



LEGISLATIVE ASSEMBLY

FOR THE AUSTRALIAN CAPITAL TERRITORY

SELECT COMMITTEE ON THE 2016 ACT ELECTION AND ELECTORAL ACT

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Name – ACT Greens

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To the Inquiry into the 2016 ACT Election and the Electoral Act,

The ACT Greens thank the Select Committee on 2016 ACT Election and Electoral Act for the opportunity to make a submission the inquiry.

Kind regards

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STRENGTHENING OUR DEMOCRACY

**ACT Greens Submission to the Inquiry into the
2016 ACT Election and Electoral Act**



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Executive Summary

Voting and electoral participation are part of our culture, expressed through our history of electoral reform.

The ACT has among the highest electoral participation rates in the country, although electoral turnout has been falling. The number of non-voters has nearly doubled over the last four elections. As a percentage of the electorate, non-voters have grown from 7.2% to 11.5% over this period.

Improving confidence in our electoral process, ensuring transparency, and improving participation are key priorities for the ACT Greens. This submission makes 18 recommendations to amend the Electoral Act, related laws, and regulations to achieve these goals.

Overview of recommendations

The ACT Greens recommend:

1. That the voting age be lowered to 16.
2. That Elections ACT be funded to lead improved education on civics and citizenship matters for young people, at schools and in other settings, with a particular focus on young people aged 16-19 years of age
3. Imposing a cap of \$5,000 cap on donations for ACT election purposes
4. Reinstating the restrictions on receiving donations for ACT election purposes from organisations and persons not enrolled in the ACT
5. Maintaining the existing expenditure cap of \$40,000 per candidate
6. That monthly public disclosure of political donations and funding be required and published on a public website, in non-election periods and weekly disclosure during election periods
7. That Elections ACT should endeavour to publish disclosures as soon as practicable on Election Day for disclosure submitted in the week preceding Election Day. Donations received within the final 48 hours before Election Day should be subjected to the current disclosure rules
8. An Alternate Reporting Agent be allowed for parties to lodge returns on behalf of the parties' Principal Reporting Agent.
9. That the Standing Orders of the Assembly be changed to ensure that any community petition that receives 500 or more signatures from ACT residents will also be debated on the floor of the Legislative Assembly
10. That Elections ACT be funded to work with support services, schools, and other organisations to improve voter turnout among underrepresented groups.
11. An outright ban on roadside signs used for political material.
12. That no change be made to current rules surrounding yard signs on private property
13. That the ACT abolish the 100m rule and return to the 6m rule for election signage and canvassing
14. The introduction of Truth in Political Advertising legislation in the ACT, appointing the Electoral Commissioner as an independent adjudicator
15. That existing rules surrounding pre-polling be maintained and properly enforced
16. That the voting instructions on the ballot paper instruct people to number from 1 onwards, up to as many numbers as they wish
17. That the size of the Assembly be increased to 35 in 2020
18. That the Committee looks at building a trigger into the legislation to allow for an automatic review of the Assembly size when the population reaches a certain size.

Lowering the voting age

The ACT Greens believe that young people aged 16 and 17 years should have the option to vote in ACT elections. Decisions made today will affect young people right now, and potentially for the rest of their lives. Lowering the voting age means more people helping to shape our city, our democracy and our future which the ACT Greens strongly support.

We believe there are three rationales for this change:

- Improving equity
- Improving participation
- Improving civic education

Improving equity

Many government-regulated activities have a lower minimum age, such as military service and obtaining a driving license, which are both set at 17. Other activities have a minimum age of 16, such as the age of sexual consent, or 14, such as the ability to enter paid employment.

It does not make sense to prevent young people from voting, while at the same time determining that they are old enough to work, join the army, have sex, pay tax, sign a lease, be charged with crimes, and drive vehicles. These are all activities that require responsibility and involve risk.

It is important to note that arguments against lowering the voting age can be used to disenfranchise adults. Throughout history, arguments against increasing the franchise have always been dubious, no matter the group. The argument that certain groups of people lack the knowledge or maturity to vote has been used against increasing voting rights to minority groups for years, and undermine a core principle of our democracy – that voting is an expression of values, rather than a test of knowledge or ability.

Improving participation

Research suggests that many young people would vote if given the choice. According to a *Rate Canberra* survey conducted by the Youth Coalition, 62% of the 1165 young respondents identified that young people aged 16-17 should be able to vote, with the clear majority of these indicating that this voting should be optional, not compulsory. 67% of survey participants aged 16-17 thought people their age should be able to vote, and more than half of this age group said they would vote if it were optional.

While a high proportion of young people aged 18-25 are enrolled to vote, a significant proportion of young people aged 18-19 years are not enrolled. This low enrolment may in part be due to education around government and the political system for young people, and ease of access to enrolment. Several studies have shown that many young people do not feel connected to politics or the political process. This highlights the need for governments to make a concerted effort to engage with young people in a meaningful manner and to create processes for equitable automatic enrolment.

Lowering the voting age has the potential to improve this. Young people have high levels of volunteerism and community service, despite the fact many feel disillusioned with the political process. Including young people in a real, substantive way in politics has the potential to improve confidence in our democracy, giving young people a real stake in their futures, and encouraging them to become involved, active citizens.

Improving civic education

The importance of education in empowering young people to actively participate in the voting process was documented in the 2009 Youth Electoral Study, where 62% of the young people surveyed indicated that studying the government and politics positively affected their intention to vote, even if voting wasn't compulsory.

However, the study also indicated that while 25.5% of young people studied government and the political system in Year 9; and 33.7% studied it in Year 10; only 15.8% and 7.1% studied the topic in Year 11 and 12 respectively, which is when most young people become eligible to enroll to vote. It is worth noting that the ACT Year 12 Certificate does not require social science studies, and there aren't generally many electives that cover Australian politics and government.

The Australian Electoral Commission's Youth Electoral Study found that only half of the students surveyed from across Australia felt prepared to vote. Given that we know that youth are generally supportive of having the option to vote, it would be wise to support them to feel prepared. Lowering the voting age, and improving civic education, therefore has the potential to build a better informed, more empowered electorate in the ACT.

Recommendations

The ACT Greens recommend:

1. That the voting age be lowered to 16.
2. That Elections ACT be funded to lead improved education on civics and citizenship matters for young people, at schools and in other settings, with a particular focus on young people aged 16-19 years of age.

Improving donation rules and donation reporting timeframes

The ACT Greens believe that the ACT Legislative Assembly should serve the best interests of all Canberrans. Those with money and wealth shouldn't be able to buy political power, and influence decisions that affect us all. The ACT Greens have long advocated here in the ACT, and all around the country, to end corporate donations and vested interest influence in politics.

Relevant laws must be amended to address the inequity that was created when donation laws were relaxed, at the same time the public funding rate was increased to \$8.00 per primary vote.

Strengthening donation laws

The ACT had robust donation laws in place in the 2012 election year that meant only individuals on the ACT electoral roll could donate to the political parties. But, these were repealed by the Liberal and Labor parties in 2015 who voted to re-allow donations from groups and corporations.

The ACT Greens support reinstating rules to ensure that donations only be accepted from individuals in the ACT, and that these donations be capped at \$5,000. The ACT Greens believe that a cap on donations would decrease the possibility of undue influence on the political process by individuals or organisations.

Prior increases in the public funding rate to \$8.00 per primary vote already work to mitigate the potential impacts of stricter donation caps.

Maintaining expenditure caps

The ACT Greens strongly support limits on campaign expenditure by political parties and candidates. The current limit of \$40,000 per candidate ensures that all candidates can promote their ideas and values to the community whilst at the same time ensuring that those with a significant revenue raising advantage are not able to exploit an inherently distortional advantage. On this basis, the ACT Greens do not support an increase in the expenditure cap.

Improving 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 seven days before Election Day and disclose after Election Day itself. We submit that any donations received up to two days 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 two days before Election Day should be subjected to the current disclosure rules. This regime would make it more difficult for parties to preemptively spend donations they plan to receive but do not wish to disclose until after the election.

Supporting reporting compliance

The ACT Greens believe that the appointment of multiple reporting agents would assist with ongoing compliance with reporting requirements. During prolonged periods where the seven-day gift disclosure deadline applies, an alternate agent would help address the added compliance burden and provide coverage if a reporting agent were 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 lodgment 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.

Recommendations

The ACT Greens recommend:

1. Imposing a cap of \$5,000 cap on donations for ACT election purposes
2. Reinstating the restrictions on receiving donations for ACT election purposes from organisations and persons not enrolled in the ACT
3. Maintaining the existing expenditure cap of \$40,000 per candidate
4. That monthly public disclosure of political donations and funding be required and published on a public website, in non-election periods and weekly disclosure during election periods
5. That Elections ACT should endeavour to publish disclosures as soon as practicable on Election Day for disclosure submitted in the week preceding Election Day. Donations received within the final 48 hours before Election Day should be subjected to the current disclosure rules
6. An Alternate Reporting Agent be allowed for parties to lodge returns on behalf of the parties’ Principal Reporting Agent.

Increasing voter participation in elections and encouraging political activity

The ACT Greens believe that a healthy democracy requires frank, transparent and accountable practices in all aspects of government. The ACT Greens also believe that where possible the community should be involved in making decisions that affect them. This has been shown to improve participation in elections, and strengthen public confidence in democratic processes.

Community voices in the Assembly

The Greens believe that the community should have the opportunity to be heard in the Assembly about Territory issues that are important to them and their community. Currently the community can have petitions tabled in the Assembly, and the Government is required to respond within 3 months. We are pleased with the new Standing Order that requires petitions with more than 500 signatures to be sent to the relevant committee for consideration.

In the UK parliament, petitions that receive 10,000 signatures trigger a response from the Government, and petitions that receive 100,000 signatures are debated in the Parliament. In NSW community petitions are debated at a particular time in the sitting week, enabling the community to be able to attend proceedings in the chamber.

The ACT Greens want more opportunities for community issues to be debated in this way in the Legislative Assembly when any community petition with 500 or more signatures from ACT residents is tabled.

This change could be easily enacted without amending the Electoral Act through changes to Assembly Standing Orders.

A modern Assembly that serves the community

The Legislative Assembly is made up of MLAs elected by the Canberra community, to serve the Canberra community. The ACT Greens believe that it is crucial that the Legislative Assembly is transparent in its operations, is accountable to ACT residents and plans for Canberra's long-term future.

When major legislation is rushed, processes are not fully utilised and the community doesn't feel consulted, then the community can lose confidence in the functioning of their own parliament. The ACT Legislative Assembly has a proud history of being accessible to the community and working for the people of Canberra, and the ACT Greens want to ensure it continues to do so.

This change could be enacted without amending the Electoral Act.

Enfranchising under-represented groups

Elections ACT proactively facilitates the enfranchisement of certain groups – for example, older people in residential aged care, and people being treated at Canberra hospitals. The ACT Greens recommend this process be extended to other under-represented groups who face barriers to enfranchisement. For example, this could mean reaching out to young people who have recently turned 18 in high schools, or working with support services to enfranchise vulnerable groups.

The ACT Greens do not support the removal of all restrictions on pre-polling. This is a lazy solution to complex problem. We note that increased rates of pre-polling have not led to a commensurate growth in enfranchisement among under-represented groups such as Aboriginal and Torres Strait Islander people, or young people who have recently turned 18.

Recommendations

The ACT Greens recommend:

1. That the Standing Orders of the Assembly be changed to ensure that any community petition that receives 500 or more signatures from ACT residents will also be debated on the floor of the Legislative Assembly
2. That Elections ACT be funded to work with support services, schools, and other organisations to improve voter turnout among underrepresented groups.

Other relevant matters

Movable signs, roadside signs, and related signs

Election signage falls into three categories – roadside signs, yard signs, and polling day visibility.

By far the most challenging of these is roadside signs, commonly known as “corflutes”. These signs are much more vulnerable to vandalism, which was an ongoing problem for the ACT Greens throughout the 2016 campaign. Attrition seems to be accepted as an unavoidable issue, and the sign war was especially brutal in 2016. Our signs were routinely vandalised or destroyed. Unfortunately, many volunteers had the demoralising experience of seeing their signs destroyed within 24 hours of putting them up. It is hard to imagine that independent candidates and emerging parties were able to keep up in this environment.

It must also be noted that parties themselves cannot completely control their compliance with the rules surrounding roadside signs. While assurances appeared to be given in good faith, the behaviour of individual volunteers cannot always be accounted for and parties cannot always be held responsible for the actions of individual supporters.

It is simply not practical to monitor signs at all times. The ACT Greens believe the simplest way to eliminate these issues is to ban roadside signs used for political material. This change would attract widespread public support, reduce waste, and level the playing field for all parties and candidates.

The ACT Greens do not consider that any changes need to be made to rules surrounding yard signs, which are placed on private property.

The ACT Greens recommend that election signs be allowed up to 6m of a polling place. Further information on our position is below.

Compliance with existing requirements on polling day

The ACT Greens are extremely concerned about the viability of the 100m rule. This is closely linked to broader compliance issues on polling day.

Our experience is that the 100m rule creates confusion on Election Day, and the past two elections have seen inadequate communication with parties and candidates on how the rules would be enforced.

On polling day, itself, dozens of violations of the 100m rule were reported to Elections ACT by the, and to our knowledge, only one was followed up. The ACT Greens made three complaints on election day of incorrectly authorised or unauthorised materials with no action being taken.

Our volunteers found this particularly difficult at booths where the defined polling area was in dispute, and in many cases, officials took no action despite being notified.

Of particular concern was the fact that Elections ACT issued advice that polling place officials had no responsibility for enforcing these rules, and that any complaints needed to be made directly to Elections ACT.

The Elections ACT main phone number was unstaffed on election day. This means that there was no clear channel to properly report a violation, and this goes some way to explaining the Electoral Commissioner’s characterisation of a ‘handful’ complaints in spite of widespread violations and anecdotal reports.

There do not seem to be effective mechanisms to enforce the existing rules, no culture of enforcement of rules, and no appetite to change this among the responsible officials. Coupled with the limited number of city rangers working on polling day, this severely disadvantages parties and candidates complying with the rules.

The ACT Greens do not support the complete abolition of Election Day canvassing. There are two reasons for this. Firstly, as a matter of principle, Election Day canvassing is one of the only low-cost communication methods for independents and small or emerging parties. Abolishing canvassing entirely would make parties more heavily reliant on media coverage and advertising, advantaging established parties.

Secondly, as a matter of practicality, ACT election officials have not been able to enforce existing rules, and an outright ban is unlikely to prevent breaches.

Considering these issues, it is the recommendation of this submission that the ACT introduce a 6m rule, similar to that used for federal elections.

'Truth in advertising' issues

The Greens understand that in political and public debate there are different views about issues, and different ideas about how to solve the challenges that we face. But this does not absolve us of our obligation to provide accurate information.

When people are bombarded with factually incorrect information, they lose faith in the democratic process and are left not knowing who to believe. We support the introduction of Truth in Political Advertising legislation in the ACT, to stop factually incorrect information being used to influence voters in the lead up to elections. This puts a higher obligation on candidates and political parties to check their facts before they authorise publications.

The onus on facts would make it much clearer for an independent adjudicator, in this case the Electoral Commissioner, to rule whether or not there are factual inaccuracies in a particular publication before polling day, and to require the publication to be withdrawn.

In South Australia, Truth in Advertising laws have uncovered 19 breaches where advertising was found to be "inaccurate and misleading to a material extent," which then had to be withdrawn during the campaign.

These laws improve the community's confidence in the democratic process, and ensure that inaccuracies can be challenged before voters go to the polls.

Pre-poll voting rules

The 2016 Assembly Election saw record numbers of pre-poll votes in the ACT, with around 85,000 people, or one in every three Canberrans voting at one of the six pre-poll voting booths.

The ACT Greens do not believe that this is inherently a positive direction. The aim of our electoral system should be an overall increase in turnout, not an increase in pre-poll votes. It is disappointing that the ACT is failing on that measure, with falling voter turnout despite commensurate increases in early voting.

The expansion of early voting has significant implications for smaller parties and independent candidates. The growing popularity of early voting contributes to the need for parties to engage in perpetual campaigning, which is both unpleasant for voters and difficult for new and emerging candidates.

More concerning is the deeper conflict at the heart of this change – it undermines the function of elections. In a representative democracy, elections are events that allow people stop, consider options, and cast an informed vote. Our democracy has its roots in a model of citizenship that places on elections as “focusing events” where information is shared up to polling day. Our entire electoral system is based around the premise that an election is a moment in time, and a range of other rules, such as the media blackout, are built around this premise. Any major change to pre-poll rules would need to be accompanied by a fundamental redesign of all related rules.

We do not believe that expanding early voting should be used as an excuse to absolve governments and election officials of their responsibilities to:

- Provide an efficient and functional voting process on Election Day
- Undertake dedicated outreach to enfranchise under-represented groups
- Address the issues that underlie declining voter turnout.

Expanding pre-polling does not address these issues, and it fundamentally changes the nature of our elections. We therefore believe that existing rules surrounding pre-polling should be maintained, and properly enforced.

Instructions on how to cast a valid vote

The ACT Greens submit that the voting instructions on the ballot paper should be made clearer and avoid the potential unintended consequence of inferring that voters should only number a minimum of 5 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 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.”

The size of the Assembly

The ACT Greens support a further increase to the size of the ACT Legislative Assembly. Even after the recent increase in the size of the Assembly to 25 Members, the ACT still has proportionally fewer elected representatives than any other Australian jurisdiction, partly as a result of significant population increases over the past 20 years.

The ACT Greens believe that five member electorates reduce the proportionality and the diversity of representation in the Assembly.

The ACT Greens would recommend an increase in the size of the assembly to seven elected members across five electorates for the 2020 election.

This recommendation is consistent with the recommendations of the 2013 Expert Reference Group Review into the Size of the ACT Legislative Assembly.

Future increases in Assembly size

The ACT Greens recommend that the Committee investigate the option of a building a trigger into the legislation to allow for an automatic review of the Assembly size when the population reaches a certain size. The 2013 Expert Reference Group (ERG) for the Review into The Size of the ACT Legislative Assembly 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.”

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 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.

Recommendations

The ACT Greens recommend:

1. An outright ban on roadside signs used for political material.
2. That no change be made to current rules surrounding yard signs on private property
3. That the ACT abolish the 100m rule and return to the 6m rule for election signage and canvassing
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