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Hon Mark Mitchell
Associate Minister of Justice
Parliament Buildings
Wellington

ELECTORAL COMMISSION PLANS FOR MANAGING AN EMERGENCY AFFECTING THE ELECTION

Purpose

1. This paper outlines the steps the Electoral Commission (“the Commission”) would take should an emergency occur in the lead-up to or on election day and the contingency planning that the Commission is doing to prepare in case of an emergency.

Emergency decision-making process

2. Under the Electoral Act 1993 (“the Act”) there is no power to entirely postpone the election in the event of an emergency – only the power to adjourn election day voting on a voting place by voting place basis.
3. Under MMP and a single writ, if voting has to be adjourned in even a single election day voting place, the election of all members of Parliament and, therefore, the formation of Government is delayed for the period of the adjournment. For this reason, wherever possible, the Commission will make alternative arrangements for voters rather than adjourning voting.
4. Where election day voting is affected by an emergency of any kind, the Commission will proceed as follows:
 - (a) if the area affected is localised, the Commission will revoke and amend particular voting places and continue with the conduct of the general election in the rest of the affected electorate and nationwide;
 - (b) if the event has wider effect, the Commission will adjourn voting in particular voting places, and continue with the conduct of the general election elsewhere in the country including the publication of the preliminary results.
5. Given the constitutional and political significance of a decision to adjourn voting, the Commission would seek advice and information from the Officials Committee for Domestic and External Security Co-Ordination (ODESC) whose purposes include exercising oversight in respect of matters of crisis management including disasters with serious community consequences or a high level of political interest. The relevant membership for this purpose

would include the Department of Prime Minister and Cabinet (DPMC), Crown Law, the Director of Civil Defence Emergency Management, the Clerk of the Executive Council, the Secretary for Justice, and the Electoral Commission. Our expectation is that other members of ODESC would brief and advise Ministers and Leaders of Parliamentary Parties as required.

6. In considering whether to adjourn voting in an election day voting place, the Commission will consider three questions based on best available information:
 - 1) Is the voting place likely to be safe?
 - 2) Is it likely to be safe or practical for voters and electoral staff to attend the voting place? and
 - 3) Are sufficient staff available to conduct the vote?
7. If the answer to any of the three questions is no, but voters can go to another voting place, voting would likely proceed with any revocations and amendments necessary. If the answer to any of the three questions is no, and voters can't get to another voting place, voting would need to be adjourned at that voting place. A flow chart illustrating the Electoral Commission's emergency decision making process is attached as **Appendix 1**.
8. Further information about the designation, revocation and adjournment of voting places and the implications of adjournment are set out in **Appendix 2**.

Contingency plans for an emergency

Cyber security

9. New Zealand's electoral processes are still largely manual. A manual voting and counting system means that we are at low risk of cyber-enabled manipulation. It also means that we are not reliant on technology to produce the election result. If we have to, we can default to paper. However, the Commission considers it critical to maintain trust and confidence in the administration of the electoral system. We must demonstrate and reassure Ministers, MPs, parties, candidates, electors and media that we have taken all reasonable steps to protect and monitor our key systems: the enrolment system, the overseas download and upload system, and the Election Management System (EMS).
10. The Commission's enrolment system contains personal information on over 3.15 million electors on the main roll. The electoral rolls used to issue votes in general elections and by-elections are paper-based, but the elector data from which they are generated is maintained electronically. Significant disruption and loss of confidence could be caused if the enrolment system were compromised. This would have particular impact if the personal information of electors on the unpublished roll were to be compromised given their personal safety concerns.
11. Since the 2014 general election, the overseas download and upload systems enable overseas voters to download their voting paper, complete it manually and then upload the paper along with their witnessed signed declaration to the upload voting paper service available on the Commission's website. In

2014, there were 40,132 overseas votes, the majority being returned using the online system. Disruption to this service would be a significant problem for overseas voters, who would only be able to access votes by post or in person at an embassy or High Commission.

12. EMS is the key system through which we plan and deliver the election, including election results. However, it is not mission critical to the election. A manual voting and counting system means that we are at low risk of cyber-enabled manipulation and that we are not reliant on technology to produce the election result. The Commission has comprehensive back-up and response plans in place for election day and night, caused by loss of communication links, power outages, fire, etc.
13. The Commission follows the recommendations set out by the Government Chief Information Officer (GCIO) and the standards provided by the Government Communications Security Bureau's (GCSB) NZ Information Security Manual (NZISM). Key applications and infrastructure are penetration tested by an independent provider.
14. Multiple levels of redundancy have been incorporated into IT system design to ensure there is no one single point of failure for critical systems. Key IT infrastructure is hosted by Revera at highly resilient data-centres in Auckland and Wellington that have been approved by the Department of Internal Affairs. In the event of a local outage, Commission services can be run from any location via Virtual Private Network (VPN). The Commission has emergency response procedures in place to assist in the recovery and support of key systems in the event of an emergency.
15. The Commission is conducting a series of operational tests and dress rehearsals in the lead-up to the election with field staff and national office to test the results system, the IT network, and key processes and procedures on election night and post-election. The results of the tests to date support our confidence that the systems are robust.
16. The Commission has worked with DPMC on advice to Ministers on cyber risks to the election. Protocols have been put in place to ensure that appropriate assistance is available to the Commission if required. The Commission has provided political parties with advice on how they can protect themselves from cyber risk.

National Office business continuity

17. If the Commission's National Office in Wellington is inaccessible for any reason during the critical election period, several disaster recovery back-up sites will be in place for staff. We have an alternative site in Wellington equipped to manage the monitoring and release of results on election night under certain disaster scenarios. A site will also be in place outside Wellington in the event that it is needed.

Field business continuity

18. Registrars of Electors in each of our 20 offices around the country have business continuity plans along with disaster recovery procedures, to deal

with potential interruptions to enrolment services. Because we have multiple sites, the Commission can redistribute work electronically between sites, depending on the location of any disruption.

19. Disaster recovery is tested on an annual basis, with enrolment production (normally based in Wellington), being switched to our disaster recovery site (based in Auckland) for a period of a month.
20. The 64 Returning Officers responsible for delivering the elections in the General and Maori electorates are located in 38 separate properties around the country. Each Returning Officer, in consultation with their Regional Manager, has a business continuity and disaster recovery plan for localised events (such as access being lost to a remote voting place because of a bridge being washed out, for example). Preparations include having key contact details in place for local civil defence authorities, local radio stations, and suppliers of essential services to electorate headquarters.
21. The Commission has also held discussions with the New Zealand Defence Force (NZDF) to discuss how logistical assistance could be provided by NZDF personnel if a localised event occurred during a critical period of the election that would significantly impact the conduct of the election in the affected area. NZDF has advised the Commission that Ministerial approval would be required before any logistical assistance could be provided to the Commission. The Commission would make the request for NZDF assistance through the Officials Committee for Domestic and External Security Co-Ordination (ODESC), to ensure all appropriate government agencies and Ministers are consulted.

Post Kaikoura earthquake

22. The Commission and the Kaikoura electorate Returning Officer are developing a plan to provide enrolment and voting service, anticipating that there could still be lasting effects from the Kaikoura earthquake on the availability and usability of roads, buildings and other infrastructure.
23. We can draw on the experience of having delivered an election in Canterbury in 2011.
24. The key issues are likely to be:
 - Ensuring voting places are checked to ensure they are safe to use.
 - Making sure voting services are accessible, and consider mobile voting solutions where voting places are unavailable.
 - Ensuring voters who have temporarily relocated out of Kaikoura to other electorates, are aware that they can have their say via a special vote.
 - Having alternative non-land based back-up plans for transporting voting materials in and out of the area.

Next steps

25. In the event that election day voting is affected by an emergency, it is important that Ministers, political parties, and the wider public understand what the implications would be for the conduct of the election and how the Commission proposes to manage it.
26. We suggest that you advise your Cabinet colleagues, and then the Leaders of all Parliamentary Parties on the Commission's contingency plans and preparations for managing in an emergency.
27. The Electoral Commission will also make a copy of this paper available on its website.

Consultation

28. The Commission has consulted with DPMC, the Ministry of Justice, and NZDF.

Recommendations

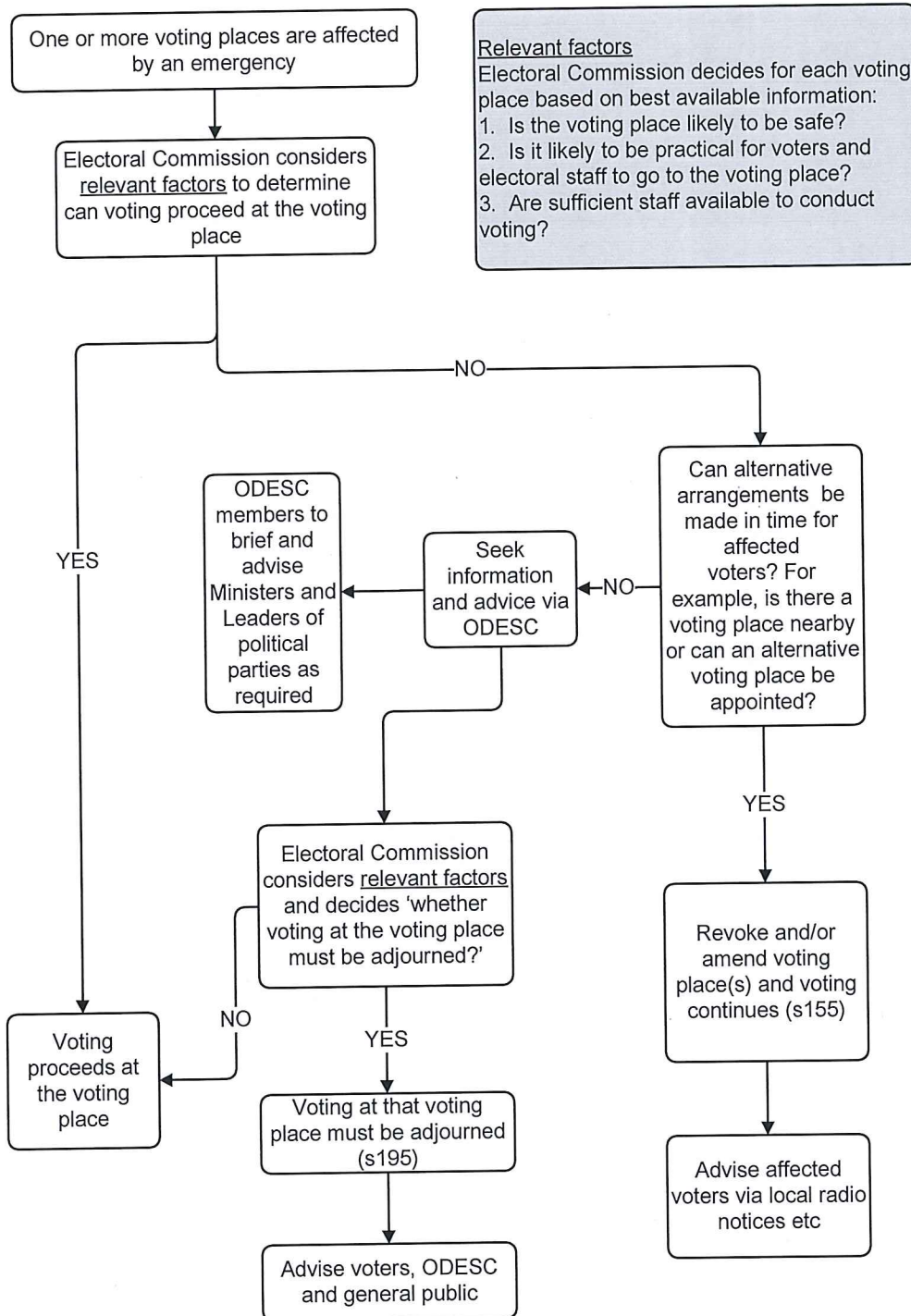
29. It is recommended that you:
 - 1 **note** the process the Commission would take should an emergency arise;
 - 2 **note** the contingency steps the Commission has taken to prepare for a potential emergency including a cyber security incident;
 - 3 **forward** this paper to your Cabinet colleagues and Leaders of all Parliamentary Parties; and
 - 4 **note** that the Electoral Commission will make a copy of this paper available on its website.

Signed for and on behalf of the Electoral Commission



Alicia Wright
Chief Electoral Officer

Electoral Commission Emergency Decision Making Process



Source: Electoral Commission

Power to alter or revoke an election day voting place

The Commission formally appoints voting places for the general election under section 155(5) of the Act by publishing a Gazette notice shortly before Election Day.

Section 155 gives the Commission the power to revoke, alter, or add to any voting places that have been appointed. There is no time limit on when the Commission can amend voting places, including on election day. The Commission can notify any changes by any means considered appropriate.

Power to adjourn voting at an election day voting place

Section 195 of the Act provides:

“Where the polling at any polling place cannot start or has to be suspended whether by reason of riot or open violence, natural disaster, or any other cause, the ... Returning Officer may adjourn the taking of the poll at that polling place to the following day, and if necessary from day to day until the poll can be taken, and shall, if he or she adjourns the taking of the poll, forthwith give public notice of the adjournment in such manner as he or she thinks fit....”

Where the close of the poll at any polling place is adjourned under this section for any number of days, the day on or before which the writ is made returnable shall be postponed by the same number of days”.

The Commission has no power to adjourn voting nationwide under section 195 of the Act even if the impact of an event is of national significance. Section 195 of the Act requires that adjournment decisions are made on a voting place by voting place basis. This means that if, for example, there was a major earthquake in Wellington, voting elsewhere would have to proceed.

Current legislation prioritises the need for voting to proceed in order that members of Parliament can be elected. This appears to reflect the principle that when an election has been called by the Governor-General, voting is paramount and should only be adjourned in the most exceptional circumstances. Section 67 of the Civil Defence Emergency Management Act 2002 allows the Governor-General to summon Parliament to meet if a state of national emergency is declared while Parliament is dissolved or has expired. In that case, Parliament must be summoned to meet within seven days of the last day appointed for the return of the writ for the general election (or if that day has passed, within seven days of the declaration of the state of emergency). Even at the time of a state of national emergency, it is recognised that an election must continue in order for Parliament to be able to be summoned. Section 6(2)(b)(ii) of the Epidemic Preparedness Act 2006 contains a similar provision.

Implications of adjourning an election day voting place under MMP

Section 54 of the Electoral Act provides that members of Parliament cease to be such at the close of election day (defined in section 3 of the Act as the day

appointed in the writ for the polling to take place). Under MMP, because of the single writ and the party vote, if voting has to be adjourned even in a single election day voting place, the election of all members of Parliament and, therefore, the formation of Government is delayed for the period of the adjournment.

Until voting is complete in every voting place, the Commission cannot return the writ showing all of the successful electorate candidates. If no electorate candidates can be declared elected and there is no final nationwide party vote result, the Commission cannot declare the election of any list members.

In the meantime, although a Minister of the Crown or member of the Executive Council has ceased to be a member of Parliament, he or she may continue to act as Minister or member of the Executive Council for 28 days after he or she ceases to be a member of Parliament (section 6(2)(b) of the Constitution Act 1986). In addition, a person who was not a member of Parliament but was a candidate for election, may be appointed a Minister or member of the Executive Council for a period of forty days from the date of appointment, but must vacate office after forty days unless within that time he or she becomes a member of Parliament (section 6(2)(a)).

Accordingly, in the event of an adjournment, despite a delay in the return of the writ and declaration of list members, the Executive continues for a defined period.

Decision to revoke an election day voting place

Because of the implications of adjourning, wherever possible the Commission will utilise the mechanism of revoking and/or amending election day voting places and making alternative arrangements for voters, rather than adjourning.

If, for example, one or more voting places were damaged by fire or localised flood, the voting place(s) would be revoked. Voters would be advised of alternative voting arrangements including any new voting places, nearby voting places, and the option to vote in advance at an advance voting place. Steps would be taken to ensure that any effects on staff and availability of voting papers were managed.

Were an event to occur during the advance voting period, depending on the scale of the event, it is likely that the Commission would be able to organise alternative voting options at a local level. The power to adjourn in section 195 appears to be confined to the adjournment of voting on election day.

If a similar event happened on election day during the hours of voting, provided satisfactory arrangements could be made quickly enough, similar steps would be taken.

Because of the need for immediacy, public notification of changes to voting places would be by local radio or other media operating in the area. Depending on the circumstances, notices would also be put up in the local area around the revoked voting place letting voters know where else they can go to vote.

Decision to adjourn voting at an election day voting place

If the scale, nature, and possible consequences of the event are such that it appears to the Commission that it may not be possible to make alternative arrangements for voters, then the Commission will have to consider adjournment at particular voting places.

Given the constitutional and political significance of a decision to adjourn, the Commission would seek advice and information from ODESC before making a decision.

Administrative implications

The logistical issues involved in implementing an adjournment across a number of election day voting places or continuing with voting in the face of an emergency should not be underestimated. For this election we need approximately 16,000 staff to work in voting places. Training takes place in the evenings over the two and half weeks before election day. Each Returning Officer has a limited number of standby staff who are trained and paid to be available in the event that staff are unavailable. Most of the 16,000 staff are only contracted for one day.

Approximately 60% of election day voting places are schools. The rest are a mix of public and privately owned facilities leased for election day. Most election day staff have other jobs. If voting is adjourned, it is unlikely to be possible to resume voting until the next available Saturday.

Preliminary results

If voting is adjourned in affected voting places, consideration needs to be given to whether the Commission should either publish the preliminary results or delay doing so until the adjourned voting can be held.

There is no statutory requirement for the Commission to release preliminary results on election night. However, by convention, the Commission has provided preliminary results on the elections website progressively from 7pm, indicating overall party and electorate results including a preliminary list of successful electorate and list candidates.

If the preliminary results suggest that:

- the party vote is close,
 - a party is close to the 5% threshold,
 - a party has a candidate that is very close to winning an electorate seat that would bring additional list members with him or her based on the share of the party vote, or
 - a party is close to the threshold for obtaining an additional list member,
- when the voting places are re-opened following the adjournment, people who did not vote on election day may now want to do so because of their knowledge of the preliminary results.

However, attempting to embargo the preliminary results is likely to be ineffective. Candidate scrutineers are entitled to be present during the preliminary counts of

election day and advance votes. Parties and candidates would know the results and would be able to act upon them once voting resumed. There would likely be leaks, rumour and speculation about the preliminary results and parties and candidates would be in a privileged position vis a vis the rest of the public and the media.

Withholding preliminary results could also affect timely formation of government. Although government formation cannot be completed until the election process is completed, the preliminary results enable discussions on government formation to commence.

Having weighed all those factors, the Commission's view is that on balance, the preliminary results for the rest of the country should still be released on election night.