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STANDING COMMITTEE ON JUSTICE

AND

COMMUNITY SAFETY

**INQUIRY INTO THE ACT ELECTORAL COMMISSION REPORT ON
THE ACT LEGISLATIVE ASSEMBLY ELECTION 2008 AND
ELECTORAL ACT AMENDMENT BILLS**

SUBMISSION BY THE ACT GOVERNMENT

Introduction

1. The ACT electoral system has proven to be very robust since the Territory was granted the power to manage its own elections.
2. Since 1994, the ACT has led the nation in adopting a number of innovations in electoral processes, including:
 - a. the introduction of electronic electoral rolls for marking the names of voters in all polling places;
 - b. implementing new rules for grouping candidates on ballot papers;
 - c. introducing simplified rules for authorisation of electoral material; and
 - d. using an intelligent character recognition scanning system for capturing and counting preferences marked on ballot papers.
3. The proposed amendments identified by the Electoral Commission in its report on the 2008 election, and reflected in the ACT Government's two bills, the *Electoral Legislation Amendment Bill 2011* and the *Electoral (Casual Vacancies) Amendment Bill 2011* represent minor and primarily technical adjustments to an already strong electoral system.

The 2008 ACT Legislative Assembly election

4. The seventh general election for 17 members of the ACT Legislative Assembly was held on 18 October 2008. After the election, a number of issues were identified that needed to be addressed ahead of the upcoming 2012 election. These issues include:
 - a. casual vacancy provisions;
 - b. the number of candidates to be nominated within an electorate;
 - c. lowering the age of entitlement to provisionally enrol to vote; and
 - d. the possibility of implementing automatic enrolment.

5. There are also a number of minor technical amendments that will need to be resolved within the *Electoral Act 1992* (the Electoral Act).
6. The ACT Electoral Commission produced a report on the 2008 election, which made several important recommendations that will guide the direction that the Government takes leading up to the 2012 election.
7. The Government agrees with the majority of the Commission's recommendations, and has introduced two bills to the Assembly, the *Electoral Legislation Amendment Bill 2011* and the *Electoral (Casual Vacancies) Amendment Bill 2011*, which will progress a number of these recommendations.
8. The Commission's report and the two bills have been referred to the Standing Committee on Justice and Community Safety (the Standing Committee), to inform an inquiry into the operation of the electoral process in the ACT.

ACT Electoral Commission's *Report on the ACT Legislative Assembly Election 2008*

9. On 16 October 2009, the ACT Electoral Commission presented to the Attorney General, Minister Simon Corbell MLA, the *Report on the ACT Legislative Assembly Election 2008* under section 10A of the Electoral Act.
10. The report contained a total of 16 recommendations relating to the future conduct of elections in the ACT, and the operation of the Electoral Act and the *Electoral Regulation 1993* (the Electoral Regulation).

Referral to the Standing Committee on Justice and Community Safety

11. The Attorney General, Minister Simon Corbell MLA, indicated on 31 March that the Government believes it is prudent and sensible for matters of this nature to be properly considered by the relevant standing committee of the Assembly prior to any debate occurring on any changes to the operation of the ACT's electoral laws.
12. Accordingly, on 7 April 2011, the Attorney General, the Minister referred the Electoral Commission's report, the *Electoral Legislation Amendment Bill 2011* and the *Electoral (Casual Vacancies) Amendment Bill 2011*, to the Standing Committee for review.
13. Minister Corbell advised that consideration by the Standing Committee will give Assembly members the opportunity to consider these two bills and the Electoral Commission's report in the context of a comprehensive public inquiry into the conduct of the 2008 election.

Terms of reference for the review

14. Minister Corbell advised that in conducting the review, the Standing Committee should have regard to a range of issues, including but not limited to:
- a. the ACT Electoral Commission's *Report on the ACT Legislative Assembly Election 2008*;
 - b. the amendments proposed to be made by the Electoral Legislation Amendment Bill 2011;
 - c. the amendments proposed to be made by the Electoral (Casual Vacancies) Amendment Bill 2011;
 - d. the application of the *Proportional Representation (Hare-Clark) Entrenchment Act 1994* to the Electoral (Casual Vacancies) Amendment Bill 2011; and
 - e. any other relevant matter.

Recommendations made in the *Report on the ACT Legislative Assembly Election 2008*

15. The ACT Electoral Commission made the following recommendations in its report on the 2008 election:

Rec 1	The Commission recommends that the Electoral Act be amended to provide for the inclusion of an elector's year of birth and gender on the certified list of electors for an election.
Rec 2	Should the year of birth and gender be included on the certified list, the Commission recommends that the lists provided to candidates should exclude the year of birth and gender details, on privacy grounds.
Rec 3	The Commission recommends that the Legislative Assembly consider whether it is desirable to amend the Electoral Act to provide that candidates may be given electronic copies of the certified lists.
Rec 4	The Commission recommends that section 113 of the Electoral Act be amended to provide that where a candidate has qualified for the return of a nomination deposit, then the deposit is to be returned to the person who paid it or a person authorised in writing by the person who paid it, and, in the case of a candidate dying before polling day, to the person who paid it or a person authorised in writing by the person who paid it, or in any other case, the deceased's personal representative.
Rec 5	The Commission recommends that it would be prudent to amend the Electoral Act to explicitly provide for the format of the ballot paper where a party's candidates are split into two columns, to put the issue beyond doubt.
Rec 6	If the casual vacancy provisions in the Electoral Act are amended to remove any incentive to nominate more candidates than the number of vacancies, the Commission recommends that the Assembly consider amending the Electoral Act to prevent a party from nominating more candidates in an electorate than the number of vacancies.
Rec 7	The Commission recommends that the Electoral Regulation be amended to provide that the word "declaration" be printed adjacent to the words "ballot paper".
Rec 8	The Commission recommends that the requirement in the Electoral Act for a witness to sign a postal vote certificate be removed.
Rec 9	If the previous recommendation is not accepted, then the Commission recommends that the requirement for the witness to observe the whole of the postal voting process by the voter be removed, and replaced with a requirement that the witness only witness the signing of the postal vote declaration by the voter.
Rec 10	The Commission recommends that the Assembly consider the arguments for and against

	amending the Electoral Act to provide that any elector may vote at a pre-poll voting centre, without the need to declare that they are unable to attend a polling place on polling day.
Rec 11	The Commission recommends that the Assembly consider whether an amendment to the Electoral Act is warranted to address the issue of authorisation of double-sided stickers containing electoral matter.
Rec 12	The Commission recommends that the offence of defamation of a candidate in section 300 of the Electoral Act be repealed.
Rec 13	The Commission recommends that the two disclosure issues (the proposal to require all political donations to be disclosed within 1 month of receipt and, in an election period, on a weekly basis; and proposals that may arise resulting from the Commonwealth Electoral Reform Green Paper on Donations, Funding and Expenditure) be considered, perhaps by a Legislative Assembly parliamentary committee, once the outcome of the Commonwealth review is known.
Rec 14	The Commission recommends that the penalty notice fine for failing to vote at ACT Legislative Assembly elections should be increased to, say, \$25.
Rec 15	The Commission recommends that consideration be given to whether it would be desirable to amend the Electoral Act to provide that, where a casual vacancy arises and the vacating member was elected as a party candidate, and no unsuccessful candidates from that party apply to contest the vacancy, then the vacancy would be filled by the appointment method set out in section 195 of the Electoral Act.
Rec 16	The Commission recommends that, if the size of the Assembly is to be changed prior to the 2012 election all necessary legislative changes should be made by October 2010.

Recommendations adopted by the ACT Government

16. The ACT Government has adopted 8 out of the 16 recommendations, which are reflected in the two bills as follows:

a. *Electoral (Casual Vacancies) Amendment Bill 2011*:

i. Recommendation 15.

b. *Electoral Legislation Amendment Bill 2011*:

- i. Recommendation 1;
- ii. Recommendation 2;
- iii. Recommendation 3;
- iv. Recommendation 4;
- v. Recommendation 6;
- vi. Recommendation 7; and
- vii. Recommendation 8.

17. The Government has chosen **not** to adopt 6 recommendations, which will be discussed below, as follows:

- a. Recommendation 5;
- b. Recommendation 9;
- c. Recommendation 10;
- d. Recommendation 11;
- e. Recommendation 12; and
- f. Recommendation 14.

18. The remaining 2 recommendations, Recommendation 13 and Recommendation 16, have been left for the Standing Committee to review and are discussed below.

The Electoral (Casual Vacancies) Amendment Bill 2011

19. The *Electoral (Casual Vacancies) Amendment Bill 2011* makes amendments to the casual vacancy provisions in section 195 of the Electoral Act. The bill will also make consequential amendments to the *Aboriginal and Torres Strait Islander Elected Body Act 2008*.

Casual vacancies and the count-back method

Addressing the issue – Recommendation 15

20. Section 195 of the Electoral Act currently provides for the situation where a casual vacancy occurs and it is not practicable to fill the vacancy by count-back at all. If a vacancy cannot be filled by count-back, there is a mechanism for the Assembly to appoint a replacement member from the same party, where the vacating member belonged to a party, or to appoint a candidate with no party affiliation where the vacating member was not elected as a party candidate. This method is similar to the Senate casual vacancy rules which, like the ACT's count-back rules, are designed to preserve the proportionality of multi-member election outcomes.
21. To address this issue, the Electoral Commission has recommended, in Recommendation 15 of its report, that the Electoral Act be amended to provide that where a casual vacancy arises and the vacating member was elected as a party candidate, and no unsuccessful candidates from that party apply to contest the vacancy, then the vacancy would be filled by an appointment made by the Assembly using the method set out in section 195 of the Electoral Act.

The bill provision

22. This bill implements the Electoral Commission's recommendation and provides that where a casual vacancy arises and the vacating member was elected as a party candidate, and no unsuccessful candidates from that party apply to contest the vacancy, the vacancy would be filled by the appointment method set out in section 195 of the Electoral Act.
23. Casual vacancies in the Assembly are currently filled by conducting a count-back of the ballot papers used to elect the vacating member. The count-back method of filling casual vacancies serves to preserve the integrity of the proportional representation aspect of the ACT's Hare-Clark system, as it enables the voters who elected the vacating member to choose that member's replacement.
24. In practice, this has always meant that a vacating member of a particular political party has been replaced by a member of the same party, thereby retaining the party balance in the Assembly, which in turn reflects the will of the electorate at the relevant general election.

25. However, the Electoral Commission has noted that the count-back method will only operate as intended to preserve the proportional outcome of the original general election where there is at least one candidate of the vacating member's party available to contest the vacancy.
26. Should a party member resign, and at least one unsuccessful candidate from that same party is not available to contest the vacancy, under the current law, that vacancy would be filled by a candidate from a different party or, indeed, potentially by an independent candidate. Arguably, such an outcome would not deliver a representative result, and might serve to alter the balance of power in the Legislative Assembly.

The role of the Proportional Representation (Hare-Clark) Entrenchment Act 1994

27. The proposed change to the casual vacancy rules is subject to the *Proportional Representation (Hare-Clark) Entrenchment Act 1994*. This Act applies to any law that is inconsistent with any of the listed principles of the proportional representation Hare-Clark electoral system, including the principle that "where there are two or more eligible candidates in relation to a casual vacancy, the vacancy shall be filled by a recount of the ballot papers counted for the person who, at the last election before the vacancy occurred, was elected to the seat in which the vacancy has occurred".
28. Any law to which the *Proportional Representation (Hare-Clark) Entrenchment Act 1994* applies has no effect unless it is passed by at least a two-third majority of the members of the Legislative Assembly, or passed by a simple majority of the Legislative Assembly and subsequently passed by a majority of electors at a referendum.
29. Consequently, in order for this bill to have effect, it must be passed by:
- a. the Legislative Assembly and passed by a majority of Electors at the Referendum held in accordance with the *Referendum (Machinery Provisions) Act 1994*; or
 - b. at least a two third majority of the members of the Legislative Assembly.
 - c. a special majority.
30. The purpose of the special majority requirements of the entrenchment act is to ensure that significant changes to our electoral system have multi-party support. In this case, given the compelling arguments for making the proposed changes, aimed at preserving the representative nature of the Assembly, the Government hopes that this bill will receive the support of all Assembly members.

Concerns raised by the Opposition

31. The Opposition have raised concerns about the proposed amendments for casual vacancies in the media, arguing that it will allow the Government to "parachute

handpicked Labor Party members into Legislative Assembly seats without facing the electors".¹

32. However, the Government's position is that the bill is designed to maintain the balance of party representation in the Assembly as determined by the ACT community at the most recent election. It would apply to any case where a member of a party can no longer fill their position, not just the Labor party. The bill also prevents the thwarting of the intention of the people of the ACT, which might occur under a count-back.

The Electoral Legislation Amendment Bill 2011

33. The *Electoral Legislation Amendment Bill 2011* provides for amendments to the *Electoral Act 1992* and the *Electoral Regulation 1993*. The bill will also make consequential amendments to the *Aboriginal and Torres Strait Islander Elected Body Act 2008*.
34. The purpose of this bill is to give effect to a number of the recommendations made by the Electoral Commission in its report, which will give effect to technical amendments designed to improve efficiency within the electoral process.

Recommendations 1 and 2 – certified list of electors and personal details (s 121)

35. Proposed amendments at section 121 implement Recommendation 1 of the Electoral Commission's report provides that the certified list of electors used in polling places contains the year of birth and gender of each elector to assist in correctly identifying electors as they vote. This recommendation was designed to ensure that electoral processes are as accurate as possible.
36. Recommendation 2 states that the extract of the certified list of electors provided to candidates will not contain the year of birth and gender of electors in order to protect their privacy. This recommendation is self explanatory and is clearly designed to maintain and preserve the privacy of voters in cases where the extra information is not necessary for the purpose for which it was provided, that is, accurately identifying voters at polling booths.

Recommendation 3 – extract of certified list in electronic form (s 121)

37. Section 121 is amended to allow for the Electoral Commission to provide the extract of the certified list of electors to candidates in electronic form. This implements Recommendation 3.
38. Currently, certified lists are only provided to candidates in printed form, to avoid the risk that candidates may compromise the security of the rolls, either accidentally or deliberately.

¹ Noel Towell, "Bill undemocratic, ACT Liberals say", *The Canberra Times*, 1 April 2011.

39. However, copies of the roll are available to registered political parties in electronic form. It is arguable, therefore, that this discriminates against independent candidates.
40. There is no reason to suggest that independent candidates are any less responsible than party candidates.

Recommendation 4 – return of a candidate's deposit (s 113)

41. The bill amends section 113 to implement Recommendation 4 which provides for the return of a candidate's deposit to the person who paid it, or to a person authorised by the person who paid it.
42. The primary reason behind this proposed amendment is a need to reflect the reality that nomination deposits for grouped candidates are typically lodged at one time by the campaign director, party secretary or registered officer on behalf of all candidates for that party.
43. The amendment would also ensure that if a candidate should die before polling day, the deposit should be returned to the person who paid it or the person authorised in writing by the person who paid it, or in any other case, to the personal representative of the deceased.
44. This amendment has already been implemented in a similar fashion by the Commonwealth Government in the *Commonwealth Electoral Act 1918*.

Recommendation 6 – number of candidates (Part 13)

45. Part 13 of the Electoral Act provides that, where a party nominates more candidates for an electorate than there are vacancies in the electorate, those candidates are to be split into 2 or more adjacent columns of equal length, so that no column of candidates is longer than the number of vacancies. The primary reason behind this requirement is the need to limit the length of columns on ballot papers in order to minimise the number of Robson rotation variations that are needed to ensure fairness to all candidates.
46. The Government agrees with amending Part 13 to implement Recommendation 6, which seeks to limit the number of candidates that may be nominated for an election in an electorate to no more than the number of members of the Legislative Assembly to be elected for the electorate.
47. This amendment is intended to address the type of situation that occurred in the lead up to the 2008 election, where it appeared from media reports² that both the

² Natasha Rudra, "Liberals cast wide net as 18 nominate for pre-selection", *The Canberra Times*, 4 April 2008; Antony Green, "Labor running Two Tickets for ACT Election", *Antony Green's*

Australian Labor Party and the Liberal Party announced that they were intending to nominate 6 candidates in at least one of the 5 member electorates.

48. Although this situation did not eventuate, the possibility of the situation occurring in the future caused concern for the Electoral Commission. The Government agrees that this concern was warranted.

Recommendation 7 – positioning of the word “declaration” on ballot papers (s 5A)

49. Section 5A of the Electoral Regulation currently provides that the word “declaration” is to be printed *above* the words “ballot paper” on declaration ballot papers. However, placing the word “declaration” in that position can cause practical issues, such as the restriction of space on the ballot paper interfering with the scanning of ballot papers.
50. The bill amends section 5A to implement Recommendation 7 which is designed to provide flexibility to the Electoral Commissioner as to where the word “declaration” is to be printed in relation to the words “ballot paper” on declaration ballot papers.
51. Declaration ballot papers are issued to postal voters and to voters attending a polling place who satisfy the polling official that:
- a. the certified list of electors for the electorate does not include the person’s name; or
 - b. the certified list of electors for the electorate has been marked so as to indicate that a ballot paper has already been issued to that elector, but the elector claims not to have already voted.

Recommendation 8 – signature of a witness on postal votes (s 144A(2))

52. Section 144A(2) of the Electoral Act sets out the conditions that must be met by an individual when casting a postal vote. Currently, the Electoral Act simply requires a postal vote certificate to be signed by a witness – it does not require electoral staff to check the veracity of a witness’ identity. The Electoral Commission has stated that the requirement for a person to effectively only witness a signature adds no value or security to the postal voting process.
53. However, where a postal voter fails to secure the signature of a witness that vote currently has to be rejected, even where electoral staff are able to verify that the voter’s signature is genuine.
54. The amendment of section 144A(2) would prevent such votes from being rejected from the count and implements Recommendation 8, which involves the removal of the requirement for a person to sign as witness when a voter is casting a postal vote.

Election Blog, <http://blogs.act.net.au/antonygreen/2008/07/labor-running-t.html>, 2 July 2008; Natasha Rudra, “Labor loses two poll hopefuls”, *The Canberra Times*, 16 July 2008.

Lowering the age of entitlement to provisionally enrol (s 75)

55. Another issue which the Government seeks to address, raised by the Electoral Commission, although not included as a specific recommendation in its report, arises from changes made in 2010 to the Commonwealth *Electoral Act 1918*, by way of the *Electoral and Referendum Amendment (Modernisation and Other Measures) Act 2010*.
56. Currently, section 75 of the Electoral Act states that the Electoral Commissioner shall enrol a person on the roll for an electorate if the person is at least 17 years old.
57. The proposed amendment to section 75 would lower the age of entitlement to provisionally enrol to vote from 17 years old to 16 years old, to bring the ACT into line with the Commonwealth. The requirement that an elector must be 18 years old or over before they can vote will not be affected – there will simply be a longer period in which the person can provisionally enrol.

Scrutiny of Bills and Subordinate Legislation Committee concerns

58. On 29 April 2011, the Assembly's Scrutiny of Bills and Subordinate Legislation Committee commented on the *Electoral Legislation Amendment Bill 2011*. The Committee noted that Clause 7 of the bill proposes to insert a new subsection under section 105, section 105(2A), stating that the registered officer of a registered party must not nominate more people to be candidates for election in an electorate than the number of members of the Assembly to be elected for the electorate.
59. Clause 8 of the bill, which seeks to substitute a new section 106 of the Electoral Act, then provides that where the above situation occurs, the nomination of all candidates by that party for the electorate will be **invalid** if, at the hour of nomination for the election, the registered party officer has nominated more candidates in an electorate than the number of vacancies in the electorate, then the nomination of all the candidates by that party for the electorate is made invalid.
60. In practice, this situation would result in a new nomination form being produced, to reflect the correct number of candidates. The most significant problem that would arise here, is that if an invalid nomination form was discovered too late in the process, then there may not be an opportunity to rectify the breach.
61. The Scrutiny Committee has argued that this clause appears to be an unduly harsh result, and is incompatible with the right stated in paragraph 17(a) of the *Human Rights Act*, which deals with "taking part in public life". The Committee believes that the relevant party should be afforded the opportunity

to rectify a breach under the proposed section 105(2A) within some period of time after the hour of nomination.

62. However, the Government believes that this proposed clause is not overly burdensome and, in fact, can be viewed as an incentive for registered officers to submit accurate nomination forms in the first instance and in a timely manner. It also acts as an important protection for the candidates whose registered officers submit correct nomination forms.

63. At present, there is a 24 hour gap between the close of nominations and the declaration of nominations the following day. The Commission may suggest that parties could be given some or all of this time to remove a candidate's nomination to bring a party back within its correct candidate allocation.

Recommendations not agreed to by the ACT Government

Recommendation 5 – format of ballot papers

64. Recommendation 5 states that it would be prudent to amend the Electoral Act to explicitly provide for the format of the ballot paper where a party's candidates are split into two columns, to put the issue raised in Recommendation 6 beyond doubt.

65. The Government accepts the substance of this recommendation but has not adopted it, as to strictly implement it may lead to unnecessary restrictions and raise objections on purely technical grounds.

66. Recommendation 5 is not required if Recommendation 6 is adopted, and the Government has agreed to adopt Recommendation 6.

Recommendation 9 – requirement for witness to observe postal voting process to be removed (s 144A(2))

67. The Electoral Commission has stated in Recommendation 9 that if Recommendation 8 is **not** accepted, it would advise that the requirement for a witness to observe the whole of the postal voting process by the voter – the conditions set out under section 144A(2) – be removed.

68. The Commission suggested that the process could then be replaced with a requirement that the witness only witness the signing of the postal vote declaration by the voter.

69. However, as the Government has adopted Recommendation 8, there is no reason to adopt Recommendation 9.

Recommendation 10 – pre-poll voting (part 10)

70. The Electoral Commission has noted that an increasing number of people are tending to vote at pre-poll centres and by post – at the 2008 election, approximately 25% of all votes cast were pre-poll or postal votes. Currently, these early voters are required to declare that they are unable to vote on polling day in order to qualify for an early vote.
71. The Commission has noted that this trend appeared to be indicative of public demand for more flexible service delivery and convenience. The Commission has therefore recommended that the Assembly consider the arguments for and against amending part 10 of the Electoral Act to provide that any elector could cast a pre-poll vote without the need to declare that they are unable to vote on polling day.
72. The ACT Government considers that the current requirement for voters to attend to vote on polling day should continue, with the facility for pre-poll voting being available only for those who cannot attend a polling place on polling day.
73. The Government believes that early voting would significantly alter the nature of ACT elections by effectively providing for a 3-week open period when anyone could vote, rather than requiring most electors to vote on polling day, as presently occurs. Early voting also prevents voters from considering last minute developments, such as resignation of candidates or global crises.
74. There is considerable merit in retaining the concept of polling day, being the day on which most electors vote, and the day on which campaigning efforts and media attention are focused.

Recommendation 11 – authorisation requirements for double-sided stickers

75. The Electoral Commission has recommended that the Legislative Assembly consider whether an amendment to the authorisation provisions to address the issue of double-sided stickers is warranted.
76. The ACT Government considers that the current authorisation requirements are sufficient to ensure readers are aware of the authors of political advertising. In particular, the double-sided stickers referred to are required to be authorised on one side, with the authorisation statement easily accessed by peeling off the stickers, or by viewing from the other side.

Recommendation 12 – removing the offence of defamation (s 300)

77. The Electoral Commission has recommended that the defamation of candidate provisions, in section 300 of the Electoral Act, be repealed.

78. The Commission has argued that the provision is not necessary, given that there are civil remedies available under other legislation, such as the defamation provisions in chapter 9 of the *Civil Law (Wrongs) Act 2002*. Another argument has been made that, to date, no prosecution action has ever been taken under section 300, which indicates that the provision is redundant.

79. However, the Government has argued that section 300 still serves an important function, namely protecting the reputations of political candidates. In rejecting the Commission's proposal, previous Assembly Members have noted that repealing the Electoral Act defamation provisions, and relying on alternative means of pursuing defamation in the courts, would reduce the opportunity for action to be taken during an election campaign.

80. The previous Assembly also argued that candidates who put themselves forward in an election are more vulnerable to defamatory claims than others. Without the protection of the offence of defaming a candidate, it would be easier for an individual to substantially and detrimentally derail a candidate's campaign by circulating defamatory material concerning that candidate.

Recommendation 14 – increasing the penalty for non-voting (s 161(2))

81. The Electoral Commission has recommended that the penalty notice fine for a failure to vote from the current penalty of \$20 to \$25. However, the Government feels that the purpose of this penalty is to encourage compulsory voting – it is not a revenue-raising measure.

82. The penalty for failing to vote in Commonwealth elections is still \$20, and the Government believes that raising the penalty for ACT elections above the level of the Commonwealth penalty would attract considerable criticism.

Recommendations 13 and 16 – for the Committee's consideration

83. These recommendations are not addressed by either of the Government's bills. However, the Committee may wish to consider them during its inquiry.

Recommendation 13 – political donations and the Commonwealth Electoral Reform Green Paper on Donations, Funding and Expenditure

84. The ACT's scheme for disclosure of political donations and expenditure requires the submission of both annual returns and election returns by various political participants. All disclosure thresholds were reduced to \$1000 on 1 July 2008.

85. The Electoral Commission considers that the ACT's disclosure scheme requires regular compliance audit to provide assurance to the community that political candidates are disclosing the relevant financial information in accordance with the law.

86. There are currently two processes underway that could impact on the ACT's disclosure provisions:
- a. the Parliamentary Agreement between the ACT Government and the ACT Greens – the Agreement includes a clause that commits the parties to pass legislation requiring all political donations to be disclosed within 1 month of receipt and, in an election period, on a weekly basis; and
 - b. the *Commonwealth Electoral Reform Green Paper on Donations, Funding and Expenditure* – the Paper may lead to reform of the Commonwealth disclosure scheme in the near future, including the Commonwealth's proposal that all Commonwealth, State and Territory electoral laws be harmonised.
87. The Committee may wish to consider this issue during its inquiry, given the potential impacts that it could have on the ACT electoral system. However, the Government does not support reform in this area at the present time, given that the Commonwealth has indicated its intention to harmonise all electoral laws.

Recommendation 16 – size of the Assembly

88. On 17 June 2009, the Legislative Assembly passed a resolution calling for a joint ACT/Commonwealth review of the *Australian Capital Territory (Self-Government) Act 1988* and related matters, to determine whether it continues to provide the best model for effective self-government in the ACT. One of the matters to be considered by this review was the most appropriate method of lifting the restriction on the Assembly determining its own size.
89. If the review were to result in the Commonwealth handing over the power to determine the size of the Assembly, it would impact on the Electoral Act and the operation of the Commission.
90. The Electoral Commission has identified the following principles that should be taken into account with a view to preserving the ACT's Hare-Clark electoral system:
- a. each electorate should have at least 5 members;
 - b. each electorate should have an odd number of members;
 - c. electorates should each return the same number of members; and
 - d. the total number of members should be an odd number, and accordingly, there should be an odd number of electorates.
91. An important consideration if the size of the Assembly was to change would be to allow sufficient time between the conclusion of the redistribution process and the election period, in order to inform the public of the changes and to allow political participants to adjust to the changed circumstances, particularly in relation to the preselection process for party candidates.

92. The Commission has advised that changing the number of members to be elected will also require changes to the Commission's operational systems, particularly its IT systems, and changes to the Commission's information and education material.
93. While the Government supports an increase in the size of the Assembly, there is currently no power for the ACT to change the number of Legislative Assembly members.

Automatic Enrolment

94. The Electoral Commission and the ACT Government have discussed the issue of automatic enrolment, in light of the fact that the Victorian Government utilised the system during their 2010 election. New South Wales also currently uses an automatic enrolment system.
95. Automatic enrolment describes the system where electoral agencies access information from other trusted agencies, such as Centrelink and Medicare, to change their records without direct action from the individual voter.
96. The ACT Electoral Commission has advised that implementation of the system in the ACT could be costly and labour intensive if it were introduced without complementary changes at the Commonwealth level. However, once implementation is achieved, automatic enrolment would result in a more up-to-date electoral roll that would have the potential to include many people who are currently not on the roll.

Conclusion

97. The ACT Government considers that these bills will significantly enhance the ACT's already robust electoral system.
98. Where the Government has not adopted the recommendations made by the Electoral Commission, it has presented strong reasoning as to why this is the case.
99. The maintenance and preservation of a transparent electoral process is integral to a democratic society. The Government welcomes the Standing Committee's inquiry and recognises that it is an important opportunity to canvass the views of the ACT community.

