

ACT Greens Submission to the Select Committee on Amendments to the Electoral Act

The ACT Greens have identified a number of provisions in the *Electoral Act 1992* that could be improved to achieve greater efficiency, transparency and enhance the democratic process.

Key recommendations:

- Reform to the 100 metre rule.
- Improvement of the voting instructions on the ballot paper
- Reduction in expenditure caps
- Mandatory reporting of tithing
- Discussion of campaign donations in light of *Unions NSW & Ors v State of New South Wales*
- Reform to administrative reporting arrangements to make regulations easier to comply with and less onerous for parties
- Stronger pre-election day disclosure requirements
- A mechanism to manage future increases in the size of the Assembly.

The ACT Greens strongly support increasing the size of the ACT Legislative Assembly. The current 17 member Assembly fulfils the duties of both state and local government, which results in lower representation of the ACT community and risks less accountability and transparency for the community. The ACT has proportionally fewer politicians than any other Australian jurisdiction, partly as a result of significant population increases over the past 20 years

However, the ACT Greens do not support five member electorates as they reduce the proportionality and the diversity of representation in the Assembly. The ACT Greens maintain their position that the best configurations for increasing the size of the Assembly in 2016 would be three electorates with between 7 and 9 members.

This structure would ensure that communities of interest can exist within an electorate rather than be split across two electorates, as is likely to happen under a 5 by 5 arrangement (eg. Tuggeranong and Belconnen will be too large to sit within one electorate).

It would also allow for the growth of the Assembly to 35 members in the future.

We note the ACT Electoral Commissions's submission recommendation to remove the "hard-cod[ed]" references to numbers of members in the Electoral Act (s34, s116, s205) to allow for further changes to electorate size without requiring future amendments to the legislation. We support these recommendations.

1. Recommend that the 100 metre rule is modified in light of enforcement issues

As outlined in the 2012 Election Report prepared by the Electoral Commissioner, there have been ongoing practical challenges in ensuring compliance with the 100 metre rule. In 2012, parties and candidates were given maps clearly demarcating the 100 metre boundary, and we note the Commissioner's report that complaints about compliance with the 100 metre rule did reduce in 2012. However, systematic breaches of the rule were still observed and reported to the ACT Greens campaign team.

The ACT Greens submit that a range of options surrounding the modification of the 100 metre rule could be considered to address systemic issues with the enforcement and thus compliance with the rule, and ensure that voters are provided with the information they may require at the polling booth

a) Allow How to Vote (HTV) material for political parties and candidates to be presented in each individual booth

Given the challenges of enforcing the 100 metre rule (particularly when campaign offices fall within the 100 metre radius) the ACT Greens submit that the Committee considers the merits of providing for HTV material within the individual polling booths as a measure that will ensure voters are given the opportunity to review information from *all* parties and independents, but also reduces the incentive for non-compliance with the 100 metre rule.

One option is a system whereby each party or independent candidate prepares a piece of material advising voters how they can vote if they wish to support said party or candidate. These pieces of material would be placed in individual polling booths or in a general space with a polling place for voters to consider if they wish.

A system which allows for the presentation of HTV materials from all parties and independent candidates gives voters the autonomy to assess the material available to inform their vote, or disregard the material presented. All materials would need to be approved by Elections ACT before being displayed within polling booths.

The specifics of the size, format and content of the HTV material requires consideration by the Committee. The exact requirements of the materials should be investigated but to avoid misleading or confusing information, regulations such as not allowing other parties or candidates to be mentioned on HTV materials could be considered.

b) Extend the 100 metre rule to 200 metres (or further) to provide an increased disincentive to canvassing near polling booths

Given the difficulties enforcing the 100 metre rule, and reports that unsafe, reckless behaviour is engaged in by both party volunteers and voters due to the intensity of canvassing activity near booths, the Committee could give consideration to extending the 100 metre boundary to create an additional buffer for voters. The ACT Greens submit that this option be considered alongside additional enforcement methods such as on the spot fines and additional resourcing for Elections ACT, so they can provide more trained staff to monitor the revised boundary on Election Day.

c) Bring the ACT Territory rules in line with Federal Elections and replace the 100 metre with the 6 metre rule

A further option would be to change the arrangements for ACT Elections to a 6-metre rule, as used at Federal Elections. The 6 metre rule is easier to staff and enforce than the 100 metre. Supplementary measures such as restricting election day advertising bunting, restricting the number of party volunteers or signage per polling booth could be considered to moderate party presence on Election Day, and ensure a less confronting environment for those who come to vote.

2. Review the Voting Instructions on the Ballot Paper

The ACT Greens submit that the voting instructions on the ballot paper should be made clearer and avoid the potential unintended consequence of encouraging voters to *only* number the inferred minimum required of 5 or 7 candidates. The Hare-Clark system has a preferential system, and the instructions to voters should not imply that full preferences would not flow beyond the number of members in each electorate or that voting beyond 5 or 7 has no value.

It is also important that people do not repeat numbers, to avoid people numbering 1-5 within every column, thus rendering the whole vote invalid.

The ACT Greens suggest the following wording:

“Write numbers from 1 onwards, up to as many numbers as you wish. Use numbers only and use each number only once.”

3. Limits to and reporting of donations received and electoral expenditure

Currently there is a cap on ACT electoral expenditure per candidate of \$60,000 plus indexation. The ACT Greens submit that given the ALP and Canberra Liberals have both indicated publically they support an increase in the Legislative Assembly to 25 members, the expenditure cap should be reviewed to ensure the most efficient and fairest scheme.

A stronger expenditure cap reduces the incentive and ability for any one party to attempt to grossly outspend another thus supporting a diversity of voices within the democratic process.

The ACT Greens submit that the expenditure cap should be reduced to account for the increase in Assembly party size. If the Legislative Assembly expands to 21, 25 or 35 members and accordingly a party runs 5 or 7 candidates per electorate, the party's total possible expenditure would be dramatically increased, despite costs unlikely to increase proportionally (as campaign resources can be pooled.)

The ACT Greens support creating a party cap of \$500,000 so as to limit the overall expenditure whilst not disadvantaging independents or smaller parties. The ACT Greens also support a reduction in the candidate cap, whilst acknowledging that a balance is required between limiting campaign expenditure and inhibiting the ability of independents to participate fully in the democratic process. As such, we propose an individual candidate cap be reduced to \$45,000. We propose that the same candidate cap be applied to third party campaigners.

We support an increase in the administrative funding given the increase in Assembly size, and propose the Committee investigate whether the administrative funding should remain set per MLA and increase accordingly, or whether total funding should be increased but funding per individual MLA reduced, as some administrative functions within the parties could potentially be combined, and thus the cost reduced per MLA.

4. Mandatory Reporting of Tithing

The ACT Greens submit that the legislation be clarified with respect to 'MLA tithing', as required under some party constitutions, so that parties are required to declare tithing as a "gift" under Part 14 of the *Electoral Act 1992*. The ACT Greens support increasing the transparency of political donations, gifts and contributions where possible.

5. Campaign donations in light of the High Court decision *Unions NSW & Ors v State of New South Wales*

In light of the recent High Court decision, *Unions NSW & Ors v NSW*, it is possible that the legislated requirement that only individual persons enrolled on the ACT electoral roll are

able to make donations to ACT parties and candidates for ACT election purposes will no longer be valid.

We recommend the Committee seek legal advice. However, the ACT Greens do not believe that it is appropriate to preempt any decision that the High Court might make in regards to the ACT legislation, and continue to support the principles underpinning the ACT's current restrictions on donors as "individual persons enrolled".

6. Reporting agent

The ACT Greens support the Commission's recommendation that the appointment of an agent automatically cancels the appointment of any previously appointed agent (Recommendation 12, ACT Legislative Assembly Election 2012 Report) however, we suggest that the appointment of multiple reporting agents would assist with ongoing compliance with reporting requirements.

The ACT Greens support allowing for the appointment of alternate agent. During prolonged periods where the 7-day gift disclosure deadline applies an alternate agent would help address the added compliance burden and provide coverage if a reporting agent was unable to fulfil this duty short-term.

Concerns regarding to the ability of the Electoral Commission to identify the specific person responsible for lodging a disclosure return could be addressed by allowing parties to identify a "Principal Reporting Agent" with whom the ultimate responsibility for the lodgement of returns rests, along with an "Alternate Reporting Agent" who may lodge returns on their behalf. The Principal Reporting Agent would carry any liability for breaches of disclosure requirements.

The ACT Greens would support provisions to allow the appointed secretary of a political party to provide notification of the cessation of an appointment as Reporting Agent.

7. Pre-Election Disclosure

The ACT Greens support strengthening the pre-election disclosure regulations. As it stands, parties are able to receive donations within the final 7 days before Election Day and disclose after Election Day itself. We submit that any donations received up to 48 hours before Election Day should be required to be reported by 6 am on Election Day itself. Elections ACT should endeavor to publish disclosures as soon as practicable on Election Day.

Donations received within the final 48 hours before Election Day should be subjected to the current disclosure rules.

This would make it more difficult for parties to preemptively spend donations they plan on but do not wish to disclose until after the election.

8. Future increases in Assembly size

The ACT Greens submit that the Committee investigate the option of building a trigger into the legislation to allow for an automatic review of the Assembly size when the population reaches a certain size. The Expert Reference Group considered that “it would be appropriate to enlarge the Assembly to 35 in either 2020 when the population is expected to reach 410,000 or in 2024 when the population is projected to reach 428,000.”¹

A legislated trigger for the expansion of the Assembly would allow for a timely response to population increases to ensure the ACT community is adequately and proportionately represented in the Assembly, and would ensure that the process to review the size of the Assembly is depoliticised.

Alternatively, the Assembly could simply embed in legislation the recommendations of the Expert Reference Group to increase in the size of the Assembly at a specific time.

The ERG recommended moving to 25 members in 2016 and 35 members in 2020, and said that if the Assembly did not accept 35 members in 2020, that it proceed with 35 (7 members x 5 electorates) members in 2024. This is consistent with the view of the ERG that even with 35 members; the voters of the ACT would be modestly represented.

However, as this recommendation was based on population projections, and that population projections can shift, it may be more expedient to link the increase to population itself.

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¹ REVIEW INTO THE SIZE OF THE ACT LEGISLATIVE ASSEMBLY Report by the Expert Reference Group 2013, page 2.