



**Legislative Assembly for the  
Australian Capital Territory**

Standing Committee on Justice and  
Community Safety

# **Inquiry into Electoral and Road Safety Legislation Amendment Bill 2023**

Legislative Assembly for the Australian Capital Territory  
Standing Committee on Justice and Community Safety

---

Approved for publication

Report 19  
10th Assembly  
August 2023



# About the committee

## Establishing resolution

The Assembly established the Standing Committee on Justice and Community Safety on 2 December 2020.

The Committee is responsible for the following areas:

- ACT Electoral Commission
- ACT Integrity Commission
- Gaming
- Minister of State (JACS reporting areas)
- Emergency management and the Emergency Services Agency
- Policing and ACT Policing
- ACT Ombudsman
- Corrective services
- Attorney-General
- Consumer affairs
- Human rights
- Victims of crime
- Access to justice and restorative practice
- Public Trustee and Guardian

You can read the full establishing resolution [on our website](#).

## Committee members

Mr Peter Cain MLA, Chair

Dr Marisa Paterson MLA, Deputy Chair

Mr Andrew Braddock MLA

## Secretariat

Ms Kathleen de Kleuver, Committee Secretary (from 14 August 2023)

Ms Kate Mickelson, A/g Committee Secretary (until 11 August 2023)

Ms Anna Hough, Assistant Secretary

Mr Satyen Sharma, Administrative Officer

## Contact us

**Mail** Standing Committee on Justice and Community Safety  
Legislative Assembly for the Australian Capital Territory  
GPO Box 1020  
CANBERRA ACT 2601

**Phone** (02) 6207 0524

**Email** [LACommitteeJCS@parliament.act.gov.au](mailto:LACommitteeJCS@parliament.act.gov.au)

**Website** [parliament.act.gov.au/parliamentary-business/in-committees](http://parliament.act.gov.au/parliamentary-business/in-committees)

## About this inquiry

The Electoral and Road Safety Legislation Amendment Bill 2023 was presented in the Assembly on 29 June 2023. It was then referred to the Standing Committee on Justice and Community Safety as required by clause 5 of the establishing resolution. This clause allows committees to inquire into and report on bills within two months of their presentation.

The Committee decided to inquire into the Bill on 3 July 2023.

# Contents

<b>About the committee</b>	<b>i</b>
Establishing resolution	i
Committee members	i
Secretariat	i
Contact us	i
<b>About this inquiry</b>	<b>ii</b>
<b>Acronyms and Abbreviations</b>	<b>iv</b>
<b>Recommendations</b>	<b>v</b>
<b>1. Introduction</b>	<b>1</b>
Conduct of the inquiry	1
Background to the Bill	1
Foreign donations	1
Reporting of political donations	2
Enhancement of party membership checks	2
Dissemination of electoral matter	2
Roadside advertising	3
Legislative Scrutiny	4
<b>2. Issues Raised in Evidence</b>	<b>6</b>
Support for the Bill	6
Issues of Concern	6
Gifts and receipts	6
Electronic and overseas voting	11
Moveable signs and roadside advertising	14
Electoral matter	15
Definition of political entity	18
<b>3. Conclusion</b>	<b>20</b>
<b>Appendix A: Submissions</b>	<b>21</b>

# Acronyms and Abbreviations

Short form	Long form
ABN	Australian Business Number
ACT	Australian Capital Territory
The Committee	Standing Committee on Justice and Community Safety
The Act	<i>Electoral Act 1992</i>
The Bill	Electoral and Road Safety Legislation Amendment Bill 2023
HRA	<i>Human Rights Act 2005</i>
MLA	Member of the Legislative Assembly
OSEV	overseas electronic voting system
PULA	<i>Public Unleased Land Act 2013</i>
The Scrutiny Committee	Standing Committee on Justice and Community Safety (Legislative Scrutiny Role)
The Territory	The Australian Capital Territory

# Recommendations

## Recommendation 1

The Committee recommends that the ACT Government amend the Bill to omit reforms to the gifts and donations disclosure scheme, other than those associated with the implementation of ‘real time’ seven-day donation reporting, and in particular to omit the reforms:

- lowering the threshold amount for disclosure; and
- imposing a requirement to report all gifts from an entity after the 12th gift of any amount in a financial year.

## Recommendation 2

The Committee recommends that the ACT Government amend the Bill to remove the requirement that gifts to MLAs be reported twice, and instead require that such gifts be reported only in the party’s Annual Return.

## Recommendation 3

The Committee recommends that the ACT Government amend the Bill to provide for a definition of a foreign donor based on foreign control.

## Recommendation 4

The Committee recommends that the ACT Government consider further reforms to clarify liability for a failure of a reporting agent to lodge a report, or otherwise omit from the Bill an increase to the permitted number of reporting agents.

## Recommendation 5

The Committee recommends that the ACT Government comprehensively address the risks associated with online voting systems before proceeding to implement such a system.

## Recommendation 6

The Committee recommends that, if an online voting system is adopted, the ACT Government ensure that overseas electors are able to access telephone voting if the online voting system is suspended.

## Recommendation 7

The Committee recommends that the ACT Government amend the Bill to require that an approved electronic voting system have a voter-verifiable paper record, so that an immutable record of the vote can be verified by the voter independently of the software.

## Recommendation 8

The Committee recommends that the ACT Government supports the ACT Electoral Commission to publish electronic voting system code and documentation by April 2024.

## Recommendation 9

The Committee recommends that, in order to ensure that electoral signage reforms are implemented in time for the Voice referendum, the ACT Government amend the Bill to omit the six-month delayed implementation for the provisions concerning electoral signage.

#### **Recommendation 10**

The Committee recommends that the ACT Government amend the Bill to double fines for the incursion of minor traffic offences while displaying electoral matter or advertising, rather than imposing a fixed-amount increase.

#### **Recommendation 11**

The Committee recommends that the ACT Government amend the Bill to include a revised definition of ‘electoral matter’ in line with the definition in Commonwealth legislation.

#### **Recommendation 12**

The Committee recommends that the ACT Government amend the Bill to include Section 237 of the *Electoral Act 1992* in Schedule 5 of the Act as an internally reviewable decision.

#### **Recommendation 13**

The Committee recommends that the ACT Government amend the Bill to ensure that translation services be exempted from the expenditure cap, rather than the production of translated electoral matter.

#### **Recommendation 14**

The Committee recommends that the ACT Government amend the Bill to define ‘political entity’ consistently.

#### **Recommendation 15**

The Committee recommends that, after considering and responding to the recommendations in this report, the Assembly pass the Electoral and Road Safety Legislation Amendment Bill 2023.



# 1. Introduction

## Conduct of the inquiry

- 1.1. The Committee received 8 submissions. These are listed in **Appendix A**.

## Background to the Bill

- 1.2. The Electoral and Road Safety Legislation Amendment Bill 2023 (the Bill) has been identified as a Significant Bill. Significant Bills are bills that have been assessed as likely to have significant engagement of human rights and require more detailed reasoning in relation to compatibility with the *Human Rights Act 2004*.<sup>1</sup>
- 1.3. The aims of the Bill include protecting the integrity of the ACT political system from undue influence or corruption; improving transparency; and reducing the environmental and road safety impacts of roadside electoral and commercial advertising.<sup>2</sup>
- 1.4. Among other measures, the Bill will ban political donations from foreign entities and introduce real-time reporting of political donations; allow any voter access to early voting for two weeks before the election; provide for the use of electronic voting for voters outside of Australia; and strengthen rules around authorisation statements for the dissemination of electoral matter and party name registration.<sup>3</sup>
- 1.5. The Bill will also amend the *Public Unleased Land Act 2013*, *Road Transport (Road Rules) Regulation 2017* and the *Road Transport (Offences) Regulation 2005* to further restrict roadside electoral advertising (including corflutes) and introduce specific offences for roadside political or commercial advertising using idling or illegally parked vehicles.<sup>4</sup>

## Foreign donations

- 1.6. The Bill will ban donations (referred to as gifts) from foreign entities to political entities in the ACT, where a political entity is:
- An MLA;
  - A party grouping;
  - A non-party candidate grouping;
  - A non-party prospective candidate grouping; or
  - An associated entity.<sup>5</sup>
- 1.7. Gifts of less than \$250 from foreign entities, or a sum of gifts from a single foreign entity less than \$250 in a financial year, will require the giver to also pay the amount of the gift to

---

<sup>1</sup> Electoral and Road Safety Legislation Amendment Bill 2023, *Explanatory Statement*, p 1.

<sup>2</sup> Electoral and Road Safety Legislation Amendment Bill 2023, *Explanatory Statement*, p 1.

<sup>3</sup> Electoral and Road Safety Legislation Amendment Bill 2023, *Explanatory Statement*, p 1.

<sup>4</sup> Electoral and Road Safety Legislation Amendment Bill 2023, *Explanatory Statement*, pp 1–2.

<sup>5</sup> Electoral and Road Safety Legislation Amendment Bill 2023, section 69, proposing a new section 222M of the *Electoral Act 1992*.

the Territory.<sup>6</sup> The financial representative of the political entity accepting the gift must also pay an equal sum to the Territory.<sup>7</sup> Giving or accepting a gift of \$250 or more, or a number of gifts totalling \$250 or more within a financial year, will be an offence under the Bill if the giver is a foreign entity or acts on behalf of a foreign entity.<sup>8</sup> Gifts also include loans, other than loans given by financial institutions on a commercial basis.<sup>9</sup> These provisions are constructed in a manner consistent with those which ban donations from property developers.<sup>10</sup>

## Reporting of political donations

- 1.8. The Bill will introduce a requirement for political entities to disclose any gifts of \$100 or more in value within seven days of receipt. A donor may also make up to 12 gifts of up to \$100 each to a political entity in a financial year without disclosure, but if there is a further gift the political entity will be required to report all of the gifts to the Electoral Commissioner within seven days of receiving the 13th gift.<sup>11</sup>
- 1.9. This lowers the amount requiring disclosure from \$1,000, as well as requiring stricter reporting times.<sup>12</sup>

## Enhancement of party membership checks

- 1.10. The Bill will require both registered political parties and parties seeking to be registered under the *Electoral Act 1992* (the Act) to provide the Electoral Commission with the dates of birth and email addresses (where available) of 100 members of the party, for the purpose of supporting the Electoral Commission in undertaking party membership checks. The name and address of the secretary of a political party will also be required to be provided to the Electoral Commissioner.<sup>13</sup>

## Dissemination of electoral matter

- 1.11. According to the Explanatory Statement accompanying the Bill, section 292 of the Act makes it an offence to disseminate unauthorised electoral matter:

Section 292 further sets out the requirements for what an authorisation statement is to contain. Section 293A of the Electoral Act includes an exemption from the section 292 offence for individuals disseminating electoral matter on social media which forms part of the individual's personal political views and the individual is not paid to express those views.<sup>14</sup>

---

<sup>6</sup> Electoral and Road Safety Legislation Amendment Bill 2023, s 69, proposing a new s 222N of the *Electoral Act 1992*.

<sup>7</sup> Electoral and Road Safety Legislation Amendment Bill 2023, s 69, proposing a new s 222P of the *Electoral Act 1992*.

<sup>8</sup> Electoral and Road Safety Legislation Amendment Bill 2023, s 69, proposing new s 222O and s 222Q of the *Electoral Act 1992*.

<sup>9</sup> Electoral and Road Safety Legislation Amendment Bill 2023, s 69, proposing a new s 222M of the *Electoral Act 1992*.

<sup>10</sup> Electoral and Road Safety Legislation Amendment Bill 2023, *Explanatory Statement*, p 6.

<sup>11</sup> Electoral and Road Safety Legislation Amendment Bill 2023, *Explanatory Statement*, p 10.

<sup>12</sup> Electoral and Road Safety Legislation Amendment Bill 2023, *Explanatory Statement*, p 10.

<sup>13</sup> Electoral and Road Safety Legislation Amendment Bill 2023, *Explanatory Statement*, p 7.

<sup>14</sup> Electoral and Road Safety Legislation Amendment Bill 2023, *Explanatory Statement*, p 12.

1.12. The Bill will amend section 293A of the Act to add the further requirements to this exemption that the electoral matter must be disseminated in a private capacity, and using an account that was not created for the dominant purpose of disseminating electoral matter, unless that account is in the person's name.<sup>15</sup>

1.13. The Explanatory Statement notes that:

The spread of electoral disinformation and misinformation is a critical issue as it can deceive voters on election matters, whether intentionally or unintentionally, and may influence an elector's decision, infringing on their right to vote in a meaningful way.<sup>16</sup>

1.14. This measure is intended to address the issue of anonymous special interest social media profiles by ensuring that information disseminated by accounts created for the purpose contain either the name of the person or entity controlling the account, or an authorisation statement.<sup>17</sup>

## Roadside advertising

1.15. The Bill will amend the *Public Unleased Land Act 2013* (PULA) to introduce a new offence of failing to comply with the movable signs code of practice when placing electoral advertising signs on public unleased land.<sup>18</sup> The Explanatory Statement to the Bill notes that this may limit the number of electoral corflutes, with an intended maximum number of 250 electoral signs per candidate. Designated roads where such signs are prohibited are intended to be all ACT Government managed roads with a standard speed limit of 90 kilometres per hour or higher.<sup>19</sup>

1.16. The purposes of these measures are to reduce waste production and environmental pollution, and to address safety risks associated with vehicles stopping to install or remove signs, signs blowing into the path of moving traffic, and driver distraction due to the 'sudden influx' of electoral roadside advertising during the election period.<sup>20</sup>

1.17. The Bill will also prohibit vehicles from parking in designated areas where the vehicle has a sign attached that displays advertising or electoral matter,<sup>21</sup> and increase fines for existing offences against part 12 of the *Road Transport (Road Rules) Regulation 2017* (restrictions on stopping and parking)<sup>22</sup> by \$50 if the vehicle displays advertising or electoral matter 'in or on the vehicle'.<sup>23</sup>

---

<sup>15</sup> Electoral and Road Safety Legislation Amendment Bill 2023, *Explanatory Statement*, p 12.

<sup>16</sup> Electoral and Road Safety Legislation Amendment Bill 2023, *Explanatory Statement*, p 13.

<sup>17</sup> Electoral and Road Safety Legislation Amendment Bill 2023, *Explanatory Statement*, p 13.

<sup>18</sup> Electoral and Road Safety Legislation Amendment Bill 2023, s 84.

<sup>19</sup> Electoral and Road Safety Legislation Amendment Bill 2023, *Explanatory Statement*, p 16.

<sup>20</sup> Electoral and Road Safety Legislation Amendment Bill 2023, *Explanatory Statement*, p 17.

<sup>21</sup> Electoral and Road Safety Legislation Amendment Bill 2023, *Explanatory Statement*, p 21.

<sup>22</sup> *Road Transport (Road Rules) Regulation 2017*, part 12.

<sup>23</sup> Electoral and Road Safety Legislation Amendment Bill 2023, *Explanatory Statement*, p 52.

## Legislative Scrutiny

- 1.18. The Standing Committee on Justice and Community Safety (Legislative Scrutiny Role) (the Scrutiny Committee) considered the Bill in its *Scrutiny Report 32* of 22 August 2023. The report raised concerns about proposed amendments in the Bill to the *Road Transport (Road Rules) Regulation 2017* inserting a strict liability offence where a vehicle with an attached sign displaying advertising or electoral matter is parked in a designated place. The offence will be a strict liability offence with a maximum penalty of 20 penalty units. Noting that this provision may limit the protection of freedom of expression under section 16 of the *Human Rights Act 2005* (HRA), the Committee expressed concern that elements of the offence would be defined through further delegated instruments and subject to insufficient parliamentary scrutiny.<sup>24</sup>
- 1.19. The Scrutiny Committee also noted that there was no link in the Bill between the nature of advertising matter and its likely impact on public safety:
- The definition of sign refers to a board, device, plate or screen, ruling out banners and flags which may be just, if not more, distracting for drivers. There is no reference to the size or obtrusiveness any sign would have to have before its display could lead to the offence.<sup>25</sup>
- 1.20. The Scrutiny Committee further noted that there was no requirement for the declaration of what constituted an advertisement under the Road Transport (Offences) Regulation to be the same as under the new offence to be introduced into the Road Transport (Road Rules) Regulation.
- 1.21. The Scrutiny Committee requested that the Minister provide the following information before the Bill was debated:
- a) why it is considered necessary to define elements of the offences through delegated instruments; and
  - b) why any limitations of rights protected under the HRA associated with higher infringement notice penalties should be considered reasonable using the framework under s 28 of that Act.<sup>26</sup>
- 1.22. The Scrutiny Committee also expressed concern that a consequence of donation reporting requirements under the Bill could be to require all party members to agree to having their identity and party membership disclosed. Reporting periods for donations could also differ, with the reporting period for most entities being a financial year, but for non-party candidates who had been a candidate in a previous Territory election the reporting period would start on the 31st day after polling in that previous election. This could lead to non-party candidates having to disclose donations above the threshold for a longer period of time than political parties or other candidates.<sup>27</sup>

---

<sup>24</sup> Standing Committee on Justice and Community Safety (Legislative Scrutiny), *Scrutiny Report 32*, 22 August 2023, p 5.

<sup>25</sup> Standing Committee on Justice and Community Safety (Legislative Scrutiny), *Scrutiny Report 32*, 22 August 2023, p 5.

<sup>26</sup> Standing Committee on Justice and Community Safety (Legislative Scrutiny), *Scrutiny Report 32*, 22 August 2023, p 6.

<sup>27</sup> Standing Committee on Justice and Community Safety (Legislative Scrutiny), *Scrutiny Report 32*, 22 August 2023, p 7.

- 1.23. The Scrutiny Committee asked the Minister to provide further information on the potential impact of the proposed reporting requirements on disclosure of party membership, and on candidates in previous elections, before the Bill was debated.<sup>28</sup>
- 1.24. The Scrutiny Committee also noted that the Bill would introduce an offence for a political entity to accept a gift over \$250 from or on behalf of a foreign entity unless the political entity takes reasonable steps to ensure against such a donation occurring. The Scrutiny Committee considered that this provision may limit the presumption of innocence protected as a right in criminal proceeding in section 22 of the HRA, by requiring that political entities demonstrate that they took reasonable steps to ensure that a gift was not by or on behalf of a foreign entity.<sup>29</sup>
- 1.25. The Scrutiny Committee requested that the Minister respond to this concern before the Bill was debated.<sup>30</sup>

---

<sup>28</sup> Standing Committee on Justice and Community Safety (Legislative Scrutiny), *Scrutiny Report 32*, 22 August 2023, p 7.

<sup>29</sup> Standing Committee on Justice and Community Safety (Legislative Scrutiny), *Scrutiny Report 32*, 22 August 2023, p 8.

<sup>30</sup> Standing Committee on Justice and Community Safety (Legislative Scrutiny), *Scrutiny Report 32*, 22 August 2023, p 9.

## 2. Issues Raised in Evidence

### Support for the Bill

- 2.1. There was general support amongst submitters for several provisions of the Bill, including:
- real-time reporting of donations;<sup>31</sup>
  - restrictions on gifts from foreign entities;<sup>32</sup>
  - restrictions on moveable signs and roadside advertising (corflutes);<sup>33</sup> and
  - party membership checks and registration of party secretaries.<sup>34</sup>
- 2.2. In their submission, Bruce Baer Arnold, Tess Rooney and Erina Mikus-Fletcher supported real-time reporting of donations, and called for ‘substantive rather than notional transparency’ to allow ready identification of funding recipients and broad patterns in funding. They endorsed identification by postcode rather than specific home addresses.<sup>35</sup>

### Issues of Concern

#### Gifts and receipts

##### Lower reporting threshold for gifts and receipts

- 2.3. While supporting real-time disclosure of gifts for greater transparency, ACT Labor in their submission argued that the threshold of \$100 proposed in the Bill may be too low. They noted that many donors, regardless of affiliation, are ‘sensitive to having their information published’ for a variety of reasons, and said that \$100 was ‘a low threshold to forego anonymity’.<sup>36</sup>
- 2.4. Furthermore, according to ACT Labor’s submission, the \$100 threshold could place an undue administrative burden on both political entities and the ACT Electoral Commission:

For example, a political entity receiving a generous gift of a bouquet of flowers, a ticket to an event, a dinner, etc. would be required to seek the necessary information from the donor, send it to the reporting agent, the reporting agent would be required to collate the information, ensure it is as accurate as possible and if required, submit it within seven days of receipt. Any details provided with the gift could not be thoroughly audited or checked for accuracy given the short timeframe. The Electoral Commission would also be required to resource the

---

<sup>31</sup> See, for example: ACT Labor, *Submission 002*, p 2; ACT Greens, *Submission 005*, p 1; Bruce Baer Arnold, Tess Rooney and Erina Mikus-Fletcher, *Submission 006*, pp 3–4.

<sup>32</sup> See, for example: Bruce Baer Arnold, Tess Rooney and Erina Mikus-Fletcher, *Submission 006*, p 2; Canberra Liberals, *Submission 008*, p 2.

<sup>33</sup> See, for example: ACT Labor, *Submission 002*, p 4; Bruce Baer Arnold, Tess Rooney and Erina Mikus-Fletcher, *Submission 006*, p 4, Canberra Liberals, *Submission 008*, p 3.

<sup>34</sup> See, for example: ACT Electoral Commission, *Submission 003*, p 7; Bruce Baer Arnold, Tess Rooney and Erina Mikus-Fletcher, *Submission 006*, p 3.

<sup>35</sup> Bruce Baer Arnold, Tess Rooney and Erina Mikus-Fletcher, *Submission 006*, p 4.

<sup>36</sup> ACT Labor, *Submission 002*, p 2.

collection and publication of the information it receives. Expand that system to up to 25 candidates per party during an election period and the difficulty to comply increases significantly.<sup>37</sup>

- 2.5. ACT Labor also noted that the Bill would also amend the Act to require that all receipts from a particular person or organisation of over \$100 in a financial year be included in an MLA's or party's annual return.<sup>38</sup> As the general annual membership fee of ACT Labor is over \$100, this amendment would require the party to publish the details of a large majority of their members, raising privacy concerns.<sup>39</sup>
- 2.6. The ACT Greens also supported real-time reporting of donations in their submission, and anticipated being able to comply with these requirements. However, they argued that reducing the reporting threshold from \$1,000 to \$100 would increase the administrative burden for political entities 'exponentially', saying that '\$100 may genuinely be too low'. They put the view that '\$1,000 has previously been nominated as striking the proper balance between transparency and burden'.<sup>40</sup>
- 2.7. The Canberra Liberals in their submission also argued that the \$100 threshold was 'impractical'. They noted that the current donation disclosure requirements were already among the most rigorous in Australia, and expressed concern that the proposed amendments may 'undermine [voter] confidence with unintentional breaches occurring because of the complexity in these changes and the extremely low threshold for disclosure'.<sup>41</sup>
- 2.8. The ACT Electoral Commission noted in their submission that current reporting requirements meant that the maximum period a gift over the reporting threshold (currently \$1,000) may remain undisclosed to the public is 38 days, and during election periods disclosure is required within seven days of receipt.<sup>42</sup>
- 2.9. The Commission offered the opinion that 'the current legislation already provides for an appropriate balance' between transparency of donations and administrative burden on political entities and the Commission.<sup>43</sup> The Commission described the changes to the disclosure regime proposed in the Bill as 'significant', and likely to require both political entities and the Commission itself to engage further staff to administer the reporting of gifts. They added that Elections ACT would also require 'significant additional capital funding' to procure a more automated online portal to process the disclosure obligations.<sup>44</sup>

---

<sup>37</sup> ACT Labor, *Submission 002*, p 2.

<sup>38</sup> Electoral and Road Safety Legislation Amendment Bill 2023, s 70.

<sup>39</sup> ACT Labor, *Submission 002*, p 3.

<sup>40</sup> ACT Greens, *Submission 005*, p 1.

<sup>41</sup> Canberra Liberals, *Submission 008*, p 2.

<sup>42</sup> ACT Electoral Commission, *Submission 003*, p 9.

<sup>43</sup> ACT Electoral Commission, *Submission 003*, p 9.

<sup>44</sup> ACT Electoral Commission, *Submission 003*, p 10.

## Disclosure of repeated small donations

- 2.10. The provision requiring disclosure of all gifts from a single entity after the 12th gift of less than \$100 in a financial year was also of concern to several submitters.<sup>45</sup>
- 2.11. ACT Labor said in their submission that such a measure would ‘significantly increase’ an already high degree of administration, noting that in 2020 ACT Labor recorded more than 2,200 gift or gift-in-kind transactions with a median value of \$25.<sup>46</sup>
- 2.12. The ACT Electoral Commission noted that the provision would give rise to an ‘anomaly’ where a single donation of \$100 would require disclosure, but a person could make 12 donations of \$99, totalling \$1,188, which would not need to be disclosed.<sup>47</sup>
- 2.13. In their submission, the ACT Greens observed that financial tools and reporting systems had been set up to report recurring donations once a threshold amount had been reached, and at the end of the financial year. Reconfiguring these systems to count the number of small donations from each donor as well as retaining the cumulative reporting for annual returns would add to the reporting burden.<sup>48</sup>
- 2.14. The Canberra Liberals said that the provision was ‘impractical’:
- For example, if a Party member were to attend 13 Branch meetings and purchase raffle tickets of \$3 this would require the Party to disclose this member for 13 ‘gifts’ totalling \$39.<sup>49</sup>
- 2.15. Furthermore, the Canberra Liberals argued, the requirement would unreasonably impede on the right to privacy of party members who might also attend a number of low-cost party events throughout the year. Such activities would not seek undue influence of the political process, but would have to be disclosed under the Bill.<sup>50</sup>

## Committee Comment

- 2.16. The Committee considers that a lower threshold for reporting of donations would impose an undue administrative burden on both the ACT Electoral Commission and on political entities, and that the current threshold of \$1,000 is sufficient to balance the requirements of transparency and efficiency. The Committee is also concerned that a lower threshold may lead to an effective requirement to publish party membership lists, which would likely have a chilling effect on political participation in the ACT.
- 2.17. The Committee is of the view that a requirement to disclose all gifts of any amount after the 12th gift or donation of any amount from one entity during a financial year would likely also impose an undue administrative burden, and potentially result in the disclosure of several gifts totalling much less than even \$100.

---

<sup>45</sup> See, for example: ACT Labor, *Submission 002*, p 3; ACT Greens, *Submission 005*, p 2.

<sup>46</sup> ACT Labor, *Submission 002*, p 3.

<sup>47</sup> ACT Electoral Commission, *Submission 003*, p 9.

<sup>48</sup> ACT Greens, *Submission 005*, p 2.

<sup>49</sup> Canberra Liberals, *Submission 008*, p 2.

<sup>50</sup> Canberra Liberals, *Submission 008*, p 2.



### Recommendation 1

The Committee recommends that the ACT Government amend the Bill to omit reforms to the gifts and donations disclosure scheme, other than those associated with the implementation of ‘real time’ seven-day donation reporting, and in particular to omit the reforms:

- lowering the threshold amount for disclosure; and
- imposing a requirement to report all gifts from an entity after the 12th gift of any amount in a financial year.

### Double reporting of gifts to MLAs

- 2.18. Both ACT Labor and the Canberra Liberals raised the issue of double reporting of gifts to MLAs, where MLAs must report gifts of any value both in their own annual return and to the office of the party to which they belong for reporting in the party’s return to the Electoral Commission.<sup>51</sup> ACT Labor argued in their submission that this issue would be exacerbated if a lower threshold were applied.<sup>52</sup>
- 2.19. In their submission, the Canberra Liberals said that to ensure transparency and accuracy, gifts to MLAs should be reported only in each MLA’s Annual Return.<sup>53</sup>

### Committee Comment

- 2.20. The Committee considers that double reporting of gifts to MLAs is unnecessary and does not add to transparency or reflect an accurate picture of donations and gifts made to political parties.

### Recommendation 2

The Committee recommends that the ACT Government amend the Bill to remove the requirement that gifts to MLAs be reported twice, and instead require that such gifts be reported only in the party’s Annual Return.

### Donations from foreign entities

- 2.21. Concerns were raised in evidence over the definition of a foreign entity in the Bill, for the purposes of banning foreign donations.<sup>54</sup>
- 2.22. The ACT Greens noted in their submission that the definition of a foreign entity in the Bill was ‘based on what a foreign entity is not rather than what it is’, and expressed concern

---

<sup>51</sup> ACT Labor, *Submission 019, Standing Committee on Justice and Community Safety Inquiry into 2020 ACT Election and the Electoral Act*, p 2; Canberra Liberals, *Submission 008*, p 2.

<sup>52</sup> ACT Labor, *Submission 002*, p 2.

<sup>53</sup> Canberra Liberals, *Submission 008*, p 2.

<sup>54</sup> See, for example: Mark Fletcher, *Submission 001*, pp 20–25; ACT Greens, *Submission 005*, p 2; Bruce Baer Arnold, Tess Rooney and Erina Mikus-Fletcher, *Submission 006*, p 2.

that companies ‘incorporated under the Corporations Act’<sup>55</sup> would include large international companies such as Meta (Facebook), Alphabet (Google), Huawei, and ByteDance (Tiktok). Furthermore, they argued, a foreign embassy could claim not to be a foreign entity on the basis of having a registered Australian Business Number (ABN) for a principal place of activity in Australia.<sup>56</sup>

- 2.23. In their submission, Bruce Baer Arnold, Tess Rooney and Erina Mikus-Fletcher described the exception for ‘an individual whose principal place of residence is in Australia’<sup>57</sup> as ‘inappropriate’, and noted that:

...it would be feasible for a foreign commercial entity aligned with an overseas body such as the Communist Party to organise dissemination of funds through a cadre of international students.<sup>58</sup>

- 2.24. The ACT Electoral Commission noted in their submission that expanding the category of prohibited donors to include foreign donors would impact financially on the Commission’s ability to ensure compliance:

[I]f prohibited donor legislation is to be expanded to include foreign donors, the commission will require additional funds to expand the compliance investigations to meet the broader focus.<sup>59</sup>

## Committee Comment

- 2.25. The Committee is concerned that the current definition of ‘foreign entity’ in the Bill is not fit for purpose, and considers that foreign-controlled entities based in Australia should be considered foreign entities for the purposes of the Bill.

### Recommendation 3

The Committee recommends that the ACT Government amend the Bill to provide for a definition of a foreign donor based on foreign control.

## Reporting agents

- 2.26. The ACT Electoral Commission noted in their submission the provision in the Bill allowing a party or MLA to appoint up to two reporting agents. While this may assist parties and MLAs to meet their reporting requirements, especially during busy campaign periods, the Commission expressed concern that it was unclear which of the agents would be liable in the case of a breach of those requirements.<sup>60</sup>

---

<sup>55</sup> Electoral and Road Safety Legislation Amendment Bill 2023, s 69, proposing a new ss 222M(e) of the *Electoral Act 1992*.

<sup>56</sup> ACT Greens, *Submission 005*, p 2.

<sup>57</sup> Electoral and Road Safety Legislation Amendment Bill 2023, s 69, proposing a new ss 222M(d) of the *Electoral Act 1992*.

<sup>58</sup> Bruce Baer Arnold, Tess Rooney and Erina Mikus-Fletcher, *Submission 006*, p 2.

<sup>59</sup> ACT Electoral Commission, *Submission 003*, p 13.

<sup>60</sup> ACT Electoral Commission, *Submission 003*, pp 12–13.

## Committee Comment

- 2.27. The Committee considers that, if more than one reporting agent is permitted, it should be clear where liability rests in the event of a breach of responsibilities.

### Recommendation 4

The Committee recommends that the ACT Government consider further reforms to clarify liability for a failure of a reporting agent to lodge a report, or otherwise omit from the Bill an increase to the permitted number of reporting agents.

## Electronic and overseas voting

### Access for overseas electors

- 2.28. The ACT Electoral Commission noted in their submission that the Bill will re-introduce legislation to provide the Electoral Commissioner with the power to use an online voting system, the overseas electronic voting system (OEV), as previous enabling legislation under the *COVID-19 Emergency Response Legislation Amendment Act 2020 (No 2)* expired after the 2020 ACT election. The power is discretionary and allows the Commissioner to suspend the system if necessary to protect the integrity of the election from cyber-security or other risks.<sup>61</sup>
- 2.29. The intent of the provision of the OEV to overseas voters is to:
- ...better support their enfranchisement and encourage the uptake of OEV, as opposed to postal voting from overseas, which can be subject to delays and other risks.<sup>62</sup>
- 2.30. Thomas Haines' submission said that 'There is no known way to construct an internet voting system which is secure enough for government elections', and that alternatives to online voting – such as allowing more time for postal votes, or allowing them to be mailed to local embassies rather than directly to Australia – should be carefully considered.<sup>63</sup>
- 2.31. The submission of Conway, Teague and Wilson-Brown also supported this view, further describing how '[d]owntimes remove the franchise from voters, with no warning, and no fallback voting method' in circumstances where technical faults or bad actors cause the Electoral Commission to suspend or withdraw use of the online system.<sup>64</sup>

## Committee Comment

- 2.32. The Committee is concerned that technology standards, both in the ACT and abroad, are insufficiently mature to comprehensively manage the risks associated with operating an online voting system.

<sup>61</sup> ACT Electoral Commission, *Submission 003*, pp 4–5.

<sup>62</sup> Electoral and Road Safety Legislation Amendment Bill 2023, *Explanatory Statement*, p 35.

<sup>63</sup> Thomas Haines, *Submission 004*, pp 1–2.

<sup>64</sup> Andrew Conway, Vanessa Teague and T Wilson-Brown, *Submission 007*, p 3.

- 2.33. The Committee also considers that, if such a system is in place, where voters have registered to use the OSEV and that system is later suspended by the Commissioner, then it is important that the voters not be disenfranchised by the system's suspension.

### Recommendation 5

The Committee recommends that the ACT Government comprehensively address the risks associated with online voting systems before proceeding to implement such a system.

### Recommendation 6

The Committee recommends that, if an online voting system is adopted, the ACT Government ensure that overseas electors are able to access telephone voting if the online voting system is suspended.

## Security of electronic voting system

- 2.34. In their submission, Andrew Conway, Vanessa Teague and T Wilson-Brown described the ACT's electronic voting system as 'a process that cannot be effectively scrutinised' due to the lack of a human-readable paper trail. They said that the system was 'inherently brittle' because any compromise could be undetectable, and noted that even if the software was perfectly secure and absolutely correct, physical or electronic security could be breached elsewhere allowing the software to be substituted. The lack of a paper trail for electronically submitted votes made any such breach impossible to audit or identify.<sup>65</sup>

## Committee Comment

- 2.35. The Committee notes that it recommended in *Report 2: Inquiry into the 2020 ACT Election and the Electoral Act* that 'the e-voting system incorporate a voter-verifiable paper record, so the voter can check that their vote was recorded as they intended'.<sup>66</sup> The ACT Electoral Commission opposed this recommendation, saying that there was 'no evidence that any issue involving the inaccurate recording of votes exists in the ACT electronic voting and counting system', and that assurance of the accuracy of recording votes as cast was best achieved through certification and public scrutiny of the source code.<sup>67</sup>
- 2.36. The Committee observes that the auditability of vote recording is a separate issue to the auditability of vote counting. The Committee further notes that, without a voter-verifiable paper record, it would be impossible to provide evidence that an electronic vote had been recorded incorrectly, and considers that a voter-verifiable paper record would provide assurance and foster public confidence in the electronic voting system.

<sup>65</sup> Andrew Conway, Vanessa Teague and T Wilson-Brown, *Submission 007*, pp 1–2.

<sup>66</sup> Standing Committee on Justice and Community Safety, *Report 2: Inquiry into the 2020 ACT election and the Electoral Act, Recommendation 5*, 5 August 2021.

<sup>67</sup> ACT Electoral Commission, *Response to Inquiry into the 2020 ACT election and the Electoral Act*, 13 December 2021, p 4.

## Recommendation 7

The Committee recommends that the ACT Government amend the Bill to require that an approved electronic voting system have a voter-verifiable paper record, so that an immutable record of the vote can be verified by the voter independently of the software.

2.37. Andrew Conway, Vanessa Teague and T Wilson-Brown's submission said that, to allow a chance of detecting 'the most serious errors and vulnerabilities', electronic voting code and documentation should be made available for public inspection at least six months before the election.<sup>68</sup>

2.38. In response to a Question on Notice taken during the Select Committee on Estimates 2023–2023 *Inquiry into Appropriation Bill 2023-2024 and Appropriation (Office of the Legislative Assembly) Bill 2023-2024*, the ACT Electoral Commission advised that:

...the source code for the eVACS® voting and counting system will be published online without a non-disclosure agreement in preparation for the 2024 ACT election.<sup>69</sup>

2.39. The Commission noted in the response that:

Timely publication of software code by Elections ACT is reliant on the enactment of any electoral legislative changes by the Assembly at least 12 months prior to the 2024 ACT election. Legislation changes requiring electoral system software changes after that point will adversely impact the Commission's ability to appropriately alter, test, certify and publish the code in advance of the election.<sup>70</sup>

## Committee Comment

2.40. The Committee notes that the ACT Electoral Commission does not rule out using electronic voting code after changes to the electoral software required by legislation within 12 months of the election, but says only that it will not be able to test, certify and publish it.

2.41. The Committee considers that, to allow maximum public and expert scrutiny of the security of electronic voting software, and time for any errors or vulnerabilities detected by this scrutiny to be corrected, is it important that the code and documentation be publicly and freely available at least six months before the election. For this reason, it is equally important that the Assembly avoids legislative reform that would impede the Electoral Commission from meeting these timelines.

---

<sup>68</sup> <sup>68</sup> Andrew Conway, Vanessa Teague and T Wilson-Brown, *Submission 007*, pp 3–4.

<sup>69</sup> ACT Electoral Commission, *Inquiry into Appropriation Bill 2023-2024 and Appropriation (Office of the Legislative Assembly) Bill 2023-2024, answer to QON 192*, 25 July 2023 (received 7 August 2023).

<sup>70</sup> ACT Electoral Commission, *Inquiry into Appropriation Bill 2023-2024 and Appropriation (Office of the Legislative Assembly) Bill 2023-2024, answer to QON 192*, 25 July 2023 (received 7 August 2023).

### Recommendation 8

The Committee recommends that the ACT Government supports the ACT Electoral Commission to publish electronic voting system code and documentation by April 2024.

## Moveable signs and roadside advertising

- 2.42. While there was general support for increased restrictions on moveable signs and roadside electoral advertising,<sup>71</sup> the ACT Greens expressed disappointment that a six-month delay in implementation meant that they would not be in place for the Commonwealth referendum on the Voice to Parliament.<sup>72</sup>
- 2.43. ACT Labor also questioned how these provisions of the Bill would operate with respect to the referendum.<sup>73</sup>

### Committee Comment

- 2.44. The Committee is of the view that the electoral signage reforms proposed in the Bill should be implemented before the Commonwealth referendum on the Voice to Parliament takes place.

### Recommendation 9

The Committee recommends that, in order to ensure that electoral signage reforms are implemented in time for the Voice referendum, the ACT Government amend the Bill to omit the six-month delayed implementation for the provisions concerning electoral signage.

- 2.45. In their submission, the ACT Greens argued that the proposed increase of \$50 to fines for parking and stopping offences when a vehicle is displaying electoral advertising would be ‘insufficient to ensure the penalty exceeds the cost of doing business’ and advocated for the imposition of demerit points or requiring a court hearing for the offence.<sup>74</sup>

### Committee Comment

- 2.46. The Committee is of the view that penalties for parking and stopping offences while displaying electoral advertising should be proportionate and appropriate deterrents.

---

<sup>71</sup> See, for example: ACT Labor, *Submission 002*, p 4; ACT Greens, *Submission 005*, pp 3–4; Bruce Baer Arnold, Tess Rooney and Erina Mikus-Fletcher, *Submission 006*, p 4, Canberra Liberals, *Submission 008*, p 3.

<sup>72</sup> ACT Greens, *Submission 005*, p 4.

<sup>73</sup> ACT Labor, *Submission 002*, p 4.

<sup>74</sup> ACT Greens, *Submission 005*, p 4.

### Recommendation 10

The Committee recommends that the ACT Government amend the Bill to double fines for the incursion of minor traffic offences while displaying electoral matter or advertising, rather than imposing a fixed-amount increase.

## Electoral matter

2.47. Mark Fletcher’s submission described the definition of electoral matter in the *Electoral Act 1992* (the Act) as ‘extremely broken’.<sup>75</sup>

2.48. Section 4 of the Act provides a definition of electoral matter:

#### 4. Meaning of *electoral matter*

(1) In this Act, *electoral matter* is matter, in printed or electronic form, that is intended or likely to affect voting at an election.

(2) Without limiting subsection (1), matter is taken to be intended or likely to affect voting at an election if it contains an express or implicit reference to, or comment on—

(a) the election; or

(b) the performance of the Government or Opposition, or a previous Government or Opposition; or

(c) the performance of an MLA or former MLA; or

(d) the performance of a political party, candidate or group of candidates in the election; or

(e) an issue submitted to, or otherwise before, the electors in relation to the election.

(3) However, a publication of the Assembly (including a committee of the Assembly) is not electoral matter.

2.49. Mark Fletcher observed that subsection 4(2) of the Act results in a ‘surprisingly broad’ definition,<sup>76</sup> which could include material not intended or likely to affect voting such as satirical material, academic articles, research projects, and non-partisan policy information.<sup>77</sup>

2.50. This may have the unintended consequences of requiring that unexpected material such as academic articles or research projects carry authorisation statements. The authors of such material may meet the definition of ‘third-party campaigners’ if they spend more than

<sup>75</sup> Mark Fletcher, *Submission 001*, p 27.

<sup>76</sup> Mark Fletcher, *Submission 001*, p 5.

<sup>77</sup> Mark Fletcher, *Submission 001*, pp 6–8.

\$1,000 in developing or disseminating the material.<sup>78</sup> This in turn places obligations on the authors or researchers such as expenditure caps,<sup>79</sup> restrictions on loans,<sup>80</sup> disclosure requirements for gifts,<sup>81</sup> and requirement to make a return to the Electoral Commissioner stating the details of electoral expenditure incurred.<sup>82</sup>

- 2.51. The Bill will reduce the threshold for donations required to be reported to the ACT Electoral Commission by those deemed to be third-party campaigners from \$1,000 to \$100.<sup>83</sup> Mark Fletcher argued that this would place an undue administrative burden on potentially non-partisan bodies such as churches, schools, universities, community legal centres, and advocacy groups who publish material which costs more than \$1,000 to develop or disseminate and are thus deemed to be third-party campaigners.<sup>84</sup>

- 2.52. In the *Commonwealth Electoral Act 1918* (Cth), electoral matter is defined as:

**Electoral matter** means matter communicated or intended to be communicated for the dominant purpose of influencing the way electors vote in an election (a **federal election**) of a member of the House of Representatives or of Senators for a State or Territory, including by promoting or opposing:

- (a) a political entity, to the extent that the matter relates to a federal election;
- or
- (b) a member of the House of Representatives or a Senator.

Note: Communications whose dominant purpose is to educate their audience on a public policy issue, or to raise awareness of, or encourage debate on, a public policy issue, are not for the dominant purpose of influencing the way electors vote in an election (as there can be only one dominant purpose for any given communication).<sup>85</sup>

## Committee Comment

- 2.53. The Committee is of the view that the current definition of ‘electoral matter’ can lead to perverse outcomes depending on interpretation, and that a definition using a determination of ‘dominant purpose’ would be more fit for purpose.

### Recommendation 11

The Committee recommends that the ACT Government amend the Bill to include a revised definition of ‘electoral matter’ in line with the definition in Commonwealth legislation.

---

<sup>78</sup> *Electoral Act 1992*, s 198.

<sup>79</sup> *Electoral Act 1992*, s 205G.

<sup>80</sup> *Electoral Act 1992*, s 218A.

<sup>81</sup> *Electoral Act 1992*, s 220.

<sup>82</sup> *Electoral Act 1992*, ss 224(5).

<sup>83</sup> Electoral and Road Safety Legislation Amendment Bill 2023, s 61.

<sup>84</sup> Mark Fletcher, *Submission 001*, p 17.

<sup>85</sup> *Commonwealth Electoral Act 1918* (Cth), ss 4AA(1).



- 2.54. Mark Fletcher also raised that Section 237 of the Act allows the Electoral Commissioner to issue an investigation notice to any officer or employee of a corporation required to provide a return to the Commissioner in relation to an election.<sup>86</sup> It was noted that this could lead to a notice being issued to an employee not involved in the electoral activity, and that while a decision to issue a notice to an associated entity under Section 237(A) of the Act was an internally reviewable decision in Schedule 5 to the Act, the general power in Section 237 to issue investigation notices was not.<sup>87</sup>

### Committee Comment

- 2.55. The Committee is of the view that decisions to issue investigation notices under Section 237 of the Act should be internally reviewable, to avoid and rectify situations where such notices are inappropriately issued.

#### Recommendation 12

The Committee recommends that the ACT Government amend the Bill to include Section 237 of the *Electoral Act 1992* in Schedule 5 of the Act as an internally reviewable decision.

### Translated electoral matter

- 2.56. The ACT Electoral Commission's submission opposed the exemption of translated material from the expenditure cap, expressing concern that it would decrease the impact of the cap and allow larger parties who could afford to produce extra translated material to expand their spending limits, while smaller parties and candidates who often did not reach the cap limit anyway would gain no benefit.<sup>88</sup>
- 2.57. The Commission supported measures to encourage greater outreach within the ACT community, but suggested that alternative measures for promoting the production of translated material should be explored.<sup>89</sup>
- 2.58. Mark Fletcher's submission observed that the definition of 'translated electoral matter' in the Bill required only that at least half of the matter be 'broadcast, published or displayed in a language other than English'<sup>90</sup> and did not specify that it in fact should be a translation of the English text.<sup>91</sup>

### Committee Comment

- 2.59. The Committee is of the view that exempting translation services, rather than the production of translated electoral matter, would be a more equitable approach to encouraging the provision of such matter in languages other than English.

---

<sup>86</sup> *Electoral Act 1992*, ss 237(1) and 237(3).

<sup>87</sup> Mark Fletcher, *Submission 001*, p 25.

<sup>88</sup> ACT Electoral Commission, *Submission 003*, p 12.

<sup>89</sup> ACT Electoral Commission, *Submission 003*, p 12.

<sup>90</sup> Electoral and Road Safety Legislation Amendment Bill 2023, s 56.

<sup>91</sup> Mark Fletcher, *Submission 001*, p 18.

### Recommendation 13

The Committee recommends that the ACT Government amend the Bill to ensure that translation services be exempted from the expenditure cap, rather than the production of translated electoral matter.

## Definition of political entity

- 2.60. Mark Fletcher's submission noted that one effect of the Bill will be to have three definitions of 'political entity' in the Act.<sup>92</sup>
- 2.61. Currently, 'political entity' is defined in section 222B of the Act, and the Bill would amend this definition to include 'a non-party prospective candidate grouping'<sup>93</sup>. Another definition is introduced by the Bill in the proposed substitute section 216A,<sup>94</sup> and 'political entity' would be further defined in proposed new section 222M.<sup>95</sup>
- 2.62. The definition in new section 222M is the same as the proposed amended definition in section 222B, although with different paragraph lettering. The definition in the proposed amended section 216A differs by specifying a non-party MLA rather than an MLA.
- 2.63. The following table shows the definitions which would be in effect if the Bill were enacted, side by side for ease of comparison:

S 216A	S 222B	S 222M
In this section:	In this division:	In this division:
[...]	[...]	[...]
<b>political entity</b> means—	<b>political entity</b> means—	<b>political entity</b> means—
(a) a non-party MLA; or	(a) an MLA; or	(a) an MLA; or
(b) a party grouping; or	(b) a party grouping; or	(b) a party grouping; or
(c) a non-party candidate grouping; or	(c) a non-party candidate grouping; or	(c) a non-party candidate grouping; or
(d) a non-party prospective	(ca) a non-party prospective	(d) a non-party prospective

<sup>92</sup> Mark Fletcher, *Submission 001*, p 22.

<sup>93</sup> Electoral and Road Safety Legislation Amendment Bill 2023, s 66.

<sup>94</sup> Electoral and Road Safety Legislation Amendment Bill 2023, s 58.

<sup>95</sup> Electoral and Road Safety Legislation Amendment Bill 2023, s 69.

candidate grouping; or	candidate grouping; or <sup>97</sup>	candidate grouping; or
(e) an associated entity. <sup>96</sup>	(d) an associated entity. <sup>98</sup>	(e) an associated entity. <sup>99</sup>

## Committee comment

- 2.64. The Committee is of the view that a definition in an Act should be consistent throughout that Act.

### Recommendation 14

The Committee recommends that the ACT Government amend the Bill to define ‘political entity’ consistently.

<sup>96</sup> Electoral and Road Safety Legislation Amendment Bill 2023, s 58.

<sup>97</sup> Electoral and Road Safety Legislation Amendment Bill 2023, s 66.

<sup>98</sup> *Electoral Act 1992*, s 222B.

<sup>99</sup> Electoral and Road Safety Legislation Amendment Bill 2023, s 69.

### 3. Conclusion

- 3.1. The Committee considers that, given the impact of the amendments made in the Bill to the operation of political funding and advertising in the ACT, it was important to conduct this inquiry.

#### Recommendation 15

The Committee recommends that, after considering and responding to the recommendations in this report, the Assembly pass the Electoral and Road Safety Legislation Amendment Bill 2023.

- 3.2. The Committee thanks everyone who participated in this inquiry for their valuable contributions in assisting and informing the Committee's deliberations.
- 3.3. The Committee has made 15 recommendations in relation to the Electoral and Road Safety Legislation Amendment Bill 2023.

Peter Cain MLA

Chair

August 2023

## Appendix A: Submissions

No.	Submission by	Received	Published
1	Mark Fletcher	18/07/2023	2/08/2023
2	ACT Labor	26/07/2023	2/08/2023
3	ACT Electoral Commission	26/07/2023	2/08/2023
4	Thomas Haines	27/07/2023	2/08/2023
5	ACT Greens	27/07/2023	2/08/2023
6	Bruce Baer Arnold, Tess Rooney and Erina Mikus-Fletcher	28/07/2023	2/08/2023
7	Andrew Conway, Vanessa Teague and T Wilson-Brown	28/07/2023	2/08/2023
8	Canberra Liberals	28/07/2023	2/08/2023

# Inquiry into Electoral and Road Safety Legislation Amendment Bill 2023

## Additional comments by Andrew Braddock MLA

Immediately, I wish to stress that I agree with the findings made by the committee during this inquiry. What follows are additional comments on matters where the committee could not form a majority view, or where I believe the committee's agreed recommendation is helpful but insufficient to address issues that I have identified in the bill.

I note that the following commitment is included in Appendix 2 of the Parliamentary and Governing Agreement of the 10<sup>th</sup> Assembly:

*Further restrict roadside electoral advertising including further regulation of roadside corflutes and introduce specific offences for roadside advertising using illegally parked or idling vehicles for commercial or political purposes.*

It is my view that this commitment can only be taken to have been met if it results in reforms that will affect meaningful and practical change. This is not simply a matter of road safety, but also of addressing community concerns regarding the visual pollution caused by roadside electoral and commercial signs.

### Regulation of roadside corflutes

For reforms to be meaningful, they need to be enforceable. While the bill's provisions for offences under the movable signs code are suitable, the associated regulatory response will result in an unenforceable regime.

The proposal to allow 250 movable signs per candidate will allow for a party with 25 candidates to have 6,250 signs across the Territory. There is no practical way for city rangers or an alternative regulatory force to assess whether a candidate or party is compliant across the whole of an electorate. As such, we can presume that the regulations will have no practical effect in changing party or candidate behaviour. The high limit also appears to imply that the number of roadside signs would be comparable to past elections in any case.

An effective regulatory approach would be to prescribe sign number limitations on a per-location basis, as this would allow an assessment of compliance without a need to cross-reference other locations. If the approach were to also prescribe the locations where signs are permitted ('white-listing'), it would be simpler for candidates and parties to interpret where the acceptable locations are without having to decipher where they are not, and it would be equally simple for city rangers to judge when they should be removing improperly-placed signs. A limit of four signs per candidate per location, or twenty per party per location for a party with five candidates in the electorate, should be plenty to ensure sufficient candidate opportunities for their campaign visibility.

### Recommendation 1

That the government adopt a regulatory approach to roadside corflutes of 'white-listing' permitted locations, and impose a limit of four signs per candidate per location.

## Penalties for illegally parked and idling vehicles

Our system of traffic infringements and related penalties are designed around an assumption of personal responsibility. We assume that the individual driver who commits an offence will be the one who pays the penalty. This mostly holds up, including in the corporate sector, where businesses maintain HR policies that hold their employees financially responsible for any traffic infringements they accrue. However, this assumption breaks down when the purpose of the undertaking involves roadside and vehicle advertising campaign services as offered by companies like Big Impact Outdoor Media and Media-V. These are companies which have both had their services deployed in the ACT, and which use images of inappropriately parked billboard trucks and scooter trailers in the advertising of their services. See Figures 1 and 2.

*Figure 1: Big Impact Media product specifications*

This depicts a product specification sheet for mobile billboard services provided by Big Impact Outdoor Media. It includes a picture of a mobile billboard truck which appears to be illegally parked on the Commonwealth Avenue median.

Source: [LINK](#)

### MOBILE BILLBOARDS SPECS.

Flexibility to target high traffic roads



#### FILE FORMATS

Format: PDF preferred or Adobe CS5 Design Suite files  
(Illustrator, InDesign, Photoshop). Outline all fonts and supply all linked files.  
Ratio: 1:1 (100% of final size)

#### FILE SETUP

Include 20mm of bleed  
All images should be min 300dpi when placed  
Convert ALL fonts to outlines  
All overprint/trapping options should be turned off  
Do not use ASCII encoding for EPS files, use Binary only  
All files must be supplied CMYK not RGB  
Set all solid black to C 20% M 20% Y 20% K 100%  
If not supplying as PDF, supply all native files (.TIFs & .EPS files etc.) that are linked & updated within the document



Send files under 4MB via email. Use a sharing service like Hightail, Dropbox or Google Drive for larger files.  
Send artwork to [admin@bigimpactadvertising.com.au](mailto:admin@bigimpactadvertising.com.au)

**bigimpact**  
outdoor media

HELPING YOU MAKING AN IMPACT

[bigimpactmedia.com.au](http://bigimpactmedia.com.au)

1300 244 467

*Figure 2: Mobile signage from Media-V*

This depicts a scooter and trailer displaying electoral matter parked in Garema Place during the 2021 federal election.

Source: Photographed by a Greens campaign volunteer.



For these sorts of companies, traffic infringements easily become a part of the cost of doing business, and even a business expense which can be written-off for tax purposes. A \$50 increase in fines is nothing to these companies. A few hundred dollars for fines here and there are entirely within the cost of doing business, are compatible with the business model, and can be accounted for in the prices charged for services.

The committee has proposed a *doubling* of fine penalties rather than a simple increase by \$50. While such an update to the offences might help, it's still just a fine. What is required is a response which genuinely threatens a business model which flouts road regulations. To that end, I recommend the imposition of demerit points for drivers where advertising and electoral matter is displayed. While a fine can be borne as a company expense, demerit points remain with the drivers – companies who instruct their drivers to flout road regulations will quickly find themselves running out of drivers; and drivers will have specific cause to refuse such directions as would directly threaten their livelihood. Companies would have additional incentive to ensure that their drivers are well-educated in the road regulations, further reducing violations. This would effect a meaningful reform to roadside advertising.

## **Recommendation 2**

That the Government amend the bill to provide for the accrual of demerit points to the driver when electoral matter is displayed in or on a vehicle committing a violation of the Road Transport (Offences) Regulation 2005.

## **Carve-outs for prohibited donations**

The bill contains a new provision for donations from property developers, such that the ban will no longer apply where a gift is made to, or immediately transferred to, a federal account. This carve-out is also applied for the purposes of banning donations from foreign entities.

By my reading, the intent in these provisions is to establish compatibility with amendments to the Commonwealth Electoral Act 1918 passed by the federal parliament in the *Electoral Legislation*



*Amendment (Miscellaneous Measures) Bill 2020*<sup>1</sup>. These laws were passed with the explicit intention of over-riding State and Territory Laws which regulated prohibited donors where a gift was “for federal purposes”.

This change was insidious, impinges on Territory Rights, and should be repealed. It fails to recognise the way financial resources are managed by political parties. While a party may be required to keep gifts from property developers quarantined for use only in federal campaigns, such funds still contribute to the party’s overall resources and allow them to direct other resources to other priorities. As the Greens’ submission to this inquiry points out, “parties do not plan for Federal and Territory elections in isolation from each other” and “a property developer who donates to an ACT party for ‘Federal election purposes’ can still seek a quid-pro-quo in Territory politics”.

Those examining the federal legislation will also notice that it is detailed in defining what constitutes a federal account and the manner in which it over-rides State and Territory law. The Commonwealth law was deliberately designed in such a way that State and Territory law compatibility would *not be required*. Elections ACT has arrangements in place which facilitate parties understanding the over-ride.<sup>2</sup>

There is no harm to the ACT in designing our laws for prohibited donors in such a way as we would wish for them to operate, regardless of how the Commonwealth may legislate over the top. This would also ensure that, should the Commonwealth provisions be repealed, ACT laws would not require further amendments to restore operate as wanted.

### **Recommendation 3**

That the government amend the bill to omit reforms which create carve-outs to rules governing gifts from prohibited donors paid into federal accounts.

### **Possible online voting system**

Throughout this inquiry, and also in recent years, I have been in periodic contact with Associate Professor Vanessa Teague, Mx T Wilson-Brown and Dr Andrew Conway to discuss their concerns regarding the technological capabilities of Elections ACT.

To summarize their concerns, their principal point is that networking technology is what makes voting systems vulnerable, and specifically so at the point where a vote is recorded in the interface between the voter and counting system. In the world of an open internet, the hacking of databases and internet gateways by people with malign intent is a sophisticated activity against which even the most well-resourced organisations struggle to protect themselves. The recent hacking of Medibank and Optus are only a sample of the incidents that Australians have been exposed to.

This is why electoral experts all over the world, who have interests in defending the integrity of democratic elections, emphasise the singular importance of retaining offline and paper-verifiable systems wherever possible – systems that cannot be hacked and interfered with via networks. Having a temporary system to account for a global pandemic is one thing, but having a system that bad actors can plan around being in place in future elections is another.

This committee has recommended “that the ACT Government comprehensively address the risks associated with online voting systems before proceeding to implement such a system”. Extreme caution is required to comprehensively address the risks presented by an online system, against a

---

<sup>1</sup> [https://www.aph.gov.au/Parliamentary\\_Business/Bills\\_Legislation/Bills\\_Search\\_Results/Result?bId=s1260](https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=s1260)

<sup>2</sup> [https://www.elections.act.gov.au/\\_data/assets/pdf\\_file/0012/1767495/Fact-sheet-property-developers.pdf](https://www.elections.act.gov.au/_data/assets/pdf_file/0012/1767495/Fact-sheet-property-developers.pdf)

backdrop on which the vast majority of western democracies are not advancing with the technology, the identification of security issues and criticism where it has been advanced regardless<sup>3</sup>, and New South Wales experiencing complications with their own iVote system<sup>4</sup>.

#### Size of the assembly

As was observed in the Greens' submission, the 2013 review into the size of the ACT Legislative Assembly recommended that the assembly be increased to 35 members at the 2020 election, or in the alternative at the 2024 election.<sup>5</sup> This bill would have been the appropriate time for this expansion to have been implemented if following the review's advice.

Its absence from the bill suggests that the Government is no longer considering or advancing the matter of assembly expansion. To the extent that the matter was briefly raised at Estimates, I would like to assume that this is due to an oversight by the Government rather than a deliberate obfuscation of its work program. As the population of the ACT has been growing among the fastest in the country, with a rising complexity in Government responsibilities, and in the context of the Tasmanian Government's decision to restore the size of its own Legislative Assembly to 35 members<sup>6</sup> (in addition to having a Legislative Council and Local Councils), it would be prudent of the Government to return its attention to the 2013 recommendations.

#### Recommendation 4

That the ACT Government resume consideration of when the appropriate time will be to expand the legislative assembly to 35 members, consistent with the advice of the 2013 review into the size of the Assembly.

A handwritten signature in black ink, appearing to read 'A Braddock', with a stylized, flowing script.

Andrew Braddock MLA

24 August 2023

---

<sup>3</sup> See for example: [https://en.wikipedia.org/wiki/Electronic\\_voting\\_in\\_Estonia#Criticism](https://en.wikipedia.org/wiki/Electronic_voting_in_Estonia#Criticism) and <https://www.vice.com/en/article/vbwz94/experts-find-serious-problems-with-switzerlands-online-voting-system-before-public-penetration-test-even-begins>

<sup>4</sup> See for example: <https://www.abc.net.au/news/2022-03-17/ivote-revote-ordered-supreme-court-judgement/100917050> and <https://arxiv.org/abs/1504.05646>

<sup>5</sup> [https://www.elections.act.gov.au/electoral\\_boundaries/review\\_into\\_the\\_size\\_of\\_the\\_legislative\\_assembly](https://www.elections.act.gov.au/electoral_boundaries/review_into_the_size_of_the_legislative_assembly)

<sup>6</sup> <https://www.legislation.tas.gov.au/view/html/asmade/act-2022-040#GS6@EN>