



Legislative Assembly for the
Australian Capital Territory

Standing Committee on the Integrity
Commission and Statutory Office
Holders

Submission Cover Sheet

Inquiry into the operation of the 2024 ACT Election and Electoral Act 1992

Submission number: 028

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SUBMISSION TO THE INQUIRY INTO THE OPERATION OF THE 2024 ELECTION AND ELECTORAL ACT 1992

I write to make a brief submission in relation to the use of the term 'independent' on ACT Legislative Assembly election ballot papers.

The Electoral Act 1992 (the Act) currently permits the term 'independent' to be used in the name of a registered political party.

In the most recent 2024 elections, two registered political parties standing in the Kurrajong electorate had that term in the party name.¹

This practice is prohibited in South Australia.

Section 42 of the Electoral Act 1992 (SA) reads²:

42—Registration

(1) After considering all objections to an application for registration of a political party submitted under this Part, the Electoral Commissioner must determine the application.

(2) An application for the registration of a political party must be refused if, in the opinion of the Electoral Commissioner, the name of the party or the abbreviation of its name (if any) that it wishes to be registered—

- (a) comprises more than 6 words; or
- (b) is obscene; or
- (c) is the name, or is an abbreviation or acronym of the name, of another political party (not being a related political party) that is a parliamentary party or a registered political party; or
- (d) so nearly resembles the name, or an abbreviation or acronym of the name, of another political party (not being a related political party) that is a parliamentary party or a registered political party that it is likely to be confused with or mistaken for that name, abbreviation or acronym; or
- (e) comprises or contains the word "Independent".

The amendment of the terms of 42 (1)(e) was made by way of government amendment to the Electoral (Miscellaneous) Amendment Bill 2016³ in the Legislative Council.

¹ <https://www.abc.net.au/news/elections/act/2024/guide/kurr>

² https://austlii.edu.au/cgi-bin/viewdoc/au/legis/sa/consol_act/ea1985103/s42.html

³ Passed as the Electoral Amendment Act 867 of 2017 (Act 20, 2017):
[https://www.legislation.sa.gov.au/_/legislation/lz/v/a/2017/electoral%20\(miscellaneous\)%20amendment%20act%202017_20/2017.20.un.pdf](https://www.legislation.sa.gov.au/_/legislation/lz/v/a/2017/electoral%20(miscellaneous)%20amendment%20act%202017_20/2017.20.un.pdf)

In introducing the amendment, the Minister said:

New clause 8A.

The Hon. K.J. MAHER: I move:

Amendment No 2 [Employment-1]—

Page 4, after line 5—Insert:

8A—Amendment of section 42—Registration

Section 42(2)(e)—delete paragraph (e) and substitute:

(e) comprises or contains the word 'Independent'.

This is the first of a series of amendments that are based on a number of fairly straightforward provisions. If you are an Independent, you can call yourself an Independent, but if you are a registered political party you can call yourself by your registered name. However, a party should not be able to have the best of both worlds; that is, to call itself independent, and an Independent should also not be able to associate itself with a party on its how-to-vote cards.

Currently, section 42(2)(e) provides that you cannot register a political party name that contains the word 'independent' or 'independent party' or the name or abbreviation or acronym of a political party or a registered political party or something that closely resembles the name of a political party. The effect of this change is that now you will not be able to register a party name that has the word 'independent' in it. This will provide for a clearer distinction between a person who is running as an Independent and a person who has formed a political party and is running as a political party.⁴

It is also noted that Tasmania, which has effectively the same electoral system as the ACT also prohibits this practice, and has done so at least as long as the current principal electoral law (the Electoral Act 1990 (Tas)) has been in operation.

In particular:

- subparagraphs 44(1)(b)(ii) and 44(1)(c)(ii) expressly prohibits the use of the term independent for parties⁵; whilst
- paragraph 84(2)(c) goes so far as prohibiting the acceptance of a nomination from a person who have changed their name to include the word 'independent'⁶.

Having several groups on the one ballot paper with a party name of 'independent' can be confusing for some voters.

⁴ Hansard 1 June 2017: <https://hansardsearch.parliament.sa.gov.au/daily/uh/2017-06-01/6?sid=82d3691a3844423585>

⁵ <https://www.legislation.tas.gov.au/view/html/inforce/current/act-2004-051#GS44@EN>

⁶ <https://www.legislation.tas.gov.au/view/html/inforce/current/act-2004-051#GS84@EN>. See also the Tasmanian Registration of political parties policy; [https://www.tec.tas.gov.au/disclosure_and_funding-edf_policies-Registration%20of%20political%20parties%20policy\(806980\).pdf](https://www.tec.tas.gov.au/disclosure_and_funding-edf_policies-Registration%20of%20political%20parties%20policy(806980).pdf)

Moreover, it is difficult to see how the term ‘independent’ can properly describe a registered party group that (for example):

- conducts an ‘endorsement process’ and expects candidates to commit to ‘ten core principles’ and reserves the right to disendorse parties who don’t ‘measure up’;⁷ and
- will only support a government that meets a 20-point statement of expectations.⁸

It also begs the question: a group that has gone through the process to form a party for the purposes of an election is independent of what?

The way in which paragraph 117(2)(c)⁹ is structured evinces a policy intent to recognise that a ‘dictionary definition’ independent (defined relevantly as not subject to another person’s authority or jurisdiction; free from party commitments in voting¹⁰) can, at their option, appropriately seek ballot paper identification as being an independent.

For the policy reasons identified in this submission, the term ‘independent’ should be reserved for those individual candidates that do not have the support of any form of party structure. The legislation should not facilitate the creation of an artificial artefact to allow a candidate, still claiming to be ‘independent’, to have their own column on the ballot paper.¹¹

Committee should propose an amendment to section 93 of the Act¹² to make clear that a registered party name does not contain the word ‘independent’, as is the case in South Australia and Tasmania.

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⁷ <https://region.com.au/growing-independents-for-canberra-registered-and-building-candidate-list/752315/>

⁸ <https://region.com.au/independents-for-canberra-prepared-to-cut-deals-but-wont-hold-a-government-to-ransom/815523/>

⁹ https://austlii.edu.au/cgi-bin/viewdoc/au/legis/act/consol_act/ea1992103/s117.html?context=1;query=independent;mask_path=au/legis/act/consol_act/ea1992103

¹⁰ Definitions 2 and 10 from the Macquarie Dictionary (3rd edition)

¹¹ Section 115 of the Act: https://austlii.edu.au/cgi-bin/viewdoc/au/legis/act/consol_act/ea1992103/s115.html

¹² https://austlii.edu.au/cgi-bin/viewdoc/au/legis/act/consol_act/ea1992103/s93.html

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