



**LEGISLATIVE ASSEMBLY**  
FOR THE AUSTRALIAN CAPITAL TERRITORY

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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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# **INQUIRY INTO THE ELECTORAL AND ROAD SAFETY LEGISLATION AMENDMENT BILL 2023**

The ACT Greens welcome the opportunity to make a submission to the Justice and Community Safety Committee's inquiry into the Electoral and Road Safety Legislation Amendment Bill 2023.

The ACT Greens recognise that amendments to the Electoral Act can be among the most contested bills that are placed before a parliament. It is our hope that the committee will be able to reach consensus on as many of the reforms as possible, demonstrating the robustness of our parliamentary processes that are committed to dialogue, and our collective respect for our democratic institutions.

## **Donation and Income Disclosure**

The Greens welcome a transition to real-time disclosure of donations, and agree that a 7-day reporting cycle strikes an appropriate balance between timely reporting and the administrative burden that it places on reporting parties. We infer from the bill that the intention is for these provisions to commence when they ordinarily would for an election year and simply continue beyond the election where current provisions would otherwise see them cease. We welcome this approach and anticipate being able to comply with it.

Separately, the bill seeks to reform the disclosure thresholds for periodic donations reporting and annual reporting. The proposal to lower the disclosure threshold from \$1,000 to \$100 was unexpected given no previous calls for this to change. At the national level, the Greens have been campaigning for disclosure thresholds to be lowered to \$1,000, considering the ACT as a positive example of disclosure done well. While we welcome transparency of party finances, we anticipate that the administrative burden on a small- or medium-sized party of screening and reporting donor identities increases exponentially the lower the reporting threshold is set. \$100 may genuinely be too low. \$1,000 has previously been nominated as striking the proper balance between transparency and burden.

The Greens wish to particularly draw the Committee's attention to the reforms to Section 232 of the Act. This concerns the annual reporting of all receipts, including event registration fees, merchandise sales, and membership fees, not just donations. Setting the disclosure threshold at \$100 for this section would, for some parties including the Greens, transform the annual reporting into a readout of party memberships. This could have unhelpful ramifications for democracy,

particularly in the ACT where a large portion of the population is employed in the Public Service and do not wish to draw public attention to a political affiliation.

Disclosure can serve as a disincentive to contributing to grassroots democracy, so there is a genuine balance to be struck between amounts that allow people to show their support for a political party or candidate in confidence and without prejudice, and amounts that are necessary to disclose since they may influence political decision-making as a form of quid-pro-quo. For this reason, the Greens would prefer retaining the existing threshold at \$1,000.

Lastly, the Greens question whether the proposal to introduce a new reporting system for repeat or recurring donations below the disclosure threshold is helpful or necessary. At present, the rules require that we report a donor once their cumulative donations (and at the end of the year, all cumulative receipts from them) exceed the disclosure threshold. Our financial tools and reporting systems have been designed with this requirement in mind, and would need reconfiguring if we were instead required to count the number of small donations received from an individual donor. The ability to test for cumulative donations would not be able to be retired as this would still be required for annual reporting and is a useful test for the screening of donors by our Donations References Group. As such, the proposed reforms add to the reporting burden. The ACT Greens would prefer that the current system be retained.

## **Prohibited Donors**

The Greens support the extension of the prohibited donor system to foreign donors in principle. We would also support its extension to select industries which are known as a source of political interference - gambling, tobacco/nicotine, alcohol, and weapons systems.

However, we are concerned that the foreign donor provisions would have no practical effect due to the proposed definition of a foreign entity. This definition is based on what a foreign entity is not rather than what it is, and what it is not includes all companies incorporated under Australian or ACT law or for which their principal place of activity is in Australia.

Under this definition, Meta (Facebook) is not a foreign entity due to being registered under the Corporations Act to conduct business in Australia. The same applies to Alphabet (Google), Huawei, and ByteDance (TikTok). Also under this definition, foreign embassies could easily argue that they are not a foreign entity on the basis that they have a registered ABN for a principal place of activity in Australia.

These provisions are so loose that a bad actor can drive a truck through them. It would be far more productive to define a foreign entity by what it is - foreign-controlled - rather than what it is not. To be clear, we have the same concerns with equivalent Federal laws.

The Greens would also like to express strong opposition to provisions which create carve-outs for prohibited donors where funds are promptly transferred into a federal election account, including those in Section 62 of the bill. The ACT has previously repealed laws which prescribed the holding of separate bank accounts for Federal election, Territory election and administrative purposes. In

doing so, the ACT correctly identified that such provisions are largely ineffective at preventing or mitigating corruption. Allowing tainted funds to be retained where they are directed to a particular purpose allows for *other* financial resources to be freed up for other purposes. Parties do not plan for Federal and Territory elections in isolation from each other.

Allowing an ACT political party to receive property developer donations for Federal election purposes still expands its overall resources and thereby its available funds for Territory election purposes. A property developer who donates to an ACT party for “Federal election purposes” can still seek a quid-pro-quo in Territory politics. Allowing such carve-outs directly undermines the entire purpose of banning donations from property developers and foreign actors.

Insofar as Federal laws may be inconsistent with and override Territory laws on this topic, the Greens believe that the ACT Government should maintain a position that those Federal laws are wrong, that those Federal laws should be amended or repealed, and that ACT laws should be drafted in a manner we would like to see them work irrespective of how the Federal Government may choose to exercise its own prerogative over us.

## Polling arrangements

The ACT Greens welcome a shift to a 2 week pre-poll period, as this will strike a better balance between meeting the needs of voters, the flow of political debate in the lead-up to the opening of polls, and the ability of candidates and parties (and particularly minor parties) to make themselves available in the hubs which form 100 metres away from polling locations.

The ACT Greens also welcome the removal of provisions which require voters to have a reason to vote early.

## Roadside Signage

The ACT Greens support the legislative reforms to further restrict the use of roadside signs by creating additional “hooks” to prosecute non-adherence to the movable signs code. However, we are concerned that the anticipated regulatory reforms to the moveable signs code and other declarations of particular roads will be insufficient and unenforceable thus precluding meaningful change.

The ACT Greens believe that the restriction of roadside signs can be justified on the basis of visual pollution, not just road safety. Canberrans **hate** roadside signs. This has been consistent feedback that the Greens have heard from all the districts of Canberra, and this is more frequently based on their appearance and impact on the landscape with secondary concerns registered of road safety and environmental cost. It is for this reason that the ACT Greens have not used roadside signs in recent elections and would prefer to see their use banned.

We appreciate that the Constitution’s implied freedom of political communication requires any restrictions to be limited and proportional. If signs are to be used, we would prefer a system

whereby particular roads are 'white-listed' as locations where advertising and electoral matter are permitted with minimum distances between them rather than the present and proposed approach of 'black-listing' where it is to be prohibited. We also recommend a limitation on signs per candidate in each location. Such an approach would also better allow enforcement of the proposed rules on the number of signs. As drafted, we cannot see how any violation of sign quantity rules could be evidenced and prosecuted to the standard required by a court of law. This makes the reforms as proposed simple to ignore.

Furthermore, the permitted number of roadside signs should be reduced. 250 signs per candidate means 6,250 roadside signs for a major party with 25 candidates. This feels like a status-quo outcome which will not address community concerns about the blight of political signs on our roads. Further, given the current practice of nightly destruction of signs, it is hard to envisage how any restriction of total sign numbers can be enforceable. Again, this highlights the option of 'white-listing' as one which could be enforceable in practice.

## Vehicle Signage

As with roadside signage, the ACT Greens welcome the broad intent of these reforms, but believe that it can be justified on the basis of being visual pollution rather than only on the basis of road safety. Billboards towed by trucks and motorcycles are a visual blight on our neighbourhoods.

The ACT Greens see a number of flaws in the reformed traffic offences for vehicles exhibiting advertising or electoral matter. Most significantly, the proposal to increase fines by \$50 is insufficient to ensure the penalty exceeds the cost of doing business. The government should consider whether it could issue demerit points as a more substantial disincentive for the bearers of advertising or electoral matter, or alternatively making the bearers of electoral matter ineligible for fines and forcing them to appear before a magistrate. We are not dealing with vulnerable people, but with professional intentions, and a proportionate response is required.

The government should also consider whether it can define *advertising* in the legislation. As drafted, material neither is nor isn't advertising until such time as the minister makes a disallowable decision on the matter. It is unclear how this will operate in practice, and there are risks of the Ministerial decision system being open to misuse, particularly during election campaign periods and longer recesses where the assembly does not sit and cannot move to disallow.

Lastly, the reforms have a six month delay in their implementation. This means that they will not be in place for the upcoming Referendum. This is both disappointing and concerning.

## Other Matters

The ACT Greens note that the Electoral Amendment Bill 2021 remains before the assembly, which would lower the voting age from 18 to 16 years of age. We remain hopeful that this legislation will

be advanced and passed ahead of the next election, and call upon members of the assembly to support this reform. As has been demonstrated through the effort to raise the minimum age of criminal responsibility, humans develop the ability for consequence-informed intentions in the range of 14- to 16-years of age. Our young people deserve a say in their future and it is past time we gave it to them.

The ACT Greens would also like to draw attention to the findings of the 2013 Review into the size of the Legislative Assembly.<sup>1</sup> In that review, the Expert Reference Group concluded that “the Assembly should be large enough to encompass an executive of between 7-9 ministers and sufficient government back bench members, opposition members and cross bench members to fulfil the various parliamentary scrutiny and representational roles expected of them by the community.”

It was on this basis that the Expert Review Group recommended that “the Assembly be increased to 35 members at the 2020 election, consisting of 5 electorates each returning 7 members” and that “if the Assembly does not accept an increase to 35 members in 2020, the ERG supports an increase to 35 members at the 2024 election.”

The ACT Government has expanded the size of cabinet to 9 ministers, which is understandable given the scope of work that is expected of Cabinet. In a similar manner, the Opposition has appointed 9 shadow ministers. Despite making these expansions of the executive and shadow executive, the Assembly has not progressed the public debate for an expansion of the Assembly to the requisite 35 members for reliably supporting an executive of this size into the future. The ACT Greens call upon the Assembly to do so.

## Conclusion

There are a large range of other matters contained in the bill which this submission has not touched upon. Broadly, the ACT Greens support the remaining provisions of the bill. The concerns this submission raises regarding the practical effects of the bill's reforms do not limit our overall support for the apparent intent underpinning them.

Sincerely,



Michael Brewer

Adam Poulter

ACT Greens Convenor

ACT Greens Party Director

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<sup>1</sup> [https://www.elections.act.gov.au/electoral\\_boundaries/review\\_into\\_the\\_size\\_of\\_the\\_legislative\\_assembly](https://www.elections.act.gov.au/electoral_boundaries/review_into_the_size_of_the_legislative_assembly)