

2021

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

**GOVERNMENT RESPONSE TO THE JUSTICE AND COMMUNITY SAFETY STANDING
COMMITTEE REPORT 2 ON THE INQUIRY INTO THE 2020 ACT ELECTION AND ELECTORAL
ACT**

**Presented by
Mr Chris Steel MLA
Special Minister of State**

Introduction

The Government welcomes the Standing Committee's Report 2 of the *Inquiry into the 2020 ACT Election and Electoral Act*. The Government is committed to fostering a fair, inclusive and robust electoral process that reflects the ACT's strong democracy. Continued assessment of our electoral processes and legislative framework is vital to protecting the effective functioning of our democracy.

The 2020 Election was undeniably unique with the emergence of the COVID-19 pandemic. In addition to the reforms that were already being progressed through the *Electoral Legislation Amendment Act 2020* and *Electoral Amendment Act 2020*, the Electoral Commission and Government worked collaboratively to progress several innovative temporary legislative measures and adapt electoral processes to mitigate public health risks to the community while facilitating a safe and fair election.

The *COVID-19 Emergency Response Legislation Amendment Act 2020 (No.2)* introduced temporary amendments to the Electoral Act for delivery of the October 2020 election in the COVID-19 environment. These amendments:

- expanded the eligibility criteria for pre-poll voting so that any eligible elector of the ACT could cast a vote before polling day at early voting centres (section 136AA)
- supported the Electoral Commission's deployment of an overseas electronic voting solution for eligible ACT electors who were abroad (section 120)
- clarified that the offence under the Electoral Act for making a false or misleading statement in response to an official question applied to a person responding to a question about their eligibility to vote using the overseas electronic voting solution (section 136D)
- supported the Electoral Commission's deployment of a telephone voting system for eligible ACT electors who are blind or vision impaired and electors who have a physical disability (section 136BA).

As part of the Inquiry into the 2020 ACT Election and Electoral Act, the Standing Committee received 29 written submissions and spoke with 21 witnesses over two days of public hearings. The Government would like to thank the Standing Committee and everyone who took the time to participate and contribute to the Inquiry.

The Committee made 52 recommendations. The Government recognises the role of robust electoral legislation in ensuring free, fair and accessible elections. Following further policy development and engagement with the Electoral Commission and other stakeholders, the Government will develop a legislative program to respond to key recommendations, noting that future policy and legislative changes will be subject to decisions of Government and of the Legislative Assembly.

The Government notes several of the recommendations are substantively matters for the Electoral Commission to consider. The Government will engage with the Electoral Commission as necessary to further examine these matters, noting the Electoral Commission is an independent statutory body reporting directly to the Legislative Assembly.

The Inquiry has provided a valued opportunity to hear the broader community's views on the electoral process and supporting legislation. The Government believes that substantive consideration of the community's views is necessary before any legislative reform is undertaken. Therefore, to develop the upcoming legislative program the Government will consider both the Standing Committee's recommendations and the community's submissions to the Inquiry and the public hearing transcripts. This will support identification of any additional means of making the Territory's elections more transparent, fair and inclusive.

The Government will continue to progress policy work to develop reforms that are tailored to the Canberra context and will update the Legislative Assembly on this work as appropriate, including providing updates by March 2022 on the six recommendations highlighted by the Standing Committee.

ACT Electoral Commission's Report

The Standing Committee also commented on the recommendations of the ACT Electoral Commission report on the 2020 ACT Election and Electoral Act. The Government's response recognised the significant work of the Electoral Commission during the challenging and evolving circumstances of the 2020 Election. We reiterate our commendation of the Electoral Commission in conducting a fair, safe and inclusive election. The Government's response to the Electoral Commission's report referred the report to the Standing Committee to allow for the recommendations to be considered in partnership with the evidence and submissions provided by the broader community.

The Electoral Commission's report made 24 recommendations. The Government notes these recommendations span a breadth of areas including improving administration and transparency, electoral processes and campaigning, the availability of online voting, early voting and electoral advertising. We will take these matters into account in developing the future legislative reform program.

Government responses to the Standing Committee’s recommendations

Recommendation 1

The Committee recommends that s136B Electoral Act 1992 be amended to provide that any elector may vote during the early voting period without the need to declare they are unable to attend a polling place on election day.

Government response

Agreed.

The Government supports measures which facilitate greater voter participation, including this recommendation to increasing access to voting in the early voting period for all voters. This measure was also recommended by the Electoral Commission.

The Committee’s report highlights the significant uptake of early voting in the 2020 Election and the improved accessibility outcomes associated with early voting. The Government recognises that the delivery of early voting was facilitated by temporary legislative changes responding to the unprecedented public health challenges of the COVID-19 pandemic and notes that a permanent reform would have a positive impact on the Canberra community.

Safeguarding informed participation and facilitating parties and candidates to appropriately communicate their policies prior to polling is an essential component of the electoral process. The Government notes the concerns that the expansion of early voting may limit the campaigning opportunities for candidates, and for voters to be informed prior to casting their vote. These considerations will need to be balanced when undertaking legislative reforms.

Recommendation 2

The Committee recommends that s136B Electoral Act 1992 be amended to establish an early voting period of 2 weeks (outside periods of public health emergency).

Government response

Agreed.

Any reforms to early voting measures need to strike an appropriate balance between providing flexible and accessible voting for the community and supporting political parties to communicate their policies so that voters can make informed decisions.

The Government supports the recommendation to establish an early voting period of two weeks.

Noting that there may be concerns about the implications of this recommendation for postal voting timeframes, the Government will work closely with the Electoral Commission to explore how best to implement this recommendation as part of the upcoming legislative reform process.

Recommendation 3

The Committee recommends that early voting centres be limited to one per electorate for elections conducted during ordinary circumstances (outside periods of public health emergency).

Government response

Not agreed.

The Government understands that for every election since the introduction of early voting in 1992 there has typically been more than one early voting centre in at least one of Canberra's electorates. Further, the Government recognises that the establishment of early voting centres in each electorate is a matter for the Electoral Commission to determine based on the unique context and community needs of each election. As such, limiting the number of early voting centres to one per electorate may negatively impact the accessibility of voting for eligible electors when compared to previous elections.

The Government notes the challenges to political parties by having multiple early voting centres in each electorate, which could limit the conduct of campaigning activities. However, this concern should be outweighed by the increased accessibility for voters. Consequently, it is the Government's view that legislative restrictions on the number of early voting centres in each electorate are not appropriate. If a restriction is warranted in particular circumstances the Electoral Commission is best placed to make this assessment on a case-by-case basis, rather than having a fixed rule that applies to all electorates.

Recommendation 4

The Committee recommends that any planned/scheduled modifications to the electronic voting system, and any required audits and declarations, be completed before candidate nomination closes.

Government response

Noted.

The Government is committed to ensuring the integrity of the electoral process. This recommendation relates to the timeframes of modifications to the electronic voting system, which is substantively a matter for the Electoral Commission. The Government recognises the implementation challenges for the Commission following the passage of electoral legislation in June and July 2020 to respond to the impacts of the COVID-19 pandemic. As such, the Government does note the Committee's request that legislative reform not be

enacted in the 12 months prior to an election, unless necessary to respond to urgent or unexpected circumstances. We will endeavour to accommodate this request in planning future legislative reforms.

Recommendation 5

The Committee recommends that the e-voting system incorporate a voter-verifiable paper record, so the voter can check that their vote was recorded as they intended.

Government response

Noted.

This recommendation, relating to the incorporation of a voter-verifiable paper record, is a matter for the Electoral Commission. The ACT Government notes that there have not been any integrity risks or breaches identified in relation to the ACT's e-voting system at the 2020 Election or in previous elections.

Recommendation 6

The Committee recommends that the Electoral Act be amended to require a public audit of randomly selected paper records of electronic votes, to compare each ballot against its electronic record and check for discrepancies.

Government response

Noted.

The Government notes this measure, given this recommendation is closely linked to recommendation 5, which is a matter for the Electoral Commission. There would be cost implications associated with the implementation of such a measure and any amendment will be subject to further consultation with the Electoral Commission and further consideration by Government.

Recommendation 7

The Committee recommends that the ACT Government assess the benefits and risks of providing an online voting system for overseas voters outside periods of public health emergency, and report to the Assembly by March 2022.

Government response

Agreed in principle.

The Government supports innovative measures which enable greater participation in elections by all members of the Canberra community. The Government acknowledges recommendation 11 from the Electoral Commission's report which advocates for legislative reforms to instate an electronic voting system for overseas electors as part of all future elections.

The implementation of online voting for overseas electors required extensive cross-government collaboration with significant assistance from the Australian Signals Directorate and Australian Cyber Security to ensure adequate security. Noting the complexity in implementing this measure, the Government will engage with relevant stakeholders to provide an update to the Legislative Assembly by March 2022.

Recommendation 8

The Committee recommends that ACT Government provide the Electoral Commission with assurance of funding for continuous modernisation of ICT systems.

Government response

Noted.

The Government notes the Electoral Commission's submission that ongoing modernisation of ICT systems is required to meet future operational demand and evolving sophistication of cybersecurity threats. While the Government recognises the importance of future proofing ICT systems, the provisions of any additional funds will be subject to future budget decisions by Government.

Recommendation 9

The Committee recommends that the terms of the non-disclosure agreement applied to the release of the electronic voting source code be revised to:

- *apply the 60-day restriction on publication only if the source code is available at least six months before the election, and*
- *give explicit assurance that there is no barrier to publication of findings if the conditions of the agreement are met.*

Government response

Noted.

The Government notes this recommendation as it is substantively a matter for the Electoral Commission's consideration. The Government also notes the relationship of this measure to recommendation 4 and the impacts on the implementation of the non-disclosure agreement during the 2020 election due to the late passage of COVID-19 related electoral amendments.

Recommendation 10

The Committee recommends that the eVACS source code and system documentation be available for inspection at least six months before election day and within seven days of request.

Government response

Noted.

The Government notes this recommendation as it is a matter for consideration by the Electoral Commission. The Government recognises that providing sufficient time for inspection of the source code by independent researchers may provide valuable information which can be used by the Commission to address any anomalies prior to the election period.

Recommendation 11

The Committee recommends that the Electoral Act require public release of the electronic voting code and system documentation, and that the scope of this requirement be defined in an instrument under the Act, following consultation with electronic voting experts.

Government response

Agreed in principle.

The Government supports this recommendation in principle noting the relationship to recommendations 9 and 10. The Government recognises the value in providing legislative accountability for the public release of electronic voting code and system documentation to ensure it is executed appropriately.

Recommendation 12

The Committee recommends the Electoral Act be amended to require party secretaries to supply name and address to the Electoral Commission.

Government response

Agreed.

The Government supports the recommendation on the basis that it would support improved compliance activities by the Electoral Commission, and notes it was also included in the Electoral Commission's submission to the Inquiry.

The Government notes the evidence presented in the Standing Committee's report that the Electoral Commission is not able to readily identify the party secretary despite the power this position is afforded to request deregistration. There is a risk that without a register of party secretaries, the Commission is unable to definitively determine if a person requesting deregistration is the current party secretary.

Recommendation 13

The Committee recommends the Electoral Act be amended to require parties to supply dates of birth and email addresses (where available) for the purpose of party membership checks.

Government response

Agreed.

Currently section 89(1) of the Electoral Act only requires the physical addresses of 100 members of the party to be provided for a party to be registered. The Government supports

this recommendation to also provide email addresses for these members, noting it was included in the Electoral Commission's report. The Commission's evidence to the Standing Committee indicated that the requirement to provide hard copy correspondence to 100 listed party members as part of membership checks imposes a significant administrative and cost burden.

The Government recognises that requiring email addresses to be provided will modernise and streamline party membership checking processes and will consider the recommendation as part of future reform work pending further consultation and analysis.

Recommendation 14

The Committee recommends ACT Government raise with Commonwealth, state and territory counterparts the potential for a more rigorous test for party name registration with the aim of preventing voter confusion.

Government response

Agreed.

The Government understands that avoiding confusion about party names is an important part of ensuring electors can make informed decisions when casting their votes. Under section 93 of the Electoral Act, the Electoral Commissioner may refuse registration if a name or acronym 'so nearly resembles' another political party that it is likely 'to be confused with or mistaken for that acronym'.

The Government notes that the threshold that a name must 'nearly resemble' and 'likely to be confused with or mistaken for' is used in other jurisdictions' electoral legislation. The Government also recognises the recent amendments to the *Commonwealth Electoral Act 1918* which provide for new restrictions on party names including preventing new party names being registered if they include a word which is part of an already registered political party. Noting the recent Commonwealth amendments and the benefits of having consistency across jurisdictions in legislative terminology, the Government supports this recommendation.

Recommendation 15

The Committee recommends the Electoral Act be amended to limit the number of candidates that a registered party can run to five per electorate.

Government response

Agreed.

The Government supports the intent of this recommendation on the basis that it is a practical measure which would lessen the Electoral Commission's administrative burden and simplify candidate selection for political parties.

It should be noted that as Canberra continues to grow, there may be a future need for the expansion of representation per electorate. In this instance, any restrictions on the number

of candidates per electorate would need to be aligned to the actual number of seats available.

Recommendation 16

The Committee recommends the Electoral Act be amended to provide the Commission an extra 24 hours between formal nomination of candidates and commencement of voting.

Government response

Agreed in principle.

The Government welcomes recommendations that bolster the integrity of the Territory's electoral process and mitigate the risk of human error. The Government notes the Electoral Commission's evidence to the Standing Committee that the current schedule places significant pressure on the Commission which increases the risk profile of the agency. Subject to further consultation and analysis, the Government supports the proposed amendment in principle.

Recommendation 17

The Committee recommends that commercial premises only be designated as a polling place if the tenancy agreement permits the Electoral Commission to display prominent signage directing people to the venue throughout the voting period.

Government response

Noted.

The Government notes this recommendation as it is substantively a matter for the Electoral Commission. The Government notes the importance of clear signage in ensuring accessibility to premises designated as polling places and welcomes the Commission's views on this recommendation.

Recommendation 18

The Committee recommends that ACT Government investigate the feasibility of allowing people who are already on the ACT electoral roll to notify change of address up to 6pm on polling day.

Government response

Agreed in principle.

The Government supports changes which strengthen voter participation. We note evidence provided to the Standing Committee that the July 2020 amendments to the Electoral Act resulted in confusion within the community about the different rules for people enrolling for the first time, and those who are already enrolled and were merely seeking to change their details. The Government agrees in principle to this recommendation, and notes it will

require further consultation with the Electoral Commission given the measure would impact their operational capacity.

Recommendation 19

The Committee recommends the Electoral Act be amended to expand the definition of 'eligible elector' for purpose of telephone voting to include ACT electors based in Antarctica.

Government response

Agreed.

The Government welcomes measures which expand voter participation and notes that this recommendation was also included in the Electoral Commission's report. While there were no ACT residents stationed in Antarctica during the 2020 election, the Government recognises that there is benefit in progressing reforms to the definition of the 'eligible elector' to future-proof against potential problems. The Government supports this recommendation.

Recommendation 20

The Committee recommends ACT Government assess whether Schedule 4 of the Electoral Act should be amended to define 'surplus' as 'the candidate's total votes less the quota, if the resulting number of votes is greater than zero'.

Government response

Agreed in principle.

The Government is committed to the efficient and fair administration of the Hare-Clark system to ensure accurate electoral results which reflect the views of the community. Following the 2016 election, the Electoral Act was amended on the recommendation of the Electoral Commission to provide for vote values be rounded down to six decimal places rather than the nearest whole number.

The Government notes this recommendation was supported by the Electoral Commission on the basis that the result of the 2016 amendment, where the decimal points are kept by the first successful candidate as they did not constitute 'one vote greater' than the quota, is contrary to the design of the Hare-Clark system. This issue has been characterised by the Electoral Commission as a drafting error.

The Government supports this recommendation in principle, pending further analysis to determine whether the recommended amendment is appropriate for inclusion in the upcoming legislative program.

Recommendation 21

The Committee recommends that the current 100 metre exclusion zone for campaigning outside polling places be retained.

Government response

Agreed.

The Government notes that the administration and enforcement of the 100-metre rule was the subject of concern during the 2020 election. The Government notes the evidence in the Standing Committee's report on the experience of the Tasmanian electoral processes and alternative options, and the likely unworkability of a six-metre zone under the Hare-Clark electoral system. The Government supports this recommendation with the view that the current 100-metre exclusion zone is the most appropriate method within the ACT context for ensuring a level playing field for all parties and candidates.

Recommendation 22

The Committee recommends that the Electoral Act be amended to prohibit campaigning on election day, in line with the legislative framework in Tasmania.

Government response

Not agreed.

The Government believes election day provides a valuable opportunity for political parties to communicate their platforms and policies to assist eligible voters to make an informed decision. While the Government notes the evidence in the Standing Committee's report on the campaigning rules in Tasmania, it is the Government's view that there are already suitable restrictions in place, such as the 100-metre exclusion zone discussed in recommendation 21. These strike an appropriate balance between supporting political communication by parties and ensuring electors can cast their vote without interference.

Recommendation 23

The Committee recommends that ACT Government review the legislative powers and resources available to enforce rules on campaigning outside polling places.

Government response

Noted.

The Government notes this recommendation, recognising the importance of electoral rules being enforced equally to ensure there is a level playing field for all parties and candidates, and noting the link between this recommendation and recommendation 21.

The Government notes the conflicting evidence provided to the Standing Committee concerning the enforcement of breaches of 100-metre exclusion zone rules. Any consideration of changes to legislative powers and resources regarding the enforcement of rules by Government will need to be subject to extensive consultation and analysis.

Recommendation 24

The Committee recommends that ACT Government prohibit roadside signs for electoral advertising on public land. If Constitutional or human rights considerations

present a barrier to this outcome, the Committee recommends that ACT Government consult with the community and report to the Assembly on the nearest alternative options by March 2022.

Government response

Noted.

The Government recognises that electoral advertising is a key political communication tool that supports informed participation and allows political parties to effectively communicate their platforms and policies to the community.

Specifically, we acknowledge that roadside electoral advertising on public land provides a low-cost and accessible form of electoral advertising available to a broad range of candidates.

The Government is committed to implementing item 18 of Appendix 2 in the 10th Parliamentary and Governing Agreement, to further restrict roadside electoral advertising including further regulation of roadside corflutes.

However, measures to limit the implied freedom of political communication under the Australian Constitution must be 'appropriate and adapted' as per *Lange v Australian Broadcasting Corporation* (1997) 189 CLR 520, 567-568. The Government is concerned that the Committee's recommended complete prohibition on roadside signage on public land may not be 'appropriate or adapted' as there are other less onerous alternatives that could be taken to address specific concerns about the use of road-side electoral signs.

The Committee also did not provide any specific justification or identify the purpose supporting their recommendation to prohibit road-side signage on public land. This approach, if carried forward into law, could fall foul of the Constitution. The Government will need to ensure that any restrictions are justified by outlining how they are appropriate and adapted to address a legitimate purpose.

The Government has already identified that the environmental impact of roadside signage is a reason why action should be taken on road-side electoral signage, because signs are often made of plastic corflute and this may not be recycled. That is why 2020 ACT Election the ACT Government piloted a corflute recycling program which saw 6 tonnes of corflute roadside signs recycled with low contamination rates. The evaluation of this trial was tabled in the Assembly on 8 October 2021 and as such was not considered by the Committee before making its recommendation. The ACT Government is proposing to continue to ensure that recycling of corflutes is provided for both electoral and community road-side signs going forward.

Another justification for limits on road-side electoral signage may also be road safety. Campaigners may park on busy major arterial roads to place road-side signage which may put themselves and other road users at risk, though this behaviour is already an offence under Sections 165-178 of the *Road Transport (Road Rules) Regulation 2017* relating to restrictions on stopping and parking. Signs may also not be appropriately secured and blow

onto roadways onto oncoming vehicles in windy weather. Road-side signage may contribute to driver distraction or obscure official signs on the roadway. These issues are already addressed to an extent by the Movable Signs Code of Practice with specific limits on placement, size and materials that can be used for road-side signage.

The Government will undertake further work to consider the extent of remaining environmental and road safety issues and what further restrictions are appropriate and adapted to address them before bringing forward any legislative reform with due consideration of the implied freedom of political communication.

Recommendation 25

The Committee recommends that ACT Government prohibit the practice of waving electoral signs at the side of the road to attract attention from passing motorists. If Constitutional or human rights considerations present a barrier to this outcome, the Committee recommends that ACT Government consult with the community and report to the Assembly on the nearest alternative options by March 2022.

Government response

Not agreed.

The Government notes the Committee's recommendation to prohibit the practice of waving electoral signs at the side of the road to attract attention from passing motorists. However, the Government does not support this recommendation on the basis that there are already mechanisms in place to restrict advertisement on roads, such as section 236 of the *Road Transport (Road Rules) Regulation 2017* which prohibits a person standing on or moving into a road or designated intersection to display an advertisement. The Government will further consider the evidence provided in the Standing Committee's report and will consult with relevant stakeholders in anticipation of reporting back to the Assembly on this recommendation in March 2022.

Recommendation 26

The Committee recommends the Electoral Act be amended to allow candidate statements to be lodged earlier in time, at the point of nomination.

Government response

Agreed.

Noting that the Electoral Commission's initial recommendation to remove section 110A of the Electoral Act was not supported by the Standing Committee, the Government sees merit in this alternate recommendation, which was also suggested by the Electoral Commission. Section 110A(1) of the Electoral Act currently sets the timeframes for the commencement of the provision of candidate statements to the Commission as 'after the declaration of candidates'. As noted by the Electoral Commission in their submission, this provides a very tight timeframe for the Electoral Commission to review, prepare and publish candidate material in time for the commencement of voting. The Standing Committee's

recommendation would allow candidate information to be provided at the point of nomination, for inclusion on the Electoral Commission's website, which would increase timeframes and provide greater flexibility for the Electoral Commission to meet this publication requirement on its website.

Recommendations 27 and 28

The Committee recommends a legislative instrument be established under s292 of the Electoral Act to clarify how an authorisation statement is to appear on printed material.

The Committee recommends a legislative instrument be established under s292 of the Electoral Act to clarify how an authorisation statement is to appear within social media accounts.

Government response

Agreed in principle.

The Government supports in principle both recommendation 27 relating to printed material and recommendation 28 relating to social media. We will work in consultation with the ACT Electoral Commission to identify the best way of clarifying the requirements for the presentation of authorisation statements.

The Government supports the views expressed by the Committee, that a defined but contextual and flexible framework, like that adopted by the Commonwealth electoral system, is preferable to prescribing strict font height and colour requirements in legislation.

The Government notes that while this is different to the Electoral Commission's approach to mandate a specific colour and size of font, it may achieve a similar result through a more flexible approach. The Government supports clarifying the requirements for an authorisation statement for both printed material and social media accounts, noting the exception for social media in s293A of the Electoral Act.

Recommendation 29

The Committee recommends that ACT Government explore options for refining the scope of 'personal views on social media' in s293A Electoral Act, to meet the policy intention outlined by the Electoral Commission and avoid unintended consequences; and report to the Assembly by March 2022.

Government response

Noted.

The Government notes the Committee's recommendation to report to the Assembly by March 2022 on the options for refining the scope of 'personal views on social media' in

section 293A of the Electoral Act. The Government noted the Electoral Commission's recommendation to clarify that the exemption in s293A does not apply to individuals acting for a special interest profile, and will consider the consequences of this in its report to the Assembly.

Recommendations 30 and 31

The Committee recommends the Electoral Commission provide regulatory guidance on how it interprets the definition of 'electoral matter' in s4 Electoral Act, and how it enforces the offence of 'disseminating unauthorised electoral matter' in s292 Electoral Act, to provide clarity to entities outside the electoral process who may be captured under the provisions.

The Committee recommends that ACT Government investigate the feasibility of amending the definition of 'electoral matter' in s4 of the Electoral Act to align with the equivalent Commonwealth provision.

Government response

Noted.

The Government notes both recommendation 30 and 31, while observing that recommendation 30 is a matter for the ACT Electoral Commission. The Government notes the views expressed by the Electoral Commissioner and Deputy Electoral Commissioner at the hearing, that they considered the definition of 'electoral matter' to be sufficient.

However, the Government notes the views of community groups that further clarity is needed. The Government will work with the Electoral Commission to identify opportunities for providing further guidance on the definition of 'electoral matter' and the related offence. If required, the Government will also consider whether an amendment to Electoral Act to better align with the Commonwealth provision would be beneficial.

Recommendation 32

The Committee recommends that the Electoral Act be amended to establish the offence of falsely authorising electoral matter, to the extent that such conduct is not already prohibited under section 297.

Government response

Agreed in principle.

The Government acknowledges that maintaining the integrity of political advertising is essential to supporting voters to make informed decisions. As noted by the Committee, protections are already established in the Electoral Act to require authorising statements, and offences relating to misleading electoral matter. The Government supports this

recommendation in principle and will consider it in more detail to assess whether amendments are required to further protect against falsely authorised electoral material.

Recommendation 33

The Committee recommends that the Electoral Commission provide regulatory guidance to parties and candidates on the interpretation and enforcement of the ban on developer donations under s222I Electoral Act 1992.

Government response

Agreed in principle.

The Government is committed to maintaining public confidence in our democratic system of government by removing perceived bias and strengthening our electoral reporting framework. The amendments to s222I of the Electoral Act to ban political donations from property developers achieved a key government commitment from the 2016 election. The Government supports this recommendation in principle but notes it is a matter for the Electoral Commission to consider.

Recommendation 34

The Committee recommends ACT Government use the Development Application database to establish and maintain a public register of property developers as defined in s222C Electoral Act 1992.

Government response

Noted.

The Government supports work to make s222C of the Electoral Act as easy and practical to understand and implement as possible. The Government notes the recommendation to use the Development Application database to establish and maintain a public register of property developers. However, further assessment will need to be undertaken within Government to confirm that this register is fit for purpose and public use, and identify any consequential risks that might arise.

Recommendation 35

The Committee recommends that the ACT Government explore options for reinstating the \$10,000 cap on political donations, to remove the risk of perception of undue influence of private money in ACT elections; and report to the Assembly by March 2022.

Government response

Noted.

The Government is committed to continuing to strengthen the integrity and transparency of the electoral process. It is the Government's view that the current regulatory scheme of expenditure caps and public funding is an effective way to minimise the risk of undue

influence of private money in ACT elections. There is no electoral gain associated with raising funds above the expenditure cap because this cannot be spent on campaign activities. The limitations on expenditure as set out in division 14.2B, in conjunction with public funding measures, promote fairness and transparency of the electoral process. This scheme is further supported by the ACT Integrity Commission which provides independent investigation into allegations of corruption or the undue influence of private money.

There is a need for further exploration of the feasibility of donation caps in light of recent constitutional case law and precedent.

The Government also notes that donation caps can potentially fail to differentiate between collective action by a community group and individual action by a wealthy individual. As such, there is a risk that donation caps restrict the ability of community organisations to participate in the electoral process, while favouring the capacity of wealthy individuals to do so.

Recommendation 36

The Committee recommends that ACT Government explore legislative options for banning political donations from foreign sources, consult with the community, and report to the Assembly on preferred options by March 2022.

Government response

Agreed.

As part of the 10th Parliamentary and Governing Agreement, the Government has committed to deliver legislation to ban any political donations from foreign sources. The Government is actively considering options to progress this reform, noting changes have already been implemented by the Commonwealth, New South Wales, Queensland and Victoria. The Government supports exploring legislative options for banning political donations from foreign sources to report to the Assembly on March 2022, noting further community consultation may be required after this time on the proposed form of bans before legislation can be introduced.

Recommendation 37

The Committee recommends that ACT Government explore options for banning donations from tobacco, liquor and gambling entities and associated industry representative bodies.

Government response

Agreed in principle.

Recognising and mitigating the risk of undue influence on the electoral process is central to maintaining the integrity and fairness of the Territory's elections. The Government has implemented legislative changes to ban political donations from property developers and will continue to consider banning political donations from other sources as necessary.

The Government is also aware of the reforms in New South Wales to Part 3 of the *Electoral Funding Act 2018 Act* to ban political donations from certain prohibited donors.

While the Government agrees this recommendation in principle, further policy work is required to progress this recommendation in a manner that is compliant with human rights considerations, including the right to freedom of expression and right to take part in public life, and the unique ACT context.

Recommendation 38

The Committee recommends the Electoral Act be amended to limit the amount of public funding received by a party or candidate to not exceed the amount of electoral expenditure incurred.

Government response

Noted.

The Government notes that the purpose of the public funding scheme is to support parties and candidates in communicating messages on their policies to the community. It should not necessarily provide individuals with an opportunity to gain profit.

Further consideration and analysis is required on the implications of this recommendation, as well as systems and/or processes required to support its implementation. The Government will undertake further consideration of these matters as part of scoping future legislative reforms.

Recommendation 39

The Committee recommends the Legislative Assembly Standing Committee on Administration and Procedure:

- *consult with the Electoral Commission on potential opportunities to streamline and remove duplication in reporting requirements for gifts to MLAs,*
- *pursue any identified amendments to the 'statement of registerable interests' under Continuing Resolution 6 of Standing Orders, and*
- *publicly report any recommendations for amendment to the Electoral Act, for consideration by JACS Committee and ACT Government.*

Government response

Noted.

The Government supports this recommendation noting it is a matter for consideration by the Legislative Assembly Standing Committee on Administration and Procedure. The Government looks forward to supporting the Standing Committee on Administration and Procedure where appropriate, and to considering any subsequent recommendations from the Committee for action by ACT Government.

Recommendation 40

The Committee recommends that provision be made in the Electoral Act to allow for an 'Alternate Reporting Agent', to assist with reporting duties in peak times.

Government response

Agreed.

The Government acknowledges the need for an additional reporting agent to assist during peak times. The Government supports this recommendation and will consider this amendment in future legislative reforms.

Recommendation 41

The Committee recommends the Electoral Commission minimise the conduct of past-year audits within the 7-day reporting period leading up to an election.

Government response

Noted.

The Government notes this recommendation as it is a matter for the ACT Electoral Commission, but understands the practical impact this change could facilitate.

Recommendation 42

The Committee recommends the Electoral Act be amended to extend the timeframe for reporting electoral expenditure from seven days to 21 days.

Government response

Not agreed.

The Government does not agree this recommendation as it is satisfied the current legislative framework for reporting electoral expenditure is appropriate. The Government believes the Committee incorrectly stated the timeframe for reporting electoral expenditure as seven days. Election returns, which detail electoral expenditure incurred during the capped expenditure period for an election, are due with the Electoral Commission within 60 days of election day. The Government is satisfied this timeframe is appropriate.

Recommendation 43

The Committee recommends ACT Government consider the feasibility of amending s198 Electoral Act to incorporate 'related political parties' for the purpose of electoral expenditure cap calculations.

Government response

Noted.

The Government notes the Standing Committee's view that pursuant to the current electoral expenditure cap calculations, it is possible for a political party to exceed its

expenditure cap by arranging for associated political entities within the broader party to undertake advertising activities on behalf of the political party registered in the Territory. The Government also acknowledges the Electoral Commission's support for this recommendation.

However, the Government is concerned that legislative amendments to implement this recommendation would have the potential to limit the ability of ACT-based federal Members of Parliament to communicate with their constituents in the Territory. Consequently, the Government will carefully consider this recommendation further as part of its legislative reform process.

Recommendation 44

The Committee recommends ACT Government re-establish a legislative prohibition on third party campaigners acting in concert with others, in terms that comply with recent High Court judgments.

Government response

Not agreed.

The Government acknowledges the breadth of differing views presented to the Standing Committee on this issue and notes the High Court judgement in *Unions NSW v New South Wales (2019)*.

The Government does not support re-establishing legislative prohibitions on third party campaigners. The Government recognises and supports the active participation and engagement of the community in the electoral process. Third party advertising by community groups whose ideological values align with certain candidates and policies is a legitimate component of this process.

The Electoral Act also provides for limitations on the publishing of electoral material to ensure voters are able to judge the accuracy, balance and fairness of electoral advertising. For example, electoral material must identify the person or organisation responsible for writing or publishing the material. Further, recommendations 27 and 28 request clarification of the authorisation of electoral material which will further highlight the distinction between electoral material produced by a political party and electoral material produced by a third party campaigner.

Recommendation 45

The Committee recommends the Electoral Act be amended to permanently reintroduce supporting legislation for telephone voting for voters with disability.

Government response

Agreed.

The Government supports this recommendation to permanently reintroduce supporting legislation for telephone voting for voters with disability. The Government notes that the

temporary measures introduced under the COVID-19 Emergency Response Legislation Amendment Bill 2020 (No. 2)(which were repealed in April 2021) allowed eligible ACT electors who were blind or vision impaired, or had a physical disability, to vote from home during the 2020 ACT Election. This temporary measure was consistent with Recommendations 14 and 15 of the Standing Committee report on the 2016 ACT Election and the Electoral Act. The Government is pleased to hear that the telephone voting system was well received and used during the 2020 ACT Election.

The Government will consider this recommendation as part of the legislative reform process to make telephone voting for people with disability a permanent feature of future ACT elections.

Recommendation 46

The Committee recommends the Electoral Act be amended to allow mobile polling to be conducted at locations across the ACT where people experiencing homelessness gather to access government services and community support.

Government response

Agreed.

The Government is committed to ensuring all eligible voters have the opportunity to participate in ACT elections and removing barriers to participation. The Government commends the Electoral Commission for establishing a polling place at a venue accessible to people experiencing homelessness. The Government agrees with the Standing Committee and the Electoral Commission that this is an important first step in ensuring more vulnerable members of society are not excluded from the electoral process. The Government supports this recommendation and recognises that the legislation could be more flexible to better support these types of initiatives across the Territory in future ACT elections.

The Government will consider this recommendation as part of the legislative reform process.

Recommendation 47

The Committee recommends that ACT Government investigate options for a process whereby parties and candidates can submit electoral material for distribution to detainees at Alexander Maconochie Centre.

Government response

Agreed in principle.

The Government is committed to ensuring that as many ACT residents as possible have the opportunity to vote in ACT elections, including people on remand or detained at the Alexander Maconochie Centre (AMC). While it was unfortunate that previous mobile polling process were not able to be conducted due to COVID-19 restrictions for the 2020 ACT Election, postal voting went some way to ensuring detainees had the opportunity to vote.

The Government notes that the provision of additional candidate information may have been beneficial to assist detainees to make informed voting choices.

The ACT Government supports this recommendation in principle, and commits to investigating options to allow parties and candidates to submit electoral material for distribution to detainees at AMC, in consultation with the ACT Electoral Commission.

Recommendation 48

The Committee recommends that voting instructions in multiple languages be provided to voters using either electronic voting or paper ballots in future elections.

Government response

Noted.

The Government notes this recommendation as it is a matter for the ACT Electoral Commission. The Government commends the Electoral Commission for adapting to COVID-19 restrictions, which prevented outreach activities with multicultural communities, and instead translating electronic voting instructions into 12 languages. This recommendation will further support those efforts by providing the instructions in multiple languages for those voting on paper ballots.

Recommendation 49

The Committee recommends that the voting age be retained at age 18 years.

Government response

Noted.

The Government welcomes measures which expand voter participation and recognises the value in engaging young people in the political process. The Government notes the Electoral Commission's support for this recommendation and the reasons outlined in the Standing Committee's report for retaining the minimum age of voting of 18 years.

While there was significant consideration by the Standing Committee of the option to allow 16-and-17- year-olds to enrol and vote on a voluntary basis, the Government believes further exploration of lowering the voting age within the context of compulsory voting is required. On this basis, this recommendation is noted pending further consideration.

Recommendation 50 and 51

The Committee recommends that ACT Government consider increased staffing resources for the Electoral Commission commensurate with the increase in legislative functions in recent years.

The Committee recommends that ACT Government review the accommodation provided to the Electoral Commission to assess suitability for their needs.

Government response

Agreed in principle.

The Government acknowledges the large volume of work undertaken by the small number of staff at the ACT Electoral Commission. We commend these staff for their implementation of legislative amendments in response to the COVID-19 temporary measures prior to the 2020 ACT Election.

The Government notes that many of the recommendations flowing from this Standing Committee report will require additional implementation work by the ACT Electoral Commission prior to the next ACT election in 2024. The Government supports recommendation 50 in principle, noting that the ACT Government has provided funding to the Electoral Commission in the 2021-22 Budget to support the implementation and administration of the *Electoral Amendment Act 2020*, with additional resources for Elections ACT including specialised external investigative resources. Any future funding decisions are subject to Government budget processes.

The Government also acknowledges that any increase in staff brings the needs for more suitable accommodation space for the Commission. The Government understands the Commission is working with ACT Property Group to identify suitable alternative premises which can become its permanent home, and that funding was provided in the 2021-22 Budget to support additional leased space within the City precinct to permanently accommodate the ACT Election Commission. The Government is committed to working with the ACT Electoral Commission to ensure their future needs are adequately met. The Government supports recommendation 51 in principle.

Recommendation 52

The Committee recommends that ACT Government review their consultative processes, and identify opportunities to engage with the Electoral Commission early in the development of proposed amendments to the Electoral Act 1992.

Government response.

Agreed.

The Government acknowledges the significant effort of the ACT Electoral Commission in preparing the ACT for the 2020 election, particularly during the COVID-19 pandemic. As noted above, the ACT Government acknowledges that consultation with the ACT Electoral Commission on legislative changes leading up to the 2020 election, including the urgent COVID-19 measures, could have been improved. The Government is committed to work closely with the ACT Electoral Commission and consult them regularly and early on any proposed legislative reform to the *Electoral Act 1992*. The Government supports this recommendation, noting that timeframes for urgent or unexpected changes sometimes impact on consultation timeframes.