

INQUIRY INTO THE 2016 ACT ELECTION AND THE ELECTORAL ACT

SELECT COMMITTEE ON THE 2016 ACT ELECTION AND ELECTORAL ACT

NOVEMBER 2017

REPORT

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ACCESSIBILITY

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RESOLUTION OF APPOINTMENT AND TERMS OF REFERENCE

On 15 December 2016, the Legislative Assembly for the ACT passed the following resolution:

“That:

- 1) a select committee be established to review the operation of the 2016 ACT election and the Electoral Act and other relevant legislation and policies in regards to election-related matters, and make recommendations on:
 - a) lowering the voting age;
 - b) improving donation rules and donation reporting timeframes;
 - c) increasing voter participation in elections and encouraging political activity; and
 - d) any other relevant matter;
- 2) the select committee shall consist of the following number of members composed of:
 - a) two Members to be nominated by the Government;
 - b) two Members to be nominated by the Opposition;
 - c) one Member to be nominated by the Crossbench; and
 - d) the Chair shall be a Government Member;
- 3) the select committee be provided with necessary staff, facilities and resources;
- 4) the select committee is to report by the last sitting day in 2017;
- 5) if the Assembly is not sitting when the committee has completed its inquiry, the committee may send its report to the Speaker or, in the absence of the Speaker, to the Deputy Speaker, who is authorised to give directions for its printing, publishing and circulation;
- 6) the foregoing provisions of this resolution, so far as they are inconsistent with the standing orders, have effect notwithstanding anything containing in the standing orders; and
- 7) nomination for membership of the committee be notified in writing to the Speaker within two hours following conclusion of the debate on the matter.”¹

¹ Legislative Assembly for the ACT, *Hansard*, 13 December 2016, pp. 255-256.

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ABBREVIATIONS

ACT	Australian Capital Territory
ACT Electoral Commission Report	Report on the ACT Legislative Assembly Election 2016
ACT Labor	ACT Labor Party
Acting Commissioner	Acting ACT Electoral Commissioner
Assembly	Legislative Assembly for the ACT
Commission	ACT Electoral Commission
Committee	Select Committee on the 2016 ACT Election and Electoral Act
ECANZ	Electoral Council of Australia and New Zealand
ECQ	Electoral Commission Queensland
EFED Act	<i>Election Funding, Expenditure and Disclosure Act 1981 (NSW)</i>
Electoral Act	<i>Electoral Act 1992 (ACT)</i>
eVACS	Electoral Voting and Counting System
ICAC	NSW Independent Commission Against Corruption
ICAC Inquiry	NSW Liberal Party Electoral Funding for the 2011 State Election Campaign and Other Matters
JACS	Justice and Community Safety Directorate
MLA	Member of the Legislative Assembly
NSW	New South Wales
PRS	Proportional Representation Society of Australia (ACT Branch)
Self-Government Act	<i>Australian Capital Territory (Self-Government) Act 1988</i>
SMS	Short Message Service
TCCS	Transport Canberra and City Services Directorate
WA	Western Australia
Youth Coalition	Youth Coalition of the ACT

RECOMMENDATIONS

RECOMMENDATION 1

- 2.29 The Committee recommends, that in addition to the current notification around elections, the ACT Electoral Commission include an optional SMS scheme for electors who did not cast a vote in previous elections, which provides the elector with reminders about voting.

RECOMMENDATION 2

- 3.18 The Committee recommends that social media profile pages of political parties and candidates are to be authorised. However, the Committee also recommends that individual posts, including images, need not be authorised.

RECOMMENDATION 3

- 3.27 The Committee recommends that section 198AA of the ACT *Electoral Act 1992* be amended to include fundraising contributions, in relation to a single fundraising event that is \$250 or less be included in the definition of 'gift'.

RECOMMENDATION 4

- 3.30 The Committee recommends that the ACT *Electoral Act 1992* be amended to set the prescribed penalty for failing to vote at one half of a penalty unit, which is defined in the *Legislation Act 2001*, rounded to the nearest \$5.00.

RECOMMENDATION 5

- 4.29 The Committee recommends that the ACT retain the current minimum voting age of 18.

RECOMMENDATION 6

- 5.13 The Committee recommends a review of current legislation, regulation and practices to recognise the separate and overlapping functions of MLA, member of the Executive, political candidate and private citizen, with a view to improve demarcation and transparency of definitions.

RECOMMENDATION 7

- 5.14 The Committee recommends a review and update of all rules and regulations for the use of MLA's office, staffing and Communications Allowance to ensure MLAs are able to adequately carry out their functions, including during an election period.

RECOMMENDATION 8

- 5.37** The Committee recommends that political donations from property developers be banned in the ACT.

RECOMMENDATION 9

- 5.46** The Committee recommends that the ACT maintain its current donation reporting timeframe model, where parties and candidates must disclose all gifts and loans totalling \$1,000 or more, within seven days from 1 July though to polling day in an election year.

RECOMMENDATION 10

- 6.14** The Committee recommends that the Minister for Education and Early Childhood Development, in consultation with the Education Directorate, develop and include civics and citizenship education as part of the ACT year 11 and 12 curriculum.

RECOMMENDATION 11

- 6.28** The Committee recommends that the ACT Electoral Commission or other appropriate body provide a detailed proposal, including costs of setting up and maintaining a website, mobile app and printed material, with details of candidates at Legislative Assembly Elections, starting with the 2020 ACT election.

RECOMMENDATION 12

- 7.14** The Committee recommends that the *Public Unleased Land Act 2013* be amended to allow an authorised person to remove a non-compliant electoral advertising sign from public unleased land without providing the seven day direction requesting compliance.

RECOMMENDATION 13

- 7.15** The Committee recommends that the ACT *Electoral Act 1992* be amended to allow electoral material displayed on private property, inside the defined polling area, to remain throughout the polling period.

RECOMMENDATION 14

- 7.31** The Committee recommends that the ACT Electoral Commission continue to consider a limited electronic voting option for electors who are overseas.

RECOMMENDATION 15

- 7.32** The Committee recommends, as part of consideration of electronic voting, blind and visually impaired voters be given the opportunity to cast a secret vote.

RECOMMENDATION 16

7.33 The Committee recommends the ACT Electoral Commissioner investigate and report on the possible use of Australian Consular and diplomatic posts overseas, as an alternative voting option for electors who are overseas.

RECOMMENDATION 17

7.34 The Committee recommends that the ACT Electoral Commissioner report to the Assembly, by the last sitting day in June 2018, the results of the investigation into the provision of both a limited electronic voting option for electors who are overseas and a similar electronic voting option for blind and visually impaired electors.

RECOMMENDATION 18

7.50 The Committee recommends that a 100-metre canvassing exclusion zone around a polling booth be maintained.

RECOMMENDATION 19

7.51 The Committee recommends that the ACT Electoral Commission conduct a survey of the community to determine whether the canvassing exclusion zone be reduced, maintained or increased.

RECOMMENDATION 20

7.52 The Committee recommends that sections 303(2) and 303(7) (b) of the ACT *Electoral Act 1992* be removed to ensure consistency in the measuring of a defined polling area.

RECOMMENDATION 21

7.66 The Committee Recommends that the *Electoral Act 1992* be amended so that an elector may vote at a pre-poll voting centre without the requirement to declare that they are unable to attend a polling place on polling day.

RECOMMENDATION 22

7.75 The Committee recommends tightening the provisions within the ACT *Electoral Act 1992* to mitigate multiple entities being registered for the purposes of circumventing the expenditure cap. This provision should be in place before 1 January 2020.

RECOMMENDATION 23

7.79 The Committee recommends that the Government engage with the ACT Electoral Commission to determine whether amendment to the ACT *Electoral Act 1992* is

necessary to allow an increased period of time between the close of nominations and the declaration of nomination to address any potential challenges.

1 INTRODUCTION

- 1.1 On 15 December 2016, the Legislative Assembly for the ACT (Assembly) agreed to the motion moved by the Manager of Government Business, Mr Mick Gentleman Member of the Legislative Assembly (MLA), to establish the Select Committee on the 2016 ACT Election and Electoral Act (Committee), with a report date of the last sitting day in 2017.
- 1.2 This chapter outlines the conduct of the Inquiry and the structure of the Report, as well as acknowledging those who assisted with the Committee's Inquiry.

CONDUCT OF THE INQUIRY

- 1.3 On 20 April 2017, the Committee published a media release on the Assembly website, inviting public submission by 30 June 2017. More than 150 individuals and organisations, including each candidate who participated in the 2016 ACT election, were also contacted by email to invite them to make a submission.
- 1.4 On 20 April 2017, the Committee released a discussion paper that accompanied the Committee's media release. 30 submissions were received and published on the Committee's website. A list of the submissions received is available at [Appendix A](#).
- 1.5 Public hearings were held on 27 July, 10 August and 7 September 2017. A list of witnesses who attended the Committee's public hearings is available at [Appendix B](#). The Committee held 11 private meetings during the Inquiry.
- 1.6 On 31 August and 1 September 2017, the Committee met with the Tasmanian Electoral Commissioner and Members of the Tasmanian Parliament to discuss the electoral processes utilised in the State, as Tasmania is the only other jurisdiction in Australia that operates under the Hare-Clark System.

ACKNOWLEDGMENTS

- 1.7 The Committee acknowledges the extensive efforts within the Australian Capital Territory (ACT) Electoral Commission (Commission) to improve the understanding of and develop strategies relating to the electoral processes utilised in the ACT.
- 1.8 The Committee thanks those who made submissions to the Inquiry and those who gave evidence at the Committee's hearings.

- 1.9 The Committee would also like to thank Members of the Tasmanian Parliament and the Tasmanian Electoral Commissioner for taking the time out of their busy schedule to assist the Committee during their visit.

STRUCTURE OF THE REPORT

- 1.10 Chapter One provides some general information about the Inquiry and the structure of the Report. The remainder of the Report is structured as follows:
- Chapter Two provides a brief explanation the ACT's electoral system and its relevance to the Inquiry;
 - Chapter Three examines the Acting ACT Electoral Commissioner's and the ACT Auditor-General's review of the 2016 ACT election;
 - Chapters Four to Six focusses on the three key areas in the Committee's terms of reference:
 - lowering the voting age;
 - improving donation rules and donation reporting timeframes; and
 - increasing voter participation and encouraging political activity;
 - Chapter Seven examines other issues raised during the Inquiry; and
 - Chapter Eight presents the Committee's conclusions.

2 BACKGROUND TO THE 2016 ACT ELECTION

INTRODUCTION

- 2.1 Section 100 of the *Electoral Act 1992* (Electoral Act) provides that an election must be held on the third Saturday in October, in the fourth year after the year in which the last election was held.²
- 2.2 The ACT election was held on Saturday, 15 October 2016. The election was won by the ACT Labor Party (ACT Labor), led by the Chief Minister, Andrew Barr MLA. This was followed by the signing of a Parliamentary Agreement between the ACT Greens and the ACT Labor to form government.
- 2.3 The 2016 ACT election occurred following amendments made to the Electoral Act, which increased the size of the Assembly from 17 Members to 25 Members for the 2016 ACT election and the provision for five five-member electorates.
- 2.4 Voter turnout, in the 2016 ACT election, was the highest of the last four ACT elections. Voter turnout at the 2016 ACT election was 88.3 per cent, an increase of 4.4 per cent compared to the 2012 ACT election.³
- 2.5 39 per cent of all votes cast at the 2016 ACT election were cast before polling day, an increase of 7.7 per cent compared to the 2012 ACT election.⁴
- 2.6 This Chapter provides background information to the Committee's Inquiry, providing important information about the electoral system and electoral process utilised in the ACT. This Chapter also summarises legislative changes prior to the 2016 ACT election and trends identified in the ACT Electoral Commission's *Report on the ACT Legislative Assembly Election 2016* (ACT Electoral Commission Report).

² ACT, *Electoral Act 1992*, Section 100, republication date: 1 January 2017, p. 78.

³ Elections ACT, *Report on the ACT Legislative Assembly Election 2016*, March 2017, p. 30.

⁴ Elections ACT, *Report on the ACT Legislative Assembly Election 2016*, March 2017, p. 30.

THE HARE-CLARK SYSTEM

- 2.7 MLAs are elected using a proportional representation electoral system known as the Hare-Clark System. This system is known as the single transferable vote method. In the ACT, the Hare-Clark system is used to elect 25 Members in five, five-member electorates. Electors in the five electorates are; Brindabella, Ginninderra, Kurrajong, Murrumbidgee and Yerrabi.
- 2.8 Under the Hare-Clark System, an elector has a single vote that is initially allocated to the most preferred candidate. As the count proceeds and candidates are either elected or eliminated, the elector's vote is transferred from candidate to candidate according to the preferences shown, until all the vacancies are filled.
- 2.9 To be elected, a candidate needs to receive a quota of votes. A quota is a specific number of votes which is calculated by dividing the number of formal votes cast by the number of vacancies. The quota for the five, five-member electorates is one-sixth of valid votes plus one vote, or approximately 16.67 per cent. The following formula is used when calculating the quota of votes:

$$\frac{\text{total number of valid votes}}{\text{number of vacancies} + 1} + 1$$

- 2.10 If a candidate receives a total number of votes equal or greater than the quota, the candidate is elected. However, a candidate may be elected without a quota when the number of candidates remaining in the count that have not been elected or excluded is equal to the number of vacancies that remain to be filled.⁵
- 2.11 During the 2016 ACT election, 10 registered parties contested the election with a total of 141 candidates contesting the election. Of the 141 candidates, 10 Members of the Canberra Liberals were elected, 13 ACT Labor Members were elected and two ACT Greens Members were elected to represent the Assembly.

TASMANIAN UTILISATION OF THE HARE-CLARK SYSTEM

- 2.12 The Tasmanian House of the Assembly is also elected under a form of proportional representation electoral system, which was developed by Thomas Hare in 1856 and became known as the Hare system. Andrew Inglis Clark, Tasmanian Attorney-General in 1888 and a member of the Tasmanian Parliament, introduced a modified version of the Hare system into

⁵ Elections ACT, *Fact Sheet: Hare-Clark*, 22 September 2016, available at: http://www.elections.act.gov.au/education/act_electoral_commission_fact_sheets/fact_sheets_-_general_html/elections_act_factsheet_hare-clark_electoral_system.

Tasmanian law in 1896. This system is now known as the Hare-Clark Electoral System, which is utilised by both the ACT and Tasmania.

- 2.13 Tasmania adopted the Hare-Clark System on a trial basis in 1896 for both Hobart and Launceston, but it was abolished in 1901. The utilisation of the Hare-Clark System was revived in 1907 for state-wide elections and has continued to be a feature of the House of Assembly elections since 1909.
- 2.14 Similar to the Electoral Act, section 177 of the Tasmanian *Electoral Act 2004* states that a person is not permitted to canvass for votes, solicit the vote of an elector, or induce or attempt to induce an elector not to vote for a particular candidate or particular candidates within 100 metres of a polling place.⁶
- 2.15 Unlike the ACT utilisation of the Hare-Clark System, section 198 of the Tasmanian *Electoral Act 2004* states that it is an offence to distribute and advertise, 'how-to-vote' card, handbill, pamphlet, poster, or notice containing any electoral matter on polling-day.⁷

THE FUNCTION OF THE LEGISLATIVE ASSEMBLY

- 2.16 On 25 November 1978, an advisory referendum was held to ask the residents of the ACT if self-government should be granted. 63.75 per cent of electors favoured the continued governing arrangements but despite this result, in 1988 the Federal Parliament passed the *Australian Capital Territory (Self-Government) Act 1988* (Self-Government Act), which established self-government in the ACT.⁸
- 2.17 Part four of the Self-Government Act outlines the powers of the Assembly. Specifically, Section 22(1) states that the Assembly has the power to make laws for the peace, order and good government of the Territory.⁹
- 2.18 The parliamentary system of government utilised in Australia and more specifically, the Assembly, is the Westminster System which is modelled after the United Kingdom's parliamentary system. A core element of the Westminster System focuses on the separation of powers between the three branches of government:
- Legislature or parliament, which is responsible for making laws;

⁶ Tasmania, *Electoral Act 2004*, Section 177, last modified: 5 July 2017.

⁷ Tasmania, *Electoral Act 2004*, Section 198, last modified: 5 July 2017.

⁸ Legislative Assembly for the ACT, *Establishing Self-Government in the ACT*, Last updated on 20 March 2017, available at: <http://www.parliament.act.gov.au/Explore-your-Assembly/resources/fact-sheets/self-government>.

⁹ Commonwealth, *Australian Capital Territory (Self-Government) Act 1988*, Part four, compilation start date: 31 March 2013.

- The executive or government, which is responsible for administering laws and delivering government services; and
- The judiciary or the courts, which interpret how the law is to be applied.

2.19 As the Assembly has responsibilities at both State and local government levels, the Assembly is also responsible for municipal functions, such as rates and roads, which are carried out by local governments in other jurisdictions.

LEGISLATIVE CHANGES

2.20 On 5 August 2014, the Assembly debated the Electoral Amendment Bill 2014 and passed two enactments. The first enactment introduced the *Australian Capital Territory (Legislative Assembly) Act 2014*, which states that the Assembly is to consist of 25 Members to be elected in the next general election after the commencement of this Act.¹⁰

2.21 The second enactment of the Electoral Amendment Bill 2014 amended the Electoral Act to provide that the ACT must be divided into five electorates, as well as five members of the Assembly must be elected in each electorate.¹¹

2.22 On 19 February 2015, the *Electoral Amendment Act 2015* was passed by the Assembly, which provided a range of amendments to the election funding and disclosure provisions in the Electoral Act. Amendments to the election funding and disclosure provisions are discussed further in Chapter Five; Improving Donation Rules and Reporting Timeframes.

2016 ACT ELECTION TRENDS

2.23 In addition to the increased size of the Assembly from 17 Members to 25 Members, the 2016 ACT election also observed the highest number of candidates to contest an ACT election, with 141 candidates contesting the election. Of these 141 candidates, 13 female candidates and 12 male candidates were elected. As a result, the ninth Assembly is the first parliament in Australian history with a majority of female members.¹²

2.24 The 2016 ACT election recorded the highest number of votes in an ACT election, with 250,460 votes. The 2016 ACT election also had the highest number of eligible voters for an ACT

¹⁰ ACT, *Australian Capital Territory (Legislative Assembly) Act 2014*, 19 August 2014, p. 2.

¹¹ ACT, *Electoral Amendment Act 2014*, Section 34, 19 August 2014, p. 2.

¹² Elections ACT, *Report on the ACT Legislative Assembly Election 2016*, March 2017, pp. 2-3.

election, with 283,162 eligible voters identified. This resulted in the most complete electoral roll for an ACT election, with 99.8 per cent of the estimated eligible population enrolled.¹³

2.25 The 2016 ACT election observed the highest level of voter turnout of the last four elections, with over 88 per cent of the eligible population casting a vote. Additionally, the 2016 ACT election recorded the lowest ever rate of informal voting, with only 2.5 per cent of the votes counted as informal.¹⁴

2.26 The Commission conducted an extensive public information campaign, combining traditional media advertising and online advertising. Short Message Service (SMS) was also utilised as a medium to inform electors. The utilisation of media platforms to provide information resulted in a voter satisfaction of 96 per cent.¹⁵

2.27 The ACT Electoral Commission Report lists a number of notable features of the 2016 ACT election, which are reproduced in [Appendix C](#).

COMMITTEE COMMENT

2.28 The Committee discussed the practical application of a SMS for voters with the Tasmanian Electoral Commission during their visit. The Committee considers that such a service would benefit electors who had failed to vote at a previous election by providing a reminder of upcoming ACT elections.

Recommendation 1

2.29 The Committee recommends, that in addition to the current notification around elections, the ACT Electoral Commission include an optional SMS scheme for electors who did not cast a vote in previous elections, which provides the elector with reminders about voting.

¹³ Elections ACT, *Report on the ACT Legislative Assembly Election 2016*, March 2017, pp. 2-3.

¹⁴ Elections ACT, *Report on the ACT Legislative Assembly Election 2016*, March 2017, pp. 2-3.

¹⁵ Elections ACT, *Report on the ACT Legislative Assembly Election 2016*, March 2017, pp. 2-3.

3 REVIEWS OF THE OPERATION OF THE 2016 ACT ELECTION

INTRODUCTION

- 3.1 On 21 March 2017, the ACT Electoral Commission Report was tabled by the Speaker, pursuant to subsection 10A (2) of the Electoral Act.
- 3.2 The ACT Electoral Commission Report examined the conduct of the 2016 ACT election and made a number of recommendations to change the electoral legislation in preparation for and conduct of the 2020 ACT election. Recommendations are reproduced at [Appendix D](#).
- 3.3 On 8 June 2017, the Attorney-General, Mr Gordon Ramsay MLA responded to the ACT Electoral Commission Report on behalf of the Government. This response is also reproduced at [Appendix D](#). In doing so, the Attorney-General referred eight of the 10 recommendations, from the ACT Electoral Commission Report, to the Committee.
- 3.4 On 16 February 2017, the ACT Auditor-General's Report into the 2016 ACT election was tabled by the Speaker, pursuant to subsection 17(4) of the *Auditor-General Act 1996*. Recommendations are reproduced at [Appendix E](#).
- 3.5 The Auditor-General's Report provided an independent opinion to the Assembly on the effectiveness of the planning for, and conduct of, the 2016 ACT election conducted by Elections ACT.
- 3.6 On 8 June 2017, the Attorney-General, Mr Gordon Ramsay MLA responded to the Auditor-General's Report on behalf of the Government. This response is also reproduced at [Appendix E](#). In doing so, the Attorney-General referred two of the seven recommendations, from the Auditor-General's Report, to the Committee.
- 3.7 The Committee considered the recommendations referred to it by the Attorney-General as part of its Inquiry. The Committee responses to those recommendations are as follows:

ACT ELECTORAL COMMISSION'S REPORT

RECOMMENDATION – PRE-POLL DECLARATION

- 3.8 The Commission recommends that the Electoral Act be amended to provide that any elector may vote at a pre-poll voting centre, without the need to declare that they are unable to attend a polling place on polling day.

COMMITTEE COMMENT

- 3.9 The Committee notes that the Auditor-General made a similar recommendation (recommendation three) in the Auditor-General's Report. The Committee has reviewed this recommendation and it is discussed in the Pre-Poll Voting section of Chapter Seven: Other Matters.

RECOMMENDATION – AUTHORISATION STATEMENT

- 3.10 The Commission recommends that the Electoral Act be amended to require the full given name and surname of a person be shown in an authorisation statement.
- 3.11 The Commission recommends that the Electoral Act be amended to require the name of an entity to be shown in an authorisation statement, where electoral matter is published on behalf of an entity.

COMMITTEE COMMENT

- 3.12 The Committee has reviewed these recommendations and agrees with the Commission's recommendations being implemented.
- 3.13 However, the Committee also considers that proposals for authorisation of social media on the internet needs some comment. The Acting Commissioner noted that, following changes that were made after the 2012 election (and on the Commission's recommendation), the Electoral Act was amended to remove internet commentary by persons acting in a private capacity from authorisation requirements.
- 3.14 In the ACT Electoral Commission Report, the Commission drew particular attention to issues arising from the authorisation, and incorrect authorisation, of material posted on social media websites. In that regard, the Commission canvassed:

[W]hether the authorisation requirements applied to images/ infographics posted on social media on the internet. The Commission took the view that provided the social media page of original posting of an image carried the appropriate authorisation, then

an authorisation statement was not required within the image itself, so long as the name of the originator remained with the image.¹⁶

3.15 The Commission noted the following procedures for addressing this matter:

Under the Commissioner's prosecution policy, all reported cases of unauthorised electoral matter are addressed in the first instance with a request to cease distribution of unauthorised matter and to ensure matter is correctly authorised. This process is generally very effective. The Commissioner did not see cause to refer any unauthorised material to the Australian Federal Police for prosecution in 2016.¹⁷

3.16 This particular question was not discussed with the Acting ACT Electoral Commissioner (Acting Commissioner) during evidence, but the Committee notes that in the Commission's second submission to the Inquiry, it was advised that:

[T]he authorisation rules are intended to prevent 'irresponsibility through anonymity' - that is, making it unlawful to publish electoral material that does not identify the author, so that voters are unable to judge whether the material is coming from a source with a particular interest in the election. The authorisation rules also mean that people cannot hide behind anonymity to make irresponsible or defamatory statements about election matters.¹⁸

3.17 For the purpose of the Committee's recommendation, the Committee considers that a social media profile page is similarly defined as homepage or landing page. Landing page is defined a web page which serves as the entry point for a website or a particular section of a website. Alternatively, home page is defined as a web page set as the default or start-up page on a browser.

Recommendation 2

3.18 The Committee recommends that social media profile pages of political parties and candidates are to be authorised. However, the Committee also recommends that individual posts, including images, need not be authorised.

¹⁶ Elections ACT, *Report on the ACT Legislative Assembly Election 2016*, March 2017, p. 48.

¹⁷ Elections ACT, *Report on the ACT Legislative Assembly Election 2016*, March 2017, p. 48.

¹⁸ ACT Electoral Commission, *Submission 14*, June 2017, p. 10.

RECOMMENDATION – ROUNDING DOWN OF VOTER VALUES

- 3.19 The Commission recommends that Schedule 4 of the Electoral Act be amended to provide that vote values calculated by multiplying ballot paper totals by fractional transfer values should be rounded down to six decimal places, rather than the nearest whole number. The Commission further recommends that this amendment should apply to elections for the ACT Assembly and the Aboriginal and Torres Strait Islander Elected Body.

COMMITTEE COMMENT

- 3.20 The Committee sought advice on this recommendation from witnesses and from electoral experts (including the Tasmanian Electoral Commissioner). The Committee did not have any comment or evidence before it which rejected the proposal. The Committee agrees with the Commission's recommendation being implemented.

RECOMMENDATION – EXPENDITURE CAP: UNGROUPED CANDIDATES

- 3.21 The Commission recommends that the Assembly consider whether it should amend the Electoral Act to increase the expenditure cap applied to ungrouped candidates to avoid the risk of impermissibly burdening the freedom of political communication implied by the Commonwealth Constitution.

COMMITTEE COMMENT

- 3.22 The Committee considered submissions which commented on this recommendation, but is unconvinced that the possible risks as described by the Commission would result in the burden described. The Committee does not support this recommendation being adopted.

RECOMMENDATION – EXPENDITURE CAP: THIRD PARTY CAMPAIGNS

- 3.23 The Commission recommends that the Assembly consider whether it should amend the Electoral Act to increase the expenditure cap applied to third-party campaigners to avoid the risk of impermissibly burdening the freedom of political communication implied by the Commonwealth Constitution.

COMMITTEE COMMENT

- 3.24 The Committee has reviewed this recommendation and it is discussed in the Third-Party Campaigners section of the Chapter Seven: Other Matters.

RECOMMENDATION – GIFTS

- 3.25 The Commission recommends that section 243(5) of the Electoral Act should be amended to alter the reference to 'information about a gift made by an individual' to 'information about an amount received from an individual'.

COMMITTEE COMMENT

- 3.26 The Committee has reviewed this recommendation and agrees with the Commission's recommendation being implemented. However, the Committee considers it important that that gifts in kind be captured.

Recommendation 3

- 3.27 The Committee recommends that section 198AA of the ACT *Electoral Act 1992* be amended to include fundraising contributions, in relation to a single fundraising event that is \$250 or less be included in the definition of 'gift'.**

RECOMMENDATION – PENALTY LEVEL

- 3.28 The Commission recommends that the penalty notice fine for failing to vote at ACT Assembly elections should be increased and linked to a fraction of a penalty unit. The Commission further recommends that the penalty should be set at one quarter of a penalty unit, rounded down to the nearest \$5.00.

COMMITTEE COMMENT

- 3.29 The Committee has considered the Commission's observations and recommendation and believes that the penalty unit, if set at one quarter of a penalty unit would be too low to achieve the stated legislative aim of the provision. Evidence of the penalty unit level in other jurisdictions reinforces this view.

Recommendation 4

- 3.30 The Committee recommends that the ACT *Electoral Act 1992* be amended to set the prescribed penalty for failing to vote at one half of a penalty unit, which is defined in the *Legislation Act 2001*, rounded to the nearest \$5.00.**

ACT AUDITOR-GENERAL'S REPORT

RECOMMENDATION – PRE-POLL DECLARATION

- 3.31 The ACT Government should amend the Electoral Act so that an elector may vote at a pre-poll voting centre without the requirement to declare that they are unable to attend a polling place on polling day.

COMMITTEE COMMENT

- 3.32 The Committee has reviewed this recommendation and it is discussed in the Pre-Poll Voting section of Chapter Seven: Other Matters.

RECOMMENDATION – PENALTY LEVEL

- 3.33 The ACT Government should use penalty units as the basis for a non-voter fine to allow incremental adjustments and determine what penalty is to be established for non-voters (and in so doing increase the current \$20.00 fine).

COMMITTEE COMMENT

- 3.34 The Committee has reviewed this recommendation and notes the similarities between the Auditor-General's recommendation and the Commission's recommendation at paragraph 3.25. The Committee has made a recommendation in regards to penalty levels at paragraph 3.27.

OBSERVATION FROM SUBMISSIONS ON THE ELECTORAL COMMISSIONS REPORT ON THE ACT LEGISLATIVE ASSEMBLY ELECTION 2016

- 3.35 During the Committee's Inquiry, a number of submissions provided comment regarding the operation of the 2016 ACT election and recommendations presented in the ACT Electoral Commission Report.
- 3.36 Of the submissions the Committee received, the Committee notes the ACT Branch of the Proportional Representation Society of Australia (PRS) supported the recommendation relating to rounding down of voter values by the Commission. However, the PRS recommended the fractional transfer value be rounded down to eight or ten decimal points:

The ACT Branch agrees with the ACT Electoral Commission's recommendation to limit losses by fraction during the distribution of preferences, but suggests that working be

to eight or ten decimal places: in these circumstances, transfer values could reasonably also be expressed as truncated decimal fractions rather than in an exact fractional form as up to now.¹⁹

- 3.37 Another submission the Committee received, Ms Marea Fatseas highlighted reservations with recommendation five, noting that:

The electorate of Kurrajong has large areas of designated land, including the main avenues, and if corflutes are not permitted even on main streets in suburbs (eg those leading to suburban shops), candidates in Kurrajong may be disadvantaged compared to candidates in other electorates.²⁰

- 3.38 The ACT Liberal Democrats Submission highlighted recommendations, made in the ACT Electoral Commission Report, which were and were not supported:

While the ACT Liberal Democrats support some of these recommendations, the party has significant concerns about recommendations 4, 5, 7, 8 and 10 and significant reservations about recommendation 1. The ACT Liberal Democrats support recommendation 2 which would remove restrictions on pre-poll voting.²¹

- 3.39 The ACT Liberal Democrats supported recommendation one, noting that:

Support, on the proviso that this does not extend or impose penalties to ACT voters overseas who do not vote. Moreover, the Liberal Democrats considers that electronic voting be brought into the 21st century by being made more intuitive, more widely available at more polling places.²²

- 3.40 The ACT Liberal Democrats strongly support recommendation two, noting that:

The current legislation is easily bypassed by electors able to falsely state reasons as to why they cannot vote on elections day. The ACT Liberal Democrats consider that unnecessary and avoidable legislation is arbitrary, confusing and unfair and that such legislation should be repealed.²³

- 3.41 The ACT Liberal Democrats opposed recommendation four, noting that:

This recommendation would be unenforceable. It would not provide greater clarity and transparency to voters. The Liberal Democrats are concerned that the proposed entity

¹⁹ Proportional Representation Society of Australia (ACT Branch), *Submission 29*, no date, p. 2.

²⁰ Ms Marea Fatseas, *Submission 24*, 30 June 2017, p. 5.

²¹ ACT Liberal Democrats, *Submission 23*, no date, p. 10.

²² ACT Liberal Democrats, *Submission 23*, no date, p. 12.

²³ ACT Liberal Democrats, *Submission 23*, no date, p. 12.

name rule could serve to chill free political speech by raising administrative burdens, adding to uncertainty and arbitrariness, and casting too wide a net over third parties.²⁴

3.42 The ACT Liberal Democrats did not support recommendation five, noting that:

This recommendation would reduce freedom of political speech and tip the scales further against smaller parties and independent candidates.

This recommendation would also add uncertainty and significant administrative costs associated with determining and monitoring the designated areas where corflutes can be displayed. Its effectiveness in reducing signage would also be undermined by increased placement of signs in private property and novel ways of circumventing the new restriction. This would waste more resources and, where private property was close to polling places and result in more vexatious disputes.²⁵

3.43 The ACT Liberal Democrats did not support recommendation 10, noting that:

This recommendation would increase the penalty notice fine for failing to vote at ACT Legislative Assembly elections by 75 per cent (from \$20 to \$35). The ACT Liberal Democrats consider that such penalties disproportionately penalise groups such as the disadvantaged, students, workers with uncertain working hours (including nurses and emergency workers). These penalties should be eliminated. In any case, as it currently stands, this recommendation would result in the penalty for not voting being out of line with the current Commonwealth penalty (\$20).²⁶

3.44 In its submission to the Committee, ACT Labor did not support a number of Commission recommendations that were referred to the Committee for consideration.

3.45 ACT Labor did not support recommendation two, noting that:

It is the Party's view that a formal election campaign period is called for a specific length of time in order to allow the community and contesting parties to debate and put forward their policies for consideration. The ability for residents to vote early in person or by postal vote is only given if there are valid reasons for not being able to attend the ballot on polling day. We believe that this should remain the case.²⁷

3.46 Additionally, the ACT Labor submission noted that:

Parties and candidates debate and put forward their ideas right up to polling day, and it is a vital part of the electoral process that residents cast their vote once they have been fully appraised of the issues being debated during the formal election campaign

²⁴ ACT Liberal Democrats, *Submission 23*, no date, p. 11.

²⁵ ACT Liberal Democrats, *Submission 23*, no date, p. 10.

²⁶ ACT Liberal Democrats, *Submission 23*, no date, p. 11.

²⁷ ACT Labor Party, *Submission 15*, no date, p. 9.

period.²⁸ The Electoral Commission should prioritise focussing its resources towards ensuring the maximum number of voters are able to cast their vote on polling day.²⁹

3.47 ACT Labor did not support recommendation seven, noting that:

It is the Party's belief that the current arrangements create a level playing field for the amount that any party or candidate can spend during the year of a Territory election. We also believe that there is no evidence to suggest that ungrouped candidates are negatively burdened by the expenditure cap.³⁰

3.48 In their submission, ACT Labor also highlighted that 'analysis of the 2016 election shows that no ungrouped candidate spent more than 50 per cent of the \$40,000 that they were entitled to spend, nor did the amount spent necessarily correlate with votes gained'.³¹

3.49 ACT Labor did not support recommendation eight, noting that:

It is the Party's belief that the current arrangements create a level playing field for the amount that any third-party can spend during the year of a Territory election. There is no evidence to suggest that third-parties are negatively burdened by the expenditure cap.³²

3.50 Additionally, the ACT Labor submission noted that:

The changes made upon the introduction of the expenditure cap for third-parties cited the need to ensure that there was no 'arms race' or that no organisation in the community could unfairly sway the outcome of an election due to the amount of money they could spend.

The current system allows for a plurality of voices from across the Canberra community to be heard on issues of importance. Any change to increase the cap could have the side-effect of allowing larger organisations to effectively drown out smaller voices such as not-for-profits or community groups.³³

²⁸ ACT Labor Party, *Submission 15*, no date, p. 9.

²⁹ ACT Labor Party, *Submission 15*, no date, p. 9.

³⁰ ACT Labor Party, *Submission 15*, no date, p. 10.

³¹ ACT Labor Party, *Submission 15*, no date, p. 10.

³² ACT Labor Party, *Submission 15*, no date, p. 11.

³³ ACT Labor Party, *Submission 15*, no date, p. 11.

4 LOWERING THE VOTING AGE

INTRODUCTION

- 4.1 The Commonwealth *Electoral Act 1918* currently sets that persons are entitled to enrolment and to vote once they have attained the age of 18 years.³⁴
- 4.2 In February 2012, the Electoral Act was amended to lower the age of entitlement, to provisionally enrol to vote, from 17 years old to 16 years old. The Commissioner has the capacity to enrol a person for an electorate if the person is at least 16 years of age and would be entitled to be enrolled for the electorate once the person has attained the age of 18 years.³⁵
- 4.3 However, section 128 of the Electoral Act states that a person who is enrolled is not entitled to vote at an election unless he or she will be at least 18 years old on the day the poll for the election is required.³⁶
- 4.4 The minimum voting age for all Federal, State and Territory elections is 18 years of age. Provisional enrolment for 16 and 17 year olds is enacted nationally.
- 4.5 Countries with a minimum voting age of 16 include; Argentina, Austria, Bosnia and Herzegovina (if employed), Brazil, Croatia (if employed), Cuba, Ecuador, Malta, Nicaragua Scotland (for Scottish parliament elections only), Serbia (if Employed) and Montenegro (if employed). Additionally, countries with a minimum voting age of 17 include; East Timor, Ethiopia, Greece, Indonesia, North Korea, Sudan and South Sudan.³⁷
- 4.6 During its Inquiry, the Committee received considerable evidence from groups and individuals about the impact of lowering the voting age in ACT elections.

COMPULSORY VS. VOLUNTARY VOTING

- 4.7 The Committee heard evidence from the Acting Commissioner regarding Legislative impacts if the voting age was lowered to 16 on a compulsory or voluntary basis. Following this, the Committee was advised on how such changes would impact the electoral process.
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³⁴ Commonwealth of Australia, *Electoral Act 1918*, S93(1), compilation date: 21 October 2016

³⁵ ACT, *Electoral Act 1992*, Section 75(1), republication date: 1 January 2017, pp. 52-53.

³⁶ ACT, *Electoral Act 1992*, Section 128(2), republication date: 1 January 2017, p. 100.

³⁷ ACT Electoral Commission, *Submission 4*, 15 May 2017, p. 8.

- 4.8 The Acting Commissioner highlighted that both the Self-Government Act and the Hare-Clark System employ compulsory voting and as such, if the voting age was lowered in the ACT it would be compulsory for that age group to vote.³⁸ Additionally, Section five of the *Proportional Representation (Hare-Clark) Entrenchment Act 1994* specifically states that any amendment or repeal of this Act has not effect unless it is passed by at least a two-thirds majority of the members of the Legislative Assembly and a majority of electors at a referendum.³⁹
- 4.9 The Canberra Liberals highlighted additional concerns regarding the shift from compulsory voting to voluntary voting for 16 and 17 year old voters. Beyond legislative concerns, the Canberra Liberals drew attention to the confusion of changing classification from voluntary voter to compulsory voter once the individual turns 18.⁴⁰
- 4.10 The Justice and Community Safety Directorate (JACS) advised the Committee that if voluntary voting for 16 and 17 year olds was used as a stepping stone to having everything voluntary it would be anti-democratic and not a good outcome for the ACT. However, it would be reasonable if voluntary voting for 16 and 17 year olds was used as a stepping stone to compulsory voting at the age of 18.⁴¹
- 4.11 The Youth Coalition of the ACT (Youth Coalition) informed the Committee that they supported lowering the voting age on a voluntary basis and that 57 per cent of young people they surveyed, in the last Rate Canberra Survey, also supported this. The Youth Coalition further highlighted the benefits of lowering the voting age:
- Another thing that we talked to young people about in Rate Canberra is whether they feel valued by their society and their community. I think that what this does is give them an opportunity to feel like they are valued; that they do have rights; that they do get to have a say; they do get to be a part of the process. I actually think that it is a really good opportunity to engage young people who are passionate about it.⁴²
- 4.12 Professor George Williams AO agreed with the Youth Coalitions stance on lowering the voting age to include 16 and 17 year olds. However, Professor Williams did stress the importance of introducing civics education in conjunction with the lowering of the voting age, which would be more effective and real because of the possibility of exercising the right to vote.⁴³

³⁸ Acting ACT Electoral Commission, *Transcript of Evidence*, 27 July 2017, pp. 4-5.

³⁹ ACT, *Proportional Representation (Hare-Clark) Entrenchment Act 1994*, Section five, Republication date: 13 February 2017, p. 5

⁴⁰ Canberra Liberals, *Transcript of Evidence*, 27 July 2017, p. 47.

⁴¹ Justice and Community Safety Directorate, *Transcript of Evidence*, 7 September 2017, p. 134.

⁴² Youth Coalition of the ACT, *Transcript of Evidence*, 10 August 2017, p. 79.

⁴³ Professor George Williams AO, *Transcript of Evidence*, 7 September 2017, p. 113.

COMMITTEE COMMENT

- 4.13 The Committee notes that one obvious way to increase voter participation is by lowering the voting age. However, as a result of evidence heard, the Committee acknowledges that the community's views on lowering the voting age are unclear and there are practical issues, regarding current legislative requirements.

ELIGIBILITY FOR CANDIDACY

- 4.14 The Committee acknowledges that a number of witnesses emphasised the direct correlation between the eligible voting age and the age of which an ACT resident can be elected as a MLA or Minister of the Assembly.
- 4.15 When the Committee enquired into the legislative provisions that stipulate the eligibility requirements for the nomination and election in ACT elections, the Acting Commissioner advised:

At present all electors who are eligible to vote can stand as candidates because the Act specifically states that they must be 18 years of age and eligible. That is a fairly standard harmonisation between voting and the ability to be elected and potentially be a minister. The Assembly could choose to maintain that harmony by also lowering the age of a candidate or they could choose to keep them out of step and remain at 18. That would be an Assembly decision.⁴⁴

- 4.16 The Committee notes that evidence provided by the ACT Greens highlights that section 103(1) of the Electoral Act also states that a person who is eligible to serve as a MLA and thus as a Minister must be at least 18 years old.⁴⁵
- 4.17 Section 103(1) of the *Electoral Act 1992* states:

Eligibility—MLAs

- 1) Subject to this section, a person who is—
 - a) an Australian citizen; and
 - b) at least 18 years old; and
 - c) an elector or entitled to be an elector;is eligible to be a MLA.⁴⁶

⁴⁴ Acting ACT Electoral Commissioner, *Transcript of Evidence*, 27 July 2017, p. 5.

⁴⁵ ACT Greens, *Transcript of Evidence*, 27 July 2017, pp. 32-33.

⁴⁶ ACT, *Electoral Act 1992*, Section 103, republication date: 1 January 2017, p. 80.

- 4.18 Representatives of the Youth Coalition advised the Committee that they would not support the eligibility of candidacy for 16 and 17 year olds, noting complexities including; educational conflicts that would occur if a 16 or 17 year old was elected as a MLA or Minister of the Assembly. It was noted that 16 and 17 year olds, under legislation, are required to fulfil educational requirements and would need permission from the Education Directorate if they were not to fulfil those requirements.⁴⁷

COMMITTEE COMMENT

- 4.19 The Committee acknowledges that section 103(1) of the Electoral Act specifically states that a person must be at least 18 years old and an elector or entitled to be an elector to be eligible to be a MLA. The Committee highlights that lowering the age to allow 16 and 17 year olds to be eligible to run as candidates and be elected as a MLA was not considered as the Committee's terms of reference specifically refers to the consideration lowering the voting age only.

FINANCIAL IMPLICATIONS

- 4.20 The Committee sought advice on any financial impacts associated with lowering the voting age including costs that would be incurred by the Commission, as well as costs incurred by the individual.
- 4.21 In regards to costs incurred by the Commission, the Acting Commissioner told the Committee that:

There are also budgetary issues that would need to be addressed in terms of maintaining a roll for ACT-only electors and the type of information campaign that we would need to provide in the lead-up to an election to ensure that confusion was minimised as much as possible.⁴⁸

- 4.22 Additionally, the Acting Commissioner noted in his submission to the Inquiry that the current joint agreement with the Commonwealth allows the ACT to pay half of some costs for the enrolment of a person. However, if the ACT was to extend its enrolment to 16 and 17 year olds a separate ACT only electors section of the joint Commonwealth and ACT roll would be needed. This adjustment would result in the ACT paying the full cost of enrolling a significant class of people who are not entitled to enrol for Commonwealth purposes.⁴⁹

⁴⁷ Youth Coalition of the ACT, *Transcript of Evidence*, 10 August 2017, p. 78.

⁴⁸ Acting ACT Electoral Commissioner, *Transcript of Evidence*, 27 July 2017, p. 5.

⁴⁹ ACT Electoral Commission, Submission 4, 15 May 2017, p. 9.

- 4.23 In regards to costs incurred by the individual, the Acting Commissioner informed the Committee that there is a prescribed penalty if they do not vote. If the individual is unable to provide a sufficient reason for not voting and fails to pay the prescribed penalty, the case could be directed to the courts. This would result in the penalty increasing plus court fees.⁵⁰
- 4.24 The Acting Commissioner's advice on legislation that provides financial penalties for individuals who do not vote, lead to concerns regarding a 16 or 17 year olds ability to pay any financial penalty incurred if they do not vote.
- 4.25 When asked if being 16 or 17 could be included into the Electoral Act as sufficient reason for not voting, the Acting Commissioner reported that the Act does not provide a list of valid and sufficient reasons for not voting.⁵¹
- 4.26 As the Youth Coalition supported lowering the voting age, the Committee sought their view on 16 or 17 year olds incurring the prescribed penalty if they did not vote:

There are a lot of complexities in it. Do we fine them if they do not vote? There are a whole heap of questions on that. If we do decide to go ahead with us, there need to be ways to make sure that young people are protected and given the opportunities. We already have other examples where you can be charged penalties, depending on your age. Would we fine 16 or 17-year-olds? Obviously that is not something that we would advocate for. If it were optional, which is what we would like to see, then that would be not an issue, anyway.⁵²

COMMITTEE COMMENT

- 4.27 The Committee notes that to enrol a significant class of people who are not currently entitled to enrol for Commonwealth purposes, as well as targeted education campaigns, are significant costs. These are not currently provide for within the Commission's budget.
- 4.28 The Committee notes that penalties would not apply to 16 or 17 year olds if the voting age was lowered and voting was voluntary. However, if the voting age was lowered and compulsory voting was issued, the Committee believes that a significant portion of young voters would not have the financial resources available to pay penalties incurred if they failed to vote.

Recommendation 5

- 4.29 The Committee recommends that the ACT retain the current minimum voting age of 18.**
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⁵⁰ Acting ACT Electoral Commissioner, *Transcript of Evidence*, 27 July 2017, p. 5.

⁵¹ Acting ACT Electoral Commissioner, *Transcript of Evidence*, 27 July 2017, p. 5.

⁵² Youth Coalition of the ACT, *Transcript of Evidence*, 10 August 2017, p. 78.

5 IMPROVING DONATION RULES AND REPORTING TIMEFRAMES

INTRODUCTION

- 5.1 On 19 February 2015, the *Electoral Amendment Act 2015* was passed by the Assembly, which provided a range of amendments to the election funding and disclosure provisions in the Electoral Act.
- 5.2 A number of reviews and ongoing comment in other jurisdictions regarding political donations were discussed during the Inquiry. These reviews also included the 2016 review and report by the New South Wales (NSW) Parliament Joint Standing Committee on Electoral Matters Inquiry into the *Final Report of the Expert Panel – Political Donations*, as well as the NSW Independent Commission Against Corruption (ICAC) investigation into the solicitation and failed disclosure of political donation for ‘prohibited donors’, with particular reference to donations from property developers.⁵³
- 5.3 The Committee also sought advice from witnesses about the 2015 ACT Remuneration Tribunal’s review of MLA salary, allowance and other entitlements. The Committee specifically focused on the abolition of the Discretionary Office Allowance and subsequent introduction of the Communications Allowance, which was included in the Members salary.

COMMUNICATIONS ALLOWANCE

- 5.4 Prior to 2014, non-Executive Members had access to a Discretionary Office Allowance, which was administered by the Assembly. This allowance was not available for election campaigning, party political activities or private purposes. For non-Executive Members, the allowance was \$9,800, the Speaker received \$10,200 and the Leader of the Opposition received \$13,900.
- 5.5 The Remuneration Tribunal’s Determination Seven of 2014 introduced a communication allowance of \$15,000 per annum for all MLAs, which was dependent on the abolition of the Discretionary Office Allowance that was maintained by the Assembly.⁵⁴

⁵³ NSW Independent Commission against Corruption, *NSW Liberal Party Electoral Funding for the 2011 State Election Campaign and Other Matter*, August 2016, available at: <http://apo.org.au/system/files/67107/apo-nid67107-151021.pdf>.

⁵⁴ ACT Remuneration Tribunal, *Members of the ACT Legislative Assembly: Determination 7 of 2014*, 30 April 2014.

- 5.6 The Remuneration Tribunal's Determination Seven of 2016 subsequently abolished the Communications Allowance and the equivalent sum was formally rolled into MLA's base salary.⁵⁵
- 5.7 As result of the changes to the Communications Allowance, a number of concerns were raised regarding the Electoral Act's consideration of funding for communication. During public hearings it was noted that there is a paragraph in the Electoral Act that stipulates that funds provided to MLAs, by the Assembly, for communication or for use to talk to their constituents are not covered by the Electoral Act.⁵⁶
- 5.8 As a result of this apparent confusion, the Committee was informed that the Commissioner wrote to MLAs advising that MLAs were no longer covered by the paragraph in the Electoral Act as the Communication Allowance was no longer provided by the Assembly but rolled into the MLA's annual salary. As such, MLAs are now required to declare such spending under the Electoral Act's definition of 'electoral matter'.⁵⁷
- 5.9 ACT Labor provided potential consideration for the Committee when examining the impacts of the Remuneration Tribunal's decision to roll the Communications Allowance into the MLA's base salary:

We do not have a proposal, but I think you would have to explore a fund that was based in the Assembly as opposed to being given to you through your income through the Remuneration Tribunal. The first reason for that is because it then falls under that paragraph in the Electoral Act that says that if it is a fund given to members by the Assembly for the purposes of communicating with their electors then it is no longer covered by the definition of 'electoral matter'.

To back that in you would need to have some guidelines about how you would use it. I think that is pretty obvious. The DOA guidelines were very strict. I think you would have to review whether that would be as strict or how it would be utilised. One of the problems with the old guidelines was that they did not keep up with the times and did not provide much advice on use for social media and things like that as well. So I think they would have to change. And I think it would have to be available to all members of the Assembly, and that is really important. We have to recognise that, regardless of who is in government, executive members have a right to communicate to their electors as much as anyone else in the Assembly.⁵⁸

⁵⁵ ACT Remuneration Tribunal, *Members of the ACT Legislative Assembly: Determination 7 of 2016*, November 2016.

⁵⁶ ACT Labor Party, *Transcript of Evidence*, 27 July 2017, p. 29.

⁵⁷ ACT Acting Electoral Commissioner, *Transcript of Evidence*, 27 July 2017, p. 29.

⁵⁸ ACT Labor Party, *Transcript of Evidence*, 27 July 2017, p. 31.

COMMITTEE COMMENT

- 5.10 The Committee notes that a provision remains in the Electoral Act permitting allowances provided to a MLA by the Assembly to be excluded in declarations by MLAs of spending to the ACT Electoral Commissioner. As the current communication expenditure process is unclear, the Committee believes that a division between general communication with constituents and campaign based communication should be addressed.
- 5.11 The Committee also notes the confusion and frustration expressed by some MLAs and submissions in relation to the shifts that have occurred in the Communications Allowance, Discretionary Office Allowance, and similar, where movement between regulatory agencies has had unintended consequences of redefining the matter produced as electoral matter.
- 5.12 The Committee also received evidence that minor gifts to members were also being captured by both the electoral donations reporting regime, and the assembly gifts reporting regime, and considers this duplication unnecessary.

Recommendation 6

- 5.13 The Committee recommends a review of current legislation, regulation and practices to recognise the separate and overlapping functions of MLA, member of the Executive, political candidate and private citizen, with a view to improve demarcation and transparency of definitions.**

Recommendation 7

- 5.14 The Committee recommends a review and update of all rules and regulations for the use of MLA's office, staffing and Communications Allowance to ensure MLAs are able to adequately carry out their functions, including during an election period.**

POLITICAL DONATIONS

- 5.15 From 14 December 2009, section 96GA of The NSW *Election Funding, Expenditure and Disclosure Act 1981* (EFED Act) prohibited political donations by property developers.
- 5.16 In August 2016, the ICAC released its findings into its inquiry into *NSW Liberal Party Electoral Funding for the 2011 State Election Campaign and Other Matters* (ICAC Inquiry). The ICAC Inquiry found that a number of NSW Liberal Members had acted with the intention of evading laws under the EFED Act, relating to the disclosure of political donations and the ban on donation from property developers.

- 5.17 In 2016, the NSW Parliament Joint Standing Committee on Electoral Matters recommended in its report, *Inquiry into the Final Report of the Expert Panel – Political Donations*, that the EFED Act be amended to take account of the high degree of uncertainty, resulting from a lack of definition of property developer and other terms.
- 5.18 During the Committee’s public hearings the Committee sought the view of witnesses in regards to ACT political parties receiving donation from organisations and individuals.
- 5.19 The Committee examined ACT Labor’s position on political donations. ACT Labor reported that the Party had changed their rules to ban property developers from donating to ACT Labor and its candidates. This decision was based on NSW legislation.⁵⁹
- 5.20 In regards to what constitutes a property developer, ACT Labor informed the Committee that they had ‘changed party rules to ban property developers from donating to the party or candidates’,⁶⁰ noting that they had ‘based their views on the NSW legislation’⁶¹ which defines a property developer as:
- [A] corporation engaged in a business that regularly involves the making of relevant planning applications by or on behalf of the corporation in connection with the residential or commercial development of land, with the ultimate purpose of the sale or lease of the land for profit.⁶²
- 5.21 The ACT Greens noted the ICAC Inquiry and subsequent judgement by the High Court of Australia regarding political donations from property developers could be put in place without being in contravention of the implied freedom of political communication in the constitution’.⁶³
- 5.22 The ACT Greens further highlighted that in light of this decision:
- The ACT Greens have made the recommendation and would support the reinstatement of strengthened donation laws, including imposing a cap of \$5,000 per financial year and reinstating the restrictions on receiving donations for ACT election purposes from only persons enrolled to vote in the ACT.⁶⁴

⁵⁹ ACT Labor Party, *Transcript of Evidence*, 27 July 2017, p. 25.

⁶⁰ ACT Labor Party, *Transcript of Evidence*, 27 July 2017, p. 25.

⁶¹ ACT Labor Party, *Transcript of Evidence*, 27 July 2017, p. 25.

⁶² NSW Electoral Commission, *Unlawful Political Donations*, 30 June 2016, available at: http://www.elections.nsw.gov.au/fd/political_donations/unlawful_political_donations

⁶³ High Court of Australia, *McCloy v New South Wales*, 7 October 2017, available at: <http://eresources.hcourt.gov.au/downloadPdf/2015/HCA/34>

⁶⁴ ACT Greens, *Transcript of Evidence*, 27 July 2017, p. 33.

5.23 The Canberra Liberals advised the Committee that they do not support the ban on property developer donations. The Canberra Liberals noted that what is and is not defined as a property developer is currently unclear, stating that:

The general public consider a property developer is someone who buys a large property, gets a change of use, it is a massive building and there are large amounts of money. That is actually only a small group of people. The bulk of property developers in town are just small family businesses. Should they have any less right to be politically involved? That is the problem with the suggestion, that is, it treats people as different class citizens because of a profession they have.⁶⁵

5.24 ACT Liberal-Democrats advised the Committee that they did not support the ban on property developer donations, stating that:

Our argument is that, in the absence of evidence that this is actually a problem, the first reflex should be to allow donations until such time as there is some perceived conflict or perceived decision or there is a perception that a decision has been influenced. I am not aware of any cases in the ACT where that has happened.⁶⁶

5.25 In regards to the potential banning of other industries or professions, the Canberra Liberals highlighted that targeting one group may lead to the consideration of other industries and professions being targeted. It was emphasised that the transparency of donations is a more efficient approach to the regulation of donations, rather than banning particular industries from making political donation.⁶⁷

5.26 JACS added that in a representative democracy, the perception is that everybody has an equal right and each of their votes has an equal right. To ban an entity from contributing through political donations there must be an evidence base as to why you would exclude a particular group of people.⁶⁸

5.27 Although the ban on donations from property developers would be consistent with NSW Legislation, which survived challenge in the High Court, it was also suggested that there is an inherent risk faced in the ACT due to its integration of municipal and territory-level planning functions. Other jurisdictions have a separation between government and the city council, which considers and makes decisions on development application. However, due to the size of the ACT both functions are combined into one level of government, presenting more risk associated with property developer donations.⁶⁹

⁶⁵ Canberra Liberals, *Transcript of Evidence*, 27 July 2017, p. 44.

⁶⁶ ACT Liberal-Democrats, *Transcript of Evidence*, 27 July 2017, p. 56.

⁶⁷ Canberra Liberals, *Transcript of Evidence*, 27 July 2017, p. 46.

⁶⁸ Justice and Community Safety Directorate, *Transcript of Evidence*, 7 September 2017, pp. 129-130.

⁶⁹ Ms Marea Fatseas, *Transcript of Evidence*, 10 August 2017, pp. 106-107.

- 5.28 Professor Williams identified that the ACT currently has a cap on expenditure but caps need to be considered as there remains a risk that large donations will distort priorities, exercise undue influence and amount to what may be considered a soft form of corruption. Professor Williams further advised that the Committee should consider implementing a cap for both individuals and entities donating.⁷⁰

DEVELOPER – DEFINITION

- 5.29 As noted in paragraph 5.23, the question of a definition of the term ‘property developer’ is central to the question of limitation of donations from this source.
- 5.30 In the Commission’s submission, two points were made regarding property developer donations:

[A]ny scheme in the ACT that is tighter than the disclosure regime nationally will be the impact on the different levels of government. It is common for major political parties in the ACT to receive and expend funds in support of Territory elections, as well as on behalf of the national party in support of federal campaigns. It is difficult to envisage the ACT having the power to impose its own bans or limitations on political parties undertaking political activity in the ACT for Commonwealth purposes, given constitutional constraints and Australia's federal system.

Under legislation aimed at prohibiting gifts to political parties from property developers, it may still be possible for the ACT party to receive gifts from prohibited donors if those funds are intended for federal election purposes. It is also currently possible for an ACT party to receive funds from the national party for local purposes. Once provided to the national party, or the local party, it is eminently possible that funds are fungible between the entities and potentially between purposes. This raises the potential for complexity in regulating and enforcing legislation aimed at prohibiting gifts from certain sections of the community.

For the proposed restriction scheme to work effectively in the ACT, it will be necessary to provide careful measures to prevent parties from receiving such prohibited gifts for use in incurring ACT electoral expenditure, and potentially for administrative purposes, while still allowing political entities the ability to accept such gifts and to make uncapped electoral expenditure for federal campaigns.

Without the implementation of potentially complex legislation to enforce a statutory separation of Territory and federal functions in ACT political parties, or the imposition of legally questionable legislation to provide for a complete prohibition of these gifts to ACT political parties, the Commission is concerned that gifts accepted by a party for

⁷⁰ Professor George Williams AO, *Transcript of Evidence*, 9 September 2017, p. 116.

supposably federal purposes will be fungible to ACT purposes without a clear breach of legislation.⁷¹

and:

Should a prohibition on gifts from property developers be implemented, the Commission is of the view that regular access to legal and/or forensic accounting experts and the recruitment of, at a minimum, one full time investigator, would be required. This would have a considerable and ongoing impact on the budgetary requirements of the Commission.

It should also be noted that current accommodation for Elections ACT is barely adequate to undertake its ongoing functions. The addition of any additional staff would render the current accommodation inadequate. Alternative accommodation would be required. This has capital and recurrent budget implications.⁷²

- 5.31 In addition, the Commission highlighted the ongoing uncertainty regarding the definition that has arisen as result of ongoing NSW legislative attempts to arrive at a definition:

It appears from the NSWEC experience that great complexity comes with the requirement to determine whether a political donor falls within the stated definition of either 'property developer' or 'close associate'. As much of the definition centres around the often complex business activities of the entity involved, the NSWEC has found that for accurate determinations to be made, complex forensic investigations are often required.⁷³

- 5.32 The Commission has recommended to the Committee that, in light of matters currently unresolved in NSW legislation, and having regard to the Commission's observations on the difficulties in definition, and in resourcing any program to asses and scrutinise donations from defined property developers, that:

[T]he Commission recommends that the issue of banning or limiting gifts from property developers in the ACT await the outcome of the review of the *Election Funding, Expenditure and Disclosures Act 1981 (NSW)* (the EFED Act).⁷⁴

COMMITTEE COMMENT

- 5.33 The Committee notes that a number of witnesses advocated that political contributions should be limited to people who are registered to vote in the ACT. The consideration of this option would limit outside influence, including the perceived influence from property developers.

⁷¹ ACT Electoral Commission, *Submission 4*, 15 May 2017, p. 19.

⁷² ACT Electoral Commission, *Submission 4*, 15 May 2017, p. 20.

⁷³ ACT Electoral Commission, *Submission 4*, 15 May 2017, p. 20.

⁷⁴ ACT Electoral Commission, *Submission 4*, 15 May 2017, p. 3.

- 5.34 The Committee understands the current position in relation to the NSW EFED Act is that this review is still incomplete, and amendments of at the EFED Act are not finalised or before the NSW Parliament.
- 5.35 Nevertheless, the majority of the Committee considers that banning of donations from property developers in a legislative scheme is possible at this time.
- 5.36 The Committee notes that Opposition members of the Committee do not support the recommendation eight.

Recommendation 8

- 5.37 The Committee recommends that political donations from property developers be banned in the ACT.**

DONATION REPORTING TIMEFRAMES

- 5.38 Section 216A of the Electoral Act stipulates that in an election year after 30 June, the receiver of a gift or gifts over the threshold must report the gift to the Commission within a seven day period.⁷⁵
- 5.39 In Evidence, the Acting Commissioner noted that the majority of gifts received over \$1000 were received in the seven day reporting period after 30 June and in an election year. The Acting Commissioner also highlighted that 611 separate gifts were report in the seven day reporting period after 30 June, seven days after the end of the April to 30 June period 247 gifts were reported, and 74 gifts were reported in 2015.⁷⁶
- 5.40 The Committee enquired into the Commission's capacity to reduce the last seven day reporting period to a shorter timeframe. The Acting Commissioner advised the Committee that:

The Act could certainly be amended to allow for that. We publish this material within 24 hours of having received it, often earlier than that. So if the Act was amended to ensure that donations received within seven days of election day needed to be disclosed to the Electoral Commission before election day or within a particular time, you could compress that and—in terms of practicality for us—we could publish that.

⁷⁵ ACT, *Electoral Act 1992*, Section 216A, republication date: 1 January 2017, pp. 175-178.

⁷⁶ Acting ACT Electoral Commissioner, *Transcript of Evidence*, 27 July 2017, p. 16.

What that would do for political parties and non-party candidates in terms of workload—the practicality of that—is a different matter. But we could do it.⁷⁷

- 5.41 Although ACT Labor supported the move to real-time reporting, the party felt that to effectively achieve real-time reporting, resources and tools would need to be in place:

While I support the move to real-time reporting, there need to be some tools and resources in place for us to be able to adapt to that. I think it is in the public interest to be clear on this stuff, but I think that if it becomes a trap for parties to be fined because we do not have the resources to deal with it appropriately, then I do not think that that will work either.⁷⁸

- 5.42 ACT Labor also highlighted the Electoral Commission Queensland (ECQ) approach to real-time reporting, which the Commission could consider adopting if it were to move to real-time reporting. ACT Labor advised the Committee that the ECQ had launched a website which allows parties to upload information for donations that they have received. Following this, the ECQ determines whether the gift has reached the \$1,000 limit and then publishes it.⁷⁹

- 5.43 After researching the real-time reporting method used by the ECQ, the Committee noted that the agent of a candidate must give ECQ a disclosure return, through the Electronic Disclosure System, within seven business day from the date the gift was made, if the gift was of a value of \$1000 or more. Once the information is lodged through the Electronic Disclosure System, the information is published immediately.

COMMITTEE COMMENT

- 5.44 The Committee notes the similarities between the Commission and the ECQ's reporting requirements. The Committee also notes that recently the Queensland Government had decreased the donation disclosure threshold from \$12,800 to \$1,000, which is in line with ACT requirements. The Committee further notes that the Commission and ECQ require that donations be reported within seven days of receiving the donation. However, the Committee does note that the ECQ reports these donations immediately, whereas the Commission has a 24 hour turnaround.
- 5.45 The Committee notes that a 24 hour turnaround is not legislated in the Electoral Act and does provide a level of scrutiny prior to publication.

⁷⁷ Acting ACT Electoral Commissioner, *Transcript of Evidence*, 27 July 2017, p. 16.

⁷⁸ ACT Labor Party, *Transcript of Evidence*, 27 July 2017, p. 28.

⁷⁹ ACT Labor Party, *Transcript of Evidence*, 27 July 2017, p. 28.

Recommendation 9

- 5.46** The Committee recommends that the ACT maintain its current donation reporting timeframe model, where parties and candidates must disclose all gifts and loans totalling \$1,000 or more, within seven days from 1 July though to polling day in an election year.

6 INCREASING VOTER PARTICIPATION AND ENGAGEMENT

INTRODUCTION

6.1 In the lead up of the 2016 ACT election, the Commission undertook an extensive communication campaign, which utilised a number of advertising methods to engage electors. The communication campaign included:

- Informing ACT electors that there would be an election for the ACT Assembly on 15 October 2016;
- Informing potential electors when and how to enrol before the electoral roll closed;
- Informing electors which electorate they were enrolled in (emphasising the 2015 major redistribution of electorate boundaries which established 5 new electorates in the ACT for the first time);
- Ensuring the public was aware that voting is compulsory;
- Providing information about how to cast a valid and informed vote (including an explanation of the implications of preference choices, such as numbering only one box, numbering the number of boxes for which there are seats in the electorate, or giving preferences to as many candidates as the electors wish);
- Providing information about the physical requirements of the election, like where to vote, when to vote, what to do in special circumstances (including information on pre-poll voting, postal voting and voting at polling places on polling day);
- Informing voters of the 100-metre ban on political canvassing outside polling places; and
- Informing voters that electronic voting was available at pre-poll voting centres and equipping voters to use this method of voting.⁸⁰

6.2 When measuring voter participation as a proportion of the estimated eligible population, the 2016 ACT election achieved the highest level of voter turnout, of the last four elections, with over 88 per cent of the eligible population casting a vote.⁸¹

6.3 During its Inquiry, the Committee received evidence from organisations and individuals regarding voter participation and engagement in ACT elections.

⁸⁰ Elections ACT, *Report on the ACT Legislative Assembly Election 2016*, March 2017, p. 24.

⁸¹ Elections ACT, *Report on the ACT Legislative Assembly Election 2016*, March 2017, p. 2.

CIVICS AND CITIZENSHIP EDUCATION FOR YOUNG PEOPLE

- 6.4 The ACT Electoral Commission Report estimated that the two ages groups with the lowest representation of enrolment, for 2016, were 18 year olds at 96.7 per cent and 25-29 year olds at 93.7 per cent.⁸² However, the Committee does note that both age group representations have increased over the past three elections.
- 6.5 In 2007, the Commonwealth Joint Standing Committee on Electoral Matters tabled a report *Civics and Electoral Education*. The Joint Standing Committee on Electoral Matters found that Australians between the ages of 15 and 35 typically have limited knowledge of Australia's political history and political system, and have little interest in Australian political affairs.⁸³
- 6.6 The Joint Standing Committee on Electoral Matters made 17 recommendations in total, with eight of the recommendations focusing on civic engagement, knowledge and participation of young people.
- 6.7 In line with recommendation four of the *Civics and Electoral Education* Inquiry, the ACT Greens recommended that the Commission be funded to lead improved education on civics and citizenship matters for young people, including in schools.⁸⁴
- 6.8 Submissions received by the Committee also referenced the *Civics and Electoral Education* Inquiry's recognition of the importance of civic and electoral education as a key contribution to ensuring citizens are not only adequately informed, but are able to participate in the electoral process in an effective way.⁸⁵
- 6.9 Despite whether the voting age was lowered or not, Professor Williams highlighted civics and citizenship education as a consideration for increasing political engagement in youth, stating that:

[A]t the moment we have the problem that the electoral commissions are striving to fix, of 18-year-olds just not enrolling. It is vastly under-represented compared to other age groups. That distorts voting patterns in Australia. It weakens the franchise, the legitimacy of the system.

For me, the key is 16 and 17, in school. Education is available; tailored programs could be introduced about responsibility and also their options to make a difference. But for that to be effective it has to move beyond just the abstract to actually saying, "Here's a

⁸² Elections ACT, *Report on the ACT Legislative Assembly Election 2016*, March 2017, p. 17.

⁸³ The Parliament of Australia, Joint Standing Committee on Electoral Matters, *Civics and Electoral Education*, available at: http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=em/education/report.htm

⁸⁴ ACT Greens, *Transcript of Evidence*, 27 July 2017, p. 32.

⁸⁵ Mr Ian Coombes, *Submission 19*, no date, p. 4.

level of trust and responsibility that you can exercise that shows you can play a meaningful role in the system.”⁸⁶

- 6.10 The Youth Coalition agreed with Professor Williams’ recommendation that civics and electoral education be focused on 16 and 17 year olds in schools. However, they also raised concern with the potential gap between a student being taught about civics and citizenship and their first election where the student would be eligible to vote.⁸⁷
- 6.11 The Youth Coalition also highlighted access to information in the lead-up to an election as a matter of interest for young people.⁸⁸ Access to information was also noted in submissions received by the Committee as a key consideration for improving youth engagement in the electoral process. Particular reference to the inclusion of an election mobile app was highlighted as a method to increase voter participation in the younger cohort.⁸⁹

COMMITTEE COMMENT

- 6.12 The Committee acknowledges that the Australian curriculum includes a civics and citizenship program as part of the Humanities and Social Sciences subject. However, the Committee is concerned that civics and citizenship education is not included in the year 11 and 12 curriculum, as this age will be participating in the electoral process shortly.
- 6.13 The Committee also acknowledges the benefit of having an electoral based website, mobile app and printed material with candidacy and electoral information. The Committee believes the implementation of such resources would not only educate, engage and encourage participation in young people but all ACT residents eligible to vote.

Recommendation 10

- 6.14 The Committee recommends that the Minister for Education and Early Childhood Development, in consultation with the Education Directorate, develop and include civics and citizenship education as part of the ACT year 11 and 12 curriculum.**

⁸⁶ Professor George Williams AO, *Transcript of Evidence*, 7 September 2017, pp. 114-117.

⁸⁷ Youth Coalition of the ACT, *Transcript of Evidence*, 10 August 2017, p. 79.

⁸⁸ Youth Coalition of the ACT, *Transcript of Evidence*, 10 August 2017, p. 76.

⁸⁹ Dr Kim Huynh, *Submission 8*, no date, pp. 5-6.

ACCESS TO ELECTORAL MATERIAL

- 6.15 As highlighted in the Civics and Citizenship Education for Young People section of this Report, the introduction of a mobile app could not only increase voter participation by engaging young voters, but could also provide candidate based information to the community.
- 6.16 In his submission, the 2016 ACT election candidate, Dr Kim Huynh advised that it would be relatively easy to come up with a mobile app that not only provides information about enrolment, boundaries, the electoral system, booths and background information but also provide:
- [A] place for candidates to set out their policies, biographies, pictures, public appearances and audio and video messages. Whether voters are highly engaged or only tune in for a few minutes before casting their ballot, an app would facilitate more informed and considered decision making.⁹⁰
- 6.17 Blind Citizens Australia noted that a significant amount of electoral information was not accessible. A lot of brochures, pamphlets and published material were provided in a format that cannot be easily accessed by people who use re-reading technology. However, Blind Citizens Australia highlighted that in States which utilised electronic voting at home, voters had access to online search functions that allowed them to obtain information on candidates.⁹¹
- 6.18 Vision Australia also noted that policies, statements, speeches and even websites are not accessible to the blind and visually impaired community as most documentation tend to be presented in PDF version and thus not usually accessible via normal screen-reading software.⁹²
- 6.19 The Canberra Alliance for Participatory Democracy advised the Committee that during the 2016 ACT election they were involved in developing a website that had a candidate statement and the charter for democracy. The statement included, why the candidate thought they should stand, how they would serve their constituents, what drives the candidate and if they agreed with a number of broad statements.⁹³
- 6.20 When asked who should manage such an information platform, the Canberra Alliance for Participatory Democracy stated:
- One of the dangers of an organisation like ours is that we are just a group of volunteers. We could disappear off the map very quickly because it just depends on the energy.

⁹⁰ Dr Kim Huynh, *Submission 8*, no date, pp. 5-6.

⁹¹ Blind Citizens Australia, *Transcript of Evidence*, 10 August 2017, p. 85.

⁹² Vision Australia, *Transcript of Evidence*, 7 September 2017, p. 124.

⁹³ The Canberra Alliance for Participatory Democracy, *Transcript of Evidence*, 10 August 2017, p. 95.

I think one of the great things in our country is that our Electoral Commission is an institution that people can rely on. You can go to any other country in the world and have doubts about the way that they conduct their democracy. I think we should really strengthen those sorts of institutions in our country. If there is a way to do that which does not burden them with some of the things that might be dismissed, I think it is better to do it that way.⁹⁴

- 6.21 The Committee enquired into the Commission's stance on a central place where electors can access basic information about candidates and the role of the Commission in providing this information. The Acting Commissioner advised:

I believe that a central point of information would be very, very helpful to electors. It would also provide non-party candidates and minor parties with another avenue for providing their information to the electorate, which I always believe would be a good thing for democracy. But I do not believe it is a role for the Electoral Commission.

I would be very, very cautious of including the Electoral Commission in any form of collection of candidate biographies or policy stances or anything along those lines. That is fraught with danger for an impartial organisation.⁹⁵

COMMITTEE COMMENT

- 6.22 The Committee believes that a mobile app, website and printed material, which informs electors of candidate policies, background and appearances would provide electors the opportunity to engage in the electoral process and make an informed decision when casting their vote. The Committee also believes that access to this information should be available to all communities within the ACT and, as such, accessibility requirements should be considered throughout the development of these resources.
- 6.23 Some Committee Members were of the opinion that the Commission could facilitate the platform for candidates to submit their content for the website, mobile app and printed material. However, other Committee Members were of the opinion that it was not in the Commission's purview to provide this information.
- 6.24 Committee Members that agreed with the Commission facilitating the website, mobile app and printed material platforms for candidates, noted that the responsibility of the information provided was that of the candidate and the Commission had no liability for the content provided. The Committee considers that, as is the case in Tasmania, no other candidate is to be named in electoral material, without that other candidate's permission.

⁹⁴ The Canberra Alliance for Participatory Democracy, *Transcript of Evidence*, 10 August 2017, p. 96.

⁹⁵ Acting ACT Electoral Commissioner, *Transcript of Evidence*, 27 July 2017, p. 10.

- 6.25 The Committee agrees that the publication of printed material would be limited and be provided in public spaces.
- 6.26 The Committee also notes that in previous ACT elections, candidate residential addresses were publically available on the ACT Electoral Commissions website. The Committee does not agree with the publication of candidate residential addresses in future elections.
- 6.27 The Committee notes that Opposition members of the Committee do not support recommendation 11.

Recommendation 11

- 6.28 The Committee recommends that the ACT Electoral Commission or other appropriate body provide a detailed proposal, including costs of setting up and maintaining a website, mobile app and printed material, with details of candidates at Legislative Assembly Elections, starting with the 2020 ACT election.**

7 OTHER MATTERS

INTRODUCTION

7.1 A number of other matters were raised in submissions and during public hearings held by the Committee. Key matters discussed during the Committee's Inquiry that are examined in this chapter included:

- Corflutes;
- Electronic Voting;
- The 100 metre rule;
- Pre-poll voting;
- Third-Party Campaigners; and
- Timeline for closure of nominations and appeal.

CORFLUTES

7.2 The Electoral Act defines electoral advertisement as advertisement that contains electoral material, whether or not consideration was given for its publication or broadcast.⁹⁶ The *Public Unleased Land Act 2013* defines 'sign' as advertisement on public unleased land.⁹⁷ For the purpose of this Inquiry, the Committee defines electoral advertising signs as electoral material that is advertised on public unleased land, which is also referred to as corflutes.

7.3 During the Committee's Inquiry, a number of submissions and evidence provided a variety of views with regards to the utilisation of corflutes by candidates during the election period. A number of recommendations were provided to the Committee for consideration including a complete ban on corflutes, as well as imposing further regulations on the use, distribution and enforcement of corflutes.

7.4 The ACT Greens submission noted that a number of their corflutes were vandalised and destroyed during the 2016 ACT election campaign. Additionally, the ACT Greens emphasised concerns with the difficulties in complying with the rules surrounding roadside signs. As such,

⁹⁶ ACT, *Electoral Act 1992*, Section 198, republication date: 1 January 2017, p. 152.

⁹⁷ ACT, *Public Unleased Land Act 2013*, Section 24, republication date: 9 March 2017, p.14.

that ACT Greens suggested that the simplest way to eliminate such issues was to ban roadside signs used for political material.⁹⁸

- 7.5 Evidence provided to the Committee highlighted a number of regulatory processes used by jurisdiction around the world to ensure members of the public are not overwhelmed by corflutes. This included the consideration of Switzerland rules, where political advertising can only happen in certain designated locations, as well as the authorised check sticker system used by Singapore.⁹⁹
- 7.6 The Committee noted that the ACT Electoral Commission Report raised concerns with imposing further restrictions on signs that could lead to time consuming and/or cumbersome methods of regulating signs, such as placing limits on the number of signs that can be displayed.¹⁰⁰ However, during public hearings, the Acting Commissioner noted that the restriction of signs to be placed on arterial roads could be considered an alteration to the rules that is practically enforceable and achievable.¹⁰¹
- 7.7 Transport Canberra and City Services (TCCS) advised the Committee that the Movable Sign Code of Practice designed a framework around how movable signs, including corflutes, are dealt with in the public realm. This framework allows people to put out signs under a set of conditions without having to apply for specific approval each and every time. It was further noted that if there was a breach of the Movable Sign Code of Practice, city rangers have the authority to investigate the matter and take appropriate action.¹⁰²
- 7.8 The Committee enquired into current limitations and restrictions of enforcing the conditions and regulations when dealing with candidate corflutes:
- One of the problems is about where a sign is deemed to be non-compliant and then we say, “How are we going to manage that sign?” If it is not posing a potential danger, it is about how we remove it. Right now we have to use the Public Unleased Land Act and we have to give a person seven days as a removal direction to actually remove their sign.¹⁰³
- 7.9 TCCS further noted that legislation stipulates that the person, not the party, who erected the movable sign must be contacted and advised of the non-compliance, which also poses enforcement and education restrictions on the Directorate.¹⁰⁴

⁹⁸ ACT Greens, *Submission 17*, 30 June 2017, p.11.

⁹⁹ Mr Danial Miller, *Transcript of Evidence*, 10 August 2017, p. 66.

¹⁰⁰ Elections ACT, *Report on the ACT Legislative Assembly Election 2016*, March 2017, p. 51.

¹⁰¹ Acting ACT Electoral Commissioner, *Transcript of Evidence*, 27 July 2017, p. 18.

¹⁰² Transport Canberra and City Services, *Transcript of Evidence*, 07 September 2017, p. 147.

¹⁰³ Transport Canberra and City Services, *Transcript of Evidence*, 07 September 2017, p. 148.

¹⁰⁴ Transport Canberra and City Services, *Transcript of Evidence*, 07 September 2017, p. 149.

7.10 The seven day time frame also provided restrictions in enforcements, including:

What our problem comes down to in the legislative changes that were suggested is that time frame. Where a sign is non-compliant—it is sitting on Anzac Parade, for example, which is a pretty good area—we have to put a notice on it. The whole purpose of the sign is to advertise, so while it stays in situ it is ironic that we have to leave it in situ and it continues to create the offence while we are waiting seven days for a person to comply. We try to make compliance occur faster where we can. But where a sign is deemed to be offensive or we do deem it to be, in this case, dangerous, we have been taking those signs.¹⁰⁵

COMMITTEE COMMENT

- 7.11 The Committee believes that a complete ban on the use of roadside signs during an election period would not only penalise major parties, but also have a negative impact on the ability of an independent or a minor party candidate to promote themselves.
- 7.12 The Committee believes that restricting corflutes to a certain amount per candidate would be unfeasible due to the difficulty in regulating this approach. The Committee believes that restricting the use of corflutes to private property or arterial roads would be a more practical approach in regards to regulation. However, the Committee has concerns that restricting corflute usage to arterial roads would result in an influx of corflutes in a compact area, which would not improve the community's concern. Additionally, the Committee believes that restricting corflute usage to private property would significantly limit the opportunity for minor and independent parties to promote themselves.
- 7.13 The Committee believes that the current enforcement provisions for TCCS are limited due to the seven day period in which they are to locate the individual who erected the non-compliant corflute.

Recommendation 12

- 7.14 The Committee recommends that the *Public Unleased Land Act 2013* be amended to allow an authorised person to remove a non-compliant electoral advertising sign from public unleased land without providing the seven day direction requesting compliance.**

¹⁰⁵ Transport Canberra and City Services, *Transcript of Evidence*, 07 September 2017, p. 150.

Recommendation 13

- 7.15 The Committee recommends that the ACT *Electoral Act 1992* be amended to allow electoral material displayed on private property, inside the defined polling area, to remain throughout the polling period.**

ELECTRONIC VOTING

- 7.16 The ACT Electoral Commission Report noted that electronic voting was available in six pre-poll voting centres, with one of the electronic voting terminals specifically assigned for blind and visually impaired people and people with disability. Additionally, the electronic booths configured to suit blind and visually impaired people included headphones and a telephone style keypad to assist a blind and visually impaired elector to navigate through the system.¹⁰⁶
- 7.17 In the Blind Citizens Australia and Vision Australia submissions, both organisations noted that blind and visually impaired voters felt that their privacy was compromised when using the electronic voting terminals. It was highlighted that voting via a paper ballot guarantees privacy through the utilisation of physical partitions that separate booths. However, blind and visually impaired electors felt that they could not guarantee privacy when voting electronically.
- 7.18 During the Committee's Hearing, Blind Citizens Australia provided a personal experience using the current electronic voting system utilised in the ACT:

First of all, with regard to the electronic voting system that I used, there was a queue of people coming past. I was put into a small booth. I have got enough vision to realise that the booth was well below the head height of the people going past me. The information that I was using to vote, even though I was doing it audibly, was visible on the screen. So anybody who was inclined could have turned and watched that screen. In my case the person assisting me was overly helpful and when I finished voting she read out loud to me exactly how I had voted on the screen, just to be sure that I understood that, in front of the 10 or 20-odd people standing around waiting to vote themselves. Again, they are good intentions, but they are the outcomes we get.¹⁰⁷

- 7.19 In 2011, the NSW Electoral Commission introduced internet and telephone voting services for the State general election, known as iVote. Prior to 2011, voters could vote only by attending in person or using the post. The introduction of iVote not only allowed blind and visually impaired voters to vote in secret and independently, but also allowed people living in remote areas and electors with a disability to vote.

¹⁰⁶ Elections ACT, *Report on the ACT Legislative Assembly Election 2016*, March 2017, p. 34.

¹⁰⁷ Blind Citizens Australia, *Transcript of Evidence*, 10 August 2017, p. 82.

- 7.20 In 2011, a total of 46,865 votes were cast using the iVote system. It was noted the iVote was particularly effective in facilitating a secret and independently verifiable vote for electors who were blind or visually impaired.¹⁰⁸
- 7.21 In the 2015 NSW State general election, 97 per cent of iVote users were satisfied with the system. The NSW Electoral Commission noted that the high level of satisfaction was due to the ease and convenience of the system. Satisfaction was also high for assistance received with using iVote. 97 per cent of electors using the iVote system were satisfied with the assistance received with using iVote, with 84 per cent very satisfied and 13 per cent fairly satisfied.¹⁰⁹
- 7.22 The iVote system was also utilised in the 2015 Western Australia (WA) State Election. In an external audit report, Dr Richard Adams, auditor, stated that he was satisfied that the iVote system used in the WA State Election of March 2017 preformed its intended function very well and that the integrity of the system was maintained such that voter information was appropriately protected.¹¹⁰
- 7.23 Blind Citizens Australia advised the Committee of the blind and visually impaired community of WA received the introduction of the iVote system in the 2015 WA State Election:
- [W]e have done some good work providing feedback on the Western Australian general election, where they did use iVote and people spoke really highly of the system because they were able to really take their time. They did not feel like they were burdening anyone else by being there and having to have things explained to them. They could go over things over and over again till they were happy with them. A number of people were able to vote below the line, where they did not ever feel like that option had been open to them before just because of time constraints and different barriers that are in place when you have got to physically get to a polling booth.¹¹¹
- 7.24 Noting the next ACT election is due 17 October 2020, Vision Australia recommended the implementation of necessary legislative changes that would allow and iVote system to be implemented, including enabling the Commission to undertake planning to implement an iVote system, which would offer accessible internet and telephone voting to all ACT residents.¹¹²

¹⁰⁸ NSW Electoral Commission, *Report on the Conduct of the 2015 State General Election*, no date, p. 75.

¹⁰⁹ NSW Electoral Commission, *Report on the Conduct of the 2015 State General Election*, no date, p. 79.

¹¹⁰ Dr Richard Adams, *Final Report for the iVote system as Implemented by the Western Australian Electoral Commission for the March 2017 State Election*, June 2017, p. 8.

¹¹¹ Blind Citizens Australia, *Transcript of Evidence*, 10 August 2017, p. 84.

¹¹² Vision Australia, *Submission 12*, June 2017, p. 6.

7.25 However, with regards to the iVote system the Commission stated:

In terms of the New South Wales voting system, the commission is very cautious about online transactional database voting as it currently stands. Recent developments have shown that there are risks of technical failure to those and attacks by malicious people. We are very cautious about that and we would not recommend for implementation any form of internet voting until the risks have been fully addressed.¹¹³

7.26 Professor Rajeev Goré reinforced concerns about the security electronic voting via the internet, advising the Committee that:

Electronic voting technology is still in its infancy. We do not know how to run a secure internet election. If Google can't protect its data, what is the confidence that the ACT Electoral Commissioner, running a system with a \$200,000 budget, is able to project his or her data? You have no guarantees about the security of an electronic voting system on the internet.¹¹⁴

7.27 With regards to security concerns with the implementation of an online voting system, such as iVote, Vision Australia advised the Committee that the Victorian Electoral Commissioner had security concerns when utilising an internet based voting system. However, after witnessing the utilisation of iVote in two NSW State elections, the Victorian Electoral Commissioner has trust in the system. Additionally, the Committee was advised that the blind and visually impaired community emphasises the importance of a secret, independent and verifiable vote, which outweighs any potential security issues.¹¹⁵

7.28 The Acting Commissioner informed the Committee that the future of internet voting in Australia was recently discussed at an Electoral Council of Australia and New Zealand (ECANZ). During this meeting it was agreed that ECANZ would work towards the creation of a national system, which would be beneficial as all commissions would utilise a system that would be owned and controlled by ECANZ.¹¹⁶

7.29 Additionally, The Acting Commissioner advised the Committee that the Commission had undertaken to review the potential for a form of electronic voting to assist overseas electors and a telephone voting system that may assist blind and visually impaired voters.¹¹⁷

¹¹³ Acting ACT Electoral Commissioner, *Transcript of Evidence*, 27 July 2017, p. 20.

¹¹⁴ Professor Rajeev Goré, *Transcript of Evidence*, 07 September 2017, p. 141.

¹¹⁵ Vision Australia, *Transcript of Evidence*, 7 September 2017, p. 125.

¹¹⁶ Acting ACT Electoral Commissioner, *Transcript of Evidence*, 27 July 2017, p. 20.

¹¹⁷ Acting ACT Electoral Commissioner, *Transcript of Evidence*, 27 July 2017, p. 20.

COMMITTEE COMMENT

- 7.30 The Committee acknowledges that all electors have the right to fully participate in the electoral process independently and privately. The Committee believes that an electronic voting system would provide blind and visually impaired voters the opportunity to vote independently and privately. However, the Committee does note the risks associated with utilisation of an internet based electronic voting systems.

Recommendation 14

- 7.31 The Committee recommends that the ACT Electoral Commission continue to consider a limited electronic voting option for electors who are overseas.**

Recommendation 15

- 7.32 The Committee recommends, as part of consideration of electronic voting, blind and visually impaired voters be given the opportunity to cast a secret vote.**

Recommendation 16

- 7.33 The Committee recommends the ACT Electoral Commissioner investigate and report on the possible use of Australian Consular and diplomatic posts overseas, as an alternative voting option for electors who are overseas.**

Recommendation 17

- 7.34 The Committee recommends that the ACT Electoral Commissioner report to the Assembly, by the last sitting day in June 2018, the results of the investigation into the provision of both a limited electronic voting option for electors who are overseas and a similar electronic voting option for blind and visually impaired electors.**

100-METRE LIMIT

- 7.35 Section 303 of the Electoral Act provides for an offence of doing anything for the purpose of influencing the vote of an elector, inducing an elector not to vote or exhibit a notice containing electoral matter as the elector is approaching a polling place, within 100 metres of a pre-poll centre or a polling place on polling day, within the hours of polling.¹¹⁸
- 7.36 The ACT Electoral Commission Report highlighted that during the 2016 ACT election, 33 allegations of breaches of the 100-metre ban were received, compared to around 18 complaints received at the 2008 election. The majority of these breaches involved campaigning within a few metres of the 100-metre limit.¹¹⁹
- 7.37 Some witnesses criticised the utilisation of 100-metre rule during pre-polling periods and how it had a negative impact on businesses close to pre-poll centres. Stating that particular businesses suffered because they were located approximately 100 metres from the pre-poll centres, resulting in shopfronts being surrounded by movable signs and volunteers handing out electoral material. Consideration of a six-metre rule for pre-poll was recommended to mitigate these concerns.¹²⁰
- 7.38 Beyond pre-poll, the concerns were raised with the benefit of a 100-metre rule throughout polling day. Mr Greg Conwell AM, as well as a number of other witnesses recommended that the Committee consider the inclusion of how-to-vote cards within the booths,¹²¹ whereby people could be provided information on various parties allowing them to vote confidently.
- 7.39 During the Acting Commissioner's public hearing, the Committee enquired into the reasoning behind the introduction of the 100-metre rule. The Acting Commissioner advised the Committee that:
- The reason the 100-metre rule was brought in in the first place is that it is part of a suite that goes with the Hare-Clark electoral system, along with Robson rotation and no above-the-line party ticket voting, to provide the power and the decision-making to the elector. That is why the 100-metre ban is there, and the act provides that if there is an enclosure it can be 100 metres from that.¹²²
- 7.40 The Committee also enquired into the interpretation of the 100-metre rule, with regards to the 100-metres beginning at the polling place door or boundary. The Committee noted that

¹¹⁸ ACT, *Electoral Act 1992*, Section 303, republication date: 1 January 2017, p. 240.

¹¹⁹ Elections ACT, *Report on the ACT Legislative Assembly Election 2016*, March 2017, p. 50.

¹²⁰ Canberra Liberals, *Transcript of Evidence*, 27 July 2017, p. 43.

¹²¹ Mr Greg Cornwell AM, *Transcript of Evidence*, 10 August 2017, p. 63.

¹²² Acting ACT Electoral Commissioner, *Transcript of Evidence*, 27 July 2017, p. 8.

this interpretation had differed between the 2012 ACT election and the 2016 ACT election. The Acting Commissioner advised that:

It is not a change in interpretation; the act provides for that ability. So if there is a polling place that has an enclosure, the act provides for the commissioner to determine 100 metres from that enclosure. If there is no enclosure then the act provides for 100 metres from all aspects of the building. It is not just the entry; it is all aspects of the building.¹²³

7.41 The Committee acknowledges that in the eighth Assembly, the Select Committee on Amendments to the Electoral Act 1992 enquired into the 100-metre limit. As a result of the Committee's Inquiry, it was recommended that the canvassing limit around polling places be increased from 100 metres to 250 metres.¹²⁴

7.42 The Committee further acknowledges that the Government did not support this recommendation as:

The effectiveness of increasing the limit around polling places on Election Day is not clear from the Committee's report and may, in fact, increase confusion. In addition, the number of breaches of the rule in the 2012 election was 12 less than in 2008 (18 compared to 30). The Government's position is therefore to retain the 100 metre exclusion zone.¹²⁵

TASMANIAN 100 METRE RULE

7.43 As Tasmania is the only other Australian jurisdiction that utilises the Hare-Clark System, the Committee notes the 100-metre rule is also enforced in Tasmania.¹²⁶ However, it was highlighted that under the Tasmanian *Electoral Act 2004*, it is an offence to distribute how to vote cards, signs, advertisement or other electoral material on polling day.¹²⁷

¹²³ Acting ACT Electoral Commissioner, *Transcript of Evidence*, 27 July 2017, p. 7.

¹²⁴ ACT Legislative Assembly, Eighth Assembly, Select Committee on Amendments to the *Electoral Act 1992, Voting Matters*, 30 June 2014, available at: https://www.parliament.act.gov.au/_data/assets/pdf_file/0005/610628/Select-Committee-final-report-30-June-2014.pdf.

¹²⁵ ACT Government, *Government Response to the Report of the Select Committee on Amendments to the Electoral Act 1992*, 2014, available at: https://www.parliament.act.gov.au/_data/assets/pdf_file/0003/668541/Government-response-to-report-on-Amendments-to-the-Electoral-Act-1992.pdf.

¹²⁶ Tasmania, *Electoral Act 2004*, Section 177, Current Version: 31 March 2017.

¹²⁷ Tasmania, *Electoral Act 2004*, Section 198, Current Version: 31 March 2017.

7.44 During public hearings, witnesses noted a number of differences between the ACT and the Tasmanian utilisation of the Hare-Clare System. In particular, the Committee sought advice on differences between the implementation of the 100-metre rule. The Acting Commissioner noted:

Yes, they also have a 100-metre rule, except they have this funny little quirk on Election Day where the handing out of material is entirely banned. However, signs that were up prior to Election Day can remain; you cannot place any additional ones. That is my understanding of their law. They ban the handing out of material altogether is my understanding.¹²⁸

7.45 The House of the Assembly, *Information for Candidates Handbook* specifically states, with regards to polling day restrictions on electoral matter, that:

Additional restrictions relating to the distribution and publication of electoral matter apply for polling day. It is an offence to distribute any advertisement, 'how-to-vote' card, handbill, pamphlet, poster, or notice containing any electoral matter on polling-day. It is also an offence to publish or cause to be published in a newspaper:

- an advertisement for or on behalf of, or relating in any way to, a candidate or a party; or
- a matter or comment relating to a candidate or a question arising from, or an issue of, the election campaign.¹²⁹

7.46 Additionally, the *Information for Candidates Handbook* stipulates restrictions within 100 metres of a polling place, stating that:

A person is not permitted to—

canvass for votes; or

solicit the vote of an elector; or

induce or attempt to induce an elector not to vote for a particular candidate or particular candidates; within 100 metres of a polling place.

Please note that legal advice on the interpretation of section 177 indicates that the 100 metre restriction does not apply to static signs in place before polling day. However, under section 198 it is an offence to distribute a poster on polling day, which would prevent the erection of signs on polling day.¹³⁰

¹²⁸ Acting ACT Electoral Commissioner, *Transcript of Evidence*, 27 July 2017, p. 9.

¹²⁹ Tasmanian Electoral Commission, *House of the Assembly; Information for Candidates*, June 2017, p. 13.

¹³⁰ Tasmanian Electoral Commission, *House of the Assembly; Information for Candidates*, June 2017, p. 14.

COMMITTEE COMMENT

- 7.47 The Committee acknowledges concerns raised about the 100-metre limit around pre-poll places and polling places on polling day, including the disturbance experienced by business owners located within 100 metres of a pre-poll centre.
- 7.48 The Committee acknowledges recommendations provided by members of the public to address the ineffectiveness of the 100-metre limit on polling day, including the introduction of electoral material at polling booths. However, the Committee considers that the aim of the 100-metre limit is to avoid disruption to voters on polling day, and this would not be achieved if information was provided at polling booths.
- 7.49 The Committee has reached a general consensus for the application of the 100-metre rule but notes that the measurement and application of the 100-metre rule in the 2012 ACT election differed from the 2016 ACT election. The Committee also notes that its comments on 100-metre rule reflect comments made by the Select Committee on Electoral Matters, which reported in 2012 on this matter.

Recommendation 18

- 7.50 The Committee recommends that a 100-metre canvassing exclusion zone around a polling booth be maintained.**

Recommendation 19

- 7.51 The Committee recommends that the ACT Electoral Commission conduct a survey of the community to determine whether the canvassing exclusion zone be reduced, maintained or increased.**

Recommendation 20

- 7.52 The Committee recommends that sections 303(2) and 303(7) (b) of the ACT *Electoral Act 1992* be removed to ensure consistency in the measuring of a defined polling area.**

PRE-POLL VOTING

- 7.53 Section 136B and Section 136C of the Electoral Act stipulates that a voter who expects that they will be unable to attend a polling place on polling day, or whose address is suppressed from the role, is entitled to vote before polling day or to be provided a postal vote.¹³¹
- 7.54 Section 136B and Section 136C of the Electoral Act also stipulates that the relevant period for pre-poll and postal votes begins on the third Monday before polling day, or the next day if that Monday is a public holiday.¹³²
- 7.55 In the 2016 ACT election, six pre-poll voting centres and seven interstate electoral offices were provided. The six pre-poll voting centres were located in Belconnen, Civic, Gungahlin, Tuggeranong and Woden in the three weeks before polling day, commencing Tuesday, 27 September 2016, as Monday, 26 September 2016 was a public holiday.
- 7.56 The Commission reported that 31.2 per cent of all votes cast at the 2016 election were cast by voters who voted before polling day. Votes cast at a pre-poll voting centre accounted for 33.7 per cent of all votes (26.9 per cent in 2012) and postal votes accounted for 5.2 per cent (4.3 per cent in 2012).¹³³
- 7.57 The Committee acknowledges that the Auditor-General recommended that the Commission develop a strategy to foster an increase in electronic voting. The Acting Commissioner advised the Committee that the Commission is currently engaged in a review of electronic voting in the ACT. The Acting Commissioner further noted that the most likely way of testing potential electronic voting infrastructure and scenarios is to increase pre-polling numbers as electronic voting is currently only available in pre-poll voting centres.¹³⁴
- 7.58 Mr Cornwell, supported the introduction of electronic voting through pre-poll voting centres then onwards to polling places, noting that voters will require education prior to utilising electronic voting to avoid confusion and prolonged waiting times on polling day.¹³⁵
- 7.59 Professor Goré, highlighted concerns with the current electronic system used during pre-polling, noting that:

Yes, there are absolute concerns that we have, and we have made the ACT Electoral Commissioner aware of them. First of all, in electronic voting in general, there are two important concepts. One is called “cast as intended” and the other is called “counted

¹³¹ ACT, *Electoral Act 1992*, Sections 136B and 136C, republication date: 1 January 2017, pp. 107-112.

¹³² ACT, *Electoral Act 1992*, Sections 136B and 136C, republication date: 1 January 2017, pp. 107-112.

¹³³ ¹³³ Elections ACT, *Report on the ACT Legislative Assembly Election 2016*, March 2017, p. 30.

¹³⁴ Acting ACT Electoral Commissioner, *Transcript of Evidence*, 27 July 2017, p. 21.

¹³⁵ Mr Greg Cornwell, *Transcript of Evidence*, 10 August 2017, p. 61.

as cast". Cast as intended means that when I cast a vote for A1, B2, C3 and D4 on a piece of paper and put it in a ballot box, I can vouch that I have cast a vote as I intended, whereas in the ACT, with the EVACS system, we fill out a form on a computer and the computer says, "Here is how you are about to vote." You say, "Great, I've said A1, B2, C3 and D4." You press the button, but you have no guarantee that that is what the computer is recording.¹³⁶

7.60 Professor Goré also noted that a number of programming errors in the electronic Voting and Counting System (eVACS) used by the Commission. Such programming errors can lead election results not reflecting the true outcome of the election. Additionally, Professor Goré highlighted that due to these programming errors it would be difficult for the Commission to respond with certainty if a candidate was to dispute the electoral results.¹³⁷

7.61 The Committee notes that The Act Electoral Commission Report and the ACT Auditor-General's Report recommend that the Assembly amend 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.

7.62 The ACT Greens highlighted concerns with the increased popularity of pre-polling, noting that pre-poll has been expanded just because it makes elections easier to run for election officials. To mitigate the increase of pre-polling, the ACT Greens recommended better enforcement of current legislation, which includes requiring a reason for pre-polling and asking what the reason is.¹³⁸

7.63 Ms Marea Fatseas highlighted the potential for increased voter participation through unrestricted pre-polling and the introduction of electronic voting, stating that:

With respect to increasing voter participation in elections and encouraging political activity, I support amendment of the Electoral Act to provide that any elector may vote at a pre-poll voting centre and I support expanding opportunities for electronic voting at polling booths so long as there is sufficient security to prevent hacking or other compromise of the system.¹³⁹

COMMITTEE COMMENT

7.64 The Committee notes that 83,722 pre-poll votes were cast in the 2016 ACT elections before polling day and that this proportion has increased significantly over that past decade. The Committee can see advantage in allowing flexibility for those voters who are constrained by

¹³⁶ Professor Rajeev Goré, *Transcript of Evidence*, 7 September 2017, p. 140.

¹³⁷ Professor Rajeev Goré, *Transcript of Evidence*, 7 September 2017, p. 144.

¹³⁸ ACT Greens, *Transcript of Evidence*, 27 July 2017, p. 33.

¹³⁹ Ms Marea Fatseas, *Transcript of Evidence*, 10 August 2017, p. 106.

work, family responsibilities or travel on polling day. The Committee acknowledges the benefit in amending the Electoral Act to allow an elector to vote at a pre-poll voting centre without the requirement to declare that they are unable to attend a polling place on polling day.

- 7.65 The Committee acknowledges the advantages and disadvantages of the electronic voting at pre-poll voting centres and polling day polling booths. Following the Auditor-General's recommendations to foster an increase in electronic voting, the Committee considers that this progress should continue to be monitored, and notes that the results will be provided to the Auditor-General.

Recommendation 21

- 7.66 The Committee Recommends that the *Electoral Act 1992* be amended so that an elector may vote at a pre-poll voting centre without the requirement to declare that they are unable to attend a polling place on polling day.**

THIRD-PARTY CAMPAIGNERS

- 7.67 In its Report on the 2016 election, the Commission noted the apparent expenditure pattern on third-party campaigns in that election as follows:

Three cases arose during the election where it appeared that the expenditure cap had been breached. According to election disclosure returns submitted by 2 third-party campaigners and made public on the Elections ACT website on 1 February 2017, with a 3rd third party campaigner submitting an amended return which included changes that indicated a breach of the expenditure cap, it appeared that the United Firefighters Union of Australia A.C.T Branch had spent \$40,697.40, the Trades Hall Building Ltd had spent \$41,720.78 and the Licensed Clubs Association of the ACT (trading as ClubsACT) had spent \$56,190.20 on election expenditure. Under section 205G of the Electoral Act, where a third-party campaigner exceeds the expenditure cap for an election, the expender is liable to pay a penalty to the ACT equal to twice the amount by which the expenditure exceeds the expenditure cap for the election.¹⁴⁰

¹⁴⁰ Elections ACT, *Report on the ACT Legislative Assembly Election 2016*, March 2017, p. 64.

7.68 The Commission, in submissions to the Committee and to the select committee of the Eighth Assembly, advocated for the amendment of the Electoral Act in relation to third-party campaigns in these terms:

The Commission notes that the expenditure cap for third-party campaigners is currently tied to the expenditure cap for candidates. Consequently, if the Electoral Act is to be amended to the expenditure cap for third for candidates, a further amendment will be required to provide for a separate cap for third-party campaigners set at the current higher level.¹⁴¹

and

The Commission considers that these observations are still valid, and notes that, as was the case in 2012, a number of third-party campaigners in 2016 appear to have overspent the expenditure cap. Accordingly, the Commission considers it appropriate to restate the above recommendations in this report, for consideration by the current Assembly.¹⁴²

7.69 The Commission recommended that the Assembly consider:

[W]hether it should amend the Electoral Act to increase the expenditure cap applied to ungrouped candidates to avoid the risk of impermissibly burdening the freedom of political communication implied by the Commonwealth Constitution.¹⁴³

7.70 In evidence to the Committee, the Acting Commissioner discussed the provisions in the Electoral Act currently relating to third-party campaigns:

Section 198 defines an entity as an incorporated or unincorporated body or a trustee of a trust. Section 198 also defines a third-party campaigner as a person or entity that incurs \$1,000 or more in electoral expenditure in the disclosure period. Section 199 of the act defines related bodies corporate as:

[B]odies corporate that are related shall be taken to be the same person.

[R]elated in relation to 2 bodies corporate means that one body corporate is—

(a) a holding company; or

(b) a subsidiary; or

(c) a subsidiary of a holding company;

of the other body corporate.

[T]hat is what is used in order to determine whether there is a legal separation of those entities.¹⁴⁴

¹⁴¹ Elections ACT, *Report on the ACT Legislative Assembly Election 2016*, March 2017, p. 65.

¹⁴² Elections ACT, *Report on the ACT Legislative Assembly Election 2016*, March 2017, p. 66.

¹⁴³ Elections ACT, *Report on the ACT Legislative Assembly Election 2016*, March 2017, p. 4.

- 7.71 In an answer to a question from the Chair, regarding lifting the spending cap for third-party campaigners to comply with the federal constitution, the Acting Commissioner advised:

This is a recommendation that the Assembly look into whether a \$40,000 expenditure cap for non-party candidates and also third-party campaigners could be ruled by the High Court, similar to some of the recent ones, as impermissibly burdening the freedom of political speech. It is merely a recommendation. It is highlighting a risk that it could be.¹⁴⁵

COMMITTEE COMMENT

- 7.72 The Committee notes that there has been no specific challenge to the nature of third-party campaigns, as they occur in the ACT. One observation made to the Committee by the Canberra Liberals was that:

We support the role of organisations to be actively involved and donate to parties, but if a single organisation can set up a number of separate businesses, separate legal entities, and then spend up to the cap in each one of those, it seems to go against the spirit of the legislation. There have been some reports in the media that this tactic was used at the last election.¹⁴⁶

- 7.73 The majority of the Committee considers that the current provisions in the Electoral Act that govern third-party campaigners should be examined in view of the way in which they appear to have operated during the 2016 election. Current provisions in the Electoral Act do not allow, in the Committee's view, for a desirable level of transparency in relation to third-party campaigners. The Committee considers the following recommendation is appropriate.

- 7.74 The Committee notes that Government members of the Committee were not of the view that the current provision in the Electoral Act need to be reviewed, with regards third-party campaigners.

Recommendation 22

- 7.75 The Committee recommends tightening the provisions within the ACT *Electoral Act 1992* to mitigate multiple entities being registered for the purposes of circumventing the expenditure cap. This provision should be in place before 1 January 2020.**

¹⁴⁴ Acting ACT Electoral Commissioner, *Transcript of Evidence*, 27 July 2017, p. 11.

¹⁴⁵ Acting ACT Electoral Commissioner, *Transcript of Evidence*, 27 July 2017, p. 12.

¹⁴⁶ Canberra Liberals, *Transcript of Evidence*, 27 July 2017, p. 42.

TIMELINE FOR CLOSURE OF NOMINATIONS AND APPEAL

7.76 Currently, nominations for Assembly elections close at midday one day (for the 2016 election, 21 September 2016) with the draw for the ballot paper made the following day at midday (for 2016 ACT election, 22 September 2016).

7.77 In the ACT Electoral Commission Report, it was highlighted that:

One nomination of a non-party candidate for the electorate of Yerrabi was rejected by the Electoral Commissioner on the basis that he was not satisfied that the nomination had been correctly made by 20 electors entitled to vote at the election. This person subsequently lodged an application with the Court of Disputed Elections disputing the election result in Yerrabi on the basis of the rejection of his nomination.

This is the first occasion on which an application disputing an ACT Legislative Assembly election has been lodged with the Court of Disputed Elections.¹⁴⁷

COMMITTEE COMMENT

7.78 In light of last year's challenge, the Committee queries whether this time gap is unnecessarily short. The Committee notes that to allow the review of nominations closing and nominations being declared the time gap should be longer.

Recommendation 23

7.79 The Committee recommends that the Government engage with the ACT Electoral Commission to determine whether amendment to the ACT *Electoral Act 1992* is necessary to allow an increased period of time between the close of nominations and the declaration of nomination to address any potential challenges.

¹⁴⁷ Elections Act, *Report on the ACT Legislative Assembly Election 2016*, March 2016, p. 23.

8 CONCLUSION

- 8.1 The Committee has considered all the evidence presented to it through submissions, public hearings, official reports and research pertaining to the effectiveness of the planning for, and conduct of, the 2016 ACT election.
- 8.2 The Committee has made 23 recommendations to support the effective planning and conduct of ACT elections.
- 8.3 The Committee considered the Draft Report at meetings held on 9, 21, 23 and 24 November 2017. The Committee adopted the Report on 24 November 2017

Ms Bec Cody MLA
Chair
30 November 2017

ADDITIONAL/DISSENTING COMMENTS BY MS LE COUTEUR MLA

INTRODUCTION

I support the majority of the Committee Report recommendations. It was a pleasure to work with colleagues across party lines with the shared aim of better and more workable elections for the ACT. We were united about the basics of our electoral system - the Hare-Clarke system with Robson rotation that has served us so well. The multi-member system better reflects the views of the electorate and has led to the ACT being the most progressive jurisdiction in the ACT.

However, I wish to make some additional comments and one dissenting comment in relation to a number of issues:

Additional comments

- Campaign finance
- Fact-checking
- Lowering voting age
- Pre-Polling
- 100m rule
- Timing of enrolment

Dissenting comment

- Electoral material on private property

CAMPAIGN FINANCE

The Greens have a long history of campaigning for campaign finance reform to ensure that there is a level playing field across parties and candidates. We believe all citizens should get a fair chance to put their views as part of our democracy and wealthy individuals and corporations should not have a disproportionate influence over politics merely because they can afford to spend more money on it.

I had the privilege of being in the Seventh Assembly and passing the 2011 changes to the Electoral Act. These changes made the electoral playing field more even by restricting both donations and expenditure for the 2012 ACT election.

Many of these changes were reversed by 2015 resulting in the following changes for the 2016 ACT election:

- the removal of the \$10,000 cap on donations for ACT election purposes;
- allowing donations for ACT election purposes from any entity (whereas it had been restricted to only ACT electors); and

- decreasing the electoral expenditure cap to \$40,000 per candidate and third-party campaigner, compared to a \$60,000 cap at the 2012 election.

The ACT Greens disagree with these changes and support the reinstatement of these three electoral reforms from 2011. The 2015 rollback made it easier for non-local and corporate entities to influence politics in the ACT.

The changes also increased the size of the Assembly to 25 Members but the effect of reducing the per candidate cap meant that the cap per party was maintained at a similar level (\$1million in 2016 vs \$1.02 million in 2012). The ACT Greens supported keeping the total cap the same and not increasing it.

I will discuss campaign finance under three interrelated headings:

- Public funding
- Donations
- Caps on expenditure

PUBLIC FUNDING

Most countries provide some level of public funding of elections so that parties and candidates can run an effective election campaign, without relying on large, possibly secret, donations. The public policy justification for this is to ensure that candidates are not beholden to donors who make large donations, and to reduce corruption and inappropriate influence of elected officials.

The 2015 Electoral Act changes increased election funding for parties and non-party candidates from \$2 per vote to \$8 per vote, as long as the candidate or party received more than 4% of the vote. By comparison federal candidates receive approximately \$2.63 a vote, \$1.80 per vote in WA and \$1.50 in Victoria.

This meant that in the 2016 ACT election just over \$1.7 million dollars was paid in public funding to parties and one individual candidate: \$750,000 to ACT Labor; \$717,000 to the Canberra Liberals; \$200,000 to the ACT Greens; \$30,000 to the Sex Party and \$19,000 to Kim Huynh.

The election expenditure cap of \$40,000 per candidate means that a party which fielded a full ticket of 5 candidates in all 5 electorates had a cap of \$1 million and for the large parties this expenditure was largely covered by public funding.

The Greens did not support the increase in public funding per vote in the last Assembly at the same time as lifting donations caps and restrictions, but I do recognise that this debate has already taken place and that the Greens are the only ones opposed to this situation. Instead I will turn my attention to administrative funding and the 4% threshold.

At present to get public funding a party or individual candidate must receive at least 4% of the vote. In the 2016 election only one individual candidate received public funding. A number of submissions to the inquiry, including from Tim Wilson-Brown, Ian Coombes, ACT Liberal Democrats, Weston Creek

Community Council and from independent candidates Kim Huynh and Marea Fatseas supported a lower vote threshold for public funding.

The 4% limit provides a substantial advantage to larger incumbent parties and makes it very difficult for a small party or individual to mount a campaign. To ensure a diversity of individuals and parties can be represented in our political and electoral processes there should be fairer financing rules.

The first campaign funding legislation passed by the ACT Assembly in 1994 followed the Commonwealth scheme in effect at that time. Public funding was provided to candidates and political parties that reached the 2% threshold of votes received. Parties and candidates were required to prove they had spent at least the amount they were to be funded on electoral matters.

If this previous 1994 situation were reverted to, small parties and independents would be in a much fairer position compared to larger, often incumbent, parties. Requiring a minimum of 2% or even 1% of the vote would ensure that only candidates with some broad appeal were funded. Requiring funding to be made on a reimbursement basis would mean it would not be possible to make a profit from running in an election.

Recommendation 1

That public funding be paid to individual candidates or party groups that achieve 1% or more of the votes cast in each electorate. This funding would be to a maximum of the amount spent by the individual candidates or party groups on the election (ie, on a reimbursement basis).

Administrative funding is currently paid to parties and non-party MLAs to cover the costs of administering the reporting requirements for political expenditure. It is specifically not to be used for funding of elections.

Currently the administrative payment made to the relevant party for each MLA elected is \$22,324.64 per annum (indexed). This is \$558,116 per year in the 25 member Assembly.

This payment is to cover administrative costs, so it would be reasonable to assume that there would be efficiencies for a party required to manage administrative tasks for a larger number of MLAs.

As such I suggest a cap on administrative funding to parties to a maximum of five MLAs. This would be \$111,623.20 plus ongoing indexation, which would be an adequate amount to cover the bookkeeping, accountant or legal fees required to fulfil the reporting requirements under the Act. To not cap administrative funding simply delivers a windfall gain for larger parties due to their economies of scale

This is likely to deliver a saving on the annual costs of the Legislative Assembly, in the order of \$250,000 per annum.

Recommendation 2

That administrative funding for parties is capped at that for five MLAs once the party has five or more eligible MLAs in the Assembly.

DONATIONS

The Greens campaigned for donations reforms in 2011 in order to reduce inappropriate influence from large corporations or wealthy individuals who seek to influence political outcomes through making donations to candidates or parties.

Subsequent to this there were three relevant High Court cases. Two have been summarised by the Parliamentary Library

In the first, *Unions NSW v New South Wales* [2013] HCA 58, the Court found that a NSW provision that banned political donations from anyone other than an individual on the electoral roll was found to be invalid because it restricted political communication and was not reasonably and appropriately adapted to achieving a legitimate aim such as preventing corruption or undue influence. The Court's decision in *Unions NSW* turned on an inability for the NSW Government to prove how aggregating the expenditure of political parties and their affiliated organisations would reduce corruption, failing to satisfy the second limb of the test developed in *Lange v Australian Broadcasting Corporation* (1997) 189 CLR 520.

The Court in *Unions NSW* (echoing the decision in *Australian Capital Television Pty Ltd v Commonwealth* [1992] HCA 45) upheld that "reducing corruption and the undue influence of the wealthy within the electoral system is an entirely legitimate end, not only compatible with the implied freedom of political communication but arguably necessary for that freedom to flourish" .

In a subsequent decision, *McCloy v New South Wales* [2015] HCA 34, the High Court found that "bans in NSW on donations from specified 'prohibited donors', particularly property developers; bans on indirect campaign contributions; and caps on donations were all found to be valid as they were proportional to the legitimate purpose of preventing corruption and undue influence. The case also "affirmed that any provision that potentially infringes the implied freedom of political communication is valid if it serves a legitimate purpose in doing so and is proportional, or reasonably appropriate and adapted, to that legitimate purpose".

In October this year, the High Court gave its judgement on *Brown v Tasmania* [2017] HCA 43. This case concerned Tasmanian legislation that criminalised certain forms of protest that interfered with "business activity" at any "business premises" or "business access area". This included forestry and other industrial activities on public or private land. Bob Brown argued that, under the constitutionally protected freedom of political communication, the legislation was illegitimate and unreasonable: it disproportionately balanced between the need to protect political communication and protect workplaces.

The court unanimously found that the Act's stated aims were legitimate. Despite this the Court found in Bob Brown's favour because the way which the Tasmanian law sought to achieve this was disproportionate and used unnecessary provisions.

As a result of the *Unions NSW* decision, an ACT Legislative Assembly inquiry in 2014 recommended that section 205I(4) of the Electoral Act be repealed. The inquiry heard that the section may be

unconstitutional. The decisions in McCloy and Brown may indicate that the repeal of section 205I(4) was premature and unnecessary.

Given the confidence of this Committee that the proposed ban on property developers' donations would be appropriate, I believe that the ACT Government could restore the 2011 donations reforms and that the ACT public would expect and would support such a change – as indicated by the number of submissions that support restricting donations to individuals on the ACT electoral roll, including those of Hugh Dakin, Kim Huynh, Stuart Walkley, ACT Greens, Griffith Narrabundah Community Association, Ian Coombes, Canberra Alliance for Participatory Democracy and Marea Fatseas.

Recommendation 3

That donations to parties and individual candidates for the purposes of ACT election expenditure be restricted to individuals who are registered to vote in the ACT election.

The changes to the Electoral Act in 2014 also removed the cap on donations from one entity, be they an individual or an organisation, per year. In the interests of equity, I believe it would be appropriate to reinstate the limit.

Recommendation 4:

That donations by entities (individuals, corporations or organisations) to parties and individual candidates for the purposes of ACT election expenditure be restricted to a maximum of \$10,000 per annum.

CAPS ON EXPENDITURE

Reducing campaign expenditure is an important way to ensure a more level playing field in election campaigning. Under existing legislation, caps on campaign expenditure are \$40,000 per candidate (indexed) with a limit to the number of seats being contested. This means that the larger parties, which run 25 candidates, will have a party expenditure cap of \$1 million.

I support a cumulative “party cap” for parties. Large parties are offered a significant advantage in their spending as they are able to pool multiple candidate allocations of \$40,000 and reap an efficiency benefit. Large parties, already entrenched in the political system, will continue to be able to outspend smaller parties and individuals and thus dominate the media landscape.

Smaller parties and independents, which do not have the advantage of pooling resources, are significantly disadvantaged in so far as they are restricted to a maximum of \$40,000 expenditure per candidate. This was previously \$60,000 which seems more equitable. The ACT Electoral Commission in its report on the 2016 election also recommended that the Assembly consider amending the Electoral Act to increase the expenditure cap applied to ungrouped candidates to avoid the risk of impermissibly burdening the freedom of political communication implied by the Commonwealth Constitution.

Recommendation 5:

That the Electoral Act is amended to cap individual candidate campaign expenditure to \$60,000.

FACT-CHECKING

Trust in our political system and in politicians is at an all-time low. “Fake news”, “alternative facts” and “fact-free zones” are no longer merely satire, but legitimate concerns of the political establishment and of the public trying to engage with public discourse. The current issue with section 44 of the Constitution where many federal politicians possibly did not understand the facts or possibly did not want to publically admit to them has led to what is being called a ‘constitutional crisis’.

Our democratic system is based on the idea that citizens and their elected representatives make informed and wise decisions. It is difficult to see how this can happen in an environment of ‘alternative facts’.

The concern about facts has led the ABC to collaborate with RMIT to create the RMIT ABC Fact Check. Its task is to “determine the accuracy of claims by politicians, public figures, advocacy groups and institutions engaged in the public debate. It is funded jointly by RMIT University and the ABC. The ABC is a publicly funded, independent media organisation, and therefore RMIT ABC Fact Check is accountable to the Australian Parliament.”

“The Conversation” which is a collaboration of a number Australian universities also runs a fact-checking unit. Fact-checking units can improve public debate and in addition support educational outcomes, provide an additional resource to journalists and members of the public.

Both of these fact checking units operate nationally and are unlikely to devote resources to a purely ACT issue. Thus I feel it is important for there to be an ACT body to improve the level of public debate, especially around election time. Such a body could be funded, or co-funded by the ACT Government and hosted at one of the ACT’s many universities.

Recommendation 6

That the ACT Government investigates establishing an ACT-specific fact-checking unit in conjunction with an ACT university to support informed public debate.

VOTING AGE

“Lowering the voting age” was one of the terms of reference of the inquiry. It was widely discussed and as the main committee report states, there was not majority support for change. However I think it will remain a contentious issue and so in the future it could be a useful topic for a citizen’s jury or other further investigation.

PRE-POLLING

The main committee report has “Recommendation 21 - The Committee recommends that the Electoral Act 1992 be amended so that an elector may vote at a pre-poll voting centre without the requirement to declare that they are unable to attend a polling place on polling day.”

I acknowledge that more and more people are choosing to pre-poll and it is often convenient for voters to do so. Elections are to serve the community not the other way round so this is an important consideration.

If this recommendation is implemented, then ACT Electoral Commission may open more pre-polling locations, or open them for additional hours, to cope with increased demand. This could lead to the demise of the ‘democracy sausage’ day out at schools, and the community spirit that goes with the expectation that we will all vote on the same day.

It is also important that opening up pre-polling in this way will lead to more people voting before the parties have had their formal campaign launches and released their election costings. This may lead to less information for voters to use to make their decision.

The Auditor-General and the Electoral Commission both support removing restrictions on pre-polling, I think largely on pragmatic grounds. However this potential change in pre-polling was not well discussed by the community.

My view is that this potential change needs more public discussion. I think it will also require other changes such as changes to the timing for the elections costing process and media blackout.

Recommendation 7

That additional public consultation be conducted about changes in pre-polling. This consultation should consider what other changes would be need in areas such as media blackouts and election costings.

THE 100M RULE

I am disappointed that the committee did not provide a more definitive view, or informed discussion, on this controversial issue. I think it is clear there are issues with the current rule that prohibits electoral material and canvassing votes within 100m of an open polling place. It’s a bit like being half pregnant as parties try to find places that they can canvass and put up electoral material that are both legal and effective. It leads to considerable on the ground conflict as activities happen in arguably illegal locations.

Last Assembly, the committee that looked into electoral matters recommended that the restriction increase from 100m to 250m. The Greens supported this view at the time. The Government rejected this on the grounds it would mean that canvassing and electoral material would be prohibited in the town centres and bus interchanges for the 3 week election period and this was an unreasonable and unnecessary reduction in public discourse about electoral matters.

Given that quite reasonable consideration, I propose that we adopt the approach used in federal elections, ie. the 6m rule. We have more federal elections than territory elections so voters are very used to the 6m rule. Many voters expect to get material from candidates and parties on the day and express disappointment and confusion when they can't easily get it in ACT elections.

CLOSING OF THE ELECTORAL ROLL

The ACT Labor submission stated that it was a commitment of Labor at the 2016 Election to allow voters who enrol to vote up to, and on, Election Day to vote at that election. As the ACT Electoral Commission now uses electronic electoral rolls this is technically feasible. I understand that it is now done in NSW and Victoria.

The committee considered many issues and this one was overlooked. However I believe it is a worthy one and there simply is no reason not to do it.

Recommendation 8

Amend the legislation so that all electors can vote at an election regardless of when they enrolled to vote.

DISSENTING COMMENT - ELECTORAL MATERIAL DISPLAYED ON PRIVATE PROPERTY

Recommendation 13 states that “the Committee recommends that the ACT Electoral Act be amended to allow electoral material displayed on private property, inside the defined polling area, to remain throughout the polling period.”

I cannot see any reason for giving preferential treatment to electoral material on private property. Potentially it will lead to an effective breakdown of the 100 metre rule (or whatever replaces it) as candidates and parties find private locations to display their material. It will also potentially lead to extra pressures on business and private residences in these areas as candidates and parties approach them to allow them to display their material.

Appendix A SUBMISSIONS RECEIVED

The Committee received submissions from the following:

- Mr Hugh Dakin
- Mr Malcolm Mackerras AO
- Professor George Williams AO
- ACT Electoral Commission
- Mr Dan Miller
- Mr Greg Cornwell AM
- Mr Gordon Ramsay MLA
- Dr Kim Huynh
- Mr Stuart Walkley
- Blind Citizens Australia
- Youth Coalition of the ACT
- Vision Australia
- Mr Tim Wilson-Brown
- ACT Labor
- ACT Young Labor
- ACT Greens
- Griffith/Narrabundah Community Association
- Mr Ian Coombes
- Canberra Alliance for Participatory Democracy
- Mr Damian Haas
- Professor Rajeev Gore, Associate Professor Lyria Bennett Moses and Associate Professor Dirk Pattinson
- ACT Liberal Democrats
- Ms Marea Fatseas
- Dr Andrew Hughes
- Justice and Community Safety Directorate
- Weston Creek Community Council
- Mr James Daniels
- Proportional Representation Society of Australia
- Mr John Edquist

Appendix B WITNESSES APPEARED

The following list of witnesses appeared before the Committee on Thursday, 27 July 2017:

- Mr Rohan Spence, Acting ACT Electoral Commissioner
- Mr Matthew Byrne, ACT Labor Party and ACT Young Labor
- Ms Maiy Azize, ACT Greens
- Mr Michael Mazengarb, ACT Greens
- Mr Arthur Potter, Canberra Liberals
- Mr Stephen Clively, ACT Liberal Democrats
- Mr Jacob Gower, ACT Liberal Democrats

The following list of witnesses appeared before the Committee on Thursday, 10 August 2017:

- Mr Greg Cornwell AM
- Mr Danial Miller
- Mr James Daniels
- Ms Courtney Davis, Youth Coalition of the ACT
- Ms Hannah Watts, Youth Coalition of the ACT
- Ms Lauren Henley, Blind Citizens Australia
- Mr Justin Simpson, Blind Citizens Australia
- Mr Ian Coombes
- Professor Bob Douglas, Canberra Alliance for Participatory Democracy
- Mr Mark Spain, Canberra Alliance for Participatory Democracy
- Mr Walter Steensby, Canberra Alliance for Participatory Democracy
- Ms Plaxy McCulloch, Canberra Alliance for Participatory Democracy
- Mr Damien Haas
- Ms Marea Fatseas

The Following list of witnesses appeared before the Committee on Thursday, 07 September 2017

- Professor George Williams AO
- Ms Amanda Acutt, Vision Australia
- Mr Rowan Lee, Vision Australia
- Ms Julie Field, Justice and Community Safety Directorate
- Mr Sean Costello, Justice and Community Safety Directorate
- Professor Rajeev Gore
- Associate Professor Lyria Bennett Moses
- Mr Stephen Alegria, Transport Canberra and City Services Directorate

- Mr Sean Sloan, Transport Canberra and City Services Directorate

Appendix C ACT ELECTORAL COMMISSION REPORT ON THE ACT LEGISLATIVE ASSEMBLY ELECTION 2016 – NOTIFIABLE FEATURES

Notable features of the 2016 ACT election included:

- Implementing the increase in the size of the Assembly from 17 MLAs to 25 MLAs, elected from 5 electorates each returning 5 MLAs;
- Facilitating the election of the first parliament in Australian history with a majority of female members, with 13 female MLAs elected;
- The nomination of the highest number of candidates ever to contest an ACT election, with 141 candidates contesting the election – the previous highest number was 117 at the first election held in 1989;
- Recording the highest number of votes in an ACT election – 250,460 (compared to 229,125 in 2012);
- Successful expansion of electronic voting facilities to 81,538 voters – over 32.5 per cent of all voters (compared to 59,200 voters in 2012– over 25 per cent of all voters);
- Having the highest number of eligible voters for any ACT election – 283,162 (compared to 256,702 in 2012);
- Having the most complete electoral roll for an ACT election, with 99.8 per cent of the estimated eligible population enrolled, including very high levels of enrolment of 18-24-year-olds;
- Achieving the highest level of voter turnout of the last four elections, when measuring voter participation as a proportion of the estimated eligible population, with over 88 per cent of the eligible population casting a vote;
- Recording the lowest ever rate of informal voting at an ACT election, with only 2.5 per cent of votes counted as informal;
- The conduct of the first general election by the Commission following the establishment of the Members of the Commission as officers of the Assembly on 1 July 2014;
- The conduct of a performance audit of the conduct of the 2016 Assembly election by the ACT Auditor General’s Office, indicating that the election was conducted effectively;
- Continued use of networked computers to provide electronic electoral rolls in all polling places, enabling the transmission of marked-off voter names to all rolls across the ACT, leading to efficiencies and environmental savings and reducing the likelihood of voting fraud;
- Continued provision of secret voting facilities for blind and sight-impaired people using electronic voting;

- Conducting an extensive public information campaign, combining traditional media advertising and online advertising with public relations activities and social media platforms;
- The use of SMS messages as a medium to inform electors of their enrolment in new ACT electorates;
- High voter satisfaction with electoral services, with 96 per cent of surveyed voters expressing satisfaction with their overall voting experience;
- Using the intelligent character recognition scanning system (first used in Australia for the 2008 ACT election) for capturing and counting preferences marked on paper ballots;
- Finalising the election result in record time, with the count concluding 7 days after polling day as a result of combining the scanning of paper ballots with electronic voting and the eVACS® counting system;
- Updating the interactive on-line training system for polling staff, building on the success of the system first used in the ACT in 2008 and again in 2012;
- Continued use of an electronic display for the draw for positions on ballot papers;
- Maintaining the simplified processes for applying for a postal vote, including on-line and phone applications, contributing to a record number of postal votes counted – 13,114 (compared to 9,859 in 2012);
- Continuing to provide early voting facilities at 6 pre-poll voting centres and 7 interstate electoral offices, serving a record number of voters using pre-poll voting: 84,273 (compared to 61,660 in 2012);
- Discontinuing the provision of a Tally Room on election night, in line with developments in other Australian jurisdictions;
- Use of an improved display of election results on the internet on and after election night, noting that the results website experienced some difficulty on election night with handling the load of inquiries;
- Implementing the funding, expenditure and financial disclosure provisions, including caps on the amount of expenditure that could be incurred on ACT elections, frequent disclosure of gifts received, and payment to political parties with Assembly representatives for administrative purposes; and
- Payment of a record amount in public funding to parties and candidates: \$1,716,784, following an increase in the rate of funding from \$2 per vote to \$8 per vote (compared to \$409,402 in 2012).

Appendix D ACT ELECTORAL COMMISSION REPORT ON THE ACT LEGISLATIVE ASSEMBLY ELECTION 2016 – RECOMMENDATION AND GOVERNMENT RESPONSE

The ACT Electoral Commission made the following recommendations in the Report on the ACT Legislative Assembly Election 2016:

Recommendation 1

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

Government Response

Noted. The recommendation is addressed to the Assembly.

Recommendation 2

The Commission recommends that the Electoral Act be amended to provide that any elector may vote at a pre-poll voting centre, without the need to declare that they are unable to attend a polling place on polling day. (See “Removing restrictions on pre-poll voting” on page 44.)

Government Response

Noted.

The Government notes that there is a Select Committee Inquiry into 2016 ACT Election and the Electoral Act and will refer this recommendation to the Select Committee for consideration.

Recommendation 3

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

Government Response

Noted.

The Government notes that there is a Select Committee Inquiry into 2016 ACT Election and the Electoral Act and will refer this recommendation to the Select Committee for consideration.

Recommendation 4

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

Government Response

Noted.

The Government notes that there is a Select Committee Inquiry into 2016 ACT Election and the Electoral Act and will refer this recommendation to the Select Committee for consideration.

Recommendation 5

The Commission recommends that, subject to consultation with Transport Canberra and City Services, the moveable signs code of practice be amended to provide that electoral signs displayed on public land may not be placed on suburban streets and may only be placed on specified stretches of major arterial roads, outside designated areas that have the special characteristics of the national capital. (See “Political party and candidate posters in public places” on page 51.)

Government Response

Noted.

The Government is aware that election signage is a source of irritation and frustration for the public.

The Government is investigating options for the most appropriate solution to this issue.

Recommendation 6

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

Government Response

Noted.

The Government notes that there is a Select Committee Inquiry into 2016 ACT Election and the Electoral Act and will refer this recommendation to the Select Committee for consideration.

Recommendation 7

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

Government Response

Noted.

The recommendation is addressed to the Assembly.

The Government notes that there is a Select Committee Inquiry into 2016 ACT Election and the Electoral Act and will refer this recommendation to the Select Committee for consideration.

Recommendation 8

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

Government Response

Noted. The recommendation is addressed to the Assembly.

The Government notes that there is a Select Committee Inquiry into 2016 ACT Election and the Electoral Act and will refer this recommendation to the Select Committee for consideration.

Recommendation 9

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

Government Response

Noted.

The Government notes that there is a Select Committee Inquiry into 2016 ACT Election and the Electoral Act and will refer this recommendation to the Select Committee for consideration.

Recommendation 10

The Commission recommends that the penalty notice fine for failing to vote at Assembly elections should be increased and linked to a fraction of a penalty unit. The Commission further recommends that the penalty should be set at $\frac{1}{4}$ of a penalty unit, rounded down to the nearest \$5. (See “Compulsory voting” on page 68.)

Government Response

Noted.

The Government notes that there is a Select Committee Inquiry into 2016 ACT Election and the Electoral Act and will refer this recommendation to the Select Committee for consideration.

Appendix E ACT AUDITOR-GENERAL REPORT ON THE 2016 ACT ELECTION – RECOMMENDATION AND GOVERNMENT RESPONSE

The ACT Auditor-General made the following recommendations in the *Report No. 2/2017: 2016 ACT Election*:

Recommendation 1 – Planning

Elections ACT should enhance its planning by:

- a) developing a project management framework and/or explicitly linking its project management elements for the four years prior to an election;
- b) reviewing its Operational Plan and developing a control process for maintaining the integrity of its content;
- c) developing a periodic comprehensive review (this could be every two years) of its risk registers (in addition to the system of reviews already undertaken);
- d) developing a lessons learned tracking document for guiding actions that need to be undertaken between elections; and
- e) reviewing the classification of its ICT systems and, for any of its systems that are government critical, implement the required infrastructure arrangements that provide assurance these systems are continuously available; and document these arrangements in its business continuity and disaster recovery plans.

Government Response

Noted.

The Government notes that Elections ACT will review, consolidate and strengthen its project management and planning framework. The Government also notes that the audit report agrees that Elections ACT has the required elements of an election project management plan distributed across multiple documents and concludes that the project management and planning processes in place for the 2016 election resulted in a very successful and effective outcome.

Elections ACT has stated that it will:

- comprehensively review its operational plan and implement a control process;
- develop a periodic comprehensive review of its risk registers noting that Elections ACT reviews each risk register quarterly on an exceptions basis;
- put in place a tracking mechanism to ensure lessons learnt from the most recent election, if approved for implementation, are monitored in preparation for the next election; and
- review the classification of its ICT systems and implement, where appropriate, the required infrastructure arrangements. Noting that while not in compliance with the

requirements of systems listed as 'government critical', appropriate redundancy and backup arrangements were established for each of the ICT systems used at the 2016 ACT election. Elections ACT does not currently consider any of its ICT systems falls within the stated definition of 'government critical'.

Recommendation 2 – Security

Elections ACT should assess the security risk posed by casual staff working on ACT elections and, if appropriate, implement a mitigation measure.

Government Response

Noted.

The Government notes that Elections ACT will review the security risks posed by casual staff working on ACT elections and implement appropriate measures to mitigate perceived risks.

Recommendation 3 – Pre-poll voting

The ACT Government should amend the Electoral Act 1992 so that an elector may vote at a pre-poll voting centre without the requirement to declare that they are unable to attend a polling place on polling day

Government Response

Noted.

The Government notes that there is a Select Committee Inquiry into 2016 ACT Election and the Electoral Act and will refer this recommendation to the Select Committee for consideration.

Recommendation 4 – Electronic voting options

Elections ACT should develop a strategy to foster an increase in electronic voting.

Government Response

Noted.

The Government notes that Elections ACT will develop a strategy to foster an increase in electronic voting. Elections ACT has stated that a strategy would in part be dependent on the removal of the eligibility requirement for a pre-poll vote.

Recommendation 5 – eVACS®

Elections ACT should improve eVACS® security controls by:

- using passwords that are compliant with ACT Government password security requirements;
- using a secure, modern, unique code (hash);
- encrypting the cumulative record (data) of daily votes on compact discs; and
- comprehensively reviewing the eVACS® code.

Government Response

Noted.

The Government notes that Elections ACT will implement a full review of the electronic voting system and apply any recommended security controls. Elections ACT has noted that the security controls in place for the 2016 ACT election were suitably robust and effective.

Recommendation 6 – 2020 accommodation

ACT Property Group and Elections ACT should finalise a Memorandum of Understanding with accommodation arrangements being agreed well in advance (two years) of the 2020 election. If this is not done, Elections ACT should seek assistance from the Head of Service.

Government Response

Agreed in principle.

Elections ACT has agreed that it would be desirable to settle its additional office accommodation needs well in advance of the 2020 election. ACT Property Group will work with Elections ACT to ensure their space requirements are met for the 2020 Election in accordance with the Memorandum of Understanding.

Recommendation 7 – Penalty units for not voting

The ACT Government should use penalty units as the basis for a non-voter fine to allow incremental adjustments and determine what penalty is to be established for non-voters (and in so doing increase the current \$20 fine).

Government Response

Noted.

The Government notes that there is a Select Committee Inquiry into 2016 ACT Election and the Electoral Act and will refer this recommendation to the Select Committee for consideration.