

2012

LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

ELECTORAL AMENDMENT BILL 2012

EXPLANATORY STATEMENT

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Electoral Amendment Bill 2012

Overview of Bill

The Electoral Amendment Bill 2012 (the Electoral Bill) amends the *Electoral Act 1992* and makes consequential amendments to the *Electoral Regulation 1993* and the *Referendum (Machinery Provisions) Act 1994*.

The amendments give partial effect to the Government Response to the Standing Committee on Justice and Community Safety's report, *A Review of Campaign Financing Laws in the ACT*.

The Electoral Bill enhances the ACT's regulatory framework for the financing of electoral campaigns by implementing several of the recommendations made in the Standing Committee report. The bill has been produced with significant input from the Electoral Commissioner.

The most significant feature of the bill is that it introduces caps on electoral expenditure and gifts. The proposed cap on electoral expenditure is \$60 000 during the capped expenditure period, and the cap on gifts is \$10 000 per donor in a financial year.

These caps were developed after careful consideration of the need to balance the rights of political entities, against the concern that elections could be unduly influenced by disproportionate funding and donations.

The Government believes that this bill will improve and strengthen the ACT's already robust electoral system, and will allow more individuals to participate in the political landscape.

Human Rights implications

The amendments proposed in this bill engage the following rights under the *Human Rights Act 2004*:

- the right to freedom of expression (section 16(2));
- the right to take part in public life (section 17); and
- the right to fair trial (section 21(1)).

Section 16(2)

Under section 16(2), everyone has the right to freedom of expression. This right includes the freedom to seek, receive and impart information and ideas of all kinds, regardless of borders, whether orally, in writing or in print, by way of art, or in another way chosen by him or her.

Arguably, the Electoral Bill limits the right of political parties to freely engage in such activities as electoral advertising and promotion, to express their policy positions to the public.

However, alternatively, the bill promotes the right of political campaigners who do not have the financial resources to run sophisticated media campaigns.

Section 17

Under section 17, every citizen has the right, and is to have the opportunity, to –

- a) take part in the conduct of public affairs, directly or through freely chosen representatives; and
- b) vote and be elected at periodic elections, that guarantee the free expression of the will of the electors; and
- c) have access, on general terms of equality, for appointment to the public service and public office.

Arguably, the Electoral Bill limits *and* promotes this right, because by capping electoral expenditure and gifts, it poses both an advantage and a disadvantage to different individuals. Those who cannot afford to be ‘major players’ in the political sphere, will now be on a level playing field with others who have significant resources.

Section 21(1)

Under section 21(1), everyone charged with a criminal offence has the right to be presumed innocent until proved guilty according to the law. This right is enlivened because the Electoral Bill imposes a strict liability offence in section 236.

There are two essential features of a strict liability offence. First, there is no requirement to prove a fault element, such as intention or recklessness. It is sufficient to show that the defendant did the prohibited act – in the case of these offences, this would be that a political party has not provided their return to the Electoral Commissioner within the required time.

The second distinguishing feature is that the defence of reasonable mistake of fact applies. Under section 36 of the Criminal Code 2002, mistake of fact is a defence open to a defendant only if the person considered whether or not facts existed and was under a mistaken but reasonable belief about the facts. If those facts had existed, the conduct would not have constituted an offence.

Section 23(3) of the Criminal Code makes it clear that other defences may still be available for use in strict liability offences.

The use of strict liability offences in the Bill impacts on a person’s right to fair trial (section 21(1) of the *Human Rights Act 2004* (ACT), which relevantly provides:

Fair trial

1) Everyone has the right to have...rights and obligations recognised by law, decided by a competent, independent and impartial...tribunal after a fair and public hearing.

Although this right is engaged, strict liability is not prohibited by the *Human Rights Act 2004* (ACT), however, it is important that strict liability offences are reasonable within the specific context of the offence and are justifiable.

Strict liability offences are justifiable here because the penalties are relatively small and form part of a regulated activity. All political entities will be informed of their responsibilities in relation to returns and the Electoral Commission will be in a position to assist parties and individuals in compiling and submitting such returns.

Reasonable limits under section 28

Under section 28 of the *Human Rights Act 2004*, human rights may be subject to reasonable limits set by Territory laws that can be demonstrably justified in a free and democratic society.

In deciding whether a limit is reasonable, all relevant factors must be considered, including the following:

- a) the nature of the right affected;
- b) the importance of the purpose of the limitation;
- c) the nature and extent of the limitation;
- d) the relationship between the limitation and its purpose;
- e) any less restrictive means reasonably available to achieve the purpose the limitation seeks to achieve.

In light of the discussion above, the Government believes that limits imposed by the Electoral Bill are reasonable and proportionate in the context of the underlying purpose of the legislation, which is to protect the sanctity of the ACT's electoral system.

Further, the improvement of the ACT's electoral system by strengthening the regulatory framework will enhance individuals' capacity to take part in public life without undue influence to their decision making capacity. The Government believes that any limitations imposed by the Electoral Bill are balanced with the promotion of rights. These limitations are justified to the extent that the bill acts to reinforce the integrity of the electoral system, particularly from efforts from third parties to unduly influence the process.

The Government believes that the imposition of caps, and offences for breaching those caps, is the most effective and efficient way to ensure that the electoral system is not abused. There are no less restrictive means available to achieve this purpose, because without a penalty regime, there is no disincentive for those who seek to circumvent the system.

Clause Notes

Clause 1 Name of Act

This Act is the *Electoral Amendment Act 2012*.

Clause 2 Commencement

This clause provides that the Act commences on 1 July 2012.

Clause 3 Legislation amended

This clause specifies that the Act amends the *Electoral Act 1992*, the *Electoral Regulation 1993* and the *Referendum (Machinery Provisions) Act 1994*.

Clause 4 Offences against Act – application of Criminal Code etc Section 3A, note 1

This clause inserts references to the new offences in the Act where the *Criminal Code 2002* will apply.

Clause 5 Section 87 heading

This clause replaces the existing heading for section 87, 'Definitions – pt 7', substituting a new heading, 'Meaning of *address* – pt 7'. This is to reflect the fact that section 87 now only contains the definition of 'address', rather than also containing the definition of 'related'. The definition of 'related' has now been moved to the Dictionary, as it now has a broader application.

Clause 6 Section 87, definition of *related*

The definition of 'related' has been omitted from section 87 because it has been moved to the Dictionary, as it now has a broader application.

Clause 7 Part 14 heading

The clause replaces the existing heading for part 14, 'Election funding and financial disclosure', substituting a new heading, 'Election funding, expenditure and financial disclosure'. This is to reflect the fact that the bill introduces caps on electoral expenditure and part 14 contains definitions relating to expenditure.

Clause 8 Definitions for pt 14 Section 198, new definitions

This clause inserts new definitions into section 198 – 'called' and 'capped expenditure period'.

'Called' describes the day on which an extraordinary election is called. An extraordinary election is an election defined under section 101(1) of the

Electoral Act 1992, as:

- (a) a general election required by the Self-Government Act, section 16; or
- (b) a general election required by the Self-Government Act, section 48; or
- (c) an election of an MLA or MLAs required by section 126; or
- (d) an election of an MLA or MLAs required by section 275.

The definition of ‘called’ therefore provides that for extraordinary elections referenced in section 101(1)(a) or (b) of the *Electoral Act 1992*, those elections are ‘called’ on the day the notice under the *Australian Capital Territory (Self-Government Act) 1988*, section 16 or section 48 is published in the *Commonwealth Gazette*. In the case of extraordinary elections referenced in section 101(1)(c) or (d), those elections are ‘called’ on the day the determination under section 101(2) or (3) is notified under the *Legislation Act 2001*.

‘Capped expenditure period’ describes the period in which caps on electoral expenditure under the *Electoral Act 1992* apply. This provision makes a distinction between what will constitute the capped expenditure period in an ordinary election and what will constitute the capped expenditure period in an extraordinary election.

In the case of an ordinary election, the ‘capped expenditure period’ begins on 1 January in an election year and ends on polling day for the election. In the case of an extraordinary election, the ‘capped expenditure period’ begins on the day the extraordinary election is called and ends on polling day for the election.

Clause 9 Section 198, definition of *disposition of property*

This clause moves the definition of ‘disposition of property’ from section 198 to a new section, section 198AA. Section 198AA has been created define ‘gift’ for the purposes of part 14 within a separate section to create clarity and ease of reference.

Clause 10 Section 198, new definitions

This clause inserts new definitions of ‘electoral expenditure’ and ‘financial representative’.

‘Electoral expenditure’ describes expenditure which is incurred in disseminating electoral matter for an election. The dissemination of electoral matter, whether in printed or electronic form, is defined in section 291 of the *Electoral Act 1992* as the printing, publishing, distribution, production or broadcasting of electoral matter.

‘Financial representative’ describes the entity who is given responsibility for ensuring that caps on electoral expenditure and donations are not breached. For each of the political entities, the following individuals are taken to be the ‘financial representative’:

- (a) for a party grouping – the reporting agent of the party; or
 - (b) for a non-party MLA – the MLA; or
 - (c) for a non-party candidate grouping – the candidate; or
 - (d) for a non-party prospective candidate grouping – the prospective candidate;
- or
- (e) for an associated entity – the entity’s financial controller; or

- (f) for a third-party campaigner –
- i. if the third-party campaigner is an individual – the third-party campaigner; or
 - ii. in any other case – the managing director (however described) of the third-party campaigner.

Clause 11 Section 198, definition of *gift*

This clause moves the definition of ‘gift’ to a new section, section 198AA. As explained above, section 198AA has been created to define ‘gift’ for the purposes of part 14 of the *Electoral Act 1992*.

Clause 12 Section 198, new definitions

This clause inserts a number of new definitions, as follows:

- ‘incurs’ electoral expenditure – see section 202A;
- ‘index number’ – this refers to the all groups consumer price index number, being the weighted average of the 8 capital cities, published by the Australian statistician for that quarter;
- ‘non-party candidate grouping’ – this refers to a candidate for an election who is not a party candidate, and any other person who has incurred electoral expenditure to support the candidate in contesting the election;
- ‘non-party MLA’ – this refers to an MLA who is not a member of a party;
- ‘non-party prospective candidate grouping’ – this refers to a prospective candidate for an election who is not a prospective candidate for a party, and any other person who has incurred electoral expenditure to support the prospective candidate in contesting the election;
- ‘party grouping’ – refers to the collective group that the expenditure and donation caps apply to, as follows:
 - a party; and
 - an MLA for the party; and
 - an associated entity of the party; and
 - an associated entity of an MLA for the party; and
 - a candidate for the party; and
 - a prospective candidate for the party; and
 - any other person who has incurred electoral expenditure to support a candidate or prospective candidate for the party in contesting an election.
- ‘person’ – include an unincorporated association, and also includes a corporation (under the *Legislation Act 2001*).

Clause 13 Section 198, definition of *property*

This clause moves the definition of ‘property’ to section 198AA so that it applies to part 14 definition of ‘gift’.

Clause 14 Section 198, new definitions

This clause inserts new definitions into section 198 – ‘prospective candidate’ and ‘third-party campaigner’.

‘Prospective candidate’ defines the difference between a candidate and an individual who has not yet been declared a candidate for the purposes of section 109, but has:

- won party preselection, or endorsement, from a party for an election; or
- publicly announced that they intend to be a candidate for an election; or
- been nominated to be a candidate for an election under section 105, and the nomination has not been cancelled under section 107 or rejected under section 110.

It is important to define a ‘prospective candidate’, because there is always a possibility that a prospective candidate will eventually become a candidate, and therefore be subject to the proposed caps on political expenditure and donations.

‘Third-party campaigner’ defines a person or entity that incurs more than \$1000 in electoral expenditure in a capped expenditure period for an election. The definition does not include:

- a party, MLA, candidate, prospective candidate, party grouping, non-party candidate grouping or non-party prospective candidate grouping;
- a broadcaster;
- a publisher of a news publication;
- a government agency;
- the Legislative Assembly.

The definition has been designed to capture entities who incur electoral expenditure but are not the “major players” in the political sphere, such as single issue lobby groups.

Clause 15 New section 198AA

This clause creates a new section, section 198AA, which defines ‘gift’, along with a number of associated definitions – ‘fundraising contribution’, ‘fundraising event’ and ‘volunteer labour’.

‘Gift’ is defined as a disposition of property made by a person to another person without consideration in money or money’s worth or with inadequate consideration. It includes the provision of a service (other than volunteer labour), and an annual party membership fee or a fundraising contribution, if those amounts are over \$250. It also excludes other gifts and payments that people would not ordinarily expect to be included within the definition of ‘gift’.

As outlined in proposed new section 205G, a receiver must not deposit in an ACT election account one or more ‘gifts’ from a person in a financial year that total more than \$10 000.

‘Fundraising contribution’ is defined as an amount paid by a person as a contribution, entry fee or other payment to entitle the person or someone else to participate in, or otherwise obtain a benefit from, a fundraising event. It includes an amount paid for a raffle ticket, an item at a fundraising auction, a meal or beverage, and attending a conference, seminar or similar function.

This definition has been designed to ensure that contributions of \$250 or less, which are for the sole purpose of fundraising, are not captured by the definition of ‘gift’, as it is recognised that individuals and entities should be entitled to make fundraising contributions of a certain amount, without being subject to restrictive reporting requirements.

‘Fundraising event’ defines events where a significant proportion of the funds raised are retained by a political party, an MLA, an associated entity, a candidate, or a third-party campaigner.

This definition has been designed to ensure that events held for the sole purpose of raising money for political parties are caught within the caps on donations.

‘Volunteer labour’ defines the situations where services are provided to a political party free of charge, but those services do not constitute a ‘gift’. This definition has been modelled on the Australian Electoral Commission’s construction of volunteer labour, as follows:

“Volunteer labour” does not need to be disclosed as a gift. The donation of time by a member of a party is volunteer labour. The donation of time by a person who is not a party member is only considered volunteer labour where it does not constitute a service for which that person normally charges.

For example, the donation of legal advice by a solicitor who is a party member is volunteer labour, but the donation of legal advice by a solicitor who is not a party member is a gift-in-kind. If, however, a solicitor who is not a party member delivers voting material, then that constitutes volunteer labour because it is not a service for which that person normally charges.”

Clause 16 Section 200

This clause replaces the current section 200, ‘Activities of campaign committees’, with a new section, titled ‘Activities of candidates and prospective candidates’. The term ‘campaign committee’ described a body of people appointed, or engaged, to form a committee to assist the campaign of a candidate.

The concept of a ‘campaign committee’ had to be removed from the *Electoral Act 1992* because it doesn’t encapsulate the new scheme within the bill, which assumes that activities of members of a party or party candidates are taken to be the activities of the party.

The new section 200 states that gifts received, expenditure incurred, and amounts received, paid or owed, by or on behalf of a party candidate or prospective candidate for a party in relation to the candidate’s or prospective candidate’s campaign, the party or an election, are taken to be received, incurred, paid or owed by the party.

Clause 17 Disclosure periods

Section 201(2)(c)

This clause inserts a new set of words into section 201(2)(c) to reflect amendments made to section 220 and section 221.

Clause 18 New section 202A

This clause inserts a new section into division 14.1, section 202A, which defines when a person or entity ‘incurs’ electoral expenditure for the purposes of part 14. Electoral expenditure is incurred when the service or product that constitutes the expenditure is provided or delivered. For example:

- expenditure on electoral advertisements is incurred when the advertisement is broadcast;
- expenditure on electoral matter is incurred when the matter is distributed;
- expenditure on an electoral matter published on a website is incurred when the matter is first published on the website.

It is necessary to determine when electoral expenditure is incurred to ensure that the proposed caps on expenditure for an expenditure period are not exceeded.

Clause 19 New divisions 14.2A to 14.2C

This clause inserts three new divisions into the *Electoral Act 1992* that impose criminal penalties or a fine enforcement regime in order to enforce breaches of the caps on electoral expenditure and donations.

Division 14.2A ACT election accounts

205A Financial representatives to keep ACT election accounts

This section makes it an offence if the financial representative of a party grouping, a non-party MLA, a non-party candidate grouping, a non-party prospective candidate grouping, an associated entity, or a third-party campaigner does not keep a separate ACT election account.

The person responsible for the offence is the financial representative (as defined in section 198), as it is considered that such a person would ordinarily have the financial management and responsibility for such activities.

The maximum penalty for this offence is 100 penalty units.

Section 205A also makes it an offence for the financial representative to fail to give the details of an ACT election account to the Electoral Commissioner as soon as practicable after the account is established.

The maximum penalty for this offence is 20 penalty units.

Section 205A also makes it an offence for the financial representative to fail to notify the Commissioner of any change of details relating to an ACT election account as soon as practicable after the change happens.

The maximum penalty for this offence is 20 penalty units.

The purpose of these offences is to ensure that a separate account is kept for electoral expenditure to allow the Electoral Commission to monitor expenditure and determine whether the caps are being complied with.

205B Offence – loans to be repaid from ACT election accounts

This section makes it an offence for a loan that a party grouping, a non-party MLA, a non-party candidate grouping, a non-party prospective candidate grouping, an associated entity or third-party campaigner receives, that has been paid into an ACT election account, to be repaid from an account other than an ACT election account.

The person responsible for the offence is the financial representative (as defined in section 198) as it is considered that such a person would ordinarily have the financial management and responsibility for such activities.

The maximum penalty for this offence is 100 penalty units.

Section 205B(2) includes a reasonable steps defence if the defendant can prove that they took reasonable steps to ensure that the loan was repaid from the ACT election account.

In proving this defence, the defendant has a legal burden to discharge. This means that to rely on this defence, the defendant must establish on the balance of probabilities that the matters that constitute the defence exist. If the defendant achieves this, the prosecution must refute the defence beyond all reasonable doubt for a court to convict the defendant.

The purpose of this section is to ensure that loans taken out by political entities for the express purpose of electoral expenditure are repaid from the account established for that purpose. It is important to ensure that political entities do not use other funds to repay loans for electoral expenditure, because this would be subverting the intent of imposing caps.

205C Financial representative to ensure electoral expenditure paid from ACT election account

This section makes it an offence for the financial representative of a party grouping, a non-party MLA, a non-party candidate grouping, a non-party prospective candidate grouping, an associated entity or third-party campaigner to pay an amount for electoral expenditure from an account that is not an ACT election account.

The person responsible for the offence is the financial representative (as defined in section 198) as it is considered that such a person would ordinarily have the financial management and responsibility for such activities.

The maximum penalty for this offence is 100 penalty units.

Section 205C(2) includes a reasonable steps defence if the defendant can establish that they took reasonable steps to ensure that the amount was paid from the ACT election account.

In proving this defence, the defendant has a legal burden to discharge. This means that to rely on this defence, the defendant must establish on the balance of probabilities that the matters that constitute the defence exist. If the defendant achieves this, the prosecution must refute the defence beyond all reasonable doubt for a court to convict the defendant.

As with section 205B, the purpose of this section is to create a transparent system by which the Electoral Commissioner is able to monitor electoral expenditure and ensure that breaches of the caps do not occur.

Division 14.2B Limitations on electoral expenditure

205D Meaning of *expenditure cap* – div 14.2B

This section defines the term ‘expenditure cap’, which for an election held in 2012, is \$60 000. In the case of an election held in a later year, the cap amount is the amount declared under section 205E, which applies indexation to the \$60 000 cap amount.

205E Working out indexation for expenditure cap

This section provides that the Electoral Commissioner must, not later than 1 December in a year, declare an amount for section 205D for the following year. This amount is calculated by taking the 2012 cap amount, \$60 000, and applying a CPI percentage increase. If there would not be an increase, the amount declared remains the same as the previous year.

The declaration of the Commissioner in relation to the expenditure cap is a notifiable instrument.

205F Offence – exceeding expenditure cap

This section contains a number of offences for exceeding the electoral expenditure cap, as defined in section 205D. These offences cover party groupings, non-party MLAs, non-party candidate groupings and third-party campaigners.

Section 205F(1) creates an offence for the financial representative of a party grouping, if the party grouping incurs electoral expenditure in relation to an election in the capped expenditure period for the election and the total amount of the expenditure is more than the expenditure cap for the election, multiplied by the sum of:

- (i) for each 5-member electorate – the lesser of –
 - (A) 5; and
 - (B) the number of candidates for the party for election in the electorate; and

- (ii) for the 7-member electorate – the lesser of –
 - (A) 7; and
 - (B) the number of candidates for the party for election in the electorate.

Section 205F(1) therefore ensures that an excess number of candidates are not nominated in an attempt to secure a higher expenditure cap for each electorate. This creates a fair playing field, and mirrors the arrangements in other jurisdictions.

The maximum penalty for this offence is 100 penalty units.

Section 205F(2) creates an offence for a non-party MLA if the MLA or an associated entity of the MLA incurs electoral expenditure in relation to an election in the capped expenditure period for the election and the total amount of the expenditure is more than the expenditure cap for the election.

The maximum penalty for this offence is 100 penalty units.

Section 205F(3) creates an offence for a non-party candidate grouping if the non-party candidate grouping incurs electoral expenditure in relation to an election in the capped expenditure period for the election and the total amount of the expenditure is more than the expenditure cap for the election

The maximum penalty for this offence is 100 penalty units.

Section 205F(4) creates an offence for the financial representative of a third-party campaigner if the third-party campaigner incurs electoral expenditure in relation to an election in the capped expenditure period for the election; and the total amount of the expenditure is more than the expenditure cap for the election.

The maximum penalty for this offence is 100 penalty units.

The purpose of the offences in section 205F is to ensure that political entities that breach the expenditure cap are penalised for doing so. The imposition of caps will have no effect if there is no penalty to enforce them.

The note in section 205F refers to existing offences in the Criminal Code, pt 2.4 (Extensions of criminal responsibility). The offences in this chapter of the Criminal Code extend criminal responsibility for offences to include situations where people act jointly, by proxy or with complicity and common purpose. These offences would cover situations where people seek to collude or conspire with other individuals to exceed an expenditure cap.

Division 14.2C Limitations on gifts and other payments

205G Limit on gifts received

This section provides that a party grouping, a non-party MLA and an associated entity of the MLA, a non-party candidate grouping, a non-party prospective candidate grouping, and a third-party campaigner (a **receiver**) must not deposit in an ACT

election account one or more gifts from a person in a financial year that total more than \$10 000.

If a receiver contravenes this provision, an amount equal to twice the amount by which the gift or gifts exceed \$10 000 is payable to the Territory.

However, if a receiver returns the amount by which the gift or gifts exceed \$10 000 within 30 days after the amount is received, then no amount to the Territory is payable.

If someone takes all reasonable steps to return the amount by which the gift or gifts exceed \$10 000, but is unable to identify or find the donor, then the amount by which the gift exceeds \$10 000 is payable to the Territory.

This is a civil enforcement scheme that allows the Electoral Commissioner to recover money on behalf of the Territory. If people and entities do not get a benefit from receiving gifts over the \$10 000 cap, they are less likely to seek them out. It is expected that this provision will lead to behavioural changes in those involved in the electoral process, rather than raising money for government.

205H Offence – give indirect gift to avoid statutory limit

Section 205H makes it an offence for a person to give a gift to another person on the understanding that they will then give that gift to a party, MLA, candidate, or an associated entity of a party or MLA in a financial year in attempt to exceed the limit on gifts, which is \$10 000.

The maximum penalty for this offence is 100 penalty units.

The following is an example of the possible scenario that is intended to be captured by the offence in section 205H:

E is a tradesperson and is in need of some legal advice. V is a lawyer who is a member of GH political party, who has given \$9,950 in money to the GH political party. There is an election in 1 month's time. V provides E with some legal advice (to the value of \$10,000) but asks that instead of payment, E spends a weekend putting up signs for GH political party using the cherry picker that E has as part of her work.

Section 205H(2) contains a defence if the gift that has been received is returned to the donor within 30 days after it has been received.

The purpose of this section is to ensure that the caps on gifts are not contravened.

205I Limit on payments within parties

This provision addresses payments made between related political parties, and imposes the same \$10 000 cap as applies to 'gifts'. As discussed under clause 87 below, political parties are taken to be 'related' if:

- (a) 1 is part of the other; or

(b) both are parts of the same political party.

If a party contravenes the \$10 000 cap, an amount equal to twice the amount by which the payment or payments exceed \$10 000 is payable to the Territory. As with section 205G, if the party returns the amount by which the gift or gifts exceed \$10 000 within 30 days after the amount is received, then no amount to the Territory is payable.

However, section 205I does not apply to payments made to a party under the *Electoral Act 1992*, or a corresponding Act of the Commonwealth, a State or another Territory. This is to ensure that payments made by electoral commissions or public funding payments, are not caught within this offence.

Clause 20 Section 207

This clause substitutes a new section 207, which outlines the prescribed amount of public funding that is payable for each eligible vote cast for a candidate or party in an election. The prescribed amount for an election held in the 6-month period beginning on 1 July 2012 is 200 cents per eligible vote. The Standing Committee on Justice and Community Safety Inquiry into Campaign Finance Reform recommended (at recommendation 17), that the payment rate be linked to the Commonwealth Senate rate. However, on a previous occasion, the Commonwealth rate was increased substantially. A sudden significant increase would make it difficult to manage the Territory's finances. CPI indexed increases are more manageable and the rate of 200 cents per vote is broadly consistent with the current Commonwealth payment level.

Clause 21 New division 14.3A

This clause inserts a new division setting out the framework around payments for administrative expenditure.

Section 215A defines whether a person is taken to be an MLA during the period between polling day for an election and the declaration of the poll for the election. A person will be taken to be an MLA for this period if they were:

- (a) an MLA whose term ended on the polling day; and
- (b) declared re-elected on the declaration of the poll.

Section 215B defines which parties are eligible for a payment of administrative expenditure. Parties will be eligible if for all or part of a financial year quarter, at least one MLA is a member of the party.

Section 215C prescribes the formula by which administrative expenditure payments to eligible parties will be calculated.

Section 215D provides that a non-party MLA is eligible for payment of administrative expenditure for a quarter if they are an MLA for all or part of that quarter.

Section 215E prescribes the formula by which administrative expenditure payments to non-party MLAs are calculated.

Section 215F prescribes the formula by which the indexation for administrative expenditure payments is calculated.

Clause 22 Division 14.4 heading

This clause inserts a new heading, 'Gifts and certain loans – records and disclosure', into division 14.4. As explained above, this heading is more appropriate in the context of the new definition of 'gift' under part 14.

Clause 23 New section 215G

This clause inserts a new section, section 215G, which explains that division 14.4 does not apply to a 'gift' that breaches the donation caps in divisions 14.2A to 14.2C, as long as the 'gift' is returned to the giver within 30 days of its receipt.

Section 215G also explains that if a 'gift' is returned to the giver within 30 days of its receipt, any return under division 14.4 that includes the amount or value of the gift must also include a statement that the gift was returned to the giver.

This provision has been designed to ensure that people who inadvertently breach the donations caps by making a donation are given the opportunity to return the money without being subject to a penalty.

Clause 24 Section 216 heading

This clause replaces the current heading in section 216, 'Meaning of *defined details* for div 14.4', with a new heading, 'Definitions – div 14.4'. This amendment reflects the fact that division 14.4 will now contain additional definitions, 'anonymously' and 'small anonymous gift'.

Clause 25 Section 216, new definitions

This clause inserts a number of new definitions into section 216 – 'anonymously' and 'small anonymous gift'.

'Anonymously' describes the situation where a person receiving a gift does not know the defined details for the gift.

'Small anonymous gift' describes a gift of less than \$1000 that is made anonymously.

These new definitions have been inserted to ensure that where gifts are made without details identifying the donor, there is a requirement that the gifts are still recorded.

Clause 26 New section 216A

This clause inserts a new section setting out the record keeping and disclosure requirements for those receiving gifts in a disclosure period for an election.

Section 216A(1) defines that a ‘receiver’ is:

- a party grouping;
- a non-party MLA and an associated entity of a non-party MLA;
- a non-party candidate grouping;
- a non-party prospective candidate grouping;
- an associated entity.

Section 216A(2), (3), (4) and (5) set out the recording requirements for financial representatives of gift receivers.

Section 216A(6) defines all of the ‘relevant periods’ for political entities to meet their disclosure requirements.

Clause 27 Section 217 heading

This clause substitutes the current heading of section 217 to clarify that the section now relates to the disclosure of gifts by non-party candidates.

Clause 28 Section 217

This clause removes all reference to ‘candidates’ in section 217 and substitutes the term ‘non-party candidate’. This reflects the fact that the activities of candidates are now taken to be the activities of the party as a whole, under the new concept of ‘party grouping’.

Clause 29 Section 217(1)

This clause changes the time in which the reporting agent of a candidate must give the commissioner a return from 15 weeks to 60 days. This is designed to tighten and strengthen the current reporting framework.

Clause 30 Certain loans not to be received Section 218A(1)

This clause inserts the term ‘third-party campaigner’, so that this entity is included in a list of ‘receivers’ that must not receive a loan of \$1 000 or more from a person or entity that is not financial institution, unless the receiver complies with the requirements in section 218A.

Clause 31 Section 218A(1)

This clause inserts the words “for electoral expenditure” into this provision, so that it reads as follows:

*“A party, MLA, candidate or associated entity (the **receiver**) must not receive a loan of \$1 000 or more for electoral expenditure from a person or entity (the **giver**) that is not a financial institution, unless the receiver complies with this section.”*

This clause ensures that loans for the purposes of electoral expenditure are captured within the new expenditure cap regime and loans for administrative purposes are not.

Clause 32 Section 218A(3) and (4)

This clause provides that the financial representative for the receiver will be the entity that must pay the Territory an amount equal to any loan that comes within the ambit of subsection 218A(1) but does not comply with the requirements in subsection 218A(2).

The clause also provides that the amount payable under subsection 218A(3) is a debt payable to the Territory by the financial representative of the receiver of the loan and this debt may be recovered by proceedings in a court of competent jurisdiction.

Clause 33 Section 218A(6), definition of *financial institution*

This clause moves the definition of 'financial institution' to section 198 for the purpose of clarity.

Clause 34 Section 218A(6) definition of *loan*

This clause moves the definition of 'loan' to section 198 for the purpose of clarity.

Clause 35 Section 218A(6), definition of *relevant person*

This clause removes the definition of 'relevant person', as this entity has now been replaced by 'financial representative' as the person responsible for monitoring the financial activity of parties and other relevant entities.

Clause 36 Section 220

This clause sets out the disclosure requirements for gifts received by third-party campaigners.

Section 220(1) sets out the period during which disclosure requirements will apply to third-party campaigners. It states that the section applies if a third-party campaigner incurs electoral expenditure in the capped expenditure period for an election, and receives from someone else one or more gifts of \$1 000 or more that is used by the third-party campaigner in a way specified in subsection 220(1)(b)(i).

If these criteria are satisfied, section 220(2) operates to require the third party campaigner who has received the gift to which section 220 applies to give the Commissioner a return for the gift or gifts within 60 days after the polling day in the election.

Section 220(3) states the requirements of the return referred to in section 220(2). The return must state for each gift:

- the date the gift is received;

- the amount of the gift;
- for a gift other than a small anonymous gift – the defined details for the gift; and
- for a small anonymous gift – that the gifts is made anonymously.

Clause 37 Sections 221 to 221B

This is a technical clause which removes sections 221, 221A and 221B.

**Clause 38 Anonymous gifts
Section 222**

This clause removes all reference to ‘candidates’ in section 222 and substitutes the term ‘non-party candidate’. This reflects the fact that the activities of candidates are now taken to be the activities of the party as a whole, under the new concept of ‘party grouping’.

Clause 39 New section 222(1)

This clause omits the phrase ‘the prescribed amount’ and substitutes ‘\$1 000’, to specify that gifts are relevant if they equal \$1 000 or more.

Clause 40 New section 222(2A) and (2B)

This clause inserts new sections 222(2A) and 222(2B).

Subsection 222(2A) states that a party, MLA or associated entity of a party or MLA must not accept a gift in a financial year if acceptance of the gift would mean that the total small anonymous gifts given to or for the benefit of the party, MLA or entity would be more than \$25 000 in the financial year.

Subsection 222(2B) states that a candidate at an election must not accept a gift during the disclosure period for the election if acceptance of the gift would mean that the total of small anonymous gifts given to or for the benefit of the candidate would be more than \$25 000.

These provisions are aimed at prohibiting parties, MLAs, associated entities of a party or MLA or candidates at an election from receiving directly or receiving the benefit of anonymous gifts that total \$25 000 in the specified time period for each entity.

Clause 41 Section 222(4)

This clause makes a consequential amendment to the changes in clause 35.

Clause 42 Section 222(4A)

This clause provides that if a receiver receives a gift that contravenes section 222(2A) or (2B), it will be the financial representative for the receiver that must pay the Territory an amount equal to the amount of the gift.

Clause 43 Section 222(5)

This clause omits the term ‘relevant person’ and substitutes it with the term ‘financial representative for the receiver’. This reflects the introduction of the new entity known as the ‘financial representative’ who is responsible for ensuring that caps on political expenditure and gifts.

Clause 44 Section 222(6)

This clause omits section 222(6) as it defines the terms ‘gift’, ‘prescribed amount’ and ‘relevant person’. As discussed previously, the definition of ‘gift’ has been moved to section 198AA, and ‘prescribed amount’ and ‘relevant person’ have been removed from the *Electoral Act 1992* and replaced with ‘\$1 000’ and ‘financial representative’.

Clause 45 Definitions for div 14.5 Section 223, definition of *broadcaster*

This clause omits the definition of ‘broadcaster’ as it is now defined in the dictionary so that it applies to the *Electoral Act 1992* as a whole.

Clause 46 Section 223, definition of *electoral advertisement*

This clause moves the definition of ‘electoral advertisement’ in section 223, to section 198 to apply more broadly.

Clause 47 Section 223, definitions of *electoral expenditure* and *relates*

This clause omits the definitions for ‘electoral expenditure’ and ‘relates’. As discussed previously, the definition of ‘electoral expenditure’ has been moved to section 198, and the definition of ‘relates’ has been removed from the Act completely because the concepts contained within this definition are adequately covered in the definitions of ‘electoral expenditure’, ‘electoral matter’ and ‘publish’.

Clause 48 Section 224

This clause substitutes a new section 224 which relates to the circumstances in which returns detailing electoral expenditure must be provided to the Electoral Commissioner. Returns must now be provided within 60 days after polling day for the election.

Section 224(1) states that a return must be provided to the Commissioner if electoral expenditure in relation to an election is incurred in the capped expenditure period either by or with the authority of a candidate in the election. This return must be provided to the commissioner within 60 days after polling day and must include the details of the expenditure.

Section 224(2) states that the Electoral Commissioner must be given a return if electoral expenditure is incurred by or with the authority of a party in relation to an election within the capped expenditure period. The party’s reporting agency must

provide the return within 60 days after polling day for the election and must state the details of the expenditure.

Section 224(3) states that the commissioner must be given a return if electoral expenditure is incurred in the capped expenditure period by or with the authority of a third-party campaigner. The third-party campaigner must provide this return within 60 days after polling day for the election and must include the details of the expenditure.

Section 224(4) states that a third party campaigner is not required to give the commissioner a return under subsection (3) if the amount of electoral expenditure incurred is under \$1 000.

**Clause 49 Annual returns by parties and MLAs
Section 230(1)**

This clause provides that the reporting agent of a party or MLA must, provide a return for a financial year to the Commissioner no later than 31 July in the following financial year.

Clause 50 Section 230 (6)

This clause outlines the amounts that must be included in the annual return required by section 230. It provides that an amount paid or an outstanding amount of debts incurred, by or on behalf of an MLA must only be included in the return if the amount is paid or the amount of debt is incurred by or on behalf of the MLA for a purpose that relates solely or substantially to his or her position as MLA on electoral expenditure.

Clause 51 Section 231B heading

This clause omits the current section 231B heading, 'Annual returns by associated entities', and substitutes a new heading, 'Annual returns by associated entities of parties and MLAs'. This new heading specifies that the section relates only to annual returns by associated entities of parties and MLAs.

Clause 52 Section 231B(1)

This clause amends the time in which the financial representative of an associated entity must give the Electoral Commissioner a return for a financial year, from within 16 weeks after the end of the financial year, to no later than 31 July in the following financial year.

**Clause 53 Amounts received
New section 232(1)(c)**

This clause provides additional details that must be included in a return made pursuant to section 230. If the sum of amounts received by, or on behalf of, a party or MLA from a particular person or organisation during a financial year is \$1 000 or more, this clause provides that the return must state, in addition to the items listed in

section 232(1)(a) and (b), the date each amount was received and the amount received.

Clause 54 Section 232(2)

This clause removes section 232(2), which states that amounts of less than \$1 000 need not be counted. As the bill introduces the concept of 'small anonymous gifts', which are 'gifts' of less than \$1 000, section 232(2) would be at odds with this concept.

Clause 55 New section 232(3)(c)

This clause provides for additional details that must be included in a return made pursuant to section 231B. If an associated entity received one or more amounts from a particular person or organisation during a financial year, this clause provides that the return must state, in addition to the items listed in section 232(3)(a) and (b), the date each amount was received and the amount received.

Clause 56 Section 232(4)(c)

This clause substitutes a new provision, section 232(4)(c), and moves the current section 232(3)(c) to 232(3)(d). These clauses are exemptions to the obligation to comply with the return requirement in section 232(3).

Section 232(4)(c) exempts an amount from the application of section 232(3) if the total of all amounts received by an associated entity from a particular person or organisation in a financial year for membership of the entity, if the total is less than \$250.

Section 232(4)(d) exempts amounts that are prescribed by regulation from the application of section 232(3).

Clause 57 Section 236

This clause is a technical clause that codifies the offences contained in section 236 of the *Electoral Act 1992*.

Section 236(1) provides that a person commits an offence if the person is required to give the Electoral Commissioner a return under this part within a stated time, and the person fails to do so. The maximum penalty for this offence is 50 penalty units for the reporting agent of a party, and 20 penalty units for any other return, which equates to a maximum of \$5 500 and \$2 200 respectively.

Section 236(2) provides that subsection 236(1) does not apply if the person has a reasonable excuse for not submitting the return within the stated time.

Section 236(3) clarifies that an offence against subsection 236(1) is a strict liability offence.

Section 236(4) provides that a person commits an offence if the person is required to give the Electoral Commissioner a return under part 14 and the person gives a return to the Commissioner containing particulars that are, to the person's knowledge, false or misleading in a material particular. The maximum penalty for this offence is 50 penalty units (\$5 500), imprisonment for 6 months or both. The defence of reasonable excuse in section 236(2) does not apply to this subsection, as it addresses the situation where a person has purposely supplied the Commissioner with false and misleading return.

Section 236(5) provides that a person (the *informer*) commits an offence if another person is required to give the Electoral Commissioner a return under part 14 and the informer gives the person that is required to give a return under part 14, information relevant to that person's return that is, to the informer's knowledge, false or misleading in a material particular. The maximum penalty for this offence is 50 penalty units (\$5 500), imprisonment for 6 months or both. As with section 236(4), the reasonable excuse defence does not apply here.

Section 236(6) provides that the limitation for prosecutions in relation to offences in this section to be started is 4 years after the offence was committed.

**Clause 58 Copies of returns to be available for public inspection
Section 243(1)**

This clause makes consequential amendments to the changes made in clause 22 to change the title of division 14.4 from 'Disclosure of donations', to 'Gifts and certain loans – records and disclosure'.

Clause 59 Section 243(2)

This clause makes consequential amendments to the changes made by clause 37 to remove section 221A.

Clause 60 Section 243(2)

The current section 243(2) provides that a copy of return under division 14.4 or 14.5 must be made available for public inspection from the 25th week after polling day in the election to which the return relates.

This clause omits the phrase 'the 25th week after' and substitutes 'February in the year after (or for an extraordinary election, 90 days after)', to create more administrative simplicity.

Clause 61 Section 243(3)

Section 243(3) provides that a copy of a return under section 221A or division 14.6 must be made available for public inspection from the beginning of February in the next year.

This clause makes consequential amendments to the changes made by clause 37 to remove section 221A.

Clause 62 Section 243(3)

This clause amends section 243(3) to omit the phrase ‘February in the next year’, and substitute the phrase ‘September in the year of the election to which the return relates’.

Section 243(3) therefore now provides that a copy of a return under division 14.6 must be made available for public inspection from the beginning of September in the year of the election to which the return relates. This is to ensure that returns are given to the Electoral Commissioner ahead of each ACT election, which almost always occur in October of an election year.

Clause 63 New section 243A

This clause inserts a new section into division 14.8, section 243A, which requires the Electoral Commissioner to publish information received under section 216A (‘Records and regular disclosure of gifts’). This publication must occur as soon as practicable in a way the Commissioner considers appropriate.

Clause 64 Section 289 heading

This clause changes the heading of section 289, from ‘Discrimination on grounds of political donations’, to ‘Discrimination on ground of certain gifts’. This is to reflect the fact that the bill refers to donations as ‘gifts’.

Clause 65 Section 289(1)

This clause omits the term ‘donation’ and substitutes the term ‘gift’ to reflect the fact that the bill refers to donations as ‘gifts’.

Clause 66 Section 289(2), new definition of *gift*

This clause inserts a reference to the definition of ‘gift’ and explains that the definition is contained in section 198AA.

Clause 67 Definition for div 17.3 Section 291, definition of *disseminate*

This clause removes the definition of ‘disseminate’ from section 291 because the term will now be defined in the dictionary.

Clause 68 Section 291, definition of *publish*

This clause omits the definition of ‘publish’ because the definition of ‘electoral expenditure’ adequately describes all of the ways in which electoral matter can be published.

**Clause 69 Exceptions for dissemination of electoral matter on certain items
Section 294(2), definition of *government agency***

This clause moves the definition of ‘government agency’ to the dictionary as it is now used more widely.

Clause 70 New part 31

This clause inserts a new part – ‘Transitional – Electoral Amendment Act 2012’.

Section 505 (‘ACT election account’) addresses the commencement periods for the offence provisions contained in section 205G (‘Limit on gifts received’) and section 205I (‘Limit on payments within parties’).

Section 505(1) provides that section 205G does not apply in relation to gifts received before that section commenced. Section 505(2) provides that section 205I does not apply in relation to payments received before the section commenced. These amendments ensure that political entities are not subjected to retrospective criminal penalties because of gifts or payments already in their possession on the commencement of the Act.

Section 506 provides that the capped expenditure period for an ordinary election held in 2012 will start on 1 July 2012 and end on polling day for the election.

Section 507 provides that section 230, as in force immediately before the commencement of the *Electoral Amendment Act 2012*, will apply to returns given to the Electoral Commissioner by the reporting agent of a party or MLA under section 230 for the financial year ending on 30 June 2012.

Section 508 provides that section 231B, as in force immediately before the commencement of the *Electoral Amendment Act 2012*, will apply to returns given to the Commissioner by the financial controller of an associated entity pursuant to 231B for the financial year ending 30 June 2012.

Section 509 provides that a regulation may:

- (1) prescribe transitional matters necessary and convenient to be prescribed because of the enactment of this Act;
- (2) modify this part (including in relation to another territory law) to make provision in relation to anything that, in the Executive’s opinion, is not, or is not adequately or appropriately, dealt with in this part.

The section also provides that a regulation under subsection 509(2) has effect despite anything else in this Act or another territory law.

While this regulation-making power is technically a Henry VIII provision, in that it allows a regulation to modify the operation of part of an Act, it is a proportionate response to the risk presented by a highly technical piece of legislation. Any regulation does not have a lasting effect, as the regulation-making power expires after 1 year, and the regulation only modifies the operation of the Act, it does not amend it. A regulation must be made by 2 members of the Executive, and is tabled

in the Legislative Assembly, allowing for scrutiny and possible disallowance. The regulation-making power only allows a regulation to modify the transitional part in the Act.

While every endeavour is made to get every detail of legislation correct for passage, it is sometimes the case that circumstances arise in practice requiring new legislative schemes to be modified quickly to ensure those working under legislation are not adversely affected. This power meets that need while containing the limits mentioned above.

Section 510 provides that part 31 expires 1 year after the day it commences.

Clause 71 Dictionary, note 2

This clause inserts the terms 'person' and 'quarter' into dictionary, note 2, to specify that these terms are defined in the Legislation Act, dict, pt 1.

Clause 72 Dictionary, new definitions

This clause inserts references to the following definitions into the dictionary:

- ACT election account – see section 205A.
- anonymously, for division 14.4 (Gifts and certain loans – records and disclosure) – see section 216.

Clause 73 Dictionary, definition of *broadcaster*

This clause inserts the definition of 'broadcaster' from section 223 into the dictionary, so that the term applies for the whole of the *Electoral Act 1992*, rather than only applying to division 14.5.

Clause 74 Dictionary, new definitions

This clause inserts references to the following definitions into the Dictionary:

- called – for an extraordinary election, for part 14 (Election funding, expenditure and financial disclosure), see section 198.
- capped expenditure period - for part 14 (Election funding, expenditure and financial disclosure) – see section 198.

Clause 75 Dictionary, definition of *defined details*

This clause replaces the term 'Disclosure of donations' with 'Gifts and certain loans – records and disclosure', to reflect the amendment made to the heading of division 14.4 in clause 22.

Clause 76 Dictionary, definition of *disposition of property*

This clause removes the definition of 'disposition of property' from the dictionary. The definition will now appear in section 198AA, which is a provision created specifically for the purposes of defining 'gift'. 'Disposition of property' now only applies to section 198AA, rather than the *Electoral Act 1992* as a whole.

Clause 77 Dictionary, definition of *disseminate*

This clause inserts the definition of ‘disseminate’ into the dictionary, as omitted from section 291. Electoral matter is ‘disseminated’, whether in printed or electronic form, when it is printed, published, distributed, produced or broadcasted.

Clause 78 Dictionary, definitions of *electoral advertisement* and *electoral expenditure*

This clause inserts references to the following definitions into the dictionary:

- electoral advertisement – for part 14 (Election funding, expenditure and financial disclosure) – see section 198.
- electoral expenditure – in relation to an election, for part 14 (Election funding, expenditure and financial disclosure) – see section 198.

Clause 79 Dictionary, new definitions

This clause inserts references to the following definitions into the dictionary:

- expenditure cap – for division 14.2B (Limitations on electoral expenditure) – see section 205D.
- financial institution – for part 14 (Election funding, expenditure and financial disclosure) – see section 198.
- financial representative – for part 14 (Election funding, expenditure and financial disclosure) – see section 198.

Clause 80 Dictionary, definition of *gift*

This clause substitutes the existing definition of ‘gift’ in the dictionary:

- gift – for part 14 (Election funding, expenditure and financial disclosure) – see section 198AA.

Clause 81 Dictionary, new definitions

This clause inserts references to the following definitions into the dictionary with a reference to the definition of ‘gift’ in section 198AA:

- incurs – for part 14 (Election funding, expenditure and financial disclosure) – see section 202A.
- index number – for part 14 (Election funding, expenditure and financial disclosure) – see section 198.
- loan – for part 14 (Election funding, expenditure and financial disclosure) – see section 198.

Clause 82 Dictionary, definition of *MLA*

This clause substitutes the existing definition of MLA in the dictionary:

- MLA –
 - means a member of the Assembly; and
 - in division 14.3A (Administrative expenditure funding) – see section 215A.

Clause 83 Dictionary, new definitions

This clause inserts references to the following definitions into the dictionary:

- non-party candidate grouping – for part 14 (Election funding, expenditure and financial disclosure) – see section 198.
- non-party MLA – for part 14 (Election funding, expenditure and financial disclosure) – see section 198.
- non-party prospective candidate grouping, for part 14 (Election funding, expenditure and financial disclosure) – see section 198.
- party grouping, for part 14 (Election funding, expenditure and financial disclosure) – see section 198.
- person, for part 14 (Election funding, expenditure and financial disclosure) – see section 198.

Clause 84 Dictionary, definition of *property*

This clause removes the definition of ‘property’ from the dictionary. The definition will now appear in section 198AA, which is a provision created specifically for the purposes of defining ‘gift’. ‘Property’ now only applies to section 198AA, rather than the *Electoral Act 1992* as a whole.

Clause 85 Dictionary, new definition of *prospective candidate*

This clause inserts a reference to the definition of ‘prospective candidate’ into the dictionary:

- prospective candidate – for an election, for part 14 (Election funding, expenditure and financial disclosure) – see section 198.

Clause 86 Dictionary, definition of *publish*

This clause removes the definition of ‘publish’ from the dictionary. It was unnecessary to separately define ‘publish’ as it is discussed in a number of provisions which adequately describe the concept.

Clause 87 Dictionary, new definition of *related*

This clause substitutes a new definition of the term ‘related’, as follows:

- “...2 political parties are taken to be related if:
(a) 1 is part of the other; or
(b) both are parts of the same political party.

Example

The ACT branch of a political party and the national secretariat of the same political party.”

This new definition provides further clarity as to what defines a ‘party grouping’ and when parties will be considered to be sufficiently affiliated with one another.

Clause 88 Dictionary, definition of *relates*

This clause removes the definition of ‘relates’ from the dictionary because the concepts contained within this definition are adequately covered in the definitions of ‘electoral expenditure’, ‘electoral matter’ and ‘publish’.

Clause 89 Dictionary, new definitions

This clause inserts references to the following definitions into the dictionary:

- small anonymous gift, for division 14.4 (Gifts and certain loans – records and disclosure)—see section 216.
- third-party campaigner, for part 14 (Election funding, expenditure and financial disclosure) – see section 198.

Clause 90 Further amendments, mentions of *Election funding and financial disclosure*

This clause substitutes all references in several dictionary definitions to ‘Election funding and financial disclosure’ and substitutes them with ‘Election funding, expenditure, records and financial disclosure’.

Schedule 1 Consequential amendments

Part 1.1 Electoral Regulation 1993

[1.1] Section 6

This clause removes section 6 of the *Electoral Regulation 1993* to reflect the amendments made to section 232(4)(c) of the *Electoral Act 1992*.

Part 1.2 Referendum (Machinery Provisions) Act 1994

[1.2] New section 15 (3) (aa)

This clause inserts a new section, section 15(3)(aa), into the *Referendum (Machinery Provisions) Act 1994*, as follows:

- “(aa) a reference in the Electoral Act, section 198, to the capped expenditure period for an election is to be taken to be a reference to the capped expenditure period, in relation to a referendum, commencing 37 days before the expiration of polling day for the referendum and ending on the expiration of 30 days after polling day for the referendum; and”.

This reflects the new definition of ‘capped expenditure period’ in section 198.

[1.3] New section 15 (3) (ba)

This clause inserts a new section, section 15(3)(ba), into the *Referendum (Machinery Provisions) Act 1994*, as follows:

- “(ba) a reference in the Electoral Act, section 220, to a third-party campaigner is to be taken to be a reference to a person; and”.

This reflects the new section 220 which addresses disclosure of gifts by third-party campaigners.

[1.4] Schedule 1, part 1.3, heading

This clause substitutes a new heading into schedule 1, part 1.3 of the *Referendum (Machinery Provisions) Act 1994*, as follows:

- “Modifications of part 14 – election funding, expenditure and financial disclosure”.

This new heading reflects the new heading inserted into part 14 of the *Electoral Act 1992*.

[1.5] Schedule 1, modifications 1.13 to 1.15

This clause omits provisions 1.13 to 1.15 in schedule 1 of the *Referendum (Machinery Provisions) Act 1994* to reflect the amendments made to sections 220, 221 and 221A of the *Electoral Act 1992*.

[1.6] Schedule 1, modification 1.19

This clause amends provision 1.19 in schedule 1 of the *Referendum (Machinery Provisions) Act 1994* to reflect the new disclosure period in section 217 of the *Electoral Act 1992*, amended from 15 weeks to 60 days.

[1.7] Schedule 1, modification 1.32

This clause reflects the amendments made to various sections of the *Electoral Act 1992* to refer to ‘gift’ rather than ‘donation’.