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FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON JUSTICE AND COMMUNITY SAFETY

Mr Peter Cain MLA (Chair), Dr Marisa Paterson (Deputy Chair), Mr Andrew Braddock MLA

Submission Cover Sheet

Inquiry into Electoral and Road Safety Legislation Amendment Bill 2023

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Chair

Standing Committee on Justice and Community Safety
Legislative Assembly for the Australian Capital Territory
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ACT Electoral Commission Submission to the Standing Committee on Justice and Community Safety Inquiry into Electoral and Road Safety Legislation Amendment Bill 2023

Section 7 of the *Electoral Act 1992* establishes the provision of advice to the Assembly on matters relating to elections as a key function of the ACT Electoral Commission (the Commission).

This submission by the Commission to the Standing Committee on Justice and Community Safety's Inquiry into Electoral and Road Safety Legislation Amendment Bill 2023 (the Bill) should be read in conjunction with the Commission's *Report on the ACT Legislative Assembly Election 2020*, tabled in the ACT Legislative Assembly on 23 April 2021, and the Commission's response of 13 December 2021 to the Standing Committee on Justice and Community Safety Report of August 2021 *Inquiry into the 2020 ACT Election and the Electoral Act*.

This submission addresses the electoral amendments of the Bill in three themes: matters considered by the Commission to be of most impact to our democracy; matters that support administrative efficiencies in delivery of electoral services by Elections ACT; and other general matters for consideration by the Committee.

The Commission is pleased to advise that the Government consulted closely with the Commission throughout the drafting of the Bill. During this process the Commission stressed the importance of any amendments arising from the Bill being passed in a timely manner so as to permit operational implementation by Elections ACT by October 2023 in time for the 2024 election. As also advised to Minister Steele, implementation of the Bill will require additional resources which will be the subject of a business case to be submitted by the Commission as part of the 2024/2025 budget process.

The Commission looks forward to working with the Standing Committee on Justice and Community Safety, the Government and the Assembly to ensure that ACT electoral legislation and processes continue to provide for trusted, transparent, secure and accessible elections.

Any questions or clarifications about this submission can be directed in the first instance to Damian Cantwell, ACT Electoral Commissioner.



David W Kalisch
Chairperson
26 July 2023



Damian Cantwell AM CSC
Electoral Commissioner
26 July 2023



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26 July 2023

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Background

The ACT Electoral Commission (the Commission) is committed to providing the highest possible level of trusted, transparent, secure and accessible electoral services to the ACT community, within available resources. Following the 2020 ACT Legislative Assembly election, the Commission prepared a report about the conduct of the 2020 election and the operation of the Electoral Act (the Act); to note areas for improvement; and to make recommendations for changes to electoral legislation in preparation for the conduct of the 2024 Legislative Assembly elections.

The Commission's *Report on the ACT Legislative Assembly Election 2020* was tabled in the Assembly by the Speaker on 23 April 2021. The report also served as a submission by the Commission to the Justice and Community Safety (JACS) Committee (the Committee) Inquiry into the 2020 ACT Election and the Electoral Act.

The Commission made 24 recommendations for legislative amendment in its 2020 election report, and highlighted several areas for improvement that did not require legislative change. The Commission's recommendations were aimed at improving electoral integrity and delivering trusted, transparent, secure and accessible electoral services for ACT electors.

Following public hearings held in May 2021, the Committee released its 2020 ACT election inquiry report on 5 August 2021. The Committee made 52 official recommendations in its report. In its response of 13 December 2021 to the inquiry report, the Commission noted that the Committee either agreed or closely agreed with 17 of the 24 recommendations from the Commission's election report and made four recommendations that addressed several of the non-legislative areas for improvement highlighted by the Commission.

Minister Steele tabled the Electoral and Road Safety Legislation Amendment Bill 2023 (the Bill) in the ACT Legislative Assembly on 29 June 2023. The Government consulted closely with Elections ACT throughout the drafting process of the Bill.

The Bill aligns with many of the recommendations made by the Commission in its 2020 election report and the Commission's response to the Committee's inquiry report. The Commission's views and advice provided within those documents are unchanged. The Bill also includes several amendments initiated by the Government.

The aim of this submission is to detail the Commission's views and expert advice to the Committee, Assembly and ACT Government on key electoral matters included within the Bill.

This submission addresses the electoral amendments of the Bill in three themes: matters considered by the Commission to be of most impact to our democracy; matters that support administrative efficiencies in delivery of electoral services by Elections ACT; and other general matters for consideration by the Committee.

The Commission's position and views expressed in this response are based on an understanding of the relevant legal provisions. The Government may wish to seek legal advice on these matters.

Electoral amendment matters considered by the Commission to be of most impact on our democracy

The Commission wishes to highlight the following electoral amendment matters within the Bill which it considers have the most impact on fostering a trusted, transparent, secure and accessible democracy.

Early voting eligibility (Supported by the Commission)

The Bill removes the eligibility requirement for early voting, allowing any voter to vote during the early voting period, regardless of whether they can attend a polling place on election day.

The Commission notes that this amendment aligns with the Commission's election report recommendation 13 (see ACT Electoral Commission *Report on the ACT Legislative Assembly Election 2020* pages 47-48 'Removing restrictions on early voting').

The Commission supports this amendment as it believes that such a legislative change would appropriately acknowledge and respond to contemporary electoral service expectations of the ACT community and encourage the highest level of voter accessibility and participation in the electoral process.

Reduction to the early voting period (Opposed by the Commission)

The Bill reduces the early voting period for electors attending a physical polling place from the historical three-week voting period to a two-week voting period. The voting period for postal voting and overseas e-voting remains at three weeks.

The Commission opposes this amendment for the following reasons:

- This amendment directly contradicts well-established and increasing community demands for flexible and accessible early voting services across the historic three-week early voting period, potentially resulting in a sense of voter disenfranchisement. Overall, it may reduce access to voting facilities without discernible community or electoral administration benefit.
- Compressing the early voter load from three to two weeks has the potential to create queues at early voting facilities, increase risks of voter dissatisfaction, and put additional pressure on polling and electoral officials.
- It is likely to increase the number of electors applying for a postal vote; many of whom would have cast an attendance vote in the first week of a three-week early voting period if it were available. Postal voting continues to be the method of voting with the highest risk of electors failing to have their votes counted, either due to delays in postal delivery services or errors made on the postal vote declaration.

The Commission's views in support of early voting are further detailed in the Commission's *Report on the ACT Legislative Assembly Election 2020* pages 47-48 'Removing restrictions on early voting'.

Overseas e-voting enabling legislation (Supported by the Commission)

The COVID-19 Emergency Response Legislation Amendment Bill (No 2), which was passed by the Assembly on 2 July 2020, introduced legislation enabling the deployment of an online voting system to support ACT electors outside of Australia at the time of the election. However, this enabling legislation expired following the 2020 ACT election. The Bill reintroduces legislation to provide the Electoral Commissioner with the power to use the overseas electronic voting system (OSEV) for eligible electors who are outside of Australia. This legislative power is discretionary, allowing the Commissioner to

suspend the use of the system at any time if needed to protect the integrity of the election from cyber-security or other risks.

The intent of this amendment is to enfranchise overseas electors whose vote may otherwise risk not being counted due to delays in international postal delivery services.

The Commission supports the reintroduction of this enabling legislation to encourage and facilitate the highest level of overseas voter accessibility and participation in the electoral process.

This amendment aligns with the Commission’s election report recommendation 11 (see ACT Electoral Commission *Report on the ACT Legislative Assembly Election 2020* pages 42-43 ‘Overseas e-voting’).

Telephone voting for blind and vision impaired electors (Supported by the Commission)

The COVID-19 Emergency Response Legislation Amendment Bill (No 2) also introduced legislation enabling the deployment of a telephone voting system to support electors with disabilities during the COVID-impacted 2020 ACT election. However, this enabling legislation expired following the 2020 ACT election.

The Bill reintroduces legislation to permanently provide for telephone voting services for electors who are blind or vision impaired and who would otherwise require assistance to complete a secret ballot. The telephone voting system is a supportive technology specifically designed for people who are blind or have low vision.

The Commission supports this amendment as it enhances voter accessibility to electoral services.

This amendment aligns with the Commission’s election report recommendation 8 (see ACT Electoral Commission Report on the ACT Legislative Assembly Election 2020 page 38 ‘Telephone voting’).

Mobile voting for electors experiencing homelessness (Supported by the Commission)

The Amendment Bill provides the Commission with the power to declare the day and times in which voting may occur at a location where people experiencing homelessness are likely to attend or gather. Similar to other forms of mobile polling provided for in the Act, such voting services may only occur in the final week of the early voting period.

As noted in the Commission’s election report recommendation 12 (see ACT Electoral Commission Report on the ACT Legislative Assembly Election 2020 page 45 ‘Early Morning Centre – voting services for the homeless’), a key finding of the report prepared for the Australian Electoral Commission – *An exploration of homelessness and electoral participation* was that while the political interest of people experiencing homelessness may actually be higher than that of the general population, their turnout rate is much lower.¹

The report identified several obstacles to voting for electors experiencing homelessness. In a step towards addressing some of these obstacles for electoral participation by the homeless, the Commission sought to expand voting services to this group during the 2020 ACT election. It was the preference of the Commission to provide voting services to key locations across the ACT where electors experiencing homelessness routinely congregate to access important government services. However, this type of

¹ Coram V, Louth J, Hill L, Tually S & Goodwin-Smith L 2019, *An Exploration of Homelessness and Electoral Participation*, University of South Australia and The University of Adelaide, Adelaide, p.3.

voting activity is classified as mobile polling under the Act and thereby limited to correctional centres and locations with healthcare arrangements, such as hospitals and nursing homes.

To appropriately provide mobile polling services to electors experiencing homelessness, necessary amendments to the legislation are required. The Commission supports this amendment as it aligns with the recommendation made by the Commission in its 2020 election report and serves to increase voter accessibility to electoral services.

Electoral amendment matters that support administrative efficiencies in delivery of electoral services by Elections ACT

The following electoral amendment matters within the Bill support administrative efficiencies in delivery of electoral services by Elections ACT.

Additional 24 hours between close of nominations and polls opening (Supported by the Commission)

The Amendment Bill is amending section 108(3) of the Act to provide an additional 24 hours between the formal conclusion of the nomination period and the commencement of voting.

The *hour of nomination* in relation to an election is 12 noon on the 23rd day before election day. This is the date and time when the Commissioner must declare the candidates who have nominated to contest the election. Section 136A of the Act prescribes that postal voting may commence from the 19th day before election day. This timetable allows only three and a half days including weekend days between the formal declaration of candidates and the commencement of voting.

Significant work must be undertaken during these critical three and a half days so that the election can commence. This includes configuration, verification, printing and distribution of paper ballot papers; configuration and deployment of the OSEV system; and review, approval and publication of candidate statements. Under current legislation, none of these critical tasks can be commenced or completed until after the ‘hour of nomination’. This election schedule puts enormous stress on the staff of Elections ACT and increases the risk profile of the agency.

The Commission supports this amendment as it provides mitigation of the significant risks to election preparations and the workplace health and safety of Elections ACT staff in undertaking the multitude of election-critical tasks in the few days following declaration of candidates and before the commencement of voting.

This recommendation aligns with the Commission’s election report recommendation 5 (see ACT Electoral Commission *Report on the ACT Legislative Assembly Election 2020* pages 26 ‘Election timetable’).

Register of party secretaries (Supported by the Commission)

The Bill will require registered political parties to provide the name and addresses of their party secretaries to the Commission, establishing a register of party secretaries similar to the current legislative administration of party Registered Officers.

The secretary of the party holds several legislated powers under the Act. One critical power, prescribed under section 98, is that ‘The Commissioner must cancel the registration of a registered party if the secretary of the party asks the Commissioner to cancel the registration.’

Section 95 of the Act requires an application to the Commissioner to change particulars included in the register of political parties in relation to the party. This includes an application to change the registered party name or the person occupying the role of Registered Officer. However, no such requirement exists for the person occupying the important role of party secretary.

The Commission supports this amendment as it provides for enhanced transparency and governance in the appointment of party secretaries.

This recommendation aligns with the Commission's election report recommendation 2 (see ACT Electoral Commission *Report on the ACT Legislative Assembly Election 2020* page 23 'Party Secretaries').

Additional information to assist party membership checks (Supported by the Commission)

To be eligible to be registered for ACT Legislative Assembly elections, a political party must have at least 100 members who are ACT electors. Upon receipt of an application to register a political party or to ensure continued eligibility, Elections ACT undertakes party membership checks.

Section 89(3) of the Act prescribes that the Commissioner may use name and address information obtained from the supplied membership list to identify whether the party has at least 100 members who are electors. However, to improve the process of matching claimed members to an elector on the ACT roll, especially in cases where two or more people may have the same name or an elector has not updated their enrolled address, additional information is necessary. Furthermore, Elections ACT is increasingly finding that contacting members via email, rather than hardcopy letters, is a cheaper and more effective means of undertaking party membership checks.

Accordingly, the Commission supports the amendment to introduce a requirement for parties to supply dates of birth and email addresses (where available) of their party members. Such a legislative amendment will enhance transparency and accuracy in membership checks of political parties to determine or confirm eligibility for registration.

This recommendation aligns with the Commission's election report recommendation 3 (see ACT Electoral Commission *Report on the ACT Legislative Assembly Election 2020* page 24 'Party membership checks').

Earlier lodgement of candidate statements (Supported by the Commission)

The Act was amended through the *Electoral Legislation Amendment Act 2020*, passed by the Assembly on 2 July 2020, to require the Commissioner to publish information about candidates for an ACT election on the Elections ACT website.

Notwithstanding the Commission's continued objection to the requirement for the Commission to be involved in the publication of political campaign canvassing on behalf of candidates and parties, the Commission identified a necessary amendment to the current law.

Section 110A(1) of the Act sets the timeframe for the commencement of the provision of candidate statements to the Commission as 'after the declaration of candidates', without obvious reason. Currently, three and a half days separate the declaration of candidates and the commencement of voting, at which point it is most logical that the provided statements are made available to the public on the website. Such limited timeframes confer unnecessary delays to the considerable work required to review, prepare and publish candidate statements in time for the voting period.

The current legislated timeframe for the provision of candidate statements holds no logical basis. The Commission supports the amendment to allow candidate statements to be lodged at the point of a candidate's nomination. This amendment provides for reduced operational risks for Elections ACT.

This amendment aligns with the Commission's election report recommendation 7 (see ACT Electoral Commission *Report on the ACT Legislative Assembly Election 2020* pages 31-32 'Candidate information').

Limit the number of candidates to the number of seats per electorate (Supported by the Commission)

Section 116 of the Act currently prescribes the manner in which group and candidate names must appear on a ballot paper. Section 116(2) limits the number of candidates per column to five, while s116(3) prescribes that should there be more than five candidates in a party, their names shall be printed, as far as practicable, in two or more adjacent columns of equal length.

With good reason, no political party has ever chosen to run more candidates than there are seats to be won. Running more candidates is likely to dilute the party's vote, splitting the party across two columns and reducing the effectiveness of achieving a preference flow across the party.

The potential for a party to run more candidates than there are seats to be won significantly increases the complexity of administration for Elections ACT, particularly in relation to testing and implementation of electronic voting.

The Commission supports this amendment as it provides for a decreased complexity of testing of electronic voting systems and processes used by Elections ACT in preparation for the election.

This recommendation aligns with the Commission's election report recommendation 4 (see ACT Electoral Commission Report on the ACT Legislative Assembly Election 2020 page 25 'Party nomination limits').

Definition of 'surplus' (Supported by the Commission)

During the course of the 2020 election preparations, it became evident that a previously unforeseen issue had arisen due to the legislative amendments associated with the introduction of rounding vote values to six decimal places, introduced through *Electoral Legislation Amendment Act 2020*.

The Amendment bill introduces a technical amendment to correct the definition of 'surplus' to allow the counting of votes to consider the vote value of a successful candidate's surplus where the surplus above the quota is greater than zero but less than 1. The current definition incorrectly refers to the surplus votes for transferring to continuing candidates as the number greater than one.

The Commission supports this amendment as it will ensure the count is conducted in a way that most accurately reflects the preferences of ACT voters and aligns with the principles of the ACT's Hare-Clark voting system.

This amendment aligns with the Commission's election report recommendation 19 (see ACT Electoral Commission *Report on the ACT Legislative Assembly Election 2020* page 60 'The definition of surplus').

Other general electoral amendment matters for consideration by the Committee

The following general electoral amendment matters within the Bill are highlighted for consideration by the Committee.

Amendments to the financial disclosure reporting requirements

‘Real-time’ reporting

The Electoral Amendment Bill 2018, passed by the Assembly on 27 August 2020, introduced legislation requiring disclosure of a gift, or gifts, valued at greater than \$1,000 to be disclosed within seven days of the month in which the threshold was reached. In practice, this means that the maximum period a gift(s) in excess of \$1,000 may currently remain undisclosed to the public is 38 days. Furthermore, during the ‘defined period’, which starts on the first day of the election period and ends 30 days after election day, being the period in which political entities typically receive the largest and most frequent donations, disclosure is required within seven days of the receipt of the gift.

The 2023 Bill introduces increased frequency to the ‘real-time’ donation reporting requirements, requiring political entities to disclose eligible gifts within seven days of receipt at all times.

The Commission offers that the current legislation already provides for an appropriate balance between the need to ensure public awareness of donations to political entities and the related administration effort required by reporting political entities and the Commission to enact the legislation. Importantly the current defined period of seven days during an election period occurs when most donations occur and when such issues are likely to be uppermost in the minds of electors.

Reduction to the disclosure threshold

Current disclosure legislation requires political entities to publicly disclose the receipt of a gift or gifts when the total value of those donations, received from the same organisation or individual in a financial year, reaches \$1,000 or more. Once the total gifts received from the same person reach the \$1,000 threshold, all further gifts, regardless of their value, must be reported within the relevant reporting period.

The Bill will lower the \$1,000 threshold to \$100, requiring political entities to disclose any gifts of \$100 or more within seven days of receiving the gift. The Bill will also allow donors to gift 12 donations, each less than \$100, to a political entity in a financial year without public disclosure. If a donor provides a political entity with 13 or more gifts, each less than \$100 in value, the political entity will be required to disclose all 13 or more gifts within seven days of receiving the 13th gift. As an observation, this gives rise to an anomaly in disclosure thresholds whereby 12 donations each of \$99 totalling \$1188 would not require disclosure, yet a single disclosure of \$100 would require disclosure.

Points for consideration

The Commission acknowledges that achieving the appropriate balance between the need for transparency, donor privacy and requisite administrative effort required by both reporting entities and the Commission in enacting the legislation is a matter of policy for the Government and the Assembly. However, the Commission offers the following points for the Committee's consideration.

Public disclosure of donors and amounts provided to political participants is widely considered a healthy and transparent practice within a democracy. There is considerable potential for large and/or undisclosed donations to distort the free and fair nature of the democratic process and, at the least, to cause the public to question the integrity of the parliamentary system, and at worst, lead to actual corruption.

Disclosure of gift details provides the public and other political participants with information that allows scrutiny of whether the interests of significant donors receive preferential treatment from governments, opposition parties, or candidates.

The combination of the above two amendments to the funding and disclosure scheme - an increased frequency of reporting and a reduction to the disclosure threshold – will likely place an additional administrative burden upon political entities and the Commission without a commensurate and discernible benefit to the community.

While political parties with elected MLAs and non-party MLAs are entitled to receive quarterly administrative funding payments in meeting the costs of running their offices and complying with their disclosure obligations, these changes to gift disclosure are significant. Some parties, including those without parliamentary representation, will likely need to engage the services of administrative staff more regularly or permanently. Elections ACT will also require additional permanent officers to administer the constant reporting of gifts.

The frequency in which gifts will need to be disclosed highlights the need for a more automated online portal to facilitate more frequent and administratively demanding disclosure obligations. Development and implementation of such a system by Elections ACT will require significant additional capital funding to be determined through the necessary procurement process.

Amendments relating to authorisation statements (Supported by the Commission)

The Amendment Bill will alter the Act to clarify the requirements for including an authorisation statement when disseminating electoral matter. A significant number of complaints received by Elections ACT during the 2020 ACT election related to the manner in which an authorisation statement was displayed on physical material. Issues often centred around matters such as the font size used or the contrast between the font colour and the background.

The Act currently lacks any provision regarding the specific form an authorisation statement must take. Authorisation statements play an essential role in enabling the community to determine the source of the material and whether that source has a particular interest in the election. As such, these statements should be clearly identifiable and readable from the intended viewing distance.

The Commission supports this amendment as it aims to enhance the transparency of political processes and election related information through increased clarity, accessibility and legibility of authorisation statements.

Current legislation includes an exception from the offense of including an authorisation statement on electoral matter disseminated on social media if the content forms part of an individual's personal political views and they are not paid to express those views.

The 2020 ACT election revealed some confusion in the community regarding the requirement for authorisation of social media content and has posed challenges for the Commission in communicating the requirements. In some cases, the administrators of 'special interest profiles' with content related to 'an issue submitted to, or otherwise before the electors in relation to the election², were under the preliminary impression that section 293A of the Act exempted them from including an authorisation statement in any electoral matter posted on social media. However, electoral matter on social media should only be exempt from the authorisation requirements if disseminated by a natural person, that is, an individual acting in their own name and in a private capacity, not on behalf of a special interest profile, regardless of whether that individual is acting alone.

² *Electoral Act 1992* (ACT), section 4(2)(e)

The Commission supports this amendment as it tightens and clarifies the exception in section 293A, providing for enhanced transparency of political processes and election-related information.

These amendments align with the Commission's election report recommendations 15 through 17 (see ACT Electoral Commission *Report on the ACT Legislative Assembly Election 2020* pages 51-52 'Authorisation of electoral advertisements').

Flexibility in voting services for Antarctic based electors (Supported by the Commission)

Part 11 of the Act provides detailed directions on the method of receiving votes from ACT electors stationed in Antarctica, its surrounding islands or on a ship transporting personnel to or from these localities.

Part 11 was drafted prior to 1992 and refers to outdated technology such as fax machines, as a means of transmitting vote preferences of eligible Antarctic electors.

In 2020, the Act was amended to allow Antarctic electors to cast their vote using the OSEV system deployed at that election. This change ensured, for the first time, that an Antarctic elector's vote would be secret. However, the Act did not provide for Antarctic electors to cast their votes via the telephone voting system, which was also deployed for the first time during the 2020 election. In discussions with the Australian Antarctic Division, it became evident that not all Antarctic stations and ships have access to the internet. Accordingly, it would be beneficial if Antarctic electors at future elections could choose to vote either online using the OSEV system or via the telephone voting system.

The Commission supports this amendment as it provides for the greatest level of accessibility and participation in the electoral process by ACT voters based in Antarctica. Additionally, it ensures the secrecy of votes cast by such electors.

This recommendation aligns with the Commission's election report recommendation 9 (see ACT Electoral Commission *Report on the ACT Legislative Assembly Election 2020* page 38 'Telephone voting').

Exemption of accommodation costs from reporting in annual returns (Supported by the Commission)

Currently, under sections 231B and 232 of the Act, an associated entity must provide the Commissioner with an annual return detailing the amounts received and the associated defined particulars relating to amounts received that total to \$1,000 or more from an individual or organisation during a financial year.

The Canberra Labor Club is subject to financial disclosure obligations as an associated entity under the Act. As per the current legislation, the Canberra Labor Club is required to disclose to the Commissioner the private details of guests who have incurred accommodation costs of \$1,000 or more following a hotel stay at the Mercure Canberra Belconnen. The Commissioner is in turn required to publish the receipted amount, as well as the name and suburb of the guest, on the Elections ACT website. Additionally, a full copy of the annual return, including details of the full address, is made available for public inspection at the office of the Commissioner.

The Commission's view is that the disclosure of private details of hotel guests does not appear to be consistent with the intent of the ACT's funding and disclosure scheme. Associated entities, such as the Canberra Labor Club, often receive payments from clients for purposes other than donating to a political party or candidate. In May 2008, the Act was amended in a similar way to exempt the disclosure of details related to amounts received by an associated entity where the amounts received were for the supply of liquor, food or for playing gaming machines.

It can be assumed that many of the guests staying at the Mercure hotel are unaware of this issue and have not provided their consent to their private details being published online in relation to private funding sources of a politically aligned associated entity.

The Commission supports the amendment to exempt an associated entity operating an accommodation business from reporting the private details of guests, provided that the accommodation costs paid are not more than reasonable consideration for the supply of that accommodation.

Exempt translated material from the expenditure cap (Opposed by the Commission)

The ACT's electoral expenditure cap limits the amount of money that political participants can be spent on an election campaign for an ACT Legislative Assembly election in an election year.

The Bill proposes to allow political entities to produce electoral material that is translated into languages other than English, with the costs of production and distribution exempt, up to the value of 12.5% of the expenditure cap, when calculating expenditure for the purposes of the cap.

The Commission understands that the intent of this amendment is to remove any potential disincentive for political entities to produce electoral matter that meets the needs of the ACT's multicultural community. However, the rationale for a political expenditure cap is to ensure a 'level playing field' for candidates and parties and to prevent expenditure on electoral matter from unduly influencing the election outcome.

The Commission has concerns that by exempting specific items from the electoral expenditure cap, it decreases the impact of the cap, expanding spending limits for larger parties that can afford to produce extra translated material, while smaller parties and candidates, who rarely encroach upon the current expenditure cap limit, do not benefit from such an amendment.

While the Commission supports legislation that encourages greater outreach to all cohorts of the ACT community, alternative approaches to encouraging production of translated electoral material could be explored, such as reimbursing translated material expenditure costs through the provision of post-election public funding.

Dual reporting agents (Noted by the Commission)

The reporting agent of a party, if one is appointed, is responsible for furnishing regular disclosure of gifts, annual returns, and the election return for a political party. The reporting agent of an MLA, if one is appointed, is responsible for furnishing annual returns for an MLA.

Section 236 (1) prescribes an offence for failure to lodge a financial return:

(1) A person commits an offence if –

- (a) The person is required to give the commissioner a return under this part within a stated time; and
- (b) The person fails to give the commissioner the return within the time.

Maximum penalty:

- (a) For a return to be given by the reporting agent of a party – 50 penalty units; and
- (b) For any other return – 20 penalty units

Section 236 (2) prescribes an offence for lodging an incomplete financial return:

(2) A person commits an offence if –

- (a) The person is required to give the commissioner a return under this part; and
- (b) The person gives the commissioner the return; and
- (c) The return is incomplete

Maximum penalty: 20 penalty units

The Commissioner is required to maintain a register of party and MLA reporting agents. Currently, the appointment of a new reporting agent cancels any previous appointment by the entity.

The Bill will introduce the ability for parties or MLAs to appoint up to two reporting agents.

While the Commission is in favour of legislation that supports parties and MLAs in meeting their financial disclosure obligations, particularly noting that additional officers with appropriate statutory powers may assist political entities in avoiding possible breaches of the law during busy campaign periods, it is unclear which of the two responsible agents would hold liability in the event of a breach of the above provisions.

Party name registration matters (Noted by the Commission)

The Amendment Bill will introduce stricter requirements for party name registration. The amendments will require the Commissioner to refuse an application for registration in the ACT if the Commissioner believes on reasonable grounds that the name in the application suggests that the party applying for registration and a party already registered are related, when, in fact, they are not related; or if the name suggests a connection or relationship between parties when no such connection or relationship exists.

The policy intent of this amendment is clear, particularly noting recent similar amendments to the *Commonwealth Electoral Act 1918* (Cth). However, to date, no such areas of contention in relation to similar party names have arisen in relation to the ACT Register of Political Parties.

Prohibition of foreign donations (Noted by the Commission)

The Bill introduces an additional category of prohibited donor through by banning donations from foreign sources. This amendment follows similar changes to electoral legislation at the Commonwealth level and in New South Wales, Victoria and Queensland.

The Commission's focus is on the potential impact that amendments to the Act may have on the practical enforceability of the Act and on the Commission's regulation and enforcement of the funding and disclosure scheme.

The Commission notes the similarity between these new clauses and the current legislative framework prohibiting gifts from property developers. Such an approach will make administration, education and enforcement of the new provisions more efficient for Elections ACT. The Commission also notes the minor amendments in the bill that seek to address small issues identified with the current application of the ban on gifts from property developers.

The expansion of the prohibited donor legislation to include foreign donors is likely to have financial implications on the Commission's ability to enact compliance measures. The Commission received additional funding in the 2021/2022 and 2020/2023 to engage external compliance review services to enforce the ban on property developers. This funding has now been made permanent. However, if 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.

Moveable signs and roadside electoral advertising (Noted by the Commission)

The Amendment Bill introduces new offences under the *Public Unleased Land Act 2013* to support additional regulation of movable electoral advertising under the Public Unleased Land (Movable Signs) Code of Practice 2019 (Code of Practice). The new offence provisions will limit candidates to 250 movable signs (set via the Code of Practice) and will prohibit movable electoral signs from public land at roads with a speed limit of 90km/h or higher.

The City Rangers from Transport Canberra and City Services (TCCS) administer and enforce the laws relating to the placement of signs in public places in the ACT.

As detailed in the Commission's report on the 2020 ACT election, during the 2020 election campaign, the Commission received 17 complaints about the placement of campaign advertisements on public unleased land. This was an increase on the 13 similar complaints received during the 2016 election. All of these complaints were referred to the City Rangers. While the number of formal complaints increased in 2020, anecdotal and informal analysis of social media, letters to the editor and public commentary during the campaign indicated that the degree of dissatisfaction with the proliferation of movable electoral advertising across Canberra's main roads and suburban streets was less intense in 2020 than in the previous election.

Accordingly, the Commission remains cautious about imposing further restrictions on signs that could lead to unenforceable and cumbersome methods of regulating electoral advertising. While the Commission is not the enforcement agency for these offences, it is the agency that receives many of the complaints in the first instance. As such, it holds concerns with the likelihood that these new offences will increase the number of complaints received, and the practicality for TCCS of enforcing the numerical limitation on signs spread out across an entire electorate or the ACT as a whole.

As detailed in the Commission's report on the 2020 ACT election, the Commission suggested that an appropriate limitation on signage could be to further restrict where signs may be placed. Accordingly, the Commission supports the amendment to prohibit movable electoral signs from public land at roads with a speed limit of 90km/h or higher.