm because most of the work had been done prior to the day.

While this would require legislative changes to enable this significant improvement these are not onerous.

The AEC reported that in 2022 they were able to process over 750,000 House of Representatives postal votes by the Tuesday after polling day, when in comparison they could only do just over 200,000 in 2019 in the same time. As someone who has worked on both the TEC and AEC postal counts the latter have a far superior process and it is disappointing that this has not been adopted for state-based elections.

#### Data entry

There is also a flow on advantage to this change in that when/if the TEC moves to data entry of HoA ballot papers there is already a significant portion of ballot papers ready to begin processing at the close of the poll.

Section 143 of the *Electoral Act 2004* (Act) could be easily amended.

## PRE POLL COUNT

Much like the postal counts the AEC has also put in the needed work to streamline the early voting counts on polling night. There are of course subtle changes in these processes compared to postal as pre poll extraction cannot begin until early voting closes on the Friday evening and ballot boxes are returned to the relevant division.

For the AEC the ballot boxes are opened on the day of polling and all ballot papers are extracted, sorted upside down and balanced. This all happens before 6pm and again very much streamlines the counting and results process for the evening of polling day. As with the postal count these early voting counts are done much earlier than the TEC by approximately 9 / 9:30 pm.

Data is clear that early voting is trending up in numbers and processes such as this are much more cost effective and timely. Furthermore, count staff under less pressure are less likely to make errors that can have significant flow on impacts when subsequent recheck processes commence.

Much like the postal returns/count section above the legislative change required to implement this should not be onerous.

## Data entry

As with the postal count, having the early voting extraction done before 6pm would also facilitate a timely data entry process.

## ELECTRONIC POSTAL VOTE APPLICATION

It is mind boggling that in 2024 the TEC still does not have an electronic postal vote application (PVA) process. If someone is travelling in remote locations in Australia or the world they do not always have access to a printer to complete a PVA and with no electronic option this can make it very difficult for an elector to set the process in motion and have a postal ballot pack available to complete in time for close of poll.

This is not an issue of IT, this is a policy decision that has created this situation and the Electoral Commissioner (EC) has been adamantly against an electronic PVA for many years. Data should be provided on how many electoral commissions in the country have or do not have an electronic PVA and the EC needs to explain his reasoning.

Do the TEC have a written policy on electronic signatures and whether they are an acceptable method of completing a postal vote application?

The relevant sections of the Act are:

*126. Application for postal vote*

*(1) An application for a postal vote is to –*

*(a) be in accordance with the approved form; and*

*(b) include such details in respect of the applicant as may be approved for the purpose of identifying the applicant; and*

*(c) include the address for which the person claims to be enrolled; and*

*(d) include the address to which the ballot paper is to be sent; and*

*(e) if required by section 125(2), include the declaration referred to in that subsection; and*

*(f) be signed by the applicant or authenticated by another approved method; and*

*(g) be lodged with a returning officer, or a person approved for the purpose, before 4 p.m. on the eighth day before polling day.*

Under 126(1)(f) it does appear the TEC could implement another approved method to facilitate this change.

*39. Preliminary scrutiny of postal votes*

*(1) The returning officer, in conducting a preliminary scrutiny in accordance with procedures approved under section 137, is to admit a postal vote declaration envelope for further scrutiny at an election if he or she is satisfied that –*

*(a) the declaration on the envelope is signed and dated before the close of poll; and*

*(b) if the voter's postal vote application is authenticated by the signature of the applicant, the signature on the postal vote declaration envelope is the same as the signature on the application; and*

This section 39(1)(b) is the most problematic one requiring legislative change but this is not insurmountable and well overdue. The question could be asked of other electoral commissions on how they manage this if the Tasmanian EC cannot see a way forward.

## **PRE POLL DECLARATION**

The EC continues to insist that voters must complete a paper-based declaration for early voting. This is anachronistic and should be removed. How many other electoral commissions in the country require such an outdated and time-wasting process to be undertaken? The AEC have not required this process for several elections and it is time the TEC modernised its approach to streamline the experience for voters.

The relevant section of the Act is:

*108. Entitlement to vote within division*

*(1) A person who is entitled to vote at an election in a division, may vote –*

*(a) on polling day at an ordinary polling place appointed in respect of that division; or*

*(b) before polling day at a pre-poll polling place if he or she –*

*(i) expects to be unable to attend a polling place on polling day; or*

*(ii) is a person whose address is not included on the roll pursuant to section 36(5) ; or*

*(c) on or before polling day at a mobile polling place if he or she –*

*(i) is a resident of an institution appointed as a place at which a mobile polling place may be operated; or*

*(ii) such other person as may be approved.*

*(2) When requesting a ballot paper before polling day, a person entitled to do so under subsection (1)(b)(i) is to make a declaration in an approved form that he or she is unable to attend a polling place on polling day.*

Under 108(2) it appears the process is via an approved form; it is unclear in this wording if that approved form can be a verbal statement or would require legislative change.

## RESULTS

In the 2024 HoA election there was a significant increase in the informal ballot papers from initial 1<sup>st</sup> preference figures to final rechecked figures for some divisions. For example, in Braddon the number of informals went from 4,555 at the end of 1<sup>st</sup> preference figures being published on Thursday evening 28 March 2024, to 5,220 following re-checks on Tuesday 2 April, despite only an additional 107 ballot papers being added. This was combined with a decrease in the quota of 69. This indicated an unusually large movement of ballot papers from formal into informal.

This is an unusual event, as informals would usually go down, or at most go up by a very small amount, due to the training of polling place staff to move any papers in doubt into informal for further review during rechecks. There was also a similar increase in the informal rate between initial 1<sup>st</sup> preferences and recheck figures for the division of Lyons, however Lyons added more ballot papers in the final figures and did not have a decrease in the total formal ballot papers or quota.

Was there any additional training put in place for ROs prior to and during this state election, particularly considering the change from 5 to 7 members, to ensure their polling place and scrutiny staff were effectively trained for this scrutiny? What oversight in the lead up to polling day, polling day and post polling day was provided for support of inexperienced interstate ROs, of which one was assigned to Braddon?

Has the EC conducted any analysis of this unusual increase in informal ballot papers. Has there been any post-election review and implementation of strategies for long term training and retention of ROs to minimise risks of these types of noticeable errors occurring. In particular, ensuring the skillset is established here in Tasmania and not outsourced to another state due to what appears to be lack of strategic thinking and planning.

It may be useful to have the expertise of Kevin Bonham look at these numbers and provide his thoughts on what may or may not have happened.

## LEGISLATION CHANGE/CONSEQUENCES

### *Section 139. Preliminary scrutiny of postal votes*

There has been a legislative change made, luckily not enacted before this year's HoA elections, that will make it completely unmanageable to process and count postal votes in future elections until well after polling day, impacting the ability for election results to be determined on polling day.

The wording in question is:

- (1) *The returning officer, in conducting a preliminary scrutiny in accordance with procedures approved under section 137, is to admit a postal vote declaration envelope for further scrutiny at an election if he or she is satisfied that –*

...

- (e) *the voter has not already voted at that election.*

For anyone who understands election processes this change will have a significant impact on the timeframe of postal counts. For an RO to be satisfied that a postal vote is not a duplicate vote they will need to wait until early, polling day, and interstate voting are reconciled. This would not happen for a number of days after polling day and as such any postal votes would have to wait until this reconciliation could occur.

Why has the EC not raised the consequences of this legislative change with relevant stakeholders? Was this an intended change or a consequence of the EC not providing feedback on proposed changes.

## **SET DATES FOR STATE ELECTIONS**

With only Tasmanian HoAs and the Federal elections not having set dates it is worth mentioning the significant benefits, in terms of costs to the state of changing to align with all other states. These cost savings come in terms of areas such as the ability to be far more strategic and not reactive when planning; early booking of suitable (and accessible) polling places; procurement of materials; sufficient training of the senior election management workforce and create a high degree of certainty for staff.

There is of course very well documented reasons for why set dates should be implemented in relation to the running of Parliament which I wont go into in this submission.

## **PEOPLE WITH DISABILITY**

It is disappointing that over many years the TEC have not implemented any significant improvements in their voting processes for people with disability. It was heartening that after the 2021 elections they quickly implemented phone voting for the 2022 Legislative Council elections but they did not then ensure this process remained as accessible for the 2024 elections and instead insisted voters within Tasmania were not able to use the phone voting service, even if they were not able in any other way to cast their vote. There was ample time between these two elections for any legislative changes to be recommended but yet again this is an area where the TEC continues to take a hands-off approach. Did the EC make attempts to enfranchise these electors by agitating for any legislative change that would have allowed for these electors to cast their vote?