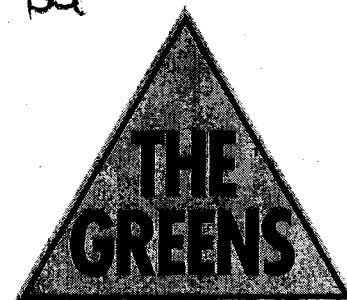


**Inquiry into the ACT Electoral Commission's
Report on the ACT Legislative Assembly
Election 2008 and *Electoral Legislation
Amendment Bill 2011* and *Electoral (Casual
Vacancies) Amendment Bill 2011***

ACT Greens Party Submission

July 18, 2011

	A.C.T. LEGISLATIVE ASSEMBLY COMMITTEE OFFICE
SUBMISSION NUMBER	5
DATE AUTH'D FOR PUBLICATION	10/08/11 Bel.



Graham Jensen
Convenor
ACT Greens Party

The Secretary
Standing Committee on Justice and Community Safety
Via e-mail: committees@parliament.act.gov.au
Via post: GPO Box 1020
CANBERRA CITY ACT 2601

RE: Inquiry into the ACT Electoral Commission's Report on the ACT Legislative Assembly Election 2008 and *Electoral Legislation Amendment Bill 2011* and *Electoral (Casual Vacancies) Amendment Bill 2011*

I thank the Committee for the opportunity for the ACT Greens Party to make a submission to the inquiry. Our submission makes comments under the following five headings.

- 1. The *Electoral (Casual Vacancies) Amendment Bill 2011***
- 2. the concept of placing How To Vote material from each party inside each voting booth**
- 3. the growing trend for people to vote before election day**
- 4. a 16 year old voting age**
- 5. the four recommendations from the Electoral Commissioner that have not been adopted in the two Electoral Bills by Government.**

1. The *Electoral (Casual Vacancies) Amendment Bill 2011*

The ACT Greens Party supports this Bill and would like to set out the rationale for its position.

At the outset, it should be noted that there are broadly two different views on what process represents the most democratic way in which a casual vacancy in the Legislative Assembly can be filled. Both views are entirely legitimate and represent the various understandings in the community on the concept of democracy and what it looks like when applied to the process of filling a casual vacancy.

The ACT Greens Party understands that the two views can be summarised as follows:

1. Democracy is served by recounting the votes cast at the past election. That is, the will of the people is best measured through votes cast („votes cast“ model)
2. Democracy is served by ensuring the numbers in the Assembly delivered by the last election are preserved. That is, the will of the people is best measured through the overall result delivered in terms of party representation („result delivered“ model)

The current process used to fill casual vacancies in the Assembly balances both competing models. Since the adoption of the Hare Clark system in the ACT there have been seven casual vacancies¹. In each case, a recount of the ballot papers received by the vacating Member took place and in each case a member of the same political party was the successful candidate. That is, both aspects of democracy are reflected in the outcome.

However, the current process does create the potential scenario where the second objective, the „result delivered“ model, is ignored and given no weight.

This scenario arises where a member of the same political party is unable to participate in the recount. Such a case has not arisen in the history of the Assembly but, if it were ever to arise, it would result in the relevant party not participating in the recount process. This would predetermine the result and would automatically result in a member of a different political party claiming the seat of the vacating member.

The *Electoral (Casual Vacancies) Amendment Bill 2011* proposes to cater for this situation by allowing the Assembly to appoint the replacement member where a member of the relevant political party is unable to participate in the recount process. This amendment would ensure that party representation is reflected in the outcome.

The ACT Greens Party understand that, in practice, this Assembly process would be satisfied by the parliamentary leader of the party bringing a motion to the Assembly to appoint someone to become the replacement Member. The Assembly would then be required to vote on the proposal.

We support the Bill on the following two grounds.

Firstly, the Bill would create a system that still caters for both a recount and maintenance of party representation. This is the case because in the majority of foreseeable cases a member of the relevant political party will be able to contest the recount. However, the ACT Greens Party believe that the proposal is a responsible one because it ensures party representation is maintained. This has been the outcome from the seven previous casual vacancies and it is appropriate to maintain this as a consistent outcome.

Secondly, the proposal adopts the process used by the Senate to fill casual vacancies which leaves the ultimate check and balance with the Parliament. The parliamentary leader brings a motion to the Assembly to make the appointment which is then voted on by the Assembly. Arguments against the Bill have been made on the basis it allows for Members to be appointed without first being put before the electorate for their assessment. In lieu of that assessment by the electorate, the Assembly process is seen as an appropriate check against inappropriate names being proposed. While it has become convention in the Senate process for Parliaments to be extremely reluctant to vote against a proposal, it can be regarded as having a cooling effect against political parties proposing inappropriate names in the first place.

¹ *Electoral Compendium 1989-2011*, Australian Capital Territory Electoral Commission, pages 53-58

2. the concept of placing How To Vote material from each party inside each individual voting booth

We believe that the issue of allowing How To Vote (HTV) material in each individual polling booth should be considered by the committee. We submit that the committee should consider the benefits of adopting a system where each party or independent should be permitted to submit a single page outlining material about themselves and how people could vote if they wish to take the advice of their preferred party or independent.

We believe that it would be most valuable for the committee to discuss the concept as a whole before progressing to specific details. Nevertheless, if the committee does progress to the details, it could consider technicalities such as: what requirements should be placed on the content and how the Electoral Commission assesses the material, whether an A4 size is the most appropriate, the best methods available to display the material to ensure it is easily accessible but also tamper proof and the issue of whether there should be a charge associated with the Electoral Commission assessing the material.

This is an issue that has previously been discussed in the ACT (a short summary is set out below on page 4), however we believe there are three reasons the issue warrants further discussion.

Firstly, a sizable proportion of voters in the ACT experience problems with the lack of easily accessible HTV information. Research performed by the ACT Electoral Commission found that in 2008, 13% of voters experienced difficulty under the current HTV arrangements.² This represents around 28,000 voters. The figure in 2001 was 15% and in 2005 it was 9%. The ACT Greens submit that this is a sizeable proportion of voters who would have found it easier to vote if HTVs were more readily accessible. The proportion of people does not appear to be declining significantly and it is fair to assume that there will be a significant number of people again in the 2012 election who will find voting easier with better access to HTV material.

Secondly, we believe in the general right to information and that for voters who want HTV material, there should be no restriction on its availability. Some voters will want to record their votes in accordance with the direction their party of choice wants them to and these people should not be denied orderly access to that information.

Thirdly, taking into account these two factors, we believe HTV material should be more readily available and that the option we have proposed is better than the alternative which is to reduce the existing restrictions on handing out HTV material outside polling places (ie the 100 meter rule). It is a better option because it is easier for voters, simpler for the Electoral Commission than enforcing a revised version of the 100 meter rule on election day and would use less paper and involve less wastage.

² The report from the ACT Electoral Commissioner on the 2008 election reported that thirteen percent (13%) of voters found the lack of easily accessible how to vote (HTV) information a problem. This is compared with nine percent (9%) in 2005 and fifteen (15%) in 2001.

This issue has previously been discussed in the ACT and we have set out below a summary of the relevant history:

1998 – the Commonwealth and ACT Governments commissioned a review of Governance in the ACT to mark 10 years of self governance (the Pettit Review). It recommended, amongst other things, that voters should be able to access HTVs at polling places if they wished, even if the 100 meter rule was maintained for outside polling places.

June 1999 – an ACT Assembly select committee looked at the Pettit recommendations. The ALP submission to the review supported full re-introduction of HTVs. The Liberal Governments submission also supported HTV's at polling booths. Despite these submissions, the committee concluded that *"the present ban on how-to-vote cards at polling places remain"*. Therefore it is unclear how the Committee reached their conclusion.

August 1999 – Ms Tucker MLA presented a Bill to support HTV material being placed inside each individual polling booth. The Bill did not gain the support of a majority of the Assembly.

3. the growing trend for people to vote before election day

The report from the Electoral Commissioner states that *"The percentage of voters who voted before polling day almost reached 25% of all votes cast at the 2008 election"* and that *"The percentage of pre-poll voters has increased by almost 92% from 1995 to 2008, and from 2004 to 2008 by over 38%".*³

After considering some of the possible factors behind these statistics, the Report draws the conclusion that *"that the trend to early voting is an inevitable result of the expectations of the electorate, and suggests that there should be no move to restrict the trend continuing."*⁴

The ACT Greens Party do have reservations about this growing trend for voters to make their decision and cast their vote in advance of all relevant material being made available during the election campaign.

This is highlighted by a Bill currently on the Legislative Register which will, if passed, set up a system of reporting the financial implications of all parties election commitments. This reporting may take place during the three week pre polling period and, as a result, people who cast their vote will have done so without having being exposed to all the relevant information.

On this basis, we suggest that the Committee consider the growing trend for people to vote before election day and whether it is a trend that should be addressed. If the Committee is of the view that growing trend is something that should be addressed, the ACT Greens Party would offer the suggestion of restricting the pre polling period from the existing three week period to two weeks.

³ Page 41

⁴ Page 43

4. a 16 year old voting age

The ACT Greens Party believe that sixteen and seventeen year olds should be given the option to register and vote in ACT elections. We suggest that this is a relevant issue for the committee to consider during the inquiry

With the fast changing conditions in the world, the future is extremely important to young people. It is thus an important principle that young people have greater opportunities to participate in decision making that affects their lives. The goal is for young people to be able to express their needs and aspirations at all levels of government, as well as in their own communities. Because of this the ACT Greens encourage the committee to examine this issue.

5. the four recommendations from the Electoral Commissioner that have not been adopted in the two Electoral Bills by Government.

The ACT Greens note that the Government have not adopted four of the sixteen recommendations made by the Electoral Commissioner in the Report on the 2008 ACT Assembly Election.

Those four recommendations from the Electoral Commissioner are:

Recommendation 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.

Recommendation 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.

Recommendation 12

The Commission **recommends** that the offence of defamation of a candidate in section 300 of the Electoral Act be repealed.

Recommendation 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.

With regards to recommendations 11, 12 and 13, the Government's rationale for not adopting those recommendations was included in the presentation speech for the Bill made by the Attorney General on 31st March 2011. That reasoning states that

*"the government considers that the current authorisation requirements are sufficient to ensure readers are aware of the authors of political advertising. The government does not support the repeal of the provisions regarding defamation of candidates, as this proposal was considered and rejected by the previous Legislative Assembly. The government does not support raising the penalty for failure to vote. The current penalty of \$20 remains the penalty for failure to vote at commonwealth elections and an increase does not appear to be justified."*⁵

The ACT Greens believe that the Committee should request that the Government provide more detailed reasoning as these statements do not shed much light on the issues.

For example, recommendation 11 deals with an issue that arose at the last election. The Electoral Commissioner committed three detailed paragraphs to the issue and the Committee could consider requesting an equal level of detail from the Government in response.

Regarding recommendation 10, the ACT Greens believe that this touches on a broader issue regarding the growing trend towards pre polling that we would like to bring to the attention of the Committee. We have addressed this issue above under our heading "the growing trend for people to vote before election day".

Graham Jensen
Convenor
ACT Greens

⁵ Hansard for the ACT Legislative Assembly, 31st March 2011, page 1162