



LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON JUSTICE AND COMMUNITY SAFETY


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Submission Cover Sheet

Inquiry into Electoral and Road Safety Legislation Amendment Bill 2023

Submission Number: 006

Date Authorised for Publication: 02 August 2023



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27 July 2023

Inquiry into Electoral and Road Safety Legislation Amendment Bill 2023 (ACT)

This submission responds to the Committee's invitation of 6 July 2023 to comment on the Electoral and Road Safety Legislation Amendment Bill 2023 (ACT).

The submission draws on graduate research, teaching and professional practice over the past thirty years, including participation in international/national policy working parties, cited engagement with law reform bodies and involvement in the exercise of rights under the national, state and territory regimes.

In particular the submission draws on research regarding electoral integrity, including measures to limit domestic/foreign influence in elections; public administration at the national and state/territory levels; and to strengthen the performance of anti-corruption agencies.

The submission does not represent what would be reasonably construed as a conflict of interest and is independent of commercial/civil society advocacy bodies.

Summary

There is substantial independent research regarding community disengagement and mistrust from political processes, increasing distrust of politicians (deemed for example to have been captured by special interests and lacking a moral compass), wariness about public administration (evident for example in revelations regarding RoboDebt and the regulatory failure highlighted in the Hayne Royal Commission on the banking and insurance sectors) and distrust of faith-based institutions with inadequate governance mechanisms.

That wariness is reinforced by perceived impropriety on the part of the consulting giants such as PwC or Synergy 360 and the ongoing resistance by dominant social media groups to address substantive concerns regarding fake news and electoral misinformation. We specifically refer to the social media groups given that, as noted below, they are more influential than corflutes in shaping elections.

The authors of this submission accordingly endorse the proposal to amend the *Electoral Act 1992* (ACT) to

- ban political donations from foreign entities,
- introduce real time political donation reporting,
- enable early voting for two weeks prior to elections,
- provide for the use of overseas electronic voting for voters outside Australia,
- strengthen Elections ACT,

- amend rules around authorisation statements for the dissemination of electoral matter and party name registration,
- further restrict roadside electoral advertising, including roadside corflutes; and
- introduce specific offences for roadside advertising using illegally parked or idling vehicles.

In endorsing technical changes to the ban on donations from property developers we suggest that it is both appropriate and necessary to extend the ban to providers of consultancy and lobbyist services. Extension reflects both the dependence of the ACT government on consultants in relation to policy development and implementation. It also reflects governance failures within leading consultancy enterprises. In addition, we would strengthen those provisions to include other industry sectors which have been shown to disproportionately influence political discourse such as the tobacco industry and gambling industries. As in New South Wales, such a ban would ensure that the ACT is limiting harmful influence on the electoral process and is supported by our international obligations such as under the WHO Framework Convention on Tobacco Control and other international agreements.

The amendments are consistent with community expectations and with the Territory's human rights framework. It is fundamental that political participation (and the determination of public policy) should not be a matter of the wealth of a corporation, a proxy for a foreign government or a colourful entrepreneur.

The following comments address specific aspects of the Bill, in some instances suggesting that the Legislative Assembly look beyond form to function.

The comments also note the importance of the Australian jurisdictions developing a uniform regime, in particular a regime that strengthens the accountability of both traditional and emerging media groups in the 'age of clickbait'.

Ban on donations from foreign entities

The proposed ban is proportionate. It provides a pragmatic response to all participants in Territory political processes ostensibly being equal – per Human Rights Act s 8 – but in practice the wealthy and well-connected being significantly more equal.

We consider that the restriction should be stronger, in line with Commonwealth arrangements.

The proposed section 222M(c) is inappropriate. It potentially privileges non-citizens whose principal place of residence is in Australia (a broader categorisation than residence in the ACT) and thus encompasses high net worth individuals rather than disadvantaged international students. If the amendment had been in place prior to Russia's invasion of the Ukraine it would, for example, have privileged Russian kleptocrats who had what can amount to a 'postbox residence' in Australia.

We further note that it would be feasible for a foreign commercial entity aligned with an overseas body such as the Communist Party to organise dissemination of funds through a cadre of international students.

Ban on donations from commercial interests

We note and endorse the existing ban on donations from property developers.

Given the ACT government's dependence on consultants for policy development and implementation, alongside substantive concerns regarding egregious governance failures in the consulting sector (including but not restricted to leading entities such as PwC and KPMG) we strongly recommend that there should be a comprehensive ban on donations from consultants.

That ban should encompass all incorporated entities. We note that corporations do not have human rights and are accordingly – and legitimately – outside the *Human Rights Act 2004* (ACT).

In addition, we note that there is a considerable body of research regarding the commercial and social determinants of health that suggests that harmful corporate industries are able to exercise a disproportionate influence on the political process through political donations and other activities. We note that such a ban has been successfully implemented in New South Wales and is in line with major party policy not to accept donations from harmful industries. Legislating such a ban, as is under consideration in other comparative jurisdictions in Australia would ensure that policy can be supported and enforced.

Party membership verification

The proposed strengthening of arrangements regarding verification of party membership is inadequate. In elections across Australia there have been instances of people being 'signed up' to membership without their knowledge. Inclusion of email addresses will not robustly provide "a more effective" option for verification of identity, given that appropriation of an individual's identity through creation of an unauthorised email address is a trivial task. We accordingly suggest that mandatory identification should require a mobile phone number, with Elections ACT having scope to match numbers (eg detect that there is appropriation if it matches the one number to multiple email addresses, a matching task that can be automated).

In making that suggestion we note that political parties and advocacy groups commonly require a mobile number (for example as the basis of SMS/MMS alerts) and that concerns regarding privacy can be addressed through cyber security protocols at Elections ACT aimed at preventing data breaches.

Party Secretary Identification

We endorse mandatory provision of name and contact details for party secretaries, with verification by Elections ACT of data on that register.

Parties must provide amended details within a reasonable period (seven days) when there is a change of secretary.

Political Party Names and nominations

We endorse the strengthened regime for refusal of applications of party names (new sections 93(2)(da) and 93(2)(g)(ii).

The proposed new section 105A is also endorsed.

Real-time Donation Reporting

We endorse real-time (ie within seven days) reporting to Elections ACT of donations as per the proposals in the Bill, ie the lower threshold and aggregation of multiple 'under \$100' donations.

A key issue is public accessibility of data, analogous to issues regarding the non-searchability in some jurisdictions of the interest registers covering legislators. We emphasise the need for substantive rather than notional transparency, so that ordinary members of the public and entities such as Transparency International can readily identify the recipients of funding and at a broad level identify patterns in funding.

The Explanatory Statement refers to the Electoral Commissioner being required “as soon as practicable” to publish information “in the way the Commissioner considers appropriate”. We endorse identification by postcode rather than specific home address.

Given the ACT Government’s commitment to ‘open government’ as a foundation of integrity, efficiency and legitimacy we consider that the Commissioner should provide data in formats that are readily searchable and aggregatable on an ongoing basis, rather than for example PDFs that feature handwritten data or otherwise cannot be converted to spreadsheets.

Special Interest Profiles

We note the proposal to introduce new obligations for authorisation statements in relation to special interest profiles. We endorse that proposal.

The Explanatory Statement characterises freedom of expression in terms that may be misunderstood by some readers. We note that at the national level the High Court has identified an implied freedom of political communication (more circumscribed than a broader freedom of expression) and that speech that embodies vilification, defamation, fraud or disregard of confidentiality, privacy and intellectual property is appropriately restricted.

Corflutes

We endorse the proposed restrictions on corflutes and ‘idling signage’ as an appropriate measure that fosters public safety.

In particular we note that parties, candidates and advocacy groups have a range of communication channels. Some of those channels, for example social media platforms and the ‘spamming’ (permitted under Commonwealth law) evident at the latest national election appear to be more effective than roadside signs. Furthermore, such corflutes are necessarily to be seen at speed and unable to be engaged with in a meaningful way.

Research is emerging that such roadside advertising is more at risk of conveying false or misleading misinformation regarding the electoral process, and individual candidates/parties in particular, undermining the political and electoral process.

We suggest that the ACT Government work with the Commonwealth (given the latter’s head of power regarding telecommunications) to remove the exemption enjoyed by political parties under the *Spam Act 2003* (Cth).

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