THOMAS EMERSON MLA

Ms Elizabeth Lee MLA
Chair, Standing Committee on the Integrity Commission and Statutory Office Holders

By email: LACommitteeIntegrity@parliament.act.gov.au

Dear Chair

I write to provide additional evidence to inform the Committee's inquiry into my Electoral (Gambling Industry) Amendment Bill 2026 (the bill).

I wish to reiterate my position that prohibiting political donations from gambling industry entities is both a necessary and proportionate measure to safeguard the integrity of our electoral system. This bill does not seek to prevent gambling industry entities from participating in public discourse, advocacy, or policy development processes, but to prevent them from unduly influencing public policy – be it overtly or subtly – through political donations. In support of this aim, I am committed to working constructively across the Assembly to resolve any technical concerns Members may have with the bill, and look forward to the Committee's insights in this regard.

The harm caused in our community by gambling addiction cannot be overstated. Gambling revenue and gambling harm are closely correlated. As such, entities dependent on gambling revenue clearly benefit when government regulation does not address the level of community harm caused by their operations. This creates a strong motive for gambling industry entities, including gaming machine venues, to lobby current and prospective elected representatives to prevent tighter regulation of their industry – a motive that exists regardless of whether or not they distribute profits to shareholders. In this context, the risk of donations from such entities being used to influence political decision-making processes poses a significant threat both to the integrity of our electoral system and to community health and wellbeing.

The likelihood of undue influence in this area is particularly high given historical and ongoing ties between gambling industry entities and political parties in the ACT.

Warm regards



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DEFINITION OF POLITICAL ENTITY

There was some confusion during hearings, including in my appearance, regarding who would be captured by the bill under the definition of a 'political entity'. I admit I was not prepared to respond to this line of questioning, given the bill does not introduce a new definition for 'political entity' as the term is already defined in the *Electoral Act 1992*. This is the same definition that currently applies to the bans on political donations by property developers and foreign entities, so should be interpreted consistently with those existing bans. To my knowledge, the interpretation of this definition has not been problematic for those bans. For the benefit of the Committee, the relevant definitions are below.

Under section 216A(3):

political entity means—
(a) a non-party MLA; or
(b) a party grouping; or
(c) a non-party candidate grouping; or
(d) a non-party prospective candidate grouping; or
(e) an associated entity.

This definition is also reiterated in the sections of the Act relating to gifts from property developers and from foreign entities.

Under section 198:

non-party MLA means an MLA who is not a member of a party.

party grouping means—
(a) a party; and
(b) an MLA for the party; and
(c) a candidate for the party; and
(d) a prospective candidate for the party.

non-party candidate grouping means—
(a) a candidate for an election who is not a party candidate; and
(b) any other person who has incurred electoral expenditure with the authority of the candidate to support the candidate in contesting the election.

non-party prospective candidate grouping means—
(a) a prospective candidate for an election who is not a prospective candidate for a party; and

(b) any other person who has incurred electoral expenditure with the authority of the prospective candidate to support the prospective candidate in contesting the election.

prospective candidate—a person is a prospective candidate for an election if—
(a) the person has—
(i) won party preselection, or endorsement, to be a candidate for the party for the election; or
(ii) publicly announced that the person intends to be a candidate for the election; or
(iii) been nominated to be a candidate for the election under section 105 and the nomination has not been cancelled under section 107 or rejected under section 110; and
(b) the commissioner has not declared the candidates for the election under section 109.

associated entity means an entity that—
(a) is controlled by 1 or more parties or MLAs; or
(b) operates, completely or to a significant extent, for the benefit of 1 or more registered parties or MLAs.

FREE FACILITIES USE

Concerns were raised during hearings about the scope of 'free facilities use' or 'use of meeting facilities', which is captured under the bill's proposed prohibition of gifts from gambling industry entities to political entities.

Under the bill, gambling industry entities will not be permitted to provide meeting facilities to political entities for free or at a discounted rate when those facilities are not ordinarily free. Importantly, this prohibition **does not apply** to the free use of any facilities that are free to use for everyone; only to those for which a fee is ordinarily charged.

It is worth noting evidence provided to the Committee in the ACT Electoral Commission's submission that "free facilities use is currently treated as a gift for the purposes of Part 14 of the *Electoral Act 1992*." The definition provided in section 198 of the Act is as follows:

free facilities use means a gift of the use of facilities for a routine meeting of the receiver of the gift and—
(a) includes the use of a room and anything reasonably necessary for the conduct of the meeting in the room; but
(b) does not include any food, drink or other gift associated with the use of the facilities.
Examples—things reasonably necessary for conduct of meeting in room
tables, chairs, photocopier, microphone, computer

Free facilities use is currently excluded from regular gift disclosure obligations under section 216A *and* from the prohibition on gifts from foreign entities under section 222L.

The bill retains the exclusion of free facilities use from the scope of the foreign entity donation prohibition provisions, but *removes* the exclusion of free facilities use from regular gift disclosure obligations. If the bill passes, foreign entities will continue to be able to provide free facilities use to political entities, and political entities will be required to report all free facilities usage under their regular gift disclosure obligations.
This is why the bill relocates the definition of 'free facilities use' to the part of the Act dealing with the prohibition on gifts from foreign entities.

The Act currently defines a ***gift*** as:

- a disposition of property made by a person to another person without consideration in money or money's worth or with inadequate consideration;
- the provision of a service (other than volunteer labour) for no consideration or inadequate consideration; and
- if an annual subscription paid to a party by a person for the person's membership of the party is more than $250—the amount of the subscription that is more than $250 is a gift.

The bill seeks to clarify that free or discounted use of a meeting room that is not ordinarily free is also considered a ***gift*** by including in the definition:

- if the use of meeting facilities is given to a political entity for no consideration or inadequate consideration, and consideration is ordinarily given for use of the facilities (the ***ordinary consideration***)—the value of the ordinary consideration less any consideration given for the use.

The bill defines meeting facilities use as follows:

use of meeting facilities includes the use of a room for a meeting (however described) and anything associated with the use.
Examples—things associated with use of meeting facilities
tables, chairs, photocopier, microphone, computer, food, drink

This reflects the existing definition of 'free facilities use', except that food and drink are now *included* within the definition because free facilities use will no longer be *excluded* from regular gift reporting obligations. Given this, it makes sense for anything provided for free or at a discount in association with the use of meeting facilities to be captured.

To summarise, the changes introduced by the bill make clear that the prohibition on donations from gambling industry entities applies *only* to the free or discounted provision of meeting use facilities that are *not* ordinarily free. If a gambling industry entity usually charges a commercial rate for the use of a meeting room, or for anything associated with the use of that room, they will not be permitted to gift the use of that room to a political entity. If, however, there is *never* any charge associated with the use of a room for *any* user, such a room would not be captured by the prohibition.

As such, any concerns that members of a political party gathering over a drink or a meal in the bar or dining area of a registered club may be prohibited from doing so under this bill are unfounded.

CLOSE ASSOCIATES

Some witnesses and Members raised concerns during hearings and in submissions about whether an employee of a gambling industry entity would be captured by the definition of a 'close associate' of a gambling industry entity. These concerns are unfounded. An employee of a gambling industry entity could only be captured for reasons *unrelated* to their employment, such as having a 5 per cent voting power in that entity.

The definition of a 'close associate' in the bill has been drafted to closely mirror the existing definition used in the Act for a close associate of a property developer. It differs in two ways. First, if the gambling industry entity is an individual, any body for which that individual is an officer is considered a close associate. This difference exists because an individual cannot be defined as a property developer under the prohibition on gifts from property developers, whereas they can be defined as a gambling industry entity under this bill.

Second, a person is considered a close associate of a gambling industry entity if they have 5 per cent or more voting power in that entity, whereas for the property developer close association definition this proportion is 20 per cent. This drafting decision was made to match the definition of an 'influential owner' in the *Gaming Machine Act 2004*, which is any person with control of 5 per cent of the votes at an annual general meeting of a gaming machine licensee.

RETROSPECTIVITY

It seems some of my remarks during hearings and elsewhere may have given some Members the impression that the bill might have retrospective effect. This is not the case. As drafted, the prohibition on donations from gambling industry entities would take effect on 1 July 2027. Noting the definition of 'political entity' in the Act referenced above, any entity that received a gift from a gambling industry entity, including in-kind gifts like free meeting room use, *prior*

to being defined as a political entity would not be captured by the bill, and would not be required to repay any such donations.

I was questioned during hearings about the political party I formerly belonged to having received a donation from the manager of a venue with poker machines, and whether I would repay that donation. This donation was received before the party had any candidates or policies. Despite the party that received the gift no longer existing, I have since decided to personally repay those funds. To be clear, this was not done for legal reasons or because such a donation would somehow be retrospectively captured by the bill, but as a matter of principle – as was put to me by Members during my participation as a witness in the Committee's hearings.

DEFINING 'SIGNIFICANT'

The prohibition on political donations from gambling industry entities contained in this bill applies to a range of entities regulated under ACT law, as well as:

an individual or entity that carries on a business (whether or not for profit), a significant part of which involves any of the following:
(i) wagering, betting or other gambling;
(ii) manufacturing or supplying products or equipment primarily used for the purposes of wagering, betting or other gambling.

The ACT Government raised concerns that the bill does not define 'significant'. Many ACT laws use the term significant without defining it. As mentioned earlier, the *Electoral Act 1992* itself uses this term in defining an 'associated entity', which includes an entity that "operates completely or to a significant extent, for the benefit of 1 or more registered parties or MLAs."

I submit that if the use of this term without a definition is of concern to Members in relation to my bill, it should be of concern to Members in relation to many other pieces of legislation that are already in effect, including the Act this bill seeks to amend.

For reference, the NSW *Electoral Funding Act 2018* which contains a prohibition on political donations from gambling industry business entities captures businesses "mainly concerned with … wagering, betting or other gambling (including the manufacture of machines used primarily for that purpose". It is unclear to me if 'mainly concerned with' is clearer than 'a significant part of which', but the Committee may wish to consider this as a possible alternative.

If the Committee has any outstanding questions or concerns about this bill, I would be very happy to respond to them.