



LEGISLATIVE ASSEMBLY

FOR THE AUSTRALIAN CAPITAL TERRITORY

SELECT COMMITTEE ON THE 2016 ACT ELECTION AND ELECTORAL ACT

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Submission 15

Name – ACT Labor

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Submission to Inquiry into 2016 ACT Election and the Electoral Act

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Introduction

ACT Labor welcomes this opportunity to make a submission regarding the issues listed in the terms of reference for this Committee.

We understand that the terms of reference for this inquiry are as follows:

Terms of Reference

- a. a select committee be established to review the operation of the 2016 ACT election and the Electoral Act and other relevant legislation and policies in regards to election-related matters, and make recommendations on:
 - i. lowering the voting age;
 - ii. improving donation rules and donation reporting timeframes;
 - iii. increasing voter participation in elections and encouraging political activity; and
 - iv. any other relevant matter.

ACT Labor's submission will cover the following topics:

- Matters pertaining to lowering the voting age
- Improving donation and reporting laws and Election campaign rules
- Lobbyists
- Member's Gift Reporting and Communication Allowance
- Responses to the recommendations in the Elections ACT submission

Lowering the voting age

It is the policy of ACT Labor to support the consideration of the voting age being lowered to include residents aged between 16 and 18¹. ACT Young Labor has written a submission on this subject, we support consideration of their position and recommendations.

Many of the arguments used in the past to justify lowering the voting age from 21 to 18 are pertinent to 16 and 17 year olds today² such as:

- 16 year olds can work,
- 16 year olds pay taxes such as income tax and GST,
- 16 and 17 year olds can marry and
- 17 year olds can join the Australian Defence Force³

The main argument used by critics of such a change is that young people are apathetic and lack the knowledge or maturity to participate in elections.

¹ http://www.actlabor.org.au/rules_and_platform

² <http://www.ayac.org.au/uploads/The%20case%20for%20lowering%20the%20voting%20age%20to%202016.pdf>

³ <http://www.defencejobs.gov.au/recruitment-centre/can-i-join/age-gender/>

We do not believe that these arguments hold water and academic research into the maturity of 16 and 17 year olds vis a vis 18 year olds shows the differences to be negligible and not sufficient enough to oppose the enfranchisement of 16 and 17 year olds.⁴

Whilst there is evidence to suggest that, when enfranchised, 16 and 17 year old cohorts turn out in significant numbers in voluntary voting jurisdictions⁵, ACT Labor believes that any change to lowering the voting age should be complemented with measures that ensures that there is no negative impact on the ACT's high rates of enrolment.

It was a commitment of ACT Labor at the election to amend legislation to allow voters to enrol to vote up to and on Election Day, as is the case in NSW and Victoria. We believe that such a measure would help to ensure and improve the ACT's enrolment numbers. We also believe that such a measure would be of most benefit to younger voters who might be voting in their first election or have been recently educated in the electoral process.

ACT Labor would only consider supporting such a change if it maintained the principle of compulsory voting. We believe that compulsory voting is one of the foundations of our rigorous democracy and therefore we would not support any change in legislation that would undermine this important practice.

It is our view that any consideration of lowering the voting age by the Assembly should also address the question of whether voters under the age of 18 would be able to nominate and stand for election. ACT Labor currently does not have a recommendation to make concerning this issue at time of submission.

Improving electoral and donation rules and reporting time frames

ACT Labor believes that the ACT has one of the most transparent and rigorous campaign finance and donation schemes in Australia, however we also believe that the ACT should continue to improve our system to ensure that citizens can continue to have faith in our electoral processes.

ACT Labor took a comprehensive set of policies regarding improving donation rules and time frames to the 2016 election.

- Introduce 'real-time' reporting of donations – requiring donations to be declared within seven days of receipt.
- Implement a ban on property developer donations
- Close donation loopholes – e.g. the '\$250 dinner plate' which allows parties to hold events that fall below the \$1,000 reporting threshold
- Investigate public funding models that encourage parties and candidates to seek small individual donations over large corporate donations
- Close nominations on day 5 of the formal campaign period to allow for an earlier distribution of postal votes
- Align the formal campaign period to the minimum length of a federal election

Introduce Real Time Reporting of Donations

ACT Labor supports the introduction of 'real time' disclosure of donations to parties and candidates. We believe that the ACT should adopt the Queensland model of requiring all parties and candidates to disclose all gifts and loans totalling \$1,000 or more from a single donor within seven business days of the funds being received. This is essentially an

⁴ C.f. Daniel Hart and Robert Atkins, "American Sixteen- and Seventeen-Year- Olds Are Ready to Vote," *Annals of the American Academy* 633 (January 2011): 208.

⁵ <http://www.vox.com/policy-and-politics/2016/11/7/13347080/voting-age-election-16>

expansion of the seven day reporting period that is in place during the final stages of ACT Legislative Assembly elections.

For such a scheme to be implemented effectively and efficiently, we advocate for the ACT Electoral Commission to be resourced to be able to develop an online submission and reporting system similar to that used by the Queensland Electoral Commission⁶ or the New York City Campaign Finance Board⁷. This will not only make it easy for donations to be reported, but will also improve the accessibility of such information to the general public.

Banning Property Developer Donations

ACT Labor supports a ban on property developers and their close associates from making donations to political parties and candidates.

ACT Labor has historically supported the principle that the best way to maintain a political donation system that has integrity and transparency is not to ban certain individuals or entities from being able to make political donations, but rather to combine strict reporting obligations on parties, candidates and donors with public funding of parties and candidates and strict caps on campaign expenditure.

Whilst we are confident that citizens, organisations and businesses in the ACT conduct their affairs in an ethical and community-minded manner, we believe that the community has formed an opinion that there must be a clear separation between government, political parties and the property development industry.

In 2015 the NSW parliament introduced complete bans on property developer donations to political parties and candidates. Unlike previous attempts by jurisdictions – including the ACT – to legislate bans on industries or sectors from making political donations, the most recent NSW bans have been found to be constitutionally sound.

The NSW Electoral Act defines a property developer as:

...a corporation engaged in a business that regularly involves the making of relevant planning applications by or on behalf of the corporation in connection with the residential or commercial development of land, with the ultimate purpose of the sale or lease of the land for profit.⁸

The NSW Act also prohibits donations from what it calls “close associates” of property developers:

- a director or officer of the corporation,
- the spouse of such a director or officer,
- a related body corporate of the corporation,
- a person whose voting power in the corporation or a related body corporate of the corporation is greater than 20% or the spouse of such a person,
- if the corporation or a related body corporate of the corporation is a stapled entity in relation to a stapled security – the other stapled entity in relation to that stapled security,

⁶ <https://disclosures.ecg.qld.gov.au/>

⁷ <http://www.nyccfb.info/>

⁸ http://www.elections.nsw.gov.au/fd/political_donations/unlawful_political_donations

- if the corporation is a trustee, manager or responsible entity in relation to a trust – a person who holds more than 20% of the units in the trust (in the case of a unit trust) or is a beneficiary of a trust (in the case of a discretionary trust).

We believe that the Committee should examine the NSW legislation in order to ensure that any such bans are compliant with the constitution with particular focus on prohibiting entities (and associated individuals) whose primary purpose is in property development.

Foreign Donations

ACT Labor supports efforts at the Commonwealth level to reach a bipartisan position on banning foreign donations to political parties. ACT Labor is willing to work with governments across all jurisdictions in order to reach a satisfactory agreement on this important matter.

Close Donation Loophole

Currently the ACT Electoral Act (198AA 2(b)) allows parties to not have to consider the first \$250 raised from a fundraising event a gift. We believe that this clause could potentially be used to hide from the \$1,000 disclosure limit and therefore we believe that it should be removed.

Complementary Public Funding Schemes

ACT Labor believes that in order to build on the ACT's rigorous and transparent election donation and finance system, the Assembly should investigate ways to encourage candidates and parties to raise funds from small individual contributions instead of seeking large donations from private entities or wealthy individuals. One such scheme that could be investigated comes from the New York City Campaign Finance Board.

The New York City Campaign Finance Board has implemented a Matching Funds Program that matches public funding with small dollar donations received by parties or candidates.⁹ The program matches public funds at a \$6-to-\$1 rate for contributions up to \$175 from individuals who reside in New York City e.g. a \$10 contribution from a New York City resident will be matched with \$60 of public funding to the candidate.

New York City candidates who wish to access this scheme must agree to abide by strict campaign expenditure caps, limits on who else they can receive donations from and rigorous reporting and auditing obligations. The total amount of public funds that can be received by a candidate under this scheme is the equivalent of 55% of the spending cap of the candidate.

The New York scheme has seen a significant increase in the number of candidates contesting elections as well as a significant increase in the contributions made by individual New Yorkers.¹⁰

We believe that schemes such as this deserve consideration by the committee.

Lobbyists

In addition to considering changes to the ACT's electoral and donation rules, ACT Labor is committed to tightening the ACT's lobbyist register to ensure that the Assembly operates in a transparent and accountable manner.

ACT Labor recommends the committee consider the following policies:

⁹ <http://www.nyccfb.info/program>

¹⁰ <http://www.nyccfb.info/program/impact-of-public-funds/>

- Widen the lobbyist register to capture in-house government relations staff, industry associations, and project management liaison officers and companies
- After one year following the expansion of the register, conduct a wide-ranging, independent review of the lobbyist register to assess whether it is meeting its objectives, and propose options for reform if necessary.
- Tighten rules and approvals processes to grant non-government passes to buildings owned or leased by the public sector, including the Legislative Assembly building

Member's Communication Allowance and MLA Gift Reporting

Two further matters that we believe this committee should give consideration to are the provision and accounting of monies granted to MLAs for the purpose of communicating with their constituents and the recording of gifts received by an MLA in their capacity as an MLA or Minister.

Member's Communication Allowance

ACT Labor believes that the change in 2014 from the Discretionary Office Allowance to a sum of money paid into MLAs salaries for the purposes of communication with constituents requires further consideration by the Assembly.

We agree with the views of former¹¹ and current¹² MLAs from across the political divide who believed that the former DOA was unworkable. The former DOA was unworkable because it did not include Members of the Executive, the guidelines had not kept up with changing methods of communication and lacked clear processes and criteria for determining what constituted appropriate material, and the oversight of the DOA was delegated down to staff of the Legislative Assembly which was not only inappropriate, it lacked any real ability to enforce the guidelines.

As such in 2014 the Assembly moved to remove the DOA and the remuneration tribunal¹³ introduced a communications allowance of \$15,000 to replace it. This new fund has had unintended consequences and we believe is also not the optimum mechanism to fund MLA communications to constituents.

The current funding model has the following problems:

- The funding is able to be used to purchase "electoral matter" which was not the intent of the fund as outlined by the Remuneration Tribunal
- This requires parties to record and report use of this money to the ACT Electoral Commission if spent on "electoral matter", again this was not intent of the remuneration tribunal's ruling
- The funding could be utilised in an election year to pay for material for the election, again this was not intent of the remuneration tribunal's ruling
- The current situation could allow an MLA to potentially not spend the fund and retain it as taxable income instead of communicating with their electors

As the Electoral Commissioner outlined to Members in correspondence in 2015:

¹¹

http://www.remunerationtribunal.act.gov.au/_data/assets/pdf_file/0006/554172/SUBMISSION_ChfMin_RE_M_MLA_remuneration_V0.2.pdf

¹²

http://www.remunerationtribunal.act.gov.au/_data/assets/pdf_file/0007/551329/Submission_Speaker_Legislative_Assembly.pdf

¹³ http://www.remunerationtribunal.act.gov.au/_data/assets/pdf_file/0005/587381/ACT-Remuneration-Tribunal-Final-Report-on-the-Review-of-Entitlements-for-Members-of-the-ACT-Legislative-Assembly.pdf

Section 230(7) of the Electoral Act provides that MLAs do not need to include in their annual returns “disclosure of any amount paid, or to be paid, by or on behalf of an MLA using funds provided by the Legislative Assembly to assist the MLA in exercising his or her functions as an MLA”. Under this provision, MLAs did not need to disclose any electoral expenditure undertaken using their DOA.

However, the Communications Allowance is paid to MLAs directly as a component of their salary and does not in my view constitute an amount provided by the Legislative Assembly within the meaning of section 230(7).

It is our view that this Committee should investigate other ways of funding and managing the communications allowance.

MLA Gift Reporting

Currently, Section 230(5) of the ACT Electoral Act requires parties to declare in their Annual Return any amounts received by, or on behalf of, an MLA if the amount is a gift received by the MLA in his or her capacity as an MLA or a Minister.

We believe that MLAs should have an obligation to declare gifts received in their work as a Member of the Legislative Assembly and in such a manner that is transparent and accessible to the public.

However, we believe that the current obligation under the Act confuses the role of an MLA as representatives of the ACT and the obligation for political parties to declare gifts that they receive that aide in their ability to contest elections.

For example if a Minister takes a flight to attend a MINCO meeting in another jurisdiction and they receive a flight upgrade, the Minister, and the party they belong to, must declare the flight upgrade as a gift. Such a gift has no electoral benefit to the party - indeed, it is almost impossible for a party to record such a gift - regardless, the Act requires it to appear in the party's and MLA's annual returns.

It is our view that this section should be amended to make clear that parties in their annual return must declare gifts that MLAs have received as representatives of the party grouping in which they belong and not as representatives of the ACT.

Gifts that MLAs receive in their capacity as MLAs should be declared under the Declarations of Member's Interests. This should be a regular requirement of MLAs and the Declarations of Interest form should be amended to allow for the declaration of such gifts.

Responses to the Submission by Elections ACT

The out-going Electoral Commissioner Phillip Green has made a number of recommendations to changing the electoral processes in the ACT in the Commission's Report on the 2016 Election¹⁴.

Our responses to these recommendations are as follows:

Recommendation 1

The Commission recommends that the Assembly notes that the Commission will investigate a limited electronic voting option for electors who are overseas and will report back to the Legislative Assembly at a later date. (See "Postal voting" on page 36.)

- ACT Labor supports this recommendation.

Recommendation 2

The Commission recommends that the Electoral Act be amended 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. (See "Removing restrictions on pre-poll voting" on page 44.)

- ACT Labor does not support this recommendation. It is our view that a formal election campaign period is called for a specific length of time in order to allow the community and contesting parties to debate and put forward their policies for consideration. The ability for residents to vote early in person or by postal vote is only given if there are valid reasons for not being able to attend the ballot on polling day. We believe that this should remain the case.
- Parties and candidates debate and put forward their ideas right up to polling day, and it is a vital part of the electoral process that residents cast their vote once they have been fully appraised of the issues being debated during the formal election campaign period.
- It is our view that the Electoral Commission should prioritise focussing its resources towards ensuring the maximum number of voters are able to cast their vote on polling day.

Recommendation 3

The Commission recommends that the Electoral Act be amended to require the full given name and surname of a person be shown in an authorisation statement. (See "Authorisation of electoral advertisements" on page 48.)

Recommendation 4

The Commission recommends that the Electoral Act be amended to require the name of an entity to be shown in an authorisation statement, where electoral matter is published on behalf of an entity. (See "Authorisation of electoral advertisements" on page 48.)

- ACT Labor supports expanding the requirement for full names and the names of an entity to be displayed in the authorisation statement on election matter. We believe that this will help to minimise any spurious or malicious material being distributed.

Recommendation 5

The Commission recommends that, subject to consultation with Transport Canberra and City Services, the moveable signs code of practice be amended to provide that electoral signs displayed on public land may not be placed on suburban streets and may only be placed on specified stretches of major arterial roads, outside designated areas that have

¹⁴ http://www.elections.act.gov.au/data/assets/pdf_file/0016/1044016/Report-on-the-ACT-Legislative-Assembly-Election-2016.pdf

the special characteristics of the national capital. (See “Political party and candidate posters in public places” on page 51.)

- ACT Labor does not support a change to these regulations. Whilst we agree that campaign signage creates a disturbance to the normal visual amenity of the ACT’s roads and paths, we do not think that this is sufficient reason to limit the ability for parties and candidates to display signs and communicate their message during the formal campaign period throughout the ACT.
- It is our view that any such change to the regulations as recommended above would have an adverse impact on the ability of independent candidates and micro-parties to campaign and communicate their message.
- Other jurisdictions in Australia and around the world have regulations that limit the amount of signage that a party or candidate can display during an election campaign e.g. Singapore and Queensland. However, as the ACT has a strict expenditure cap on the amount of money that candidates, parties and third-parties can spend on election material we do not believe that such a limitation is warranted.

Recommendation 6

The Commission recommends that Schedule 4 of the Electoral Act be amended to provide that vote values calculated by multiplying ballot paper totals by fractional transfer values should be rounded down to 6 decimal places, rather than the nearest whole number. The Commission further recommends that this amendment should apply to elections for the ACT Legislative Assembly and the Aboriginal and Torres Strait Islander Elected Body. (See “Enhancement of the ACT’s Hare-Clark counting system” on page 56.)

- ACT Labor supports this change to the counting method and recommends that it applies from the next Legislative Assembly Election in 2020.

Recommendation 7

The Commission recommends that the Assembly consider whether it should amend the Electoral Act to increase the expenditure cap applied to ungrouped candidates to avoid the risk of impermissibly burdening the freedom of political communication implied by the Commonwealth Constitution. (See “Limits on election campaign expenditure” on page 64.)

- ACT Labor does not support this recommendation. It is our belief that the current arrangements create a level playing field for the amount that any party or candidate can spend during the year of a Territory election. We also believe that there is no evidence to suggest that ungrouped candidates are negatively burdened by the expenditure cap.
- Analysis of the 2016 election shows that no ungrouped candidate spent more than 50% of the \$40,000 that they were entitled to spend, nor did the amount spent necessarily correlate with votes gained e.g.

Candidate	Amount Spent	Votes
Andrew Holt (Brindabella)	\$19,771	767
Joel McKay (Brindabella)	\$10,400	1,200
Vijay Dubey (Ginninderra)	\$19,500	386
Kim Huynh (Ginninderra)	\$15,387	2,365
Leigh Watson (Ginninderra)	\$10,589	770
Ian Coombes (Ginninderra)	\$1,788	122
David Edwards (Ginninderra)	\$0	217
Emmanuel Ezekiel-Hart (Ginninderra)	\$4,250	342
Vanessa Jones (Ginninderra)	\$1,371	242

Lea Zangl (Ginninderra)	No info	136
Marea Fatseas (Kurrajong)	\$10,962	1,597
Peter Robinson (Kurrajong)	\$1,802	388
Graeme Strachan (Kurrajong)	\$363	150
David Pollard (Yerrabi)	\$9,367	1,211
Daniel Evans (Yerrabi)	\$2,447	255
Margaret Webber (Murrumbidgee)	\$2,141	372
Brendan Whyte (Murrumbidgee)	\$187	315

- It is clear from these figures that the current cap (which will increase by CPI for each subsequent election) provides candidates with enough potential spend in which to contest an election in the ACT.

Recommendation 8

The Commission recommends that the Assembly consider whether it should amend the Electoral Act to increase the expenditure cap applied to third-party campaigners to avoid the risk of impermissibly burdening the freedom of political communication implied by the Commonwealth Constitution. (See “Limits on election campaign expenditure” on page 64.)

- ACT Labor does not support this recommendation. It is our belief that the current arrangements create a level playing field for the amount that any third-party can spend during the year of a Territory election. We also believe that there is no evidence to suggest that third-parties are negatively burdened by the expenditure cap.
- The changes made upon the introduction of the expenditure cap for third-parties cited the need to ensure that there was no ‘arms race’ or that no organisation in the community could unfairly sway the outcome of an election due to the amount of money they could spend.
- The current system allows a plurality of voices from across the Canberra community to be heard on issues of importance. Any change to increase the cap could have the side-effect of allowing larger organisations to effectively drown out smaller voices such as not-for-profits or community groups.

Recommendation 9

The Commission recommends that section 243(5) of the Electoral Act should be amended to alter the reference to “information about a gift made by an individual” to “information about an amount received from an individual”. (See “Publication of personal information in disclosure returns” on page 67.)

- ACT Labor supports this recommendation.

Contact

Thank you again for the opportunity to make a submission to this inquiry. ACT Labor is available to make comment or provide further information to the committee if it will aid the committee in your deliberations.

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