Elections ACT

ACT Electoral Commission submission to the ACT Legislative Assembly Select Committee on Amendments to the *Electoral Act 1992*

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Introduction

The ACT Electoral Commission (the Commission) provides this submission in response to the invitation for public submissions issued by the Select Committee on Amendments to the *Electoral Act 1992*.

The **Terms of Reference** of the Committee are:

> That this Assembly:
>
> (1) notes:
>
> (a) the public position of the Labor Government and the Liberal Opposition that the membership of the Legislative Assembly be expanded to 25 members at the 2016 election;
>
> (b) certain provisions of the *Electoral Act 1992* will require amendment as a result of this change;
>
> (c) the recent High Court decision, *Unions NSW & Ors v NSW*, and that this decision also has implications for the operation of the *Electoral Act 1992*; and
>
> (d) the Elections ACT's Report on the ACT Legislative Assembly Election 2012 contains a number of recommendations pertaining to the *Electoral Act 1992*; and
>
> (2) resolves:
>
> (a) that a Select Committee be established to inquire into the above matters and any related issues;
>
> (b) that the committee will be comprised of one member of the Government, one member of the Opposition and one member representing the ACT Greens with proposed members to be nominated to the Speaker by 6 pm this sitting day; and
>
> (c) the committee report by the last day of June 2014.

This submission is made pursuant to section 7(1)(d) of the *Electoral Act 1992* (the Electoral Act) which empowers the Commission to provide information and advice to the Legislative Assembly in relation to elections.

This submission focuses on discussion of suggested amendments that could be made to the Electoral Act to address the issues listed in the Committee's terms of reference. The final section on participation in the electoral process includes updated information on enrolment participation rates and further discussion on increasing turnout at elections.

The Commission notes that it is currently preparing a report to the Legislative Assembly on the operation of the campaign finance reforms that commenced on 1 July 2012. This report is not yet complete. It will be completed later in 2014 and will either be submitted as a separate report to the Legislative Assembly or incorporated in the Commission's Annual Report for 2014/2015. This current submission includes some suggestions for amendments to the Electoral Act arising from issues that have arisen in relation to campaign finance reform matters since the preparation of the Commission's report on the 2012 election.

In summary, this submission addresses the following issues:

- Amendments to the Electoral Act required to expand the ACT Legislative Assembly to 25 Members at the 2016 election;
- Implications for the operation of the campaign finance reform provisions of the Electoral Act arising from the recent High Court decision, *Unions NSW & Ors v NSW*;
- The Commission's *Report on the ACT Legislative Assembly Election 2012*;
- Further recommendations for changes to the campaign finance reform provisions of the Electoral Act; and
- Participation in the electoral process.

List of recommendations

The Commission makes the following recommendations to the Committee.

The Commission endorses the following recommendations made in its *Report on the ACT Legislative Assembly Election 2012* (subject to the variations indicated in *italics*):

Recommendation 1
The Commission **recommends** that the Electoral Act be amended to remove internet commentary by persons acting in a private capacity from the authorisation requirements.

Recommendation 2
The Commission **recommends** that clause 7(3)(c)(i) and (ii) of Schedule 4 of the Electoral Act be amended to delete the word "all" to ensure that the scrutiny rules follow accepted Hare-Clark procedures.

Recommendation 3
The Commission **recommends** that the requirement for reporting of gifts received of $1,000 or more within 7 days of their receipt during the expenditure period (from 1 January in an election year until polling day from 2016) be re-examined by the Assembly.

Recommendation 4
The Commission **recommends** that the requirement for a federal election account be re-examined by the Assembly with a view to improving the workability of section 205I(4) of the Electoral Act. (*This recommendation has been superseded by Recommendation 18.*)

Recommendation 5
The Commission **recommends** that the need for political participants to hold an ACT election account with a financial institution be re-examined by the Assembly. (*This recommendation has been superseded by Recommendation 19.*)

Recommendation 6
The Commission **recommends** that either section 222(1) be amended to cap anonymous donations at $250, instead of $1,000, or section 216 be amended to raise the threshold for small anonymous gifts from $250 to $1,000.

Recommendation 7
The Commission **recommends** that use of the phrase "small anonymous donations" be removed from the Electoral Act and replaced with the phrase "anonymous donations".

Recommendation 8
The Commission **recommends** that section 205I(4) of the Electoral Act be amended to provide that it does not require anonymous donations to be paid into a federal election account. (*This recommendation has been superseded by Recommendation 18.*)

Recommendation 9
The Commission **recommends** that the reference to section 220 in the definition of "disclosure day" in relation to third-party campaigners in section 201(2)(c) of the Electoral Act be removed.

Recommendation 10
The Commission **recommends** that the definition of third-party campaigner in section 198 of the Electoral Act be amended to replace the reference to "more than $1,000" with "$1,000 or more".

Recommendation 11
The Commission **recommends** that the definition of third-party campaigner in section 198 of the Electoral Act be amended to exclude from the definition government agencies from any Australian government.

Recommendation 12
The Commission **recommends** that section 203 of the Electoral Act be amended to make it clear that only one reporting agent can be appointed at any one time for the same entity, and that the appointment of an agent automatically cancels the appointment of any previously appointed agent.

Recommendation 13
The Commission **recommends** that the Electoral Act be amended to make reporting agents, where appointed, responsible for the lodgement of all disclosure returns by parties, MLAs and candidates.

Recommendation 14
The Commission **recommends** that section 215G(1)(b) of the Electoral Act be amended to replace "local election" with "local government election".

Recommendation 15
The Commission **recommends** that the penalty notice fine for failing to vote at ACT Legislative Assembly elections should be increased.

The Commission makes the following additional recommendations to the Committee in this submission:

Recommendation 16
The Commission **recommends** that, to increase the size of the Assembly to 25 members, consisting of 5 members elected in each of 5 electorates, the following amendments are required:

- An enactment to increase the size of the Assembly to 25 members from the 2016 election, noting that such an enactment needs to be passed by a special two-thirds majority of the Assembly;

- An amendment to section 34 of the Electoral Act to state that the Assembly shall be divided into 5 electorates, with 5 members to be elected from each electorate;

- An amendment to section 116 of the Electoral Act to remove the reference to 7 member electorates;

- An amendment to section 205F of the Electoral Act to remove the reference to 7 member electorates; and

- A transition provision to ensure that the redistribution due to commence later this year will require the ACT to be redistributed into 5 electorates each returning 5 members.

Recommendation 17

The Commission **recommends** that the Assembly considers the following issues in the context of increasing the size of the Assembly:

- Whether the expenditure cap applicable to political parties should remain set at around $62,500 per candidate, capped at a total of around $1.56 million per party if the Assembly is increased to 25 members, or whether the expenditure cap should be adjusted to sum to a lesser amount per party;

- If the expenditure cap per candidate is reduced, whether the expenditure cap for third-party campaigners should be similarly reduced, or whether this amount should remain the same as currently or be increased, and

- Whether the amount paid for administrative funding to political parties should remain set at around $20,850 per MLA per year, summing to a total of around $520,000 for 25 MLAs, or whether the administrative funding rate should be reduced to sum to a lesser amount for the total number of MLAs.

Recommendation 18

The Commission **recommends** that subsection 205I(4) of the Electoral Act be repealed, and that any provisions referring to subsection 205I(4) be amended as appropriate (including subsections 205I(7), (8) and (9)).

Recommendation 19

The Commission **recommends** that the concept of an ACT election account be removed from the Electoral Act and that the Electoral Act be amended as follows:

- Where one or more gifts are received by a political entity from a single source in a financial year totalling more than $10,000, the amount above $10,000 must be deposited in a separately identified account and must not ever be used for an ACT election purpose (including payment of a loan used to incur ACT election expenditure);

- Where a payment is made to a party by a related political party in a financial year totalling more than $10,000, the amount above $10,000 must be deposited in a separately identified account and must not ever be used for an ACT election purpose; and

- Administrative expenditure funding paid to parties and non-party MLAs under the Electoral Act must be deposited in a separately identified account and must not ever be used for an ACT, federal, state or local government election purpose.

A transition provision may be needed to ensure funds falling into the above categories, received since 1 July 2012, are deposited in a separately identified account.

Recommendation 20

The Commission **recommends** that the Electoral Act be amended to require the details of disputed debts with a total amount of $1,000 or more, held by a registered party, MLA or associated entity at 30 June, to be disclosed as a new category in the entity's annual return for the relevant financial year.

Recommendation 21

The Commission **recommends** that the current need for associated entities to disclose the details of all persons and organisations making payments to the entity of any value, with some exemptions, be amended to provide that associated entities do not need to disclose the identities of persons or organisations giving the entity less than $1,000 in a financial year (retaining the exemptions for income related to supply of food, liquor and gambling).

Recommendation 22

The Commission **recommends** that the Assembly consider whether a fee for affiliation with a political party should be treated as a subscription for membership to the party (and therefore should be treated as a gift if the amount is greater than $250). The Commission further **recommends** that, whatever the outcome of that consideration, the Electoral Act be amended to put the matter beyond doubt.

Recommendation 23

The Commission **recommends** that the Electoral Act be amended to clarify whether any part of a compulsory levy imposed by a political party on its elected representatives should be considered a gift to the party, or whether the whole of the levy should be exempt from the definition of gift.

Recommendation 24

The Commission **recommends** that the *Magistrates Court (Electoral Infringement Notices) Regulation 2012* be amended to provide that the listed infringement penalties be set at 20% of the offence penalty unit set out in the Electoral Act.

Recommendation 25

The Commission **recommends** that the Electoral Act and/or the Magistrates Court (Electoral Infringement Notices) Regulation be amended to provide that where an offence continues beyond the date of payment of a notice, a fresh liability will arise even if the notice is paid, unless the relevant disclosure return or a complete return is lodged, as the case may be.

Recommendation 26

The Commission **recommends** that the Assembly reconsider the 31 July deadline for submission of annual returns with a view to determining the effectiveness of the current arrangement. In this context, the Commission **recommends** that the Assembly seek the views and experiences of the parliamentary parties and the associated entities with respect to this issue.

Amendments to the Electoral Act required to expand the ACT Legislative Assembly to 25 Members at the 2016 election

The leaders of ACT Labor and the Canberra Liberals in the Assembly have indicated their intention to support an increase in the size of the Assembly to 25 members to be elected to the Assembly with effect from the 2016 election, with 5 members to be elected from each of 5 electorates.

This increase is consistent with the first part of the recommendation of the Expert Reference Group on the Size of the Assembly, which recommended that the Assembly be increased to 25 members at the 2016 election and increased again to 35 members at the 2020 election. It would appear there is no public support for an increase to 35 members at this time.

The ability of the Assembly to change the number of elected representatives in the Assembly was granted by the Australian parliament by amendment to section 8 of the (Commonwealth) *Australian Capital Territory (Self Government) Act 1988* (the Self-Government Act) in March 2013. The effect of that amendment allows the Assembly to change the number of members of the Assembly by enactment, provided a two-thirds majority of members vote for the change.

Giving effect to the change to the number of members of the Assembly will require amendment of the Electoral Act and a redistribution of electorate boundaries.

The proposed amendment to introduce a 25 member Assembly consisting of 5 electorates each returning 5 members is consistent with the entrenched provisions set out in the *Proportional Representation (Hare-Clark) Entrenchment Act 1994*.

The current size of the Assembly is set by section 8 of the Self-Government Act. As the Self-Government Act requires the Assembly to pass an enactment to increase the size of the Assembly by a special majority, it may be desirable to provide for the increase to a 25 member Assembly from the 2016 election in a new Act, rather than amend the Electoral Act to make the change.

A small number of relatively straight-forward amendments of the Electoral Act will be required to effect the change to the number of electorates to be elected and the number of members to be elected in each such electorate. Section 34 of the Electoral Act will need to be amended to state that the Assembly shall be divided into 5 electorates, with 5 members to be elected from each electorate. A transition provision may be necessary to ensure that the redistribution of boundaries due to commence later this year will require the ACT to be redistributed into 5 electorates each returning 5 members.

Further amendments to tidy incidental mentions of 7 member electorates would be desirable but not essential. Section 116 of the Electoral Act refers to the relevant number for determining the longest column length on the ballot papers, with reference to 5 and 7 member electorates. This section could be amended either to “hard-code” the number of electorates at 5, or be amended to remove the “hard coded” mention of the numbers of members to be elected, to be replaced with a reference to the relevant number being equal to the number of members to be elected in each electorate. This second option would

enable future changes to the size of electorates (if any) to proceed without any need to amend this section further.

Section 205F(2) of the Electoral Act also has "hard coded" references to 5 and 7 member electorates. Again, this section could be amended either to "hard-code" the number of electorates at 5, or be amended to remove the mentions of the numbers of members, to be replaced with references to the number of members to be elected in each electorate.

Schedule 2 of the Electoral Act provides for the Robson rotation tables for printing ballot papers for 5 and 7 member electorates. If the amendment to create only 5 member electorates proceeds, the table referring to 7 member electorates will be redundant. However, any amendment to remove this table may be subject to the restrictions of the Proportional Representation (Hare-Clark) Entrenchment Act, which requires any such amendment to be made by a two-thirds majority of the Assembly. The Commission recommends that this table remain in the Electoral Act to avoid this special majority requirement and to enable a future amendment to increase the size of the Assembly to be made (at least to allow 7 member electorates) without the need to reintroduce this table. Leaving this table in the Electoral Act will not create any practical problems.

A redistribution of electorate boundaries is due to commence as soon as practicable after 15 October 2014. It would be highly desirable for any change to the Electoral Act to give effect to a change in the number of members of the Assembly to take effect before the redistribution is due to commence.

To sum up, the Commission **recommends** that, to increase the size of the Assembly to 25 members, consisting of 5 members elected in each of 5 electorates, the following amendments are required:

- An enactment to increase the size of the Assembly to 25 members from the 2016 election, noting that such an enactment needs to be passed by a special two-thirds majority of the Assembly;

- An amendment to section 34 of the Electoral Act to state that the Assembly shall be divided into 5 electorates, with 5 members to be elected from each electorate;

- An amendment to section 116 of the Electoral Act to remove the reference to 7 member electorates;

- An amendment to section 205F of the Electoral Act to remove the reference to 7 member electorates; and

- A transition provision to ensure that the redistribution due to commence later this year will require the ACT to be redistributed into 5 electorates each returning 5 members.

Two further legislative issues arise if the total number of Assembly members is increased. The cap on electoral expenditure for registered political party groupings set out in section 205F of the Electoral Act is tied to the number of members to be elected to the Assembly in each electorate. This cap is indexed. For 2014, the expenditure cap is currently set at $62,530. If the Assembly is to remain at 17 members, the total expenditure cap at the 2016 election would be $1,063,010 (plus indexation). If the Assembly is increased to 25 members and section 205F is not amended, the total expenditure cap at the 2016 election would be $1,563,250 (plus indexation) – an increase of $500,240. This is a considerable increase in the total expenditure cap available to parties.

One way to address this might be to reduce the expenditure cap applicable per candidate, such that the total amount for 25 candidates summed to a lesser amount. It is noted that this would reduce the available expenditure cap for independent/non-party candidates. As the expenditure cap for third-party campaigners is also tied to the cap per candidate, such a change will also impact third-party campaigners, unless a different expenditure cap was applied to this class of campaigner.

The second issue that arises is the payment of administrative funding to political parties under division 14.3A of the Electoral Act. For 2014, the administrative funding payment is currently set at $5,210.42 per MLA per quarter, or $20,841.68 per MLA per year. If the Assembly is to remain at 17 members, the total administrative funding payment available from the 2016 election per year would be $354,308.56 per year (plus indexation). If the Assembly is increased to 25 members, the total administrative funding payment available from the 2016 election per year would be $521,042 (plus indexation) – an increase of $166,733.44. Again, this is a considerable increase in the amount of administrative funding made available to parties.

It would be appropriate for the Assembly to give consideration to these issues when debating the issue of increasing the size of the Assembly. Accordingly, the Commission **recommends** that the Assembly considers the following issues in the context of increasing the size of the Assembly:

- Whether the expenditure cap applicable to political parties should remain set at around $62,500 per candidate, capped at a total of around $1.56 million per party if the Assembly is increased to 25 members, or whether the expenditure cap should be adjusted to sum to a lesser amount per party;

- If the expenditure cap per candidate is reduced, whether the expenditure cap for third-party campaigners should be similarly reduced, or whether this amount should remain the same as currently or be increased, and

- Whether the amount paid for administrative funding to political parties should remain set at around $20,850 per MLA per year, summing to a total of around $520,000 for 25 MLAs, or whether the administrative funding rate should be reduced to sum to a lesser amount for the total number of MLAs.

Implications for the operation of the campaign finance reform provisions of the Electoral Act arising from the recent High Court decision, *Unions NSW & Ors v New South Wales*

A recent High Court decision has cast doubt on whether elements of the ACT's campaign finance reforms introduced in July 2012 are constitutionally valid.

The High Court in *Unions NSW & Ors v New South Wales* [2013] HCA 58 (18 December 2013) found parts of the *Election Funding, Expenditure and Disclosures Act 1991* (NSW) (the EFED Act) were invalid because they impermissibly burdened the freedom of political communication implied by the Commonwealth Constitution.

The two provisions deemed invalid were:

- Section 96D of the EFED Act, which prohibits the making of political donations by anyone other than individuals on the electoral roll (including annual or other subscriptions paid to a political party by an entity, such as an industrial organisation, for affiliation with the party); and

- Section 95G(6) of the EFED Act, which provides that, when calculating whether a party grouping has reached its expenditure cap, any relevant amounts spent by an affiliated organisation are to be aggregated with the party's expenditure and included in the calculation (an affiliated organisation is defined as an organisation that is authorised under the rules of the party to appoint delegates to the party or to participate in pre-selection of candidates for the party).

The Court examined the question of whether it is permissible to regulate political donations and expenditure by applying caps on donations that may be given by entities to political parties, and caps on expenditure by political parties and others. The Court accepted that "it is the legitimate purpose of the EFED Act [as a whole] to regulate the acceptance and use of political donations in order to address the possibility of undue or corrupt influence being exerted" (at [51]). This view is significant, as it indicates that the ACT's Electoral Act's imposition of caps on donations and expenditure are not of themselves invalid, provided they are aimed at the purpose of preventing the possibility of undue or corrupt influence being exerted and are proportionate to that purpose.

However, the Court noted that the particular effect of section 96D in no way achieved this purpose (at [52]-[60]):

> The terms of s 96D do not reveal any purpose other than that political donations may not be accepted from persons who are not enrolled as electors, or from corporations or other entities. …
>
> In contrast to the general, practical provisions for capping of political donations and electoral communication expenditure, s 96D is selective in its prohibition. Yet the basis for the selection was not identified and is not apparent. …

> It is not evident, even by a process approaching speculation, what s 96D seeks to achieve by effectively preventing all persons not enrolled as electors, and all corporations and other entities from making political donations.

Subsection 205I(4) of the ACT's Electoral Act is very similar, if not the same, in its effect to section 96D of the EFED Act. It provides:

> **205I Limit on gifts received**
>
> (4) Also, a receiver other than a third-party campaigner must not accept a gift from a person who is not an individual enrolled to vote in the ACT unless the gift is paid into the federal election account.

The effect of section 205I(4) of requiring gifts from any entity other than an enrolled elector to be paid into a federal election account is to prevent any such gifts from being used for ACT election purposes.

The effect of subsection 205I(4) of the Electoral Act appears identical in all material respects to the effect of section 96D of the EFED Act insofar as it relates to ACT elections. It follows that it is likely to impermissibly burden the freedom of political communication implied in the Constitution and would, if challenged, therefore likely be found to be invalid.

Accordingly, the Commission **recommends** that subsection 205I(4) of the Electoral Act be repealed, and that any provisions referring to subsection 205I(4) be amended as appropriate (including subsections 205I(7), (8) and (9)).

The effect of this repeal would return the ACT to the situation that applied prior to 1 July 2012, when political donations could be made by any entity for ACT election purposes. However, as the Court indicated that caps on donations were a legitimate means to regulate the acceptance of political donations in order to address the possibility of undue or corrupt influence being exerted, it would appear that the ACT's caps on donations have not been found to impermissibly burden the freedom of political communication implied in the Constitution. Therefore it appears that the ACT's caps on donations introduced on 1 July 2012 can continue in force.

Turning to the issue of aggregation of expenditure by political groupings, sections 205F, 205G and 205H of the ACT's Electoral Act operate to aggregate the expenditure of a range of entities for the purpose of calculating compliance with expenditure caps. However, these sections are expressed in different terms to subsection 95G(6) of the EFED Act. Therefore, there is considerable legal uncertainty whether these ACT provisions would, if challenged, be invalid.

Section 205F applies a cap on electoral expenditure by or on behalf of a party grouping during the capped expenditure period for an election (from 1 January in an election year).

Section 205G applies a cap on electoral expenditure by or on behalf of: a non-party MLA and an associated entity of the MLA; a non-party candidate grouping; and a third-party campaigner; during the capped expenditure period for an election.

Section 205H provides that, during the capped expenditure period for an election, a third-party campaigner must not act in concert with another person to incur electoral expenditure in relation to the election that is more than the expenditure cap for the third-party campaigner for the election.

Section 198 of the Electoral Act provides for the following relevant definitions:

> ***associated entity*** means an entity that—
>
> (a) is controlled by 1 or more parties or MLAs; or
>
> (b) operates, completely or to a significant extent, for the benefit of 1 or more registered parties or MLAs.
>
> ***non-party candidate grouping*** means—
>
> (a) a candidate for an election who is not a party candidate; and
>
> (b) any other person who has incurred electoral expenditure with the authority of the candidate to support the candidate in contesting the election.
>
> ***party grouping*** means—
>
> (a) a party; and
>
> (b) an MLA for the party; and
>
> (c) an associated entity of the party; and
>
> (d) an associated entity of an MLA for the party; and
>
> (e) a candidate for the party; and
>
> (f) a prospective candidate for the party.
>
> ***third-party campaigner—***
>
> (a) means a person or entity that incurs more than $1 000 in electoral expenditure in the disclosure period for an election; but
>
> (b) does not include the following:
>
> (i) a party, MLA, candidate, prospective candidate, party grouping, non-party candidate grouping or non-party prospective candidate grouping; [and other entities not presently relevant.]

The Court found in relation to section 95G(6) of the EFED Act at [61] that the provision:

> effects a burden on freedom of political communication in restricting the amount that a political party may incur by way of electoral communication expenditure in a relevant period. It does this by deeming the amount of electoral communication expenditure made by industrial organisations (and other organisations) with which it is affiliated as having been made by that party for the purposes of the applicable cap.

The majority stated at [64] to [65]:

> It may be inferred that it is the purpose of s 95G(6) to reduce the amount which a political party affiliated with industrial organisations may incur by way of electoral communication expenditure and likewise to limit the amount which may be spent by

> an affiliated industrial organisation. What cannot be deduced is how this purpose is connected to the wider anticorruption purposes of the EFED Act, or how those legitimate purposes are furthered by the operation and effect of s 95G(6). Industrial organisations are identified in the EFED Act as potential donors to political parties or candidates, and as likely to themselves expend monies on political communication. They are not identified as prohibited donors and the defendant did not seek to justify the … targeting of industrial organisations and the parties with whom they are affiliated by analogy with the provisions of Div 4 A [the "prohibited donors" provisions]. There is therefore nothing in the provision to connect it to the general anti-corruption purposes of the EFED Act.
>
> Absent a legislative purpose for s 95G(6) which is conformable with those of the EFED Act, no further consideration can be given as to whether the provision is justified. The provision is invalid.

The concept of an "associated entity" in the ACT's Electoral Act appears narrower than the concept of an "affiliated organisation" in the EFED Act. The key difference is the closeness of the connection between each such entity and the relevant party. In the case of the Electoral Act's "associated entity", the connection is one of control of the entity by the party or MLA, or the purpose of the operation of the entity being completely, or to a significant extent, for the benefit of the party or MLA.

In contrast, to be considered an "affiliated organisation" under the EFED Act requires only that the body be authorised to appoint delegates to the relevant party or participate in pre-selection of candidates for the party. On this definition, an affiliated organisation may have a purpose entirely unrelated to the party in question.

The intention of inclusion of associated entities within the concept of a party or MLA grouping in the ACT's Electoral Act is to prevent parties and non-party MLAs from setting up legally separate but nevertheless closely related entities with the purpose of assisting the "primary" political entity. For example, the only two associated entities currently active in the ACT are the ACT Labor Club and the 1973 Foundation. Both of these entities were established by the ACT Branch of the Australian Labor Party, and profits from these enterprises return to ACT Labor. A notable associated entity previously active was the 250 Club, which was established in part to raise funds for the ACT Division of the Liberal Party.

In the Commission's view, if associated entities are not included within a party or non-party MLA grouping, it is arguable that this could be a vehicle for circumventing the cap on expenditure to an unacceptable extent. The Commission considers that there is a significant difference between the ACT concept of "associated entity" compared to the concept of "affiliated organisation" under the EFED Act. As an ACT "associated entity" by definition must be controlled by, or be operating completely or to a significant extent for the benefit of, a party or MLA, the Commission suggests that it is appropriate to include such entities within a party grouping for the purpose of applying the cap on expenditure, as their political objectives are coincident. The Commission considers that this inclusion within a party grouping is consistent with the purpose of preventing the possibility of undue or corrupt

influence being exerted. Nevertheless, the Commission accepts that this issue is not beyond legal doubt.

Section 205G(b) of the Electoral Act has the effect of aggregating the expenses of a non-party candidate with the expenses of any other person who has incurred electoral expenditure with the authority of the candidate to support the candidate in contesting the election, when determining whether the non-party candidate grouping has exceeded the expenditure cap.

Again, the Commission considers that the aggregation of a non-party candidate with any other person acting with the authority of the candidate is a closer connection than the connection between an "affiliated organisation" and a party identified by the Court under the EFED Act. Therefore the Commission considers that it is appropriate to include such entities within a non-party candidate grouping for the purpose of applying the cap on expenditure, as their political objectives are coincident. The Commission accepts that this issue is not beyond legal doubt.

Section 205H of the Electoral Act effectively applies the expenditure cap to a third-party campaigner and any other person acting in concert with the third-party campaigner. This section provides that a person "acts in concert" with someone else where the person acts under an agreement (whether formal or informal) with the other person to campaign with the object, or principal object, of having a particular party, MLA or candidate elected.

While it may be difficult to prove the existence of a formal or informal agreement in the terms of this provision, this provision is aimed at preventing people acting in concert to avoid the application of the expenditure cap on third-party campaigners. Given the requirement for the relevant entities to be acting in agreement for the principal object of promoting the election of a particular party, MLA or candidate, the Commission considers that this provision is also consistent with the purpose of preventing the possibility of undue or corrupt influence being exerted.

Notwithstanding the Commission's views on these issues, it is noted that there is considerable legal uncertainty about whether these provisions would survive the tests imposed by the High Court, and an alternative view could be cogently argued. The Commission suggests that the Committee may wish to seek its own legal advice on these issues.

The Commission's *Report on the ACT Legislative Assembly Election 2012*

The Commission endorses the recommendations it made in its *Report on the ACT Legislative Assembly Election 2012*.

Two of those recommendations (4 and 8) relate to section 205I(4) of the Electoral Act, which provides that a receiver other than a third-party campaigner must not accept a gift from a person who is not an individual enrolled to vote in the ACT unless the gift is paid into the federal election account. As discussed above in relation to the High Court case *Unions NSW & Ors v New South Wales* [2013] HCA 58, the Commission recommends that this provision should be repealed as it is likely to impermissibly burden the freedom of political communication implied in the Constitution and would, if challenged, therefore likely be found to be invalid.

Accordingly, recommendations 4 and 8 of the Commission's 2012 election report have been superseded by this recommendation.

The Commission does not propose to expand further on its 2012 election report in this submission except in relation to recommendation 5 (regarding the need for ACT election accounts) and in relation to recommendation 15 (regarding the fine for failure to vote), which are discussed in the following sections on campaign finance reform and participation in the electoral process.

Further recommendations for changes to the campaign finance reform provisions of the Electoral Act

The Commission notes that it is currently preparing a report to the Legislative Assembly on the operation of the campaign finance reforms that commenced on 1 July 2012. This report is not yet complete. It will be completed later in 2014 and will either be submitted as a separate report to the Legislative Assembly or incorporated in the Commission's Annual Report for 2014/2015. This section of the current submission includes some suggestions for amendments to the Electoral Act arising from issues that have arisen in relation to campaign finance reform matters since the preparation of the Commission's report on the 2012 election.

The need for ACT election accounts

In the Commission's *Report on the ACT Legislative Assembly Election 2012* (at recommendation 5), the Commission recommended that the need for political participants to hold an ACT election account with a financial institution be re-examined by the Assembly.

The Commission noted on page 64 of its Report:

> Several of the changes introduced on 1 July 2012 require political entities to maintain an ACT election account held with a financial institution. This requirement caused some concern to some political participants. It was suggested to the Commission that it was unnecessary and could more readily be accommodated through existing accounting methods, such as sub-accounts within the party finances. In some cases, particularly third party campaigners who were not identified as such by the Commission until after they had incurred electoral expenditure, the requirement to establish an ACT election account was not known to them until after the relevant transactions had taken place.
>
> The ACT election account mechanism was adopted to facilitate the management and regulation of the new limits on donations and expenditure. Given the concerns expressed with this mechanism, it may be appropriate to review this requirement to determine whether an alternative approach may be preferable.

The need to repeal subsection 205I(4) of the Electoral Act, as discussed above, will remove the need for political participants to establish a federal election account and diminishes the need for keeping a separate account devoted to ACT elections.

On the assumption that subsection 205I(4) of the Electoral Act will be repealed, the provisions that remain that relate to the maintenance of an ACT election account include:

- The cap on gifts that may be received from a single source in a financial year of $10,000 that can be used for ACT election purposes;
- The requirement that expenses on an ACT election must be sourced from an ACT election account;

- The prohibition on the repayment of loans deposited in an ACT election account using funds sourced from a non-ACT election account;

- The cap on payments made to a party by a related political party in a financial year of $10,000 that can be used for ACT election purposes; and

- The prohibition on use of administrative expenditure funding paid to parties and non-party MLAs under the Electoral Act for expenditure in relation to an ACT, federal, state or local government election.

It can be seen that the classifications of sources of funds that cannot be used for ACT election purposes can be identified as:

- Gifts received from a single source in a financial year of more than $10,000;

- Payments made to a party by a related political party in a financial year of more than $10,000; and

- Administrative expenditure funding paid to parties and non-party MLAs under the Electoral Act.

Rather than regulating these requirements using a mixture of ACT election accounts and other accounts, the Commission **recommends** that it may be simpler to remove the concept of an ACT election account and instead provide as follows:

- Where one or more gifts are received by a political entity from a single source in a financial year totalling more than $10,000, the amount above $10,000 must be deposited in a separately identified account and must not ever be used for an ACT election purpose (including payment of a loan used to incur ACT election expenditure);

- Where a payment is made to a party by a related political party in a financial year totalling more than $10,000, the amount above $10,000 must be deposited in a separately identified account and must not ever be used for an ACT election purpose; and

- Administrative expenditure funding paid to parties and non-party MLAs under the Electoral Act must be deposited in separately identified account and must not ever be used for an ACT, federal, state or local government election purpose.

A transition provision may be needed to ensure funds falling into the above categories, received since 1 July 2012, are deposited in a separately identified account.

As the receipt of payments in the above categories is more likely to be the exception rather than the rule, it is likely that it will be less difficult for political entities to comply with these requirements and easier to monitor for compliance.

This scheme would address the issue of third-party campaigners being required to establish ACT election accounts before commencing expenditure on ACT election campaigning.

Reporting of disputed invoices

Registered political parties, MLAs and associated entities are required to disclose, in their annual returns, the total amount of outstanding debts and the details of persons and organisations to whom they are indebted, where the debt is $1,000 or more at the end of a financial year.

An issue arose with respect to a disputed invoice from Australia Post held by the Canberra Liberals at the end of the 2012/2013 financial year. The Canberra Liberals did not disclose this disputed debt in the relevant annual return as the party considered that it was not a debt that was required to be disclosed. The existence of the disputed debt became public knowledge and drew considerable media attention, which focused on whether the party should have disclosed the debt in its annual return.

After detailed consideration of the issues involved, the Electoral Commissioner concluded that only undisputed and quantifiable debts are legally required to be disclosed in an annual return lodged under section 230 of the Electoral Act.

Parties and MLAs are required by section 230 to give the Electoral Commissioner an annual return by 31 July each year. Section 230(4)(c) provides that the annual return must state the outstanding amount, at the end of the financial year, of debts incurred by, or on behalf of, the party together with the particulars required by section 234(1). Section 234(1) requires the return to specify the sum and the defined particulars of all debts that are owed by a party to a particular person or organisation that total $1,000 or more.

The obligation to disclose debts in a party's return extends only to debts that have been incurred and are owed at 30 June in the reporting period. When viewed in conjunction with the consequential obligation to "specify the sum" of those debts (section 234(1)), the Commissioner considered that only undisputed and quantifiable debts are legally required to be disclosed in an annual return. Provided there is a genuine dispute as to the existence or amount of a debt, the debt does not need to be included in the party's annual return.

Once a disputed debt has been settled between the parties, it would not be necessary to resubmit an annual return for an earlier financial year, as each annual return should include only acknowledged debts as at 30 June. If the acknowledged debt was still outstanding at the following 30 June, it would need to be included in the relevant annual return.

While the law does not (in the Commissioner's view) require parties, MLAs and associated entities to declare disputed debts in their annual returns, the public interest in the above case indicates that it might be appropriate, for transparency purposes, if parties, MLAs and associated entities were required to flag the existence of any disputed debts of $1,000 or more in their annual returns.

Accordingly, the Commission **recommends** that the Electoral Act be amended to require the details of disputed debts with a total amount of $1,000 or more, held by a registered party, MLA or associated entity at 30 June, to be disclosed as a new category in the entity's annual return for the relevant financial year.

Reporting of details of receipts of less than $1,000 by associated entities

Associated entities are required to lodge annual returns showing, inter alia, details of all persons and organisations from whom any amount has been received, unless the amount is for:

- Supply of liquor or food in accordance with a license held by the entity under the *Liquor Act 2010*, and is not more than is reasonable consideration for the supply;
- An amount received for the playing of gaming machines in accordance with a license held under the *Gaming Machine Act 2004*;
- Membership of the entity if the membership fee is less than $250 in a financial year; or
- An amount prescribed by regulation (there are currently no amounts prescribed).

The exemption for payment of membership of the entity was included in the Electoral Act when it became clear that the Canberra Labor Club would (in the absence of this amendment) need to disclose the name and address of each of its approximately 55,000 members. Clearly the intent of the requirement for the disclosure of details of persons from whom an associated entity receives any amount was not to capture the details of club members in this way, and there would appear to be no public good served by that disclosure.

In preparing its annual return for 2012/2013, a further issue arose regarding the Canberra Labor Club with respect to the receipt of payments of green fees at its newly acquired bowling club facility. While these fees were for relatively small amounts, the current provisions required the disclosure of the details of every person who paid them. The Commissioner took a pragmatic approach to the situation and decided, for privacy reasons, not to publish the details of amounts received by the Canberra Labor Club of less than $1,000 on its website; however, these details are available for inspection in the office of the Commission as required by the Electoral Act.

The situation with the receipt of green fees brings into question the intent behind the necessity for an associated entity to disclose the details of persons and organisations from whom any amount is received. Other entities, such as registered political parties and MLAs, need only disclose details of those from whom $1,000 or more is received (either as gifts or other receipts). Candidates and third-party campaigners need only disclose details of those from whom gifts of $1,000 or more is received.

The disclosure of the details of those who have made payments of small amounts to an associated entity appears to serve no purpose in the context of transparency, nor any public good, particularly while other political entities enjoy a threshold for disclosure of $1,000.

Accordingly, the Commission **recommends** that the current need for associated entities to disclose the details of all persons and organisations making payments to the entity of any value, with some exemptions, be amended to provide that associated entities do not need to disclose the identities of persons or organisations giving the entity less than $1,000 in a financial year (retaining the exemptions for income related to supply of food, liquor and gambling).

Affiliation fees paid to a political party

The definition of gift in the Electoral Act includes a provision that the part of an annual membership subscription to a political party that is more than $250 is considered to be a gift to the party. That part of the annual membership subscription that is less than $250 is not defined as a gift. The intent of this provision is to ensure that parties are not able to avoid the cap on donations by using payments classed as "membership fees" that might otherwise be in effect gifts.

Until the amendments to the Electoral Act which took effect from 1 July 2012, the definition of gift did not include any amount that related to a membership subscription. As at that time there was no cap on gifts, whether or not such payments were classed as gifts was not an issue of significant import. Now that gifts are capped, considerable significance attaches to whether various receipts are defined as gifts. In particular, following on from the amendment to include consideration of the amount of a membership subscription in the definition of gift, a further issue arises as to the treatment of a fee for affiliation with a political party.

It is not clear to the Commission whether an affiliation fee should be treated as a membership subscription, and therefore whether the amount of the fee that is more than $250 should be treated as a gift, or whether the whole of the fee should be treated as a receipt that is not a gift. It would be desirable to amend the Electoral Act to put this issue beyond doubt. This is essentially a policy decision for the Assembly.

Accordingly, the Commission **recommends** that the Assembly consider whether a fee for affiliation with a political party should be treated as a subscription for membership to the party (and therefore should be treated as a gift if the amount is greater than $250). The Commission further **recommends** that, whatever the outcome of that consideration, the Electoral Act be amended to put the matter beyond doubt.

Compulsory party levies placed on elected representatives of the party

Some registered political parties impose a compulsory levy on their elected representatives, payable to the party. A question arises as to whether the payment of a compulsory levy is akin to a payment of a "special" membership subscription, and therefore whether that amount of the levy paid in a financial year over $250 is to be considered as a gift to the party.

Prior to 1 January 2014 this issue did not require any consideration, as the definition of gift in section 198AA of the Electoral Act specifically exempted from the definition of gift any

payments from one entity within a party grouping to another entity in the grouping. This exemption ended on 1 January 2014.

To date the Commissioner has taken the view that a compulsory levy should not to be treated as a gift or "special" membership subscription as it can be argued that it is not a payment made without consideration within the definition of gift in section 198AA. However, some doubt remains.

Accordingly, the Commission **recommends** that the Electoral Act be amended to clarify whether any part of a compulsory levy imposed by a political party on its elected representatives should be considered a gift to the party, or whether the whole of the levy should be exempt from the definition of gift.

Infringement penalties for late or incomplete disclosure returns

Prior to 1 July 2012, the only way in which the Electoral Commissioner could enforce the various offences related to the campaign finance provisions of the Electoral Act was by taking prosecution action through the courts.

The campaign finance reforms that commenced on 1 July 2012 included new provisions related to straightforward offences such as failure to provide disclosure returns by the due date. To enable a simpler process for enforcing these offences than court action, a regulation was made under the *Magistrates Court Act 1930* to enable the Commissioner to issue infringement notices.

The Magistrates Court (Electoral Infringement Notices) Regulation became effective from 1 July 2012. It allows the Electoral Commissioner to issue infringement notices for offences against sections 236(1) and 236(2) of the Electoral Act. Section 236(1) provides that it is an offence to not give the Commissioner a disclosure return when required to do so within a stated time, and section 236(2) provides that it is an offence when a person who is required to give a return to the Commissioner does so, but the return is incomplete.

The penalty for an offence against sections 236(1)(a), 236(1)(b) and 236(2) is 50, 20 and 20 penalty units, respectively. The infringement penalty listed in the Regulation is a fixed amount based on 20% of the amount of the penalty for the offence at the time of making the Regulation ($1,100, $440 and $440 respectively). At the time of making the Regulation, a penalty unit was worth $110. The current value of a penalty unit is $140, and this amount increases periodically.

As the infringement penalties are not linked to the value of a penalty unit, the relative value of the penalties will decrease over time. The Commission suggests it would be appropriate to amend the Regulation to link the penalties to the value of a penalty unit, to avoid the need to manually adjust the infringement penalty as the value of a penalty unit changes.

Accordingly, the Commission **recommends** that the Magistrates Court (Electoral Infringement Notices) Regulation be amended to provide that the listed infringement penalties be set at 20% of the offence penalty unit set out in the Electoral Act.

Infringement notices and discharge of liability

There is potential for uncertainty to arise under the new infringement penalty system introduced by the Magistrates Court (Electoral Infringement Notices) Regulation in relation to whether payment of a penalty discharges the liability to submit the required disclosure return.

The payment of an infringement penalty in many situations will discharge the liability for the offence. For example, payment of a traffic infringement penalty discharges the liability for the offence to which the infringement applies. In the example of a traffic infringement, a further infringement penalty cannot be issued for that same offence where the penalty is paid.

The situation of an offence against sections 236(1) (failure to lodge a disclosure return on time) or 236(2) (failure to lodge a complete return) is different in that even though an infringement penalty may be paid, the offence continues unless a disclosure return is subsequently lodged. While sections 152 (Continuing effect of obligations) and 193 (Continuing offences) of the *Legislation Act 2001* provide some assistance in interpreting situations where obligations and offences are continuing, issuing infringement notices for continuing offences can create uncertainty as to whether payment will discharge liability.

Section 152 of the Legislation Act provides:

> **152 Continuing effect of obligations**
>
> If, under a provision of an Act or statutory instrument, an act is required to be done, the obligation to do the act continues until the act is done even if—
>
> (a) the provision required the act to be done within a particular period or before a particular time, and the period has ended or the time has passed; or
>
> (b) someone has been convicted of an offence in relation to failure to do the act.

Section 193 of the Legislation Act provides:

> **193 Continuing offences**
>
> (1) This section applies to a requirement to do an act if—
>
> (a) the act is required to be done under an ACT law within a particular period or before a particular time; and
>
> (b) failure to comply with the requirement is an offence against the law.
>
> (2) A person who fails to comply with the requirement commits an offence for each day until the act is done.
>
> (3) A day mentioned in subsection (2) includes any day of conviction for an offence and any later day.

Amending the provisions related to electoral infringement notices in the Electoral Act and/or the Magistrates Court (Electoral Infringement Notices) Regulation may help to remove any uncertainty.

Accordingly the Commission **recommends** that the Electoral Act and/or the Magistrates Court (Electoral Infringement Notices) Regulation be amended to provide that where an offence continues beyond the date of payment of a notice, a fresh liability will arise even if the notice is paid, unless the relevant disclosure return or a complete return is lodged, as the case may be.

Lodgement of annual returns by 31 July

Annual disclosure returns from political parties, MLAs and associated entities are required to be submitted to the Commissioner no later than 31 July after the end of each financial year. The Commission must make the returns publicly available at the beginning of September. These requirements commenced with the submission of the 2011/2012 annual returns. The Commission makes the details contained on the returns available through its website, and the original returns are available for viewing at the Commission's office during business hours.

While the disclosure returns for 2011/2012 and 2012/2013 were for the most part received by the due date, it is clear that the requirement to submit returns by 31 July will more than likely lead to a need to submit amended returns, as the 31 July deadline generally falls before a party's accounts have been formally audited.

To meet the 31 July requirement, preparation of party returns generally needs to be undertaken without the party's accounts having been formally audited, and in some cases before bank statement reconciliation for the end of financial year. This situation can, and has, led to errors in the original returns, some of which may not be detected until audits, initiated by the party, MLA, entity or the Commission, have taken place.

The objective for earlier submission of returns was to make disclosures public earlier in the election cycle, particularly in an election year. While this objective has been achieved with the earlier deadline, this must be balanced with the likelihood of errors in the annual returns.

The Commission **recommends** that the Assembly reconsider the 31 July deadline for submission of annual returns with a view to determining the effectiveness of the current arrangement. In this context, the Commission **recommends** that the Assembly seek the views and experiences of the parliamentary parties and the associated entities with respect to this issue.

Participation in the electoral process

The Commission's report on the 2012 election noted that in percentage terms ACT electoral participation rates were considerably lower than in 2008. The percentage of electors on the roll compared to estimated eligible population was 93.9% in 2012, compared to 97.1% in 2008. The 18-25 year age group was particularly under-represented in 2012. In 2012, the turnout of enrolled voters was 89.3%, down from 90.4% in 2008.

Table 10 of the report shows the numbers of electors enrolled by age group at the 2008 and 2012 elections and the estimated eligible proportion of each age group enrolled. The following table compares the numbers and proportions of electors enrolled by age group at the 2012 election and at September 2013 and March 2014.

Enrolled electors by age group and estimated percentage of those eligible – as at 2012 election and as at September 2013 and March 2014

	2012 election		30 September 2013		31 March 2014	
Age	**Number enrolled**	**% of estimated entitled to enrol** (see note 1)	**Number enrolled** (see note 3)	**% of estimated entitled to enrol** (see note 1)	**Number enrolled**	**% of estimated entitled to enrol** (see note 1)
18 (see note 2)	3,435	67.3%	4,030	92.7%	2,883	65.6%
19	3,165	56.0%	4,686	97.9%	4,640	104.1%
20-24	23,499	79.8%	29,681	85.3%	24,703	86.7%
25-29	26,102	88.7%	21,464	89.0%	26,807	89.8%
30-34	25,456	96.1%	26,725	94.1%	27,327	94.8%
35-39	24,393	93.6%	24,793	98.4%	25,208	98.3%
40-44	25,062	98.4%	25,794	96.6%	26,047	98.4%
45-49	22,920	93.3%	23,176	100.0%	23,443	98.4%
50-54	23,273	97.8%	23,447	96.5%	23,574	98.8%
55-59	20,497	98.2%	20,596	99.8%	20,840	99.6%
60-64	18,619	99.1%	18,647	103.6%	18,771	102.0%
65-69	14,229	110.4%	15,235	98.6%	15,623	100.3%
70+	26,052	104.6%	27,031	100.5%	27,712	101.2%
Total	**256,702**	**93.9%**	**265,305**	**95.8%**	**267,578**	**96.2%**

Note 1: The percentages in the above table need to be treated with caution as they are based on various assumptions about residency and eligibility. The estimates shown are post-censal estimates based on census data updated by birth and death registrations, and estimated interstate and overseas migration. The fact that some age groups show participation rates close to or greater than 100% is likely to be due to the imprecise nature of estimates such as these.

Note 2: This row includes 267 17 year old electors who turned 18 after the close of rolls and on or before polling day in 2012, and were therefore entitled to vote.

Note 3: In the 20-24 row, the results for September 2013 group electors who are 20-25; and in the 25-29 row, the results for September 2013 group electors who are 26-29.

Two events have impacted on the completeness of the ACT electoral roll since the October 2012 election. In the first half of the 2013 calendar year the Australian Electoral Commission commenced the implementation of "direct enrolment" in the ACT, as part of a national rollout of this new method of maintaining the electoral roll. Under direct enrolment, unenrolled eligible citizens are added to the electoral rolls without requiring electors to complete an enrolment form, using data supplied by Centrelink and NEVDIS (the National Exchange of Vehicle and Driver Information System – the database of driver and vehicle information of States and Territories in Australia). This data is also used to update the address details of enrolled electors.

The second event was the federal election held in September 2013. In relation to the ACT electoral roll, a federal election not only serves the purpose of encouraging ACT eligible citizens to enrol (as an ACT election does), but also encourages ACT enrolled electors who have left the ACT permanently to enrol for their new address interstate, which an ACT election does not do to the same extent.

The impact of these two events has been a significant improvement in enrolment participation rates in the ACT, particularly in those age groups that, at the time of the 2012 election, were not performing well. The reported outcomes for September 2013 to March 2014 indicate that the direct enrolment method has successfully addressed the problem apparent in 2012 with under-enrolment of young people, people those aged 18 and 19. The Commission notes that the participation rate of 18 year olds has declined since the September 2013 federal election. It is not clear at this stage why this has occurred, however the very high participation rate of 18 year olds at the time of the 2013 federal election indicates that this issue can be addressed.

This in turn indicates that it can be expected that enrolment participation rates at the time of the next scheduled ACT election in October 2016 will be significantly improved, particularly as a federal election will be due at around the same time.

It remains to be seen whether this increase in enrolment participation will lead to poorer elector turnout at the 2016 election. As direct enrolment has the effect of enrolling people who may not have wished to enrol (as it occurs without the elector taking any action, and can only be prevented if a person claims not to be entitled to enrol), it may be that electors who have been directly enrolled may not turnout and vote at the same rates as those who

have consciously enrolled. Data on participation rates of directly enrolled electors from the federal election is not yet available to the ACT Electoral Commission.

Regardless of the impact of direct enrolment, it is apparent that voter turnout for ACT elections is significantly lower than for federal elections in the ACT. Turnout in the ACT at the 2013 federal election was 94.8% (251,722 Senate votes counted), compared to the 2012 ACT election turnout of 89.3% (226,125 votes counted).

The reasons for this difference in the turnout between federal elections and ACT elections are complex and cannot be definitively determined. It is likely that the greater publicity given to federal elections results in more ACT electors who are absent from the ACT being aware that an election is being held. In addition, the wider opportunity for voting interstate and overseas provided at federal elections is likely to lead to more ACT voters being able to vote at interstate or overseas polling locations.

It is also possible that the higher profile and the higher perceived importance of federal elections compared to ACT elections has lead to some ACT electors deliberately choosing not to vote for ACT elections.

Analysis of voting data by age groups for the 2008 and 2012 ACT elections indicates that turnout is relatively high among 18 and 19 year olds (presumably because they have only recently enrolled and are motivated to vote for the first time) and very high among voters aged between 36 and 80. Reduced participation by those aged over 80 is presumably related to their advancing age. The relatively lower participation of those aged 20 to 35 might be related to greater mobility of this age group, both within Australia and overseas. It may also reflect attitudes to the political process and other competing priorities in this age group.

A range of strategies has been adopted by the Commission to attempt to maximise voter turnout. The key strategy has been to conduct an extensive information campaign across a wide range of platforms in the lead up to each election. The information campaign for the 2012 election used direct mail to all households, newspaper, radio, television, bus-shelter and on-line advertising, a comprehensive website, public relations, social media and targeted information provided to specific community groups. Combined with the advertising conducted by parties and candidates during the election (including widespread signage on roads) it is unlikely that many ACT residents were unaware that an ACT election was underway in October 2012.

In terms of ensuring awareness of the existence of an ACT election, the biggest challenge is to reach electors who are travelling interstate and overseas. It would not be cost-effective to conduct traditional interstate or overseas advertising campaigns for an ACT election. An approach that is more cost-effective is to use internet advertising likely to be accessed by ACT electors travelling outside the ACT. This was addressed in 2012 by taking out advertising on the *Canberra Times* website, combined with the generation of news stories on the election which appear in online news sites. However, for those who are overseas or interstate and not keeping in touch with ACT news, the opportunities for reaching this group

are limited. The Commission could examine further avenues for internet advertising at the 2016 election.

Comparison of ACT election turnout with federal election turnout in the ACT would indicate that there are a significant number of ACT electors who are aware that an ACT election is underway, but who nevertheless choose not to vote. Other strategies may need to be implemented to address this group of electors.

While the Commission has conducted education programs in ACT schools for many years, the number of students reached by this program has declined in recent years. In 2014 the Commission has commenced a review of its education program with a view to reaching a much wider audience. This review will be discussed in the Commission's 2013/2014 annual report. An aim of this program review will be to increase awareness of ACT electoral matters among young people with a long-term goal of encouraging life-long engagement with the electoral process.

Another strategy that could be considered is extending the facilities for voting services to include on-line voting. This could particularly have an impact on electors travelling interstate or overseas who may have difficulty casting a postal vote. This approach has been adopted for NSW State elections. On-line voting may also appeal to young people who are used to interacting with government using on-line facilities.

However, the fact that 94.8% of ACT electors were able to cast a vote for the 2013 federal election appears to indicate that access to ballot facilities on-line is not a serious impediment to a high turnout of voters. At best, introduction of on-line voting for ACT elections may only make a marginal difference to turnout rates.

The Commission is reluctant to recommend the adoption of on-line voting for ACT elections at this time. With regard to the 2016 election, the Commission is concerned that there is not sufficient time to develop a robust system tailored to ACT elections. The Commission also notes that considerable additional funding would be needed to develop and implement an on-line voting system.

The Commission is cautious of the risks involved in implementing internet voting and suggests that a watching brief be kept on this issue. It may be appropriate to reconsider on-line voting for the 2020 election, particularly if more Australian electoral jurisdictions move to adopt it.

Another strategy for increasing turnout would be to increase the penalty for failure to vote. As discussed in the Commission's report on the 2012 election, the number of electors choosing to pay the $20 penalty for failure to vote has increased markedly in recent elections. The Commission reiterates its recommendation that the penalty notice fine for failing to vote at ACT Legislative Assembly elections should be increased. The Commission suggests that this course is the most likely to increase participation in ACT elections.