

2014

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Electoral Amendment Bill 2014 (No 2)

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J2014-363

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(As presented)

(Attorney-General)

Electoral Amendment Bill 2014 (No 2)

A Bill for

An Act to amend the *Electoral Act 1992*

The Legislative Assembly for the Australian Capital Territory enacts as follows:

1 **1 Name of Act**

2 This Act is the *Electoral Amendment Act 2014 (No 2)*.

3 **2 Commencement**

4 This Act commences on the day after its notification day.

5 *Note* The naming and commencement provisions automatically commence on
6 the notification day (see [Legislation Act](#), s 75 (1)).

7 **3 Legislation amended**

8 This Act amends the *Electoral Act 1992*.

9 **4 Offences against Act—application of Criminal Code etc**
10 **Section 3A, note 1**

11 *omit*

- 12 • s 205A (Financial representatives to keep ACT election accounts)
- 13 • s 205B (Offence—loans to be repaid from ACT election accounts)
- 14 • s 205C (Financial representative to ensure electoral expenditure
15 paid from ACT election account)
- 16 • s 205J (Offence—give indirect gift to avoid statutory limit)

17 **5 Definitions for pt 14**
18 **Section 198, new definition of *Australian government***
19 ***body***

20 *insert*

21 *Australian government body* means—

- 22 (a) a government agency; or
- 23 (b) a Commonwealth, State or local government (*another*
24 *Australian government*); or
- 25 (c) an authority of another Australian government; or

1 (d) a corporation in which another Australian government has a
2 controlling interest.

3 *Note 1 Government agency*—see the dictionary.

4 *Note 2 State* includes the Northern Territory (see [Legislation Act](#), dict, pt 1).

5 **6 Section 198, definition of *party grouping*, paragraphs (c)**
6 **and (d)**

7 *omit*

8 **7 Section 198, definition of *third-party campaigner*,**
9 **paragraph (a)**

10 *omit*

11 more than \$1 000

12 *substitute*

13 \$1 000 or more

14 **8 Section 198, definition of *third-party campaigner*,**
15 **paragraph (b) (i)**

16 *after*

17 MLA,

18 *insert*

19 associated entity,

20 **9 Section 198, definition of *third-party campaigner*,**
21 **paragraph (b) (iv)**

22 *substitute*

23 (iv) an Australian government body;

1 **10 Disclosure periods**
2 **Section 201 (2), definition of *disclosure day*,**
3 **paragraph (c)**

4 *omit*
5 to which section 220 applies

6 **11 Appointed agents**
7 **New section 203 (2A)**

8 *insert*
9 (2A) The appointment of a reporting agent by a party, MLA or candidate
10 ends any other current appointment of a reporting agent by the
11 entity.

12 **12 Registers of reporting agents**
13 **Section 205 (4), new note**

14 *insert*
15 *Note* The appointment of a reporting agent ends any other current
16 appointment of a reporting agent by the party, MLA or candidate (see
17 s 203 (2A)).

18 **13 ACT election accounts**
19 **Division 14.2A**

20 *omit*

21 **14 Meaning of *expenditure cap*—div 14.2B**
22 **Section 205D (a)**

23 *substitute*
24 (a) for an election held in 2016—\$40 000; or

- 1 **15 New section 205D (2) and (3)**
- 2 *insert*
- 3 (2) This section, as in effect immediately before the day the *Electoral*
4 *Amendment Act 2014 (No 2)* commences, continues to apply until
5 31 December 2015.
- 6 (3) Subsection (2) and this subsection expire on 31 December 2015.
- 7 **16 Section 205G heading**
- 8 *substitute*
- 9 **205G Limit on electoral expenditure—MLAs, associated**
10 **entities, candidates and third-party campaigners**
- 11 **17 Section 205G (1) (a)**
- 12 *substitute*
- 13 (a) a non-party MLA;
- 14 (aa) an associated entity;
- 15 **18 Section 205G (4) (a) to (c)**
- 16 *substitute*
- 17 (a) if the expender is a non-party candidate grouping—the
18 non-party candidate; or
- 19 (b) for any other expender—the expender.
- 20 **19 Limit on electoral expenditure—third-party campaigner**
21 **acting in concert with others**
22 **Section 205H**
- 23 *omit*

1 **20 Division 14.2C heading**

2 *substitute*

3 **Division 14.2C Limit on payments within parties**

4 **21 Sections 205I and 205J**

5 *omit*

6 **22 Limit on payments within parties**
7 **Section 205K (2)**

8 *omit*

9 pay into the ACT election account for the party

10 *substitute*

11 receive

12 **23 Entitlement to funds**
13 **Section 207 (2) (a)**

14 *substitute*

15 (a) for an election held in the 6-month period beginning on
16 1 July 2016—\$8; and

17 **24 New section 207 (8) and (9)**

18 *insert*

19 (8) This section, as in effect immediately before the day the *Electoral*
20 *Amendment Act 2014 (No 2)* commences, continues to apply until
21 30 June 2016.

22 (9) Subsection (8) and this subsection expire on 30 June 2016.

1 **25** **Payments for administrative expenditure not to be used**
2 **for electoral expenditure**
3 **Section 215G (1)**

4 *substitute*

5 (1) If an amount is paid to a party or non-party MLA for administrative
6 expenditure under this division, the party or non-party MLA must
7 not use any part of the amount for electoral expenditure in relation
8 to an ACT, federal, state or local government election.

9 **26** **Section 215G (2)**

10 *omit*

11 deposited or

12 **27** **Definitions—div 14.4**
13 **Section 216, new definition of *anonymous gift***

14 *insert*

15 *anonymous gift* means a gift made anonymously that is less than
16 \$1 000.

17 **28** **Section 216, definition of *small anonymous gift***

18 *omit*

19 **29** **Records and regular disclosure of gifts**
20 **Section 216A (1) (b)**

21 *substitute*

22 (b) a non-party MLA;

23 (ba) an associated entity;

1 **30 Section 216A (2)**

2 *after*
3 each gift
4 *insert*
5 (other than free facilities use)

6 **31 Section 216A (2) (c) and (d)**

7 *omit*
8 a small anonymous gift
9 *substitute*
10 an anonymous gift

11 **32 Section 216A (4), except note**

12 *substitute*
13 (4) The financial representative of the receiver must give the return, in
14 writing, to the commissioner not later than—
15 (a) for an ordinary election—if the total amount of the gifts
16 received from the person reaches \$1 000—
17 (i) in the quarter beginning on 1 April in the capped
18 expenditure period—7 days after the end of the quarter;
19 or
20 (ii) after 30 June in the capped expenditure period—7 days
21 after the day the total amount received from the person
22 reaches \$1 000; or
23 (b) for an extraordinary election—if the total amount of the gifts
24 received from the person reaches \$1 000 in the capped
25 expenditure period—7 days after the day the total amount
26 received from the person reaches \$1 000; or

1 (c) in any other case—30 days after the end of the quarter in which
2 the total amount received from the person reaches \$1 000.

3 *Note 1* **Quarter** means a period of 3 months beginning on 1 January, 1 April,
4 1 July or 1 October in any year—see the [Legislation Act](#), dictionary,
5 pt 1.

6 **33 Section 216A (6), new definition of *free facilities use***

7 *insert*

8 ***free facilities use*** means a gift of the use of facilities for a routine
9 meeting of a receiver and—

10 (a) includes use of a room and anything reasonably necessary for
11 the conduct of the meeting in the room; but

12 (b) does not include any food, drink or other gift associated with
13 the use of the facilities.

14 **Examples—things reasonably necessary for conduct of meeting in room**

15 tables, chairs, photocopier, microphone, computer

16 *Note* An example is part of the Act, is not exhaustive and may extend, but
17 does not limit, the meaning of the provision in which it appears (see
18 [Legislation Act](#), s 126 and s 132).

19 **34 Section 216A (6), definition of *relevant period*,**
20 **paragraph (a)**

21 *substitute*

22 (a) for a party grouping, non-party MLA or associated entity—a
23 financial year; and

1 **35 Disclosure of gifts by third-party campaigners**
2 **Section 220 (3) (c) and (d)**

3 *omit*
4 a small anonymous gift
5 *substitute*
6 an anonymous gift

7 **36 Section 222 heading**

8 *substitute*

9 **222 Restrictions on acceptance of gifts**

10 **37 Section 222 (3)**

11 *omit*
12 of a party or MLA

13 **38 Section 222 (3)**

14 *omit*
15 a small anonymous gift
16 *substitute*
17 an anonymous gift

18 **39 Section 222 (3)**

19 *omit*
20 small anonymous gifts
21 *substitute*
22 anonymous gifts

1 **40 Section 222 (4)**

2 *omit*

3 a small anonymous gift

4 *substitute*

5 an anonymous gift

6 **41 Section 222 (4) and (7)**

7 *omit*

8 small anonymous gifts

9 *substitute*

10 anonymous gifts

11 **42 Returns of electoral expenditure**
12 **Section 224 (2)**

13 *omit*

14 or an associated entity of the MLA, the non-party MLA

15 *substitute*

16 , the reporting agent of the MLA

17 **43 New section 224 (2A)**

18 *insert*

19 (2A) If electoral expenditure in relation to an election is incurred in the
20 capped expenditure period by an associated entity, the reporting
21 agent of the entity must, within 60 days after polling day for the
22 election, give the commissioner a return stating the details of the
23 expenditure.

1 **44 Section 224 (3)**

2 *before*

3 the candidate

4 *insert*

5 the reporting agent of

6 **45 Annual returns by parties and MLAs**
7 **Section 230 (1)**

8 *omit*

9 July

10 *substitute*

11 August

12 **46 Section 230 (4) (c)**

13 *after*

14 debts

15 *insert*

16 claimed against or

17 **47 Section 230 (5)**

18 *after*

19 capacity as an MLA

20 *insert*

21 or a Minister

1 **48 Section 230 (5), example 2**

2 *after*
3 an MLA

4 *insert*
5 or a Minister

6 **49 Section 231B heading**

7 *substitute*

8 **231B Annual returns by associated entities**

9 **50 Section 231B (1)**

10 *omit*

11 July

12 *substitute*

13 August

14 **51 Amounts received**
15 **Section 232 (2)**

16 *after*

17 financial year

18 *insert*

19 that total \$1 000 or more

20 **52 Section 232 (3) (c)**

21 *omit*

1 **53 Section 232 (4)**

2 *substitute*

3 (4) For subsections (1) and (2), if the amount was received—

4 (a) as free facilities use, the return need only state—

5 (i) the defined particulars; and

6 (ii) for each free facilities use received—the date it was
7 received; or

8 (b) as a loan, the return must state the information required by
9 section 218A (2) (Certain loans not to be received).

10 (5) In this section:

11 *free facilities use*—see section 216A (6).

12 **54 Copies of returns to be available for public inspection**
13 **New section 243 (5)**

14 *after the note, insert*

15 (5) However, if the commissioner makes a return available for public
16 inspection by publishing the return, or the information in the return,
17 and the return includes information about a gift made by an
18 individual, the commissioner must not publish the individual's home
19 address other than—

20 (a) the suburb or postcode of the individual's home address; or

21 (b) any post office box details.

22 **Example—publishing**

23 on the commission website

24 *Note* An example is part of the Act, is not exhaustive and may extend, but
25 does not limit, the meaning of the provision in which it appears
26 (see [Legislation Act](#), s 126 and s 132).

- 1 **55 Section 243A heading**
- 2 *substitute*
- 3 **243A Commissioner must publish certain information given**
4 **under s 216A**
- 5 **56 New section 243A (3)**
- 6 *after the note, insert*
- 7 (3) However, if a gift was made by an individual, the commissioner
8 must not publish the individual's home address other than—
- 9 (a) the suburb or postcode of the individual's home address; or
10 (b) any post office box details.
- 11 *Note* The individual's private address details may, on request, be inspected at
12 the commissioner's office during ordinary business hours (see s 243).
- 13 **57 New section 293A**
- 14 *insert*
- 15 **293A Exception for personal views on social media**
- 16 (1) Section 292 does not apply to the dissemination of electoral matter
17 by an individual if—
- 18 (a) the electoral matter—
- 19 (i) is disseminated on or through social media; and
20 (ii) forms part of the expression of the individual's personal
21 political views; and
- 22 (b) the individual is not paid to express those views.
- 23 *Note* The defendant has an evidential burden in relation to the matters
24 mentioned in s (1) (see [Criminal Code](#), s 58).

1 (2) In this section:

2 **social media** means internet-based or mobile broadcasting-based
3 technology or applications through which individuals can create and
4 share content generated by the individual.

5 **Examples**

6 internet forums, blogs, wikis, text messaging, online or mobile broadcasting social
7 networks

8 *Note* An example is part of the Act, is not exhaustive and may extend, but
9 does not limit, the meaning of the provision in which it appears (see
10 [Legislation Act](#), s 126 and s 132).

11 **58 Ascertaining result of poll**
12 **Schedule 4, clause 7 (3) (c)**

13 *substitute*

14 (c) if 2 or more successful candidates (**contemporary candidates**)
15 who obtained a quota at the earliest count have the same
16 surplus, being a surplus larger than that of any other candidate
17 who obtained a quota at the count and—

18 (i) 1 of the contemporary candidates had more total votes
19 than any other contemporary candidate at the last count—
20 that candidate is the relevant candidate; or

21 (ii) 2 or more contemporary candidates have the same total
22 votes, being a total larger than that of any other
23 contemporary candidate (a **non-tied contemporary**
24 **candidate**) at the last count—each non-tied contemporary
25 candidate is no longer considered under this clause and—

26 (A) subparagraph (i) and this subparagraph are applied
27 to each preceding count until a relevant candidate is
28 worked out; or

- 1 (B) if a relevant candidate cannot be worked out by
2 applying subparagraph (i) and this subparagraph to
3 the preceding count—the contemporary candidate
4 who is determined by the commissioner by lot is the
5 relevant candidate.

6 **59 Schedule 4, clause 7 (4) (a)**

7 *omit*

8 subclause (3) (c) (ii)

9 *substitute*

10 subclause (3) (c) (ii) (B)

11 **60 Schedule 4, clause 8 (2)**

12 *substitute*

13 (2) If 2 or more candidates each have the same total votes, being fewer
14 total votes than any other candidate and—

15 (a) 1 of the candidates had fewer total votes than any other of the
16 candidates at the last count—that candidate is excluded; or

17 (b) 2 or more of the candidates have the same total votes, being a
18 total fewer than that of any other candidate (a *non-tied*
19 *candidate*) at the last count—each non-tied candidate is no
20 longer considered under this clause and—

21 (i) paragraph (a) and this paragraph are applied to each
22 preceding count until 1 candidate is excluded; or

23 (ii) if 1 candidate cannot be excluded by applying
24 paragraph (a) and this paragraph to the preceding count—
25 the candidate who is determined by the commissioner by
26 lot is excluded.

1 **61 Schedule 4, clause 8 (3) (a)**

2 *omit*

3 subclause (2) (b)

4 *substitute*

5 subclause (2) (b) (ii)

6 **62 Dictionary, note 2**

7 *insert*

- 8
 - individual

9 **63 Dictionary, definition of *ACT election account***

10 *omit*

11 **64 Dictionary, new definitions**

12 *insert*

13 *anonymous gift*, for division 14.4 (Gifts and certain loans—records
14 and disclosure)—see section 216.

15 *Australian government body*, for part 14 (Election funding,
16 expenditure and financial disclosure)—see section 198.

17 **65 Dictionary, definition of *small anonymous gift***

18 *omit*

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 27 November 2014.

2 Notification

Notified under the [Legislation Act](#) on 2014.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

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