



LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON JUSTICE AND COMMUNITY SAFETY

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Submission Cover Sheet

Inquiry into 2020 ACT Election and the Electoral Act

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Committee Secretary
Standing Committee on Justice and Community Safety
ACT Legislative Assembly
GPO Box 1020
CANBERRA ACT 2600

Dear Secretary

Thank you for the opportunity to contribute to the Inquiry into the 2020 ACT Election and the Electoral Act.

The administration of the 2020 election was in line with expectations. The election was, by and large, administered competently by the Electoral Commission particularly in rapidly changing circumstances. However, it is the view of the Liberal Party that improvements can be made for future elections.

Impact of COVID-19

COVID-19 had a significant impact on the conduct of the election. At an operational and preparation level, it meant that conventional norms around elections had to be reconsidered and addressed.

Throughout the lead up to the campaign, there was regular communication between the Party and the Electoral Commission both formally and informally, as well as with Health Officials.

In extremely difficult and rapidly changing circumstances, the Liberal Party appreciated the open and frank communication as to how the risks of COVID-19 were going to be managed through the campaign, in particular during the voting process.

I also want to thank the Chief Health Officer and her officials for providing clear advice throughout about how we could best manage the safety of the community, as well as our own candidates and volunteers, through COVID-safe direct voter contact.

Early Voting & Campaign Period

The Committee should consider the Assembly's intention to permit early voting. Under the Electoral Act, early voting is only intended to be available for electors who "expects to be unable to attend at a polling place on polling day". Prepoll should be the exception, not the norm. Despite this, over recent elections the level of pre-polling has increased dramatically.

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While the 2020 election was clearly an exception due to COVID-19, under normal circumstances there should be a stricter enforcement of only allowing pre-poll voting for those unable to vote on polling day.

Further, the 3-week pre-poll period is an enormous logistical burden on political parties in ensuring that polling booths are manned. Given the objective of pre-polling centres is to provide convenience for those unable to vote on polling day, we believe that a 2 week pre-poll voting period is sufficient. Should voters require additional time or greater flexibility, postal voting is available.

Polling Places

The number and location of polling places through the early voting period and polling day were reasonable in the circumstances. The majority of feedback to the Liberal Party was that voting was quick and efficient.

There was some early concern about the availability of paper ballots for those who requested them, but this minor training issue appeared to be overcome by polling day.

Electronic Voting

Noting the public criticism of the electronic voting systems, it is important that the Electoral Commission is transparent about the steps it takes to protect the integrity of our elections.

While there have been calls for the source code to be released, the Liberal Party understands the reasons why this did not take place.

Roadside Signage

Given the limited engagement with local media by Canberrans, roadside signage continues to be an important opportunity for political parties and, in particular, local candidates to build a profile. In those circumstances the Liberal Party in the ACT does not see a reason to change the current arrangements.

Exclusion Zones

The Canberra Liberals believe the Committee should consider amendments to the provisions relating to exclusion zones around polling places.

Liberal Volunteers received feedback from particularly elderly voters that it was prohibitive for them to walk 100 meters away from the polling booth to obtain a how to vote card from volunteers.

The current arrangements strike the worst of both worlds. Having a situation where candidates and volunteers are manning prepoll and polling booths from 100 meters away.

The Committee should consider either reducing exclusion zones to the Federal limit of 6 meters, or to disincentivise them completely akin to the Tasmanian arrangements.

Donation and Disclosure Rules

The Liberal Party works hard to ensure full compliance with the ACT Electoral Act's requirements around donations and disclosures. However, it is important to recognise that political parties are not only entitled under the ACT Electoral Act, but also operate under the Commonwealth Electoral Act, as well as the broader governance requirements covering us as a business.

Over the last four years, there have been numerous changes to these requirements which have added a great deal of complexity to administering a political party. This is made more difficult when changes are introduced into the Assembly with minimal consultation with political parties who need to implement them.

The Government's willingness to work with the Liberal Party, and the Labor Party, ahead of the changes to the Electoral Act just prior to the election was appreciated. However, I would suggest it is better to engage with parties prior to the introduction of legislation in the first place. Political parties are highly regulated, and regularly audited, entities, and accordingly, significant efforts are put into ensuring full compliance with relevant legislation. This should be recognised when developing legislative reform.

Those most recent changes relating to a ban on developer donations continues to create some concern from my perspective. For example, as at the date of this submission, the Electoral Commission has not provided any advice to parties about its interpretation of the Act. With the introduction of criminal sanctions for non-compliance, this creates a significant issue whereby parties are completely reliant on our own legal advice, instead of having been provided with clear advice from the Commission about how – in particular – the reasonableness provisions will be administered.

While the Liberal Party holds a principled view that all citizens should be able to participate in the political discourse, including through donations, we accept and supported the passage of the developer donation ban. My concern is not with donations from known developers, but donations from associates where it is impossible for the Party Agent to know that is the case.

I believe that placing the onus, including with criminal penalties, on the Party Agent for not knowing the unknowable is challenging. It is vital that the Electoral Commission clearly establishes the reasonable steps and processes that can be undertaken in order to be satisfied that donations comply with the Act, and its interpretation of how broad the associated entity definition will be is crucial.

Associated Entities and Third Party Campaigners

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The Committee should consider the application of electoral expenditure caps for the Associated Entities of political parties. During the 2020 election campaign, while both the Labor and Liberal campaigns effectively fully expended their caps, it is now apparent that a number of unions that are formally affiliated to the Labor Party spent money on electoral matter as a Third Party Campaigner. While I am not suggesting that this is unlawful, it is something that should be considered moving forward.

The clearest example of such a conflict was that the President of UnionsACT was a Labor Party Candidate, and UnionsACT reported spending \$15,874 as a third party campaigner. From the material that we are aware of, this was largely for the distribution of material solely in favour of the Labor Party's campaign.

The Committee should consider whether it is intentional for such close associates, that are officially registered as Associated Entities and Constitutionally interlinked, to be able to effectively expand the cap of a party through other organisations.

Disclosures

The categories for disclosure are extremely broad and are open to interpretation by the discloser. The fact that the ALP, Liberal and Greens disclosures cannot be compared because we have evidently categorised expenditure differently highlights the problem. An example of this is that expenditure published on the Canberra Times website could either be digital advertising or advertising in an online newspaper.

I believe the categories for disclosure should be simplified to something akin to:

- Broadcasting
- Printing
- Publishing
- Digital
- Distribution
- Polling
- Agents Fees
- Other

Electoral Act

During the 2020 election, the Liberal Party was on the receiving end of repeated and targeted dissemination of false material claiming to originate from the Party. This included fake social media accounts posting highly inappropriate material.

Some of this material included a statement that it was "Authorised by Josh Manuatu for the Canberra Liberals". At a time when the Electoral Commission was advertising for people to check the source by checking the authorisation statements.

The fact that it is a requirement for parties to authorise material, but it is not an offense to falsely authorise material is problematic. Despite these repeated examples the Australian

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Federal Police were unable to pursue the matters because it was not a substantial enough penalty to warrant the months of work required with international agencies to uncover the identities of the perpetrator(s).

Given the very real concerns about interference in elections, this seems to me to be a very simple issue that should be resolved. Given that Registered Officers are exercising their legally required duties to authorise material, there should be legally enshrined protections to ensure that this is not misused.

I recognise that should this suggestion be adopted, it may require that there be a restriction on those who can authorise electoral matter on behalf of parties.

Voting Age

The Canberra Liberals have consistently supported the voting age being at the age of 18.

A paper produced by Professor Ian McAllister from the Australian National University in 2012 found that "there is no evidence that lowering the voting age would increase political participation; indeed, the evidence points in the opposite direction". We strongly agree with this assessment.

Again, thank you for the opportunity to make this submission. I am happy to respond to any questions, or to appear before the Committee if you would like me to expand on any of the points raised in this submission.

Yours sincerely,



Josh Manuatu
Divisional Director

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