2022

THE LEGISLATIVE ASSEMBLY FOR THE

AUSTRALIAN CAPITAL TERRITORY

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

Presented by

Mr Chris Steel MLA

Special Minister of State

March 2022

THIS PAGE HAS INTENTIONALLY BEEN LEFT BLANK

Introduction

The Government Response to the Standing Committee into Justice and Community Safety's (the Standing Committee) Report 2 of the *Inquiry into the 2020 ACT Election and Electoral Act* was provided to the Speaker of the Legislative Assembly out-of-session on 14 December 2021, and subsequently tabled on 8 February 2022.

This Supplementary Government Response addresses the Standing Committee's request for Government to report back to the Assembly by March 2022 after further consideration of recommendations 7, 24, 25, 35, 36 and 39 of the report. For clarity, this response contains both the original Government Response to each recommendation, provided on 14 December 2021, and new comments which form the Supplementary Government Response to these items.

The Government is committed to continually strengthening of our electoral processes and legislative framework to protect the effective functioning of the ACT's democracy. In line with the Parliamentary and Governing Agreement for the 10th Legislative Assembly (PAGA) and the Standing Committee's Report 2, the Government expects to bring forward a Bill to amend the *Electoral Act 1992* (Electoral Act) in the second half of 2022. While the timeframes for delivering this Supplementary Government Response have limited the extent of policy consideration able to be given to these matters, work continues to identify the preferred options to be progressed through the legislative reform process.

The Government has engaged with the ACT Electoral Commission (also known as Elections ACT) in preparing this Supplementary Government Response. We thank the Electoral Commission for their continued advice on these important matters. The Government looks forward to continuing to work closely with the Electoral Commission in progressing legislative reforms to the ACT's electoral framework.

Supplementary Government responses to the Standing Committee's recommendations

Recommendation 7

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

Government response

Agreed in principle.

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

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

Government Supplementary Response

As noted in the Government Response to Recommendation 7, the Government agrees in principle with this recommendation and is committed to implementing this measure, subject to ongoing conversations with the Electoral Commission and the Australian Cyber Security Centre in the Australian Signals Directorate about managing the potential risks.

The benefits of providing an online voting system for overseas voting as a permanent feature of future elections have been well articulated by the Government and the Electoral Commission to the Assembly. In the 2020 ACT Election 1,554 overseas e-votes were admitted to the election count, which represents 0.4% of the ACT population.

The overseas e-voting system addressed the risk of many overseas voters being disenfranchised due to delays associated with international postal services. However, there are inherent risks of cyber-attacks with any system connected to the internet, which could have serious implications for democracy in the Territory. Cyber-attacks on the system would not only have the potential to affect votes cast from overseas, but could also impact the broader integrity of the ACT's vote recording and counting systems. The benefit of overseas e-voting to the small number of voters who will use it must be balanced against these real and significant risks.

Recent global events have demonstrated that bad actors – both foreign and domestic – can create vulnerability in voting systems with the intent to destabilise a democracy or deliver a politically favourable outcome. To mitigate this risk, regular maintenance of an overseas e-voting system will be required, which would have financial implications for the Territory. An overseas e-voting system would need regular upgrades to ensure its integrity and resilience prior to any election, given a threat environment where hacking is becoming increasingly sophisticated and difficult to detect. The Electoral Commission roughly estimates this could amount to $100,000-$150,000 every four years, with the potential for an additional $300,000 in system monitoring subject to assistance from the

Australian Cyber Security Centre. The Electoral Commission will need the ongoing cooperation of the Centre to facilitate these upgrades and manage the ongoing risks of cyber-attacks.

Reliance on an electronic voting option could also increase calls for Government to expand the system to other cohorts who would benefit from a more accessible voting system, such as interstate voters, voters with a disability or where future public health emergencies restrict access to polling places. There is an argument that an electronic voting option could increase voter participation and remove barriers to voting that exist for some minority groups. But this needs to be matched with appropriate capacity. For example, the iVote system implemented in NSW for both state and local council elections has experienced some accessibility issues in recent years due to unprecedented demand in response to the pandemic.

The Government notes the range of submissions to the Standing Committee's Inquiry which raised concerns with the integrity of the overseas e-voting system, and the restrictions with release of the source code.

The Government will continue to work with the Electoral Commission to consider ways to balance the risks of cyber-attack to an e-voting system against the benefits of enfranchising overseas voters in an ACT Election. Subject to this ongoing work, we may bring forward amendments to the Electoral Act addressing overseas e-voting as part of a future legislative reform process.

Recommendation 24

> *The Committee recommends that ACT Government prohibit roadside signs for electoral advertising on public land. If Constitutional or human rights considerations present a barrier to this outcome, the Committee recommends that ACT Government consult with the community and report to the Assembly on the nearest alternative options by March 2022.*

Government response

Noted.

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

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

The Government is committed to implementing item 18 of Appendix 2 in the PAGA, to further restrict roadside electoral advertising including further regulation of roadside corflutes.

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

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

The Government has already identified that the environmental impact of roadside signage is a reason why action should be taken on this form of advertising, because signs are often made of plastic corflute and this may not be recycled. That is why at the 2020 ACT Election the ACT Government piloted a corflute recycling program which saw 3.8 tonnes of corflute roadside signs recycled with low contamination rates. The evaluation of this trial was tabled in the Assembly on 8 October 2021 and so was not considered by the Committee before making its recommendation. The ACT Government plans to continue to ensure that corflute recycling is available during election periods for roadside signs.

Another justification for limits on roadside electoral signage may also be road safety. Campaigners may park on busy major arterial roads to place roadside signage which may put themselves and other road users at risk, though this behaviour is already an offence under Sections 165-178 of the *Road Transport (Road Rules) Regulation 2017* relating to restrictions on stopping and parking. Signs may also not be appropriately secured and blow onto roadways onto oncoming vehicles in windy weather. Roadside signage may contribute to driver distraction or obscure official signs or the roadway. These issues are already addressed to an extent by the Movable Signs Code of Practice with specific limits on placement, size and materials that can be used for road-side signage.

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

Government Supplementary Response

In line with item 18 of Appendix 2 of the PAGA, the Government is committed to the further restriction of roadside electoral advertising. This will include further regulation of roadside corflutes and the introduction of a specific offence for roadside advertising using illegally parted or idling vehicles for commercial or political purposes.

As outlined in the Government Response, the Government does not support a full prohibition of roadside signs for electoral advertising on public land. To do so would restrict a low-cost and accessible form of electoral advertising that is available to a broad range of candidates. This would represent a potential limitation on the implied constitutional freedom of political communication.

Electoral advertising in the ACT is already regulated under the Electoral Act and the *Public Unleased Land Act 2013*. Applicants must apply for approval if they intend to place a sign for advertising or giving public notice on public unleased land. If the sign is a movable sign, the applicant must comply with the *Public Unleased Land (Movable Signs) Code of Practice 2019 (No.1)* (the Code).

Section 6 (4) of the Code relates to Electoral Advertising Signs, which may only be displayed for a period of up to 6 weeks immediately preceding the election date. Election signs are covered by the Code for 48 hours after the official election day, and must be removed within 48 hours of the close of the polling booths. Any election sign not removed within that time is deemed illegal and will be removed. City Rangers from Transport Canberra and City Services (TCCS) are responsible for enforcing the laws relating to the placement of signs in public places in the ACT.

There are a number of options being considered to further regulate the use of roadside signage on public land. The Government's intent is to further reduce the visual and environmental impact of roadside signage on the community without diminishing its impact as a political communication tool.

One option being considered by Government is introducing a limit per candidate on the number of signs that can be displayed. This would assist Government with the management of signs, produce less waste, and improve equity for candidates with lower budgets. This option may also address negative constituent feedback relating to multiple signs by the one candidate being installed in a small area, as having a limited number of signs would encourage candidates to spread them over multiple locations. The Government notes the Electoral Commission has concerns with this approach, including the potential for this option to result in time consuming and cumbersome regulatory or enforcement activity. In addition to an increased workload for TCCS rangers, there is potential for this option to increase the number of complaints to the Electoral Commission originating from opposing candidates and parties. The feasibility of this option, including what an appropriate number of signs per candidate might be, will be considered further by Government as part of the ongoing legislative reform process.

A further option under consideration is limiting the available public land where placement of roadside signage is permissible. Public land in a highly visible location could be identified in each electorate as a permissible location to place roadside signs. Any signs placed on public land outside of these locations would be considered unlawful and removed. This option could include amending the Code to restrict the placement of signs to major arterial roads only, and banning signage on public land in suburban streets. This option aligns with suggestions made by the Electoral Commission about the regulation of electoral signage, and would be easier to regulate for TCCS rangers who could automatically confiscate signs placed illegally.

In assessing these options, an important consideration is to ensure further regulations do not result in an increased burden on the Electoral Commission or TCCS. New regulation needs to provide an incentive for parties to comply, and prevent candidates from placing signs illegally, given the costs of electoral signage are included within expenditure caps. Government will further consider these issues, including examining the approach in other jurisdictions, in the coming months.

In addition, in line with the PAGA commitment, Government is also considering further restrictions and the introduction of specific offences for roadside political advertising relating to illegally parked or idling vehicles. This advertising is often located in inappropriate locations such hard shoulders, which can present a dangerous distraction for drivers. Legislative amendments to support further regulation of this issue will be considered as part of the forthcoming legislative reform process.

As noted by the Standing Committee, consideration also needs to be given to human rights implications. The options proposed are likely to ensure any limitation on the implied constitutional freedom of political communication are 'appropriate and adapted' as per *Lange v Australian Broadcasting Corporation* (1997) 189 CLR 520, 567-568 and that any limitation on the right to take part in public life under the *Human Rights Act 2004 (ACT)* is proportionately justified.

The Government will continue to work closely with the Electoral Commission to consider these and other options to further regulate the use of roadside signage on unleased public land, with the intention of bringing forward amendments to the Electoral Act and other legislation as necessary.

Recommendation 25

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

Government response

Not agreed.

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

Supplementary Government response

The Government does not support prohibiting the practice of waving electoral signs at the side of the road to attract attention from passing motorists. There are sufficient mechanisms in place to restrict advertisement on roads and evidence provided to the Standing Committee, including the submissions to the Inquiry, did not indicate a significant issue with the waving of electoral signs at the side of the road, or a need for further regulation in this area.

Recommendation 29

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

Government response

Noted.

The Government notes the Committee's recommendation to report to the Assembly by March 2022 on the options for refining the scope of 'personal views on social media' in 16 section 293A of the Electoral Act. The Government noted the Electoral Commission's recommendation to clarify that the exemption in s293A does not apply to individuals acting for a special interest profile and will consider the consequences of this in its report to the Assembly.

Government Supplementary response

The Government is committed to enhancements that improve the transparency of the electoral system, allow voters to know who is communicating electoral material, and ensure those candidates, parties or entities are accountable for their communications.

The Government acknowledges the need for greater clarity to the scope of s293A of the Electoral Act. The Electoral Commission has raised concerns that although the provision has succeeded in exempting personal views expressed on social media from requiring an authorisation statement, it has created confusion in the community about how this requirement relates to administrators of a special interest profile whose content would be considered electoral material under the Electoral Act.

In exploring options to address this concern, the Government has considered the original intent of s293A of the Electoral Act. This intent was to exempt private unpaid commentary by an individual on social media from the requirements to include an authorisation statement under section 292. This means that electoral matter disseminated on social media is only exempt from authorisation requirements if, among the other requirements of section 293A, the electoral matter is disseminated by an individual, meaning a natural person under the *Legislation Act 2001*.

The Government will consider the best way to clarify this issue as part of the future legislative reform process. This will include assessing options to amend s293A to specifically exclude an administrator of a special interest profile on social media, regardless of whether the administrator is an individual acting alone. This will enable the requirements of this provision to be communicated more clearly to the ACT community and remove any ambiguity about the exemption.

These options will need further discussion with legislative drafters, and a greater assessment of the risks and any unintended consequences of legislative change. The Government notes that the approach needs to be flexible enough to adapt to a constantly-changing social media and technology landscape, and must acknowledge that social media posts can be shared very broadly in short periods of time, at times without links of the original poster. Any amendments also need to ensure the requirements are not overly onerous, and do not act as a barrier for community organisations engaging in important commentary or debate on electoral matters on social media.

Recommendation 35

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

Government response

Noted.

The Government is committed to continuing to strengthen the integrity and transparency of the electoral process. It is the Government's view that the current regulatory scheme of expenditure caps and public funding is an effective way to minimise the risk of undue influence of private money in ACT elections. There is no electoral gain associated with raising funds above the expenditure cap because this cannot be spent on campaign activities. The limitations on expenditure as set out in division 14.2B, in conjunction with public funding measures, promote fairness and transparency of the electoral process. This scheme is further supported by the ACT Integrity Commission which provides independent investigation into allegations of corruption or the undue influence of private money.

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

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

Government Supplementary Response

The ACT's election funding, expenditure and financial disclosure scheme is based on three prongs: public funding of election campaign and party/MLA administrative expenditure; limits on electoral expenditure; and the disclosure of the financial transactions to create a fair and balanced system. This includes:

- Registered political parties and non-party candidates who receive a specified minimum number of formal votes are eligible to receive public funding. Public funding of elections at a reasonable rate reflecting genuine costs is an effective way to reduce the reliance of candidates on large corporate donations.
- Existing expenditure caps foster equity between candidates as funds raised above the cap cannot be spent on campaign activities. The capped expenditure period for a Legislative Assembly election is the period from 1 January in an election year until the end of election day. For the 2020 election the electoral expenditure cap was $42,750 per party candidate to a maximum of $1,068,750 million for 25 candidates (5 candidates for each of the 5 electorates) for party groupings. Breaches of the cap incur a penalty of twice the amount by which the cap has been exceeded.
- As of 1 July 2021, once the total of gifts received from the same person reaches the $1,000 threshold all further gifts, regardless of their value, must be reported within the relevant reporting period as set out in the Electoral Act. The reporting requirement is no longer staged in increments of $1,000. Once the disclosure threshold of $1,000 is reached in any reporting period within a financial year, all donations from that point must be disclosed.

The Government considers changes made to electoral campaign finance laws by the *Electoral Amendment Act 2015* and *Electoral Amendment Act 2020*, resulting in the regulatory checks detailed above, have introduced robust safeguards to address the perception of undue influence of private money in ACT elections.

The *Electoral Amendment Act 2015* provided for a range of amendments to the election funding and disclosure provisions in the Electoral Act, including the removal of the $10,000 cap on donations for ACT election purposes; the removal of the restriction on receiving donations for ACT election purposes from organisations and persons not enrolled in the ACT; a decrease in the electoral expenditure cap and changes to the timing for the regular reporting of gifts. The view of the Government at the time, as noted in the Explanatory Statement to the Bill, was that while electoral expenditure is an example of an individual's rights to freedom of expression and to participate in public life, the amount of money spent on campaigns should not be an overriding factor in the outcome of an election. Candidates should not win seats simply because they can spend money on election campaigns than their rivals. Capping the amounts that can be expended on election campaigns, together with an increase in public funding and robust reporting requirements, provides a balanced approach. This is designed to achieve the legitimate end of the avoiding undue influence and corruption – or its perception – and of promoting a level playing field. The Government continues to see the reduction in expenditure caps as the most targeted way of allowing candidates, regardless of financial means, to express their policy positions and be visible to the public and voters. Limitations on electoral expenditure also contribute to the overarching purpose of the Electoral Act in reinforcing the integrity of the electoral system by mitigating against corruption and undue influence.

To further support this position, as detailed above, the Electoral Act was further amended by the *Electoral Amendment Act 2020*, to introduce provisions to prohibit gifts from property developers

and their close associates (identified as 'prohibited donors') to Members of the Legislative Assembly (MLAs), political parties, candidates, and associated entities. The amendments also sought to prohibit political entities from accepting gifts from prohibited donors and included shorter reporting timeframes for gifts/sums of gifts, totalling $1,000 or more received from the same organisation or individual in a financial year. These amendments took effect from 1 July 2021.

A government's ability to legislate a limitation on political donations without infringing on the implied constitutional freedom of political communication has been examined by the High Court of Australia in recent years.

In *Unions NSW v New South Wales* [2013] HCA 58, the High Court found that provisions in the *Election Funding, Expenditure and Disclosures Act 1981* were invalid. The provisions banned political donations from donors who were not individuals enrolled to vote and aggregated electoral expenditure of political parties and their affiliated organisations to cap their spending. The provisions were found to constitute a burden on the implied freedom of political communication and did not further the Act's intended purpose of lessening corruption.

The *McCloy v New South Wales* [2015] HCA 34 decision established that, despite burdening the implied freedom of political communication, sometimes excluding a class of persons from donating was a legitimate means removing the risk and perception of corruption and undue influence in politics. This was subsequently tested when both NSW and QLD reforms went before the High Court in the *Unions NSW v New South Wales* [2019] HCA 1 and *Spence v Queensland* [2019] HCA 15 decisions.

In *Unions NSW (2019),* the High Court determined that a new expenditure cap for third parties in NSW legislation burdened their freedom of political communication and rejected the State's submission that political parties occupy a privileged position which justifies a higher spending cap.

In *Spence* the High Court followed *McCloy* and determined that legislation which banned political donations from property developers did not infringe the implied freedom of political communication. The High Court also found section 302CA, a recent amendment to the *Commonwealth Electoral Act 1918* to be invalid to the extent that it authorised the giving, receipt and retention of a gift that might never be used for any federal electoral purpose, the section was beyond the scope of the power conferred by s 51(xxxvi) of the Constitution.

These prior legal decisions indicate that any further changes to the ACT's donation laws would need to be carefully designed and scoped to avoid infringing on the implied constitutional freedom of political communication. The Government believes the ACT's approach represents a strong model which levels the playing field and avoids the perception of undue influence of corruption, without imposing on that implied freedom. The Government will weigh the benefits of any further reforms against these risks through the ongoing development of the next legislative reform package.

Recommendation 36

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

Government response

Agreed.

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

Government Supplementary Response

The Government maintains its commitment to this PAGA item and intends to bring forward amendments to the Electoral Act as part of the future legislative reform package to ban political donations from foreign sources.

As noted in the Government response, the Commonwealth, New South Wales, Queensland and Victoria have implemented reforms to address this issue. These vary in scope and penalty, providing options for consideration by the ACT Government in the legislative drafting process. The approaches are detailed in Table 1 below. The Victorian legislation appears to be the simplest approach which would be the easiest to implement, while the Commonwealth approach appears to be the most complex with the most serious penalties. South Australia, Tasmania, Western Australia and the Northern Territory do not currently restrict foreign donations, although it is understood that Tasmania is currently in the process of introducing a new political donations disclosure scheme.

The Government will work closely with the Electoral Commission and legislative drafters to identify the preferred option and scope to implement in the ACT. This will come forward as part of the Government's proposed legislative reform package in the second half of 2022.

Table 1: Legislative approaches by jurisdiction

	Summary	Detailed definitions	Penalties
Commonwealth	The Commonwealth Electoral Act 1918 restricts political entities, members of Parliament, Senators, significant third parties and associated entities from: • receiving gifts of $100 or more where the recipient knows it is from a foreign donor, and knows the gift is intended to be used for electoral expenditure • receiving gifts of $1,000 to the annually indexed disclosure threshold without obtaining a written affirmation that the donor is not a foreign donor • receiving gifts equal to or above the disclosure threshold without obtaining written affirmation and appropriate information to establish that the donor is not a foreign donor Political entities, MPs, Senators, significant third parties and associated entities are permitted to receive foreign donations under certain circumstances – for personal use or to be used for purposes that are not related to a federal election.	A foreign donor is classed as: a) a body politic of (or a part of) a foreign country; b) a body politic of a foreign country; c) a part of a body politic mentioned in paragraph (a) or (b); d) a foreign public enterprise; e) an entity (whether incorporated or not) that does not meet any of the following conditions: i. the entity is incorporated in Australia; ii. the entity's head office is in Australia; iii. the entity's principal place of activity is, or is in, Australia; f) an individual who is none of the following: i. an elector; ii. an Australian citizen; iii. an Australian resident; iv. a New Zealand citizen who holds a Subclass 444 (Special Category) visa under the *Migration Act 1958* (or any visa that replaces that Subclass). [Section 287AA]	The Commonwealth legislation establishes civil and criminal penalties, which vary dependent on circumstances for receiving prohibited foreign donations and not subsequently taking acceptable action within 6 weeks in relation to the donation. 'Acceptable action' includes returning the gift to the donor, returning an amount equal to the amount or value of the gift to the donor or the person who made the gift, or transferring an amount equal to the amount or value of the gift to the Commonwealth. The penalties range from three times the amount of the value of the gift to 200 penalty units for infringements of the foreign donation ban. [See Part XX, Division 3A, Subdivision B—Offences and civil penalty provisions relating to donations]
Queensland	Part 11, Division 8, Subdivision 1 of the Electoral Act 1992 (QLD) deals with gifts of foreign property. Section 270(1) makes it unlawful for a registered political party that is a corporation (or a person acting on behalf of a registered political party that is a corporation), a registered political party that is not a corporation (or a person acting on behalf of a registered political party that is not a corporation), or for a candidate (or a person acting on behalf of a candidate) to receive foreign property during the candidacy period. The Queensland legislation differs from Commonwealth, NSW and Victorian legislation in that there is a definition as to what constitutes 'foreign money' and who is prohibited from receiving it, as opposed to defining what constitutes a foreign donor. There is no specific prohibition on third parties receiving foreign property, but agents acting on behalf of registered political parties and candidates are captured (see Section 270).	Section 267 classes money in accounts kept in Australia, other money located in Australia, or property, other than money, located in Australia as 'Australian property'. 'Foreign property' means property other than Australian property. The 'candidacy period' is also defined as starting on the earlier of the day on which the person announces that the person will be a candidate in an election, or the day on which the nomination of the person as a candidate in the election is made; and ending 30 days after the polling day for the election.	It is not unlawful if the gift is returned within 6 weeks after its receipt. If this doesn't occur, in accordance with Section 270 an amount equal to the amount or value of the gift is payable to the State by the registered political party, registered political party's agent, candidate and candidate's agent, as appropriate. Queensland legislation does not appear to impose additional criminal penalties on a breach of these laws.
NSW	Section 46 of the *Electoral Funding Act 2018* (NSW) bans donations to a party, elected member, group, candidate, associated entity or third-party campaigner from foreign entities and individuals that do not reside in Australia. Foreign individuals could potentially still donate to NSW political parties in some circumstances if they provide acceptable evidence to the NSW Electoral Commission of Australian residency.	Section 46 creates an exception from the ban on foreign donations from donors : • who are enrolled to vote within the meaning of the *Electoral Act 2017*, or who are enrolled to vote in federal or local government elections; or • where the NSW Election Commission is satisfied having been provided with evidence of the following: ○ an individual has shown acceptable identification linked to an Australian residential address, or ○ an entity that has a relevant business number (ABN or ASIC number) or a principal or executive officer of the entity has supplied acceptable identification showing the principal or officer's full name and an Australian residential address.	Sections 141 to 146 create specific offences related to political donations and electoral expenditure. Section 144 states that a person who enters into or carries out a scheme (whether alone or with others) for the purpose of circumventing a prohibition or requirement with respect to political donations or electoral expenditure is guilty of an offence. The maximum penalty applicable (on conviction on indictment) is imprisonment for 10 years.
Victoria	Victoria also bans donations from foreign entities and individuals that do not reside in Australia, although the wording of section 217A of the *Electoral Act 2002* (Vic) is more broadly drafted than that of section 46 in the NSW legislation. Section 217A of the *Electoral Act 2002* (Vic) bans donors from making political donations, or for a registered political party, a candidate at an election, a group, an elected member, a nominated entity, an associated entity or a third party campaigner to accept a political donation from a donor, unless the donor is an Australian citizen or an Australian resident; or in the case of a donor who is not a natural person, one which has a "relevant business number".	In Section 217A, 'Australian resident' is defined as having the same meaning as it has in section 7 *Social Security Act 1991* (Cth) and 'relevant business number' means an ABN or any other number allocated or recognised by the Australian Securities and Investments Commission for the purpose of identifying a business.	Section 217C of the *Electoral Act 2002* states that a political donation that is accepted in contravention of Part 12 Division 3A (Prohibited political donations) is forfeited to the State. It may be recovered from the registered political party, candidate at an election, group, elected member, nominated entity, associated entity or third-party campaigner that accepted the political donation.