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THE LEGISLATIVE ASSEMBLY FOR THE

AUSTRALIAN CAPITAL TERRITORY

ELECTORAL AND ROAD SAFETY LEGISLATION AMENDMENT BILL 2023

REVISED EXPLANATORY STATEMENT

Presented by

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ELECTORAL AND ROAD SAFETY LEGISLATION AMENDMENT BILL 2023

The Bill **is** a Significant Bill. Significant Bills are bills that have been assessed as likely to have significant engagement of human rights and require more detailed reasoning in relation to compatibility with the *Human Rights Act 2004*.

OVERVIEW OF THE BILL

The policy objective of this Bill is to:

- protect the integrity of the ACT political system from undue influence or corruption;
- improve transparency to enhance public confidence in the ACT electoral system and political system;
- enhance the rights of electors to be able to meaningfully engage and take part in elections;
- better enfranchise all voters, particularly certain vulnerable cohorts, and support their right to vote in a meaningful way;
- support Elections ACT (the Electoral Commission) by providing administrative efficiencies to better deliver ACT elections; and
- reduce the negative environmental and road safety impacts of roadside electoral and commercial advertising.

The Bill makes amendments to the *Electoral Act 1992* (the Electoral Act) to:

- enhance the financial and donation reporting requirements by banning donations from foreign entities and introducing real time political donation reporting, among other changes;
- improve access and remove barriers to voting to better enfranchise voters, including allowing for any voter to access early voting for 2 weeks prior to the election and providing for the use of overseas electronic voting for voters outside Australia, among other changes;
- support administrative efficiencies for Elections ACT to deliver elections and for political parties to meet their obligations under the Electoral Act; and
- strengthen rules around authorisation statements for the dissemination of electoral matter and party name registration.

The Bill will also amend the *Public Unleased Land Act 2013, Road Transport (Road Rules) Regulation 2017* and the *Road Transport (Offences) Regulation 2005* to deliver on a commitment of the Parliamentary and Governing Agreement of the 10th Legislative Assembly of the Australian Capital Territory (**PAGA**) to further restrict roadside electoral advertising, including further regulation of roadside corflutes, and introduce specific offences for roadside advertising using illegally parked or idling vehicles for commercial or political purposes.

CONSULTATION ON THE PROPOSED APPROACH

The 2020 Australian Capital Territory general election was held between 28 September and 17 October 2020. Following the election, on 2 December 2020, the ACT Legislative Assembly resolved that the Standing Committee on Justice and Community Safety (the **Standing Committee**) inquire into the operation of the 2020 ACT Election and the Electoral Act, and other relevant legislation and policies concerning election-related matters.

The Inquiry into the 2020 ACT Election and the Electoral Act (the **Inquiry**) sought public submissions on its terms of reference and undertook public hearings. Twenty nine submissions were received from ACT political parties, the ACT Government, Elections ACT and individuals. Hearings took place on 19 and 21 May 2021. Witnesses included the Electoral Commissioner and Deputy Electoral Commissioner, ACT Council of Social Services, representatives from the Australian National University, members from ACT political parties, representatives from the Justice and Community Safety Directorate, community organisations and individuals.

On 5 August 2021, the Standing Committee tabled Report 2 of the Inquiry in the Legislative Assembly (**Report 2**). Report 2 made 52 recommendations which included a number of recommendations for legislative amendments to the Electoral Act. The Bill implements a number of those recommendations, where agreed by Government.

The Bill also implements three commitments under the Parliamentary and Government Agreement for the 10th Assembly in relation to ACT elections, namely to:

- legislate to ban any political donations from foreign sources;
- introduce 'real time' political donation reporting within seven days of receipt of a large donation; and
- further restrict roadside electoral advertising, including further regulation of roadside corflutes, and introduce specific offences for roadside advertising using illegally parked or idling vehicles for commercial or political purposes.

Both the Justice and Community Safety and Transport Canberra and City Services directorates have consulted closely with Elections ACT (the Electoral Commission) in the development of these amendments.

CONSISTENCY WITH HUMAN RIGHTS

Rights Promoted

Broadly, the Bill engages and supports the following rights in the *Human Rights Act 2004* (HR Act):

- Section 8 – right to equality and non-discrimination
- Section 12 – right to privacy
- Section 17 – right to take part in public life

The right to equality and non-discrimination (section 8 of the HR Act) recognises that everyone is entitled to enjoy their rights without discrimination of any kind, and that everyone is entitled to equal protection of the law without discrimination.

The right to take part in public life (section 17 of the HR Act) recognises that all citizens of the ACT have the right to participate directly in the conduct of public affairs relating to the exercise of legislative, executive and administrative power.
This also includes the right to vote and to be elected and ensures people have the opportunity to exercise their right to vote in a meaningful way.

A number of measures in the Bill engage and promote the right to take part in public life, as well as the right to equality and non-discrimination.

The amendments in the Bill to reduce barriers and improve voting flexibility for people experiencing homelessness, voters who are blind or vision impaired and Antarctica or overseas-based voters promote these rights, as they aim to ensure these cohorts of electors can effectively and fully participate in political and public life on an equal basis with other individuals. Similarly, the amendment to exclude translated material up to a certain amount from the expenditure cap promotes these rights by encouraging greater engagement from Canberra's multicultural community in the Territory's public affairs.

A number of measures in the Bill also promote the right to take part in public life by improving transparency, including the introduction of 'real time' political donation reporting (within 7 days of receipt of a gift of $100 or more) and bans on donations from foreign entities. These amendments will ensure electors are properly informed on how candidates, Members of the ACT Legislation Assembly (MLA) and registered political parties are funded, so electors can exercise their right to vote in a meaningful way. These amendments also provide confidence to electors that their elected representatives, candidates and nominees are not being unduly influenced by other entities.

The amendments to clarify requirements for authorisation statements in relation to the dissemination of electoral matter, and the amendments to introduce a more rigorous test for party name registration, aim to provide greater transparency for electors. Reducing the risk of confusion around party names and ensuring that authorisation statements are used appropriately when electoral matter is disseminated will support voters to be properly informed about political matters.

The right to privacy (section 12 of the HR Act) protects individuals from unlawful or arbitrary interference with their privacy, including the protection of personal, confidential information.

The Bill engages and promotes the right to privacy as it introduces an amendment to exempt accommodation costs paid to associated entities from being reported as part of annual returns.

Associated entities are entities which are controlled by, or operate for the benefit of, 1 or more parties or MLAs (section 198, Electoral Act). Hotels which are associated entities under the Electoral Act are required to give the personal details (including name and full address) of guests who have incurred accommodation above a certain threshold at the hotel. As the disclosure of these personal details is not consistent with the original policy intent of the disclosure requirements, the Bill is exempting associated entities from the requirement to report on income received from the provision of accommodation in their annual returns, to protect the privacy of these individuals.

Rights Limited

Broadly, the Bill engages and limits the following HR Act rights:

- Section 8 - right to equality and non-discrimination
- Section 12 – right to privacy
- Section 16 - right to freedom of expression
- Section 22 - right to be presumed innocent until proven guilty

The preamble to the HR Act notes that few rights are absolute and that they may be subject only to the reasonable limits in law that can be demonstrably justified in a free and democratic society. Section 28(2) of the HR Act contains the framework that is used to determine the acceptable limitations that may be placed on human rights.

Detailed human rights discussion

Ban on donations from foreign entities

1. Nature of the right and the limitation (ss 28(2)(a) and (c))

Right to freedom of equality

The Bill contains amendments to ban donations (referred to as gifts) from foreign entities. Bans will be placed on foreign entities from donating to a political entity in the Territory. The definition of political entity in the Bill includes MLAs, a registered political party, a candidate for a party, a non-party MLA or candidate, a third-party campaigner or associated entity.

The amendments will require foreign entities (or persons acting on their behalf) who give a gift of under $250 to a political entity to pay an in-kind amount to the Territory, worth the value of the gift. Any donation over $250 will be an offence, attracting 50 penalty units, 6 months imprisonment or both.

Section 8 of the HR Act provides that everyone is equal before the law, is entitled to enjoy their rights without discrimination of any kind and is entitled to the equal protection of the law without discrimination.

The amendments which ban the giving of a gifts by foreign entities limits the right to equality and non-discrimination, as it imposes a restriction on one class of individuals (noting this does not apply to corporations which do not have human rights) based on their citizenship, residency or electoral enrolment status. While the amendments will also place obligations on political entities to not accept gifts given by or on behalf of foreign entities, these amendments do not limit any human rights.

Right to freedom of expression

The Bill also engages and limits the right to freedom of expression for foreign entities. Section 16 of the HR Act provides that everyone has the right to freedom of expression which includes the freedom to seek, impart information and ideas of all kinds, regardless of borders, in any form.

The amendments limit the freedom of expression for foreign entities as they restrict a foreign entity's ability to make political donations. While existing bans on foreign donations in other provisions have not been subject to legal challenge, the High Court of Australia has previously found that restrictions on people to make political donations can infringe on the implied freedom of political communication in the Australian Constitution.[1] While the implied freedom is not an individual right, it restricts laws which interfere with free communication about government and politics. As such, it is closely linked to the freedom of expression protected by section 16 of the HR Act.

Right to be presumed innocent until proven guilty

Section 22 of the HR Act provides that everyone charged with a criminal offence has the right to be presumed innocent until proven guilty. The Bill engages and limits this right as it introduces bans on political entities from accepting gifts from foreign entities. A political entity will be guilty of a criminal offence if they accept a gift given by or on behalf of a foreign entity unless they took reasonable steps to ensure the gift is not being given to it by or on behalf of a foreign entity. A defendant (being a political entity) has an evidential burden in relation to proving they took reasonable steps.

As imprisonment is a penalty for the offence, the Bill also engages the right to liberty.

2. Legitimate purpose (s 28(2)(b))

The limitations on foreign entities making donations to political entities, as well as limitations on political entities from accepting gifts from foreign entities, are necessary to

[1] For example, *Unions NSW v NSW* (2013) 252 CLR 530 where the High Court found that provisions which banned donations from corporations, unions, non-citizens and other individuals not qualified to vote, as well as individuals qualified to vote but not enrolled, infringed on the implied freedom of political communication and were not justified in the circumstances.

protect the integrity of the political system by removing the risk of undue influence or corruption from foreign actors.

The amendment also seeks to support the rights of all Canberrans to have an equal opportunity to participate in the political system, while building public confidence that ACT voters and those who have a genuine connection with the Territory may influence ACT election outcomes and the Government decisions and policies which impact them the most.

3. Rational connection between the limitation and the purpose (s 28(2)(d))

A prohibition on donations from foreign entities, being those individuals who do not have a genuine connection to the Territory, will address community concerns about the influence of foreign entities on the direction and decisions of government, by preventing them from using donations to obtain influence over, and access to, decision makers.

The prohibition on political entities from accepting gifts from foreign entities will also address these concerns as they will assure the community that political candidates and members, and importantly, Members of the Legislative Assembly, are not being influenced by foreign actors who may provide them with gifts.

While there is no evidence to date that foreign entities have achieved such influence in the ACT, that risk is nonetheless present given the personal, business or commercial interests foreign entities may have in the Territory and with government. These amendments follow similar amendments which have been introduced by the Australian Government for federal elections, as well as amendments in New South Wales, Victoria and Queensland to ban donations or gifts from foreign entities.

Preventing foreign entities from donating to political entities, as well as preventing political entities from accepting donations from foreign entities, in the Territory will also build confidence among the ACT community that donations are being regulated effectively, through timely and accessible disclosure of donations and visible compliance by political entities with the donations and disclosure rules.

4. Proportionality (s 28(2)(e))

A cap on donations from foreign entities may have been a less restrictive alternative to imposing a ban on donations and gifts from foreign entities. However, to achieve the legitimate objective of preventing undue influence from foreign actors on ACT elections, the cap would need to be set at a very low level and would effectively be a prohibition on donations from this cohort of prohibited donors.

Additionally, the Electoral Act already contains bans on donations from certain property developers, which aim to achieve the same objective as the ban on donations from foreign entities. The amendments have been drafted to mirror the ban on donations from foreign

entities to align the approaches taken to prohibited donors. The same obligations are placed on the prohibited donors, as well as political entities, and all bans carry the same penalties.

New section 222M in the Bill provides a narrow definition of who is **not** considered to be a foreign entity, meaning a broad category of people and entities will be allowed to donate under these provisions. The intent is to ensure that individuals (even if they are not entitled to vote) and entities who have a genuine connection to the territory and are legitimately living, working, or doing business in Australia are able to donate to political entities. Similar bans in place in other jurisdictions, such as the Commonwealth, have a broader definition of 'foreign entity' that (in terms of natural persons) effectively only allows donations from Australian citizens and permanent residents or New Zealand special category visa holders.

New section 222M(c) will allow donations from individuals whose principal place of residence is in Australia. The intent of this is to allow individuals who may be impacted by the decisions of government in the Territory and who may have a legitimate interest in electoral matters (despite potentially not being entitled to vote) to donate. This will ensure that individuals such as international students living and undertaking education in the Territory, as well as people living and working on temporary work visas, will be allowed to donate. Additionally, ACT residents who are living overseas will also not be considered foreign entities for the purposes of these provisions.

For political entities accepting gifts from foreign entities, it is a defence if a political entity receives a gift from a foreign entity and took reasonable steps to ensure that the person giving the gift is not a foreign entity or giving a gift on behalf of a foreign entity. Reasonable steps may include giving potential donors written notice that donations from foreign entities are prohibited, asking the person who gives the gift whether the person is a foreign entity or if the person is giving the gift on behalf of a foreign entity, or requiring a statutory declaration from the donor to the effect the donor is not a prohibited donor.

The penalty units for these offences have been aligned with the existing penalties in Division 14.4A in the Electoral Act for bans on gifts from property developers. All offences attract a maximum penalty of 50 penalty units, 6 months imprisonment or both. Property developers and foreign entities are both prohibited donors under the Electoral Act. In the absence of evidence indicating one class of prohibited donor may be more influential than another, the offences indicate they are to be treated the same, and that their acts in giving gifts, or the acts of political entities in accepting gifts from them, attracts the same level of criminality. It is noted that there may be difficulties in enforcing imprisonment on a foreign entity if they are not present in Australia. Having the option available for a Court to impose a fine or imprisonment will assist in addressing this issue. Additionally, to support the introduction of these new offences and obligations, the Electoral Commission may post information on its website and through its social media channels to advise political entities of their new obligations in respect of donations from foreign entities.

As discussed above, the ban on political entities from accepting gifts from foreign entities limits the right to be presumed innocent as it places an evidential burden on the defendant (being a political entity) to prove they took reasonable steps to ensure the gift is not being given by or on behalf of a foreign entity.

While a less restrictive alternative for this may have been to not include a reverse burden, this limitation is considered justified as this information would only be available to the political entity in question as the recipient of the donation. This information would not be available to the prosecution in this instance and they would have to seek this information from the political entity or purported foreign entity. The reverse burden also acknowledges that political entities have a requirement to know who they are accepting gifts from, acknowledging there is high public interest in the transparency of political donations received by MLA's, political parties and candidates.

Enhance party membership checks and require names and addresses of party secretaries to be provided to the Electoral Commission

1. Nature of the right and the limitation (ss 28(2)(a) and (c))

The Bill will require parties seeking to be registered under the Electoral Act, as well as registered political parties, to provide the Electoral Commission with the dates of birth and email addresses (where available) of 100 members of the party, for the purpose of undertaking party membership checks.

The Bill will also require the name and address of the secretary of a political party to be provided to the Electoral Commissioner. These details will be required to be kept on the register of political parties and will also be required as part of an application for registration of a political party under the Electoral Act.

The right to privacy (section 12 of the HR Act) protects individuals from unlawful or arbitrary interference with their privacy, including the protection of personal, confidential information.

These amendments will engage and limit the right to privacy as they require political parties to collect personal information from party members and share this personal information with the Electoral Commission to undertake party membership checks. The amendments also require the personal details, being the name and address, of party secretaries to be provided to the Electoral Commission.

2. Legitimate purpose (s 28(2)(b))

The purpose of the measure to support party membership checks is to maintain the integrity of the political system in the ACT by ensuring parties are entitled to be registered as a political party.

The purpose of the measure to require the name and address of party secretaries to be provided to the Commissioner is also to maintain the integrity of the political system and to enhance transparency and governance by ensuring only those individuals who are party secretaries utilise legislated powers given to them under the Electoral Act.

3. Rational connection between the limitation and the purpose (s 28(2)(d))

The amendments which enhance the ability of the Electoral Commission to undertake party membership checks will support all Canberrans to take part in public life and exercise their right to vote in a meaningful way, as electors will know which parties are entitled to be registered as political parties under the Electoral Act.

The amendments to sections 89 and 97A of the Electoral Act will modernise and streamline the process of party membership checks. This check is undertaken at the point of application for registration of the party and at least once throughout an electoral term for those parties already registered. Political parties are required to have a minimum of 100 members in order to be registered and to be entitled to maintain registration under the Electoral Act. Currently, parties are required to provide only the names and addresses of individuals who are members of their political party.

The amendments to sections 89 and 97A will require political parties to provide the dates of birth and email addresses, where available, of their members for the purpose of party membership checks. Requiring date of births of members will ensure the Commission can accurately identify which individuals are or are not members of a political party in instances where people may have the same enrolled names.

It is the practice of the Commission to write to all individuals who are listed as a member of a political party, if their information is provided by a political party, to confirm whether they are or are not a member of that party.

In circumstances where individuals have not updated their enrolled address and may therefore not receive this communication, email addresses will provide a more effective communication option for the Commission to contact these individuals. This will ensure these individuals are afforded the opportunity to confirm their membership of a party.

The limitation on the right to privacy of individuals is necessary to ensure that any political party seeking registration under the Electoral Act, or which seeks to maintain their registration, has and maintains a local support base in the ACT of a minimum of 100 electors.

Party secretaries have several legislated powers under the Electoral Act, including, importantly, the power to deregister a political party. Section 98 of the Electoral Act requires the Electoral Commission to cancel the registration of a party if the party secretary requests it.

However, the Electoral Commission does not keep a register of the names of party secretaries, so if the Commission receives a request from a person claiming to be a party secretary to deregister a political party, they are required to act on this request.

The amendment to section 88 will ensure that the name and address of a party secretary is kept on the existing register of political parties, while the amendment to section 89 will ensure this information is provided when a party applies for registration under the Electoral Act. These amendments will support the right of members of political parties to take part in public life as it will ensure only the individual who has been ratified as the party secretary can use the legislated powers of party secretaries in the Electoral Act.

4. Proportionality (s 28(2)(e))

For the changes to party membership checks, a less restrictive approach to achieving this purpose may be to maintain the existing provisions and for political parties to provide only names and addresses of their members to the Electoral Commission. However, due to the prevalence of similar names on the electoral roll and the challenge of individuals not keeping their addresses up-to-date, the new proposed approach is considered more effective as it provides additional details to the Commission to confirm a person's membership of a political party.

This will ensure the Electoral Commission can efficiently contact any individual listed as being a member of a political party to ensure they are actually a member of that party for the purposes of the party membership checks. This will also ensure no individual is being incorrectly listed as a member of a political party where they do not want to be.

There is an existing safeguard under the *Territory Records (Records Disposal Schedule – Elections & Referendums for the ACT Legislative Assembly Records) Approval 2014 (No 1)* (the **Territory Records Approval**) which will continue to apply to the new information being provided by political parties to the Electoral Commission. Entry Number 048.155.002 of the Territory Records Approval requires any lists of party members, including correspondence to and from members regarding individual membership, to be destroyed as soon as the decision is made to either register or not register the party and relevant appeals periods have expired. This current practice of the Electoral Commission accords with this requirement, in that this information is routinely destroyed, which means that personal information is not retained beyond the period for which it is required.

Other existing safeguards in the Electoral Act will also continue to apply to protect the new information required under this provision. These include the requirement that the Electoral Commissioner can only use the information obtained to find out whether the party is entitled to be registered or maintain their registration under the Electoral Act (see section 89(3); section 97A(3)).

Another existing safeguard is section 317 of the Electoral Act, which protects against any unauthorised actions by officers (for example, using the information obtained for party membership checks for another purpose).

For the amendments to require the name and address of a party secretary, a less restrictive approach may be to only require the name of the party secretary or to maintain the existing approach whereby party secretaries are not required to provide these details to the Commission. However, given the significant powers which are provided to a secretary of a registered party, it is critical the Electoral Commission is aware of the identity of party secretaries, so the Commission does not act on a request from a person who is not a secretary, yet indicates they are.

Under the Territory Records Approval, the name and address of party secretaries, being any particulars registered or altered in relation to a political party, is required to be retained as Territory Archives (see Entry No. 048.155.001). This information is appropriate to be retained as Territory Archives as the powers delegated to party secretaries under the Electoral Act could have significant impacts on political parties or on an election and it may be necessary to check these records should any disputes arise over time as to the validity of any actions of the Commission or of the relevant party.

Introduction of real-time political donation reporting

1. Nature of the right and the limitation (ss 28(2)(a) and (c))

The Bill will introduce real-time political donation reporting which will require political entities to disclose any gifts received which are $100 or over in value within 7 days of receiving the gift. A small donation exemption will apply which will allow donors to gift 12 gifts, each less than $100 in value, to a political entity in any one financial year without disclosure being required. If a donor makes 13 or more gifts each under $100, the political entity is required to report all 13 of these gifts to the Electoral Commissioner within 7 days of receiving the 13th gift.

The right to privacy (section 12 of the HR Act) protects individuals from unlawful or arbitrary interference with their privacy, including the protection of personal, confidential information.

Currently, the Electoral Act requires a gift of $1,000 or more to be reported either within 7 days of receipt, if it is received within the months prior to an election, or within 7 days of the end of the month in which the gift was received (at other times).

Lowering the monetary threshold for disclosure limits the right to privacy as it will require political entities to disclose the names and addresses (referred to in section 216 as the defined details) of individuals, when this information would not need to be disclosed under the current rules. For example, a donor may wish to make a one-off donation in a financial year of $300 to their local Member of the Legislative Assembly.

Under the current provisions, the MLA would not be required to disclose the name and address of this donor. Under the real-time political donation reporting amendments, they will be required to disclose these details.

Section 243A of the Electoral Act will apply to new section 216B. Section 243A requires the Electoral Commissioner to publish any information received under these provisions, as soon as practicable, in the way the Commissioner considers appropriate. Under section 243A, if the gift was made by an individual, the home address of the individual must not be published other than the suburb or postcode, or any post office box details.

2. Legitimate purpose (s 28(2)(b))

The purpose of this measure is to improve the transparency of political donations in real time, throughout the term of an Assembly and to further strengthen public confidence in the ACT electoral system. It also aims to promote the rights of electors to take part in public life, by providing additional information to allow electors to vote in a meaningful way.

3. Rational connection between the limitation and the purpose (s 28(2)(d))

The introduction of real-time political donation reporting will improve transparency of political donations as it will require more frequent reporting by political entities on a broader spectrum of gifts received.

The publishing of this information by the Electoral Commission will allow individuals who examine these records to identify whether political entities are receiving donations from individuals or entities that may be attempting to persuade political entities to act in a certain manner. These amendments complement the existing and proposed provisions that ban gifts from prohibited donors, namely property developers and foreign entities.

Providing increased information on donations of gifts received by political entities will allow electors to be more informed in relation to candidates, as well as political parties, who are running in an ACT election. This improved access to information will better enfranchise voters to cast their vote in a more meaningful way and improve their ability to take part in public life.

4. Proportionality (s 28(2)(e))

The intent of the introduction of real time political donation reporting is to increase transparency for the public of gifts being received over an entire election cycle, to increase public confidence and trust in the ACT electoral system. It will also reduce administrative reporting requirements on parties and candidates. Currently, parties are required to aggregate donations in order to determine whether the $1,000 reporting threshold is triggered by any particular donor. The introduction of real time political donation reporting will simplify and streamline these requirements.

A less restrictive approach may have been to retain a higher threshold for the small donation exemption. However, as the changes are focusing on the number of gifts being given, rather than an aggregate amount, raising the threshold would have reduced the effectiveness of these reforms and may have potentially limited even further the number of donations that can be made before a political entity is required to disclose the personal details of a donor.

While the amendment may limit the right to privacy, it is only limited for donors who donate more than $100, with the objectives of providing for more frequent and transparent reporting of donations, while also supporting simpler administration and compliance processes for political parties. Any limitation on the right to privacy for small donors will be reduced as the proposed measure, of allowing 12 gifts, each under the value of $100, will effectively allow small donors to donate nearly $1200 in a financial year (if the gifts are in value of $100 each) to a political entity, without the political entity having to disclose these details.

This measure, combined with the requirement for more regular reporting within 7 days of receipt of any gift, is a more effective measure to improve transparency for the public, and promote accountability by political entities regarding the gifts and donations they are receiving from donors.

Section 243A currently includes a safeguard which reduces the limit on a person's right to privacy, as it requires only certain personal details (being the suburb, postcode or post office box, not a full address) to be published by the Electoral Commission.

These measures will also have a delayed commencement of 1 July 2024 which will provide time for political entities to understand their new obligations and to put measures in place (such as appointing two reporting agents, as proposed in this Bill) to ensure they are in a position to comply with these requirements. Delayed commencement will also ensure people who wish to make donations to political entities have sufficient time to understand the changes, including the small donation exemption, and that any donations over $100 will be reported in real time.

Special Interest Profiles

1. Nature of the right and the limitation (ss 28(2)(a) and (c))

Section 292 of the Electoral Act makes it to offence to disseminate unauthorised electoral matter. Section 292 further sets out the requirements for what an authorisation statement is to contain. Section 293A of the Electoral Act includes an exemption from the section 292 offence for individuals disseminating electoral matter on social media which forms part of the individual's personal political views and the individual is not paid to express those views.

The Bill will amend section 293A of the Electoral Act to clarify and tighten the exemption by adding further requirements for its application, so that (in addition to the existing requirements) the electoral matter must be disseminated in a private capacity, and using an account that was not created for the dominant purpose of disseminating electoral matter, unless that account is in the person's name.

The right to freedom of expression (section 16 of the HR Act) covers any means or style of expression and it protects the expression and receipt of communications of every form of idea and opinion capable of transmission to others. The right to freedom of expression is also closely connected to the right to take part in public life (section 17 of the HR Act), as free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential in order to ensure the full enjoyment of the right to take part in public life.

The measure to tighten the exemption in section 293A of the Electoral Act may limit the right to freedom of expression and right to freedom to take part in public life as it places additional requirements on how individuals may communicate electoral matter in a public domain, including by requiring the material to either be authorised, or the individual's name included in the name of the social media account, where an account is created for the dominant purpose of disseminating electoral matter. This restricts the right to take part in public life as it may limit communication in public about electoral issues.

2. Legitimate purpose (s 28(2)(b))

The purpose of this measure is to prevent electoral disinformation from being disseminated on social media, and to increase transparency around who is disseminating information about electoral matters on social media.

The measure will promote the right of people to take part in public affairs and enhance the ability of electors to cast their vote in a meaningful way as it will ensure individuals who consume information from these social media accounts can be satisfied as to the identity of the individual(s) who control the social media account and make informed assessments of that information.

3. Rational connection between the limitation and the purpose (s 28(2)(d))

At the 2020 ACT election, some individuals created 'special interest profiles', or dedicated accounts, on social media to disseminate electoral matter on specific issues related to the election. These accounts did not include an authorisation statement. The administrator of the account was anonymous or not easily identifiable, as the name or 'handle' of the social media account did not include a person's name, but rather was a name that made clear their stance on an electoral issue (for example, anti-light rail or pro-light rail profiles).

The spread of electoral disinformation and misinformation is a critical issue as it can deceive voters on election matters, whether intentionally or unintentionally, and may influence an elector's decision, infringing on their right to vote in a meaningful way.

The measure in the Bill will address this issue of anonymous special interest profiles as it will ensure information regarding election matters disseminated through accounts created for this purpose must either contain the name of the person or entity who controls the account or contain an authorisation statement to promote transparency in relation to ownership or control of the account (or the content).

Where an anonymous social media account is created and the name and content of the account relates to a special interest for an election or electoral matter (for example, anti-light rail or pro-light rail profiles), these accounts are likely to be considered to have been made for the dominant purpose of disseminating electoral matter.

4. Proportionality (s 28(2)(e))

Alternative options were considered on how to clarify the section 293A exemption, including amending the existing exemption to only apply where a social media account is in an individual's name, and they are acting in their private capacity. However, these options were likely to have imposed a heavier limitation on an individual's right to expression, that may not have been proportionate, given that many people prefer to engage in social media using names other than their full legal names.

The measure in the Bill is considered a more effective option at addressing the spread of electoral disinformation and misinformation, as it is specifically addresses a narrow but serious issue, regarding the creation of anonymous special interest profiles. The measure will restrict the application of the exception in section 293A, to exclude a small cohort of individuals who create social media accounts with an intention of attempting to influence voting at an election and refuse to either authorise their social media accounts or publish their name as part of the social media account name.

The new exemption in section 293A will not apply to individuals who create social media accounts for the dominant purpose of disseminating electoral matter. A social media account is likely to be considered to have been created for the 'dominant purpose' of disseminating electoral matter where the name of the account is clearly intending to influence a topic being considered at an election and the primary focus of the content on the account is to discuss this issue. For example, an anonymous account called 'Canberrans Against the Light Rail', created in the months preceding an election, which primarily posts content regarding the policies of the government, political parties or candidates in relation to light rail is likely to be considered to have been created for the dominant purpose of disseminating electoral matter. The account may post content regarding other issues, yet its dominant focus is on the light rail.

Furthermore, this will only be applicable where the electoral matter disseminated is intended or likely to affect voting at an election, as specified in the definition of 'electoral matter' in section 4 of the Electoral Act. For example, if the 'Canberrans Against the Light Rail' was created in the middle of an electoral term where the next election may be over 2 years away, this may not be considered to have been created for the purpose of disseminating electoral matter as the matter at that time is not intended or likely to affect voting at an election.

Additionally, it will only apply to individuals who have *created* a social media account for the dominant purpose of disseminating electoral matter. If an individual wishes to disseminate electoral matter on an existing social media account which was not created for the dominant purpose of disseminating electoral matter, this material will be exempt from the requirement to include an authorisation statement, provided that it expresses the individual's personal political views, they are disseminating in a private capacity (in that they do not share this information publicly and broadly with the intent of influencing voting at an election), and they are not being paid to do so. Alternatively, an individual may create a social media account to disseminate electoral matter provided that the individual's name is in the account name or the electoral matter is authorised in line with section 292 of the Act.

It is the practice of the Electoral Commission to engage with the administrators of these accounts to explain their obligations regarding authorising electoral matter that is disseminated, and which does not fall within an individual's personal political views. If administrators refuse to authorise electoral matter which requires an authorisation statement, it is open to the Commission to pursue other avenues, including enforcing the offence in section 292 of the Electoral Act.

Additionally, the intent is for individuals to include their legal name (or as close to their legal name as possible, acknowledging there are some situations where people may use abridged names on social media, such as safety reasons) on the social media account, as is intended for authorisation statements. The exemption is not intended to apply to individuals who use fake names to authorise electoral matter. If a person does not wish for their own name to be on the social media account, they will need to have the account authorised by another individual if the dominant purpose of the account is the dissemination of electoral matter.

The existing exemption in section 293A will continue to apply so that individuals who are posting on their own social media accounts and who are expressing their own personal views, in a private capacity, without being paid, will not require an authorisation statement.

To support the introduction of these new obligations for authorisation statements, the Electoral Commission may post information on its website and through its social media channels to advise political entities of these changes. The Electoral Commission publishes information on its website throughout an election cycle (known as 'Check the Source'), as well as fact sheets, to communicate to electors the issues of electoral disinformation and misinformation, as well as requirements for authorisation statements.

This webpage, and the accompanying fact sheet, can be updated to reflect these new obligations to communicate to the public what type of social media accounts may be required to include an authorisation statement.

Electoral sign offences under the *Public Unleased Land Act 2013*

1. *Nature of the right and the limitation (ss 28(2)(a) and (c))*

Right to freedom of expression

The right to freedom of expression is fundamental to liberal democracy and includes the right to receive and impart information and ideas of all kinds in all ways, including by print.

The new movable electoral sign restrictions under the *Public Unleased Land Act 2013* (PULA) may reduce the overall number of electoral corflutes used by candidates and parties during election periods and referendums. The maximum number of signs allowed and designated public roads where signs are prohibited are detailed in the Public Unleased Land (Movable Signs) Code of Practice (Movable Signs Code). The intended maximum number of electoral signs per candidate is 250, including party and issue-based signs. The designated public roads are intended to be all ACT Government managed roads with a standard speed limit of 90km/h or higher, regardless of temporary speed limits applied in certain circumstances such as road works or events. This does not include roads considered as 'designated areas', in which electoral signs are already prohibited unless given express approval by the National Capital Authority.

This limits the right to freedom of expression under section 16 of the HR Act and engages the implied Australian Constitutional right to freedom of political communication.

Right to be presumed innocent until proven guilty

The strict liability offences proposed at new sections 28(1A)(c)(i) and (ii) of PULA engage rights in criminal proceedings, specifically the right to be presumed innocent until proven guilty under section 22 of the HR Act. These new offences relate to non-compliance with the Movable Signs Code specifically where the maximum number of electoral signs on public land per candidate is exceeded and electoral signs are placed adjacent to designated public roads.

The new offences are set at 20 penalty units and are strict liability, with infringement notices of $440. This is double the existing offence for breaching other non-insurance related provisions in the Movable Signs Code under section 28(1)(b)(ii).

The existing offence at section 28(1)(b)(ii) relates to all provisions in the Movable Sign Code other than the maximum number of electoral signs and designated public roads where electoral signs are not permitted. This existing offence for the remaining provisions in the Movable Signs Code does not apply to the new offences at section 28(1A)(c)(i) and (ii) and their corresponding provisions in the Movable Signs Code.

Strict liability offences place the evidential burden on the defendant as there is no requirement for authorised officers to prove a fault element. It must be established that the defendant was aware of and understood their legal obligations.

2. *Legitimate purpose (s 28(2)(b))*

The purpose of limiting the number of movable electoral signs per candidate is to reduce excessive waste production, environmental pollution and road safety risks posed by the influx of corflute signs during election periods. While reducing the overall number of corflutes from reaching landfills and from becoming litter is the primary environmental objective, reuse and recycling of corflutes will also continue to be encouraged.

The purpose of restricting movable electoral signs from designated public roads at or exceeding 90km/h maximum speed limits is to address safety risks associated with vehicles stopping to install/remove signs, signs blowing into the path of moving traffic, and driver distraction due to a sudden influx of electoral corflutes over the six-week election period. While some existing restrictions in the Code already address road and pedestrian safety more generally, such as spacing limits from verges, this new restriction directly targets the issue of high-speed road safety.

3. *Rational connection between the limitation and the purpose (s 28(2)(d))*

The new offences for a maximum limit to the number of electoral signs per candidate and to restrict placement of signs on designated public roads reduce the overall number of corflutes being produced at each ACT and federal election. This reduces waste production, pollution of our environment, and road safety risks in higher-speed traffic areas.

Public unleased land is defined in PULA as unleased territory land which the public is entitled to use or is otherwise open to be used by the public. Public roads are defined in PULA as including the street, road, lane, thoroughfare, footpath, or place that is public unleased land. The new restrictions for electoral signs adjacent to public roads includes all public unleased land alongside or in clear view of the public road.

The maximum number of signs is also anticipated to place higher value on each sign, suggesting more care will be taken in their strategic placement and ensuring they stay in place.

The two restrictions are interdependent to achieve the intended environmental and road safety objectives. Higher-speed traffic areas have high visibility and have proven popular for large quantities of corflutes in previous elections. Applying the maximum number of 250 signs without restricting their placement along higher-speed roads could result in candidates further concentrating their limited signs in these high-visibility areas, increasing the associated road safety risks. Restricting signs from designated public roads without a maximum number of signs could result in higher concentrations of signs on all remaining permitted roads, which leads to more litter and doesn’t address growing concerns around waste reduction.

The purpose of making the new offences strict liability is to provide an effective deterrent. Where candidates are clearly or repeatedly breaching the maximum number of signs and/or the location restriction on designated public roads, the strict liability offences ensure responsive enforcement during election periods where candidates may have otherwise considered breaching the Code to be worth the advantage over competitors.

The purpose of a higher penalty amount for the maximum sign limit and designated public road restrictions compared to all other non-insurance related restrictions in the Movable Signs Code is to reflect the greater environmental and road safety objectives.

The short-term surge in movable electoral signs in an election period means TCCS must prioritise education and enforcement during the six weeks preceding polling day and the days afterwards. If TCCS is not responsive to non-compliance in a timely manner, risk of further non-compliance grows during the high-pressure election period. Use of strict liability offences for the new restrictions enables timely enforcement through formal warnings and infringement notices.

4. *Proportionality (s 28(2)(e))*

The right to freedom of expression through the form of movable signs may continue under the new offences. Other forms of political expression remain available in addition to the ongoing option of movable electoral signs on public land. The restrictions to electoral signs balance the right to freedom of expression with the need to facilitate the broader use of public unleased land for everyone. Policy considerations such as litter and pollution reduction, visual amenity, accessibility, road safety, and fairness underpin the Movable Signs Code in addition to freedom of expression.

There is a pre-existing regulatory framework established for electoral advertising in the ACT, particularly under PULA and the Movable Signs Code and the *Electoral Act 1992* (Electoral Act). For example, the Movable Signs Code already sets out size, placement, spacing and location restrictions for movable electoral signs. Both pieces of legislation rely on the use of strict liability offences as effective deterrents and to facilitate prompt enforcement action where education and awareness have failed.

These existing provisions in the Movable Signs Code are supported by the existing strict liability offence at section 28(1)(b). This existing offence is set at 10 penalty units and will continue to apply to the existing electoral sign restrictions in the Movable Signs Code. However, it will not apply to the new electoral sign restrictions introduced by the Bill; specifically, the provisions relating to the maximum number of electoral signs permitted and the placement of these signs at designated public roads.

Existing provisions such as the size of electoral signs, distance from the kerb, and placement in designated areas (areas specified in the Movable Signs Code as having special characteristics of the National Capital) will continue to be addressed by the smaller offence at section 28(1)(b).

The new offences for a maximum electoral sign limit and restricting electoral signs from designated public roads are set at 20 penalty units ($440 infringement notice), compared to 10 penalty units ($220 infringement notice) for all other provisions in the Movable Signs Code other than insurance related. The higher penalty for the new number and location limits is necessary to not only reflect the more significant environmental and road safety implications but to deter candidates and parties from viewing the penalties as simply the cost of business within a six-week election period. The higher penalty for the new offences reduces risk of candidates and parties accepting infringement notices as a compromise for greater visibility over other candidates and parties.

The Movable Signs Code, which is a disallowable instrument under PULA, is intended to limit candidates/prospective candidates to a maximum 250 signs, including party signs, and prohibit their placement alongside roads with a standard speed limit of 90km/h or higher, regardless of temporary speed limits such as road works. The operational administration of these restrictions will be developed further in consultation with relevant ACT Government agencies and external stakeholders prior to implementation of the Bill.

The new offences in the Bill do not specify the maximum number of signs permitted or the types of designated public roads. This is to allow flexibility for these restrictions to be amended in future following ongoing feedback, such as from candidates.

Implementation of the amended Movable Signs Code will be subject to standard scrutiny processes of disallowable instruments and may be disallowed by the ACT Legislative Assembly or subjected to further amendments if required.

A cross-agency education and awareness campaign will accompany the new offences as part of the broader communications campaign for the Bill, website updates outlining the new restrictions, standard election briefings and materials for parties and candidates/prospective candidates, and ongoing proactive and reactive operations by TCCS in administering PULA. For example, a Candidate Information Handbook and a copy of the Movable Signs Code are provided to candidates at the commencement of an election period in addition to candidate briefings and other education materials, and an escalating enforcement framework is used that prioritises education and formal warnings.

Where a warning fails to correct non-compliance, an infringement notice may be issued to the responsible candidate or prospective candidate, party, or entity. Authorised officers identify the individual, party or entity advertised on the corflute sign using the authorisation information required for all electoral matter in other legislation, e.g., the Electoral Act, the *Referendum (Machinery Provisions) Act 1994*, the *Commonwealth Electoral Act 1918* (Cwlth), and the *Referendum (Machinery Provisions) Act 1984* (Cwlth)).

The Movable Signs Code currently defines ‘electoral advertising signs’ as movable signs containing any printed electoral matter to which provisions in relevant ACT and Commonwealth legislation apply.

For example, section 292 of the Electoral Act states a person commits an offence if they disseminate electoral matter that does not include:

a. the first and last name of the individual who authorised, or authored, the matter; and
b. a statement to the effect that the named person authorised, or is the author of, the matter; and
c. a statement that the matter is disseminated for the relevant party, candidate, prospective candidate, or entity (e.g. lobby group) where applicable.

The offence at new section 28(1A)(c)(ii) relates to restricting electoral signs from designated public roads, which are intended to be prescribed in the Movable Signs Code as roads with a standard speed limit at or exceeding 90km/h. The definition of 'designated public road' is separate to the definition of 'designated area', which means areas with special characteristics of the National Capital. The existing arrangements prohibiting electoral signs from designated areas will continue unchanged by the Bill and subsequent amendments to the Movable Signs Code, which will make this distinction very clear to ensure candidates, prospective candidates parties and entities understand that a higher penalty applies to designated public roads.

The subsequent amendments to the Movable Signs Code as part of the Bill will clearly set out:

a. a summary of the new restrictions (e.g. a maximum 250 signs per candidate and prohibiting signs from roads with a standard speed limit of 90km/h or higher) and a clear and simple breakdown of their application;
b. that the new electoral sign restrictions have a higher infringement notice penalty apply compared to other electoral restrictions ($440 instead of $220);
c. the distinction between 'designated public roads' and 'designated areas'; and
d. that the definition of 'electoral matter' is linked to existing definitions in other ACT and Commonwealth legislation and requires identifying information to be considered an electoral sign for the purposes of enforcement.

As the new offences are strict liability, the defence of reasonable mistake of fact is available.

The *Magistrates Court (Public Unleased Land Infringement Notices) Regulation 2013* and the Movable Signs Code will be developed together to apply the definition of 'electoral matter' only where signs meet the objective components of the definition and self-identify as electoral signs, such as through authorisation information at section 292 of the Electoral Act or other ACT and Commonwealth legislation. This aligns with current enforcement practice for the existing electoral sign provisions and ensures there is no subjective or mental element in applying the strict liability offences.

Road safety offence under the road transport legislation

1. *Nature of the right and the limitation (ss 28(2)(a) and (c))*

Right to freedom of expression

Section 16 of the HRA provides that everyone has the right to hold opinions without interference and the right to freedom of expression. The right to freedom of expression includes the freedom to seek, receive and impart information and ideas of all kinds, orally, in writing, in print, by way of art or in any other way a person chooses.

Under article 19 (3) of the International Covenant on Civil and Political Rights ('the ICCPR') (from which section 16 derives), freedom of expression may be limited as provided for by law and in circumstances where it is necessary to protect the rights or reputations of others, national security, public order, public health, or morals.

The Bill will prohibit vehicles from parking on designated roads, road-related areas, and public unleased land where the vehicle has a sign attached that displays advertising or electoral matter.

The Bill could be considered to limit a person's right to freedom of expression by restricting the opportunity to receive and impart information and ideas displayed on parked vehicles, such as:

- promoting political views;
- advertising a commercial business; or
- informing the local community of a charity, school or other community event.

The amendment could potentially remove a means of personal promotion that an individual may use regularly.

Rights in criminal proceedings

Section 22(1) of the HRA provides that everyone charged with a criminal offence has the right to be presumed innocent until proven guilty according to law. The Bill engages and limits this right as it applies strict liability offences to a part of the new offence. Strict liability is applied to determine if the person parks a vehicle in a designated place with a sign attached to the vehicle that displays advertising or electoral matter.

A road, road related area or public unleased land can be a designated place. The infringement notice penalty will only apply to if the sign contains an advertisement (as defined by an instrument) or electoral matter.

Strict liability offences engages and limits section 22(1) of the HRA. A strict liability offence means that there are no fault elements for the physical elements of the offence to which strict liability applies which essentially means that the conduct alone is sufficient to make the defendant culpable.

Strict liability offences typically arise in a regulatory context where for reasons such as public safety and ensuring that regulatory schemes are complied with, criminal penalties are required. Where a defendant can reasonably be expected, because of his or her involvement with the regulated activity, to know what the requirements of the law are, the mental, or fault, element can justifiably be excluded.

2. *Legitimate purpose (s 28(2)(b))*

The primary purpose of the measure is to promote and enable road safety. The secondary purposes of the measure are to protect the defining characteristics of Canberra.

The ACT Government is committed to the realisation of Vision Zero – a strategy outlined in the ACT Road Safety Strategy 2020-25 and the ACT Road Safety Action Plan 2020-23, which aims to achieve zero road fatalities and serious injuries. The purpose of the limitation is to promote and enable road safety, by limiting the amount of driver distractions on ACT roads, the amendment seeks to reduce accidents and fatalities. This Action Plan covers the period to the end of 2023 and includes a range of measures aimed at saving lives, reducing injuries and strongly prioritising Vision Zero.

One of the focus areas of the Action Plan is distraction, which is defined as “any action that takes a driver’s attention away from the road or impacts their driving ability: from using a mobile device to tuning the radio”. Any kind of distraction can result in inappropriate speeds, lane deviations and a delay in reaction time. The ACT Government has a responsibility to identify and respond to heightened risks in road trauma and addressing the issue of driver distraction is a high priority for the ACT Government. There are four types of distraction: physical, visual, auditory and cognitive. Roadside advertisements are a visual distraction to drivers.

Furthermore, the ACT Government recognises the importance of protecting the many defining characteristics of Canberra. Under the ACT Planning Strategy, the ACT Government has committed to striking a harmonious balance between growth and the preservation of Canberra's unique qualities, making Canberra a more liveable city.

3. *Rational connection between the limitation and the purpose (s 28(2)(d))*

The primary purpose of this amendment is to promote and enable road safety. Research has found that roadside advertisements can be a significant source of driver distraction, altering visual attention patterns and leading to increased response times and errors.

The proposed amendment will be effective to achieve the legitimate aim of reducing driver distraction and improve road safety. Studies show that roadside advertising seems to be correlated with road crashes.

For example, data from two earlier naturalistic studies were combined to create a data set of 203 commercial vehicle drivers and 55 trucks from seven trucking fleets operating at 16 locations. A total of 4,452 safety-critical events (i.e., crashes, near-crashes, crash-relevant conflicts, and unintentional lane deviations) were identified in the data set, along with 19,888 baseline (uneventful, routine driving) epochs.[2] Data analysis included odds ratio calculations and population attributable risk estimates. Key findings were that drivers were engaged in non-driving related tasks in 71 percent of crashes, 46 percent of near-crashes, and 60 percent of all safety-critical events. Performing highly complex tasks while driving leads to a significant increase in risk. Eye glance analyses examined driver eye location while performing tasks while operating a commercial vehicle.[3]

Another study focused on the glance behaviour of 25 drivers at various advertising signs along an expressway in Toronto, Ontario, Canada. The average duration of the glances for the subjects was 0.57 s [standard deviation (SD) = 0.41], and in total there was an average of 35.6 glances per subject (SD = 26.4). Active signs that contained movable displays or components made up 51% of the signs and received significantly more glances (69% of all glances and 78% of long glances).[4]

Advertising is designed to attract public attention and an effective roadside advertisement is one that distracts the attention of passing drivers. As indicated earlier, Austroads recognise a that a safe road environment should consider the potential distraction from roadside advertising.

Roadside advertising is regularly witnessed throughout the ACT's road network. There are regularly vehicles parked for the purpose of advertising along Parkes way, Monaro highway, Fyshwick markets, and Canberra Avenue. There are significant roadside advertising on vehicles during elections, which includes NSW and federal elections.

Public unleased land includes road or road related areas, but it also includes other areas that the public is entitled to use, or other areas that are open to, or used by the public. This includes unleased blocks of land that are visible from roads or road related areas. Therefore, it is important that the offence also applies to declared public unleased land to ensure that vehicles, with the dominant purpose to advertise, are not distracting drivers. The roads,

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[2] R. L. Olson, R. J. Hanowski, J. S. Hickman and J. Bocanegra, "Driver distraction in commercial vehicle operations", 2009.

[3] Ibid.

[4] Beijer, D.D., Smiley, A., and Eizenman, M. (2004). "Observed Driver Glance Behaviour at Roadside Advertising." Transportation Research Record, No. 1899. 96 - 103.

road related areas and public unleased land will be declared by a Notifiable Instrument, considering the road network and other road safety considerations. If suitable, the Instrument will prevent vehicles from parking in certain areas where vehicle advertising has been prevalent, including car parks next to busy roads.

In 2017, New South Wales (NSW) introduced an offence prohibiting roadside advertising on trailers. This was introduced to promote road safety and reduce driver distraction. This offence was included in section 3.26 of the *State Environmental Planning Policy (Industry and Employment) 2021* (NSW). The maximum penalty for breaching this provision is an infringement notice penalty of $1,500 for individuals and $3,000 for corporations.

The measure is also intended to improve public amenity. The use of vehicle advertisements in public areas can often be a point of contention due to the potential for visual clutter and distraction. If the vehicle advertisement is not integrated into the overall design of the public realm, it can detract from the aesthetic and functional value of the space, and make it more difficult for pedestrians, cyclists, and motorists to navigate. The ACT Government is committed to reinforcing and preserving the landscape and it's heritage values, prohibiting roadside advertisements on vehicles in declared roads, road related areas and public unleased land contributes towards this objective.

In addition to the road safety benefits, prohibiting advertisements on vehicles will improve the public amenity by creating a more visually cohesive and attractive environment that is easier to navigate. This can enhance the overall experience of users in the ACT, while also reducing the potential for accidents or other safety hazards resulting from visual distractions. Prohibiting advertisements on vehicles can help to reduce visual pollution and enhance the overall quality of life for people living, working, or visiting the area.

4. Proportionality (s 28(2)(e)

The amendments in the Bill are considered necessary to reduce driver distraction and improve road safety, as well as improve public amenity. There are no alternative measures that are less restrictive yet equally effective in achieving these objectives.

The amendments are considered proportional for several reasons. Firstly, the amendment is considered proportional because it will only apply to declared places. The Minister may declare a designated place if satisfied that the declaration is necessary to improve road safety, for example to reduce driver distraction. A road, road related area or public unleased land may be declared by the Minister. This provides the opportunity for the Minister to target areas that will have the greatest road safety benefit. The Minister may consider the complexity of the traffic conditions, speed of passing vehicles, the road environment and crash risk and address areas which will likely provide the greatest road safety benefits.

The Minister may also consider areas that have predominantly been used to display vehicle advertising with the intent of distracting passing drivers, recognising the offence will have a significant impact on these areas, both road safety related and with the visual attractiveness of the area.

The second reason that the amendment is considered proportional is because it will only apply to particular advertisements and electoral matters. Declaring a definition of advertisement by a Disallowable Instrument provides a solid framework for its interpretation and application. The definition of advertisement will carefully consider how signs are designed to distract drivers, the rights and interests at stake and the impact on the community The instrument can also exclude certain advertisements from the definition where justified. The instrument will clearly define what advertisements will be captured and the Government will monitor the situation and respond to emerging road safety risks as they evolve.

The offence will be proportionate because it only applies to vehicles that have a sign attached, specifically displaying advertising or electoral matter. This approach is designed to primarily target vehicles that are parked with a clear intention to advertise. It focuses on purpose-built or modified trucks or trailers that prominently display signs on an A-frame.

Within this context, the definition of a sign means a board, device, plate, or screen, and therefore does not apply to other signs made out of other material such as banners or flags. Moreover, the offence does not extend to vehicles with advertising wrapped on their exterior or other forms of advertising on a vehicle that are not displayed on a sign. Further, the amendments in the Bill excludes vehicles with advertising on a bumper sticker displayed anywhere on a vehicle, or an advertisement indicating that the vehicle is for sale.

These specific criteria are established to effectively address instances where vehicles serve as prominent advertising platforms, while simultaneously maintaining a reasonable limitation on the scope of the offence. By targeting vehicles explicitly designed for advertising purposes, the legislation aims to strike a balanced approach that addresses the intended objectives without unduly burdening or restricting other forms of vehicular advertising.

The third reason that the offence is proportional is because of the way the offence is constructed, providing defences to the defendant. Strict liability applies if the person parks a vehicle in a designated place and a sign is attached to the vehicle.

Applying strict liability means that there are no fault elements for the physical elements of the offence to which strict liability applies which essentially means that the conduct alone, is sufficient to make the defendant culpable. However, there is a specific defence of mistake of fact for strict liability offences (see sections 23 and 36 of the *Criminal Code 2002*).

There are also defences under sections 9 and 165 of the *Road Transport (Road Rules) Regulation 2017* (road rules) where the defendant proves the offence was the result of an accident, could not have been avoided by any reasonable efforts, was committed because the driver had to park for an emergency or safety reasons, to avoid a collision or because the vehicle has broken down. The person may park for as long as necessary in the circumstance.

Applying strict liability to the offence element of parking in a designated place with a sign attached to the vehicle is appropriate as it is a regulatory offence based on specific criteria. Designated places will be declared in a notifiable instrument and will fall part of the ACT road rules. To ensure drivers are aware of the requirement, the ACT Government will deliver a public community education campaign prior to commencement.

The new strict liability part of the offence is not burdensome in nature and relates to ensuring the safe parking of vehicles to protect ACT road users, including vulnerable road users. It also benefits the community by encouraging changes in behaviour. It aligns with section 8 of the road rules, which provides that an offence against the regulation is a strict liability offence.

Additional reasons that the amendments are considered proportional include:

- The amendments do not impose a blanket restriction on all advertising, it only prohibits advertising on vehicles in certain circumstances, for example where the purpose of the vehicle is to advertise with an A frame mounted to the vehicle. The offence excludes advertisements displayed on a vehicle being used by or for the Territory. This will ensure, for example, trailers that display temporary traffic management messages to drivers during roadworks or to warn drivers of road conditions ahead are excluded from the offence.

- The offence only restricts advertising on parked vehicles, in designated places, it does not prohibit advertising on vehicles driving on roads or road related areas in the ACT network.

- Numerous alternative avenues exist for businesses, community groups, and electoral candidates to advertise in public places in the ACT, including movable or fixed signage in accordance with the Movable Signs Code of Practice under the *Public Unleased Land Act 2013* and by using other platforms, including social media and other traditional media outlets.

- This offence will have a maximum of 20 penalty units to ensure that it is proportionate to the offending behaviour and align with the maximum penalty for other parking offences in the road rules. The infringement notice penalty is $640.

Further, the penalties for this offence are also within the normal range for strict liability offences across the ACT statute and are in accordance with the *Guide for Framing Offences*.

If passed, the road safety amendments in the Bill will commence 6 months after the Act is notified. This will ensure an education campaign and targeted consultation can occur prior to the commencement. Ensuring that drivers are aware of their obligations once the offence is introduced, including what will be considered an advertisement and what places the offence will apply, is a priority for the Minister for Transport and the Transport Canberra and City Services Directorate. It is important to note that when deciding designated places, a declaration by the Minister (a notifiable instrument) will be made.

Prior to the commencement, there will be communication material to educate the community and raise awareness of where a vehicle can or can't be parked. Detailed education material and media releases will ensure that drivers are aware of their obligations.

CLAUSE NOTES

Part 1 Preliminary

Clause 1 Name of Act

This is a technical clause that names the short title of the Act as the *Electoral and Road Safety Legislation Amendment Act 2023*.

Clause 2 Commencement

This clause provides that the Act, other than clauses 58, 60 to 63 and 70, and schedule 1, section [1.6], will commence 14 days after the Act's notification. These other listed sections of the Act will commence on 1 July 2024. The sections subject to delayed commencement concern real time political donation reporting and associated amendments. The delayed commencement is intended to give the commission, and political entities, time to prepare for their new reporting obligations.

Parts 4 and 5 of the Bill will also commence 6 months after this Act's notification day.

Clause 3 Legislation amended

This clause lists the legislation amended by the Bill. This Bill will amend the:

- *Electoral Act 1992*
- *Public Unleased Land Act 2013*
- *Road Transport (Offences) Regulation 2005*
- *Road Transport (Road Rules) Regulation 2017*

The Bill also makes consequential and technical amendments to the *Electoral Regulation 1993.*

Part 2 Electoral Act 1992

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

This clause amends note 1 in section 3A to clarify that the Criminal Code 2002 will apply to new sections 222O and 222Q, as outlined in clause 70.

Clause 5 Meaning of address—pt 7
Section 87, definition of *address*

This clause updates the definition of *address* in section 87 as part of the amendments in clauses 5 and 6 to require party secretaries to provide their name and address to the commissioner and for this to information to be contained on the register of political parties maintained by the commissioner.

Clause 6 Register of political parties
New section 88 (2) (d)

This clause requires the name and address of a secretary of a registered political party to be kept on a register of political parties by the commissioner.

Clause 7 Application for registration of political party
New section 89 (1) (da)

This clause requires an application for registration of a political party under the Act to state the name and address of the secretary of the party.

Clause 8 Section 89 (1) (f)

This clause substitutes section 89 (1) (f) of the Act, so that an application for registration of a political party must also be accompanied by the date of birth and email address, where available, of at least 100 members of the party who are electors.

Clause 9 Notification and publication of applications
New section 91 (2) (a) (iv)

This clause will require the commissioner to include the name and address of the party secretary when publicly notifying an application for registration as a political party.

Clause 10 Refusal of applications for registration
New section 93 (2) (da)

This clause inserts an additional ground on which the commissioner must refuse the application for registration of a political party. The commissioner will be required to refuse an application if the proposed name for the party is a name, or an acronym of a name, that suggests that the party and another political party:

- are related when the parties are not related; or
- have a connection or relationship when the parties do not have that connection or relationship.

This is intended to prevent confusion or misperceptions among voters in relation to the identity or affiliations of different parties.

Clause 11 New section 93 (2) (g) (iii)

This clause inserts an additional ground on which the commissioner must refuse the application for registration of a political party. The commissioner will be required to refuse an application if the proposed name of the party consists of or includes the word ‘independent’ and is a name, or an acronym of a name, that suggests the party and another political party:

- are related when the parties are not related; or
- have a connection or relationship when the parties do not have that connection or relationship.

As with clause 9, this is intended to prevent confusion or misperceptions among voters in relation to the identity or affiliations of different parties.

Clause 12 New section 93 (2A) and (2B)

This clause inserts new section 93 (2A), which contains a list of words to which new sections 93 (2) (da) and 93 (2) (g) (iii) do not apply, including: names of countries or geographical places, function words and the word 'democratic', among others. This is because such words are sufficiently common that their mere use would not reasonably be taken to create confusion, or imply a connection or relationship, between two parties.

New section 93 (2B) provides that if a party applying for registration uses the name or acronym of another registered political party (the second party), the commissioner will be required to register the applicant party if the second party has given written consent for the applicant party to use the name or acronym, provided that such consent is provided to the commissioner, and the commissioner does not refuse to register the applicant party for any other reason permitted under section 93 or section 90 (2).

Clause 13 Objection to continued use of name
Section 95A (1)

This clause updates section 95A to align with the introduction of the stronger test for party name registration, included in new sections 93 (2) (da) and 93 (2) (g) (iii) in clauses 9 and 10. New section 95A (1) applies in circumstances where the name, or acronym of the name, of a political party so nearly resembles that of another political party that they are likely to be confused or mistaken for each other, or it suggests they are related or connected, and the parties were initially related but the party that was registered earlier in time objects to the other party continuing to use that name. In such circumstances, where the commissioner is satisfied that the parties are no longer related or connected, the commissioner must uphold the objection and commence processes with the second party for either changing its name or being deregistered.

Clause 14 Section 95A (3)

This is a technical clause to omit section 95A (3) from the Act as the substance of the definition in this provision is now incorporated into new section 95A (1).

Clause 15 Information about political parties
Section 97A (2)

This clause supports the new requirement (in clause 7) that political parties must provide additional details for the purposes of party membership checks when applying for registration. Clause 14 substitutes section 97A (2) with the result that the commissioner may at any time require registered political parties to provide information on the names, addresses and, where known, dates of birth and email addresses for at least 100 members of the party who are electors, for the purposes of party membership checks to confirm that the party remains entitled to be registered. The current practice of the commission is to conduct such checks once for each party in every electoral cycle.

Clause 16 New section 105A

This clause inserts new section 105A to provide that a registered political party must not nominate more candidates than the number of members to be elected for an electorate, as specified under section 34 (2) of the Act.

Clause 17 Place and hour of nomination
Section 108 (3)

This clause amends the hour of nomination for candidates to be 24 hours earlier, so the hour of nomination will be 24 days before polling day for an election (as opposed to 23 days). Any person or party wishing to nominate a candidate is required to have nominated by this time, as the declaration of candidates for an election will take place as soon as practicable after the hour of nomination.

Clause 18 Section 110

This clause amends section 110 of the Act to provide an additional ground on which the commissioner may reject a nomination of candidates from a registered party. If a registered party nominates more candidates than there are number of members able to be elected under section 105A, the commissioner is required to reject that nomination.

Clause 19 Section 110A heading

This clause substitutes the heading of section 110A.

Clause 20 Section 110A (1) and (2)

This clause substitutes section 110A (1) and 110A (2) to allow a candidate, nominee or a registered officer of the party which nominated a candidate or nominee to provide their candidate information to the commissioner earlier in time than is currently permitted in section 110A. These individuals may now provide this information to the commission before the declaration of candidates.

Where information is provided in relation to a nominee, the commission is not required to publish this information until after the nominee has been declared a candidate under section 109.

Clause 21 Ballot papers
Section 114 (5)

This is a minor amendment to provide the commissioner may also approve changes to the electronic form of the ballot paper as appropriate to best support its use by electors. For example, voters may need instructions on how to use an electronic device, which may differ compared to instructions on the paper form of the ballot.

Clause 22 Printing of ballot papers
Section 116 (1)

This is a technical amendment to update a reference due to amendments in this Bill.

Clause 23 Section 116 (2) to (4)

This technical clause omits sections 116 (2) to 116 (4) from the Act, as a result of amendments in this Bill relating to the maximum number of candidates that may be nominated by a political party in any one electorate (clause 17).

Clause 24 Division 9.3 heading

This technical clause substitutes the heading of Division 9.3 of the Act to better reflect the nature of its contents.

Clause 25 New sections 118AA and 118AB

This clause inserts new section 118AA and 118AB into the Act which will allow the commissioner to make arrangements for, and approve electronic devices for use in, electronic voting in an election. This will allow the commissioner to, for example, utilise the overseas electronic voting system and telephone voting system for an election, as well as electronic voting at an early polling place or a polling place on election day.

Clause 26 Security of electronic voting devices and computer programs
Section 118B (2)

This is a consequential amendment to require the commissioner to keep back up copies of electronic data produced by an approved electronic device or approved computer program. This amendment is necessary to ensure electronic data from electronic voting (for example, telephone voting, overseas electronic voting and electronic voting at early polling places or polling places) is kept.

Clause 27 Section 120

This clause updates existing section 120 to provide the commissioner is required to make appropriate administrative arrangements, including any equipment necessary for electronic voting, for the conduct of each election. This amendment is necessary with the permanent introduction of electronic voting.

Clause 28 Procedures for voting
Section 131 (3)

This technical clause updates the terminology in section 131 (3) to indicate a person may vote using a paper ballot paper or electronic ballot paper at polling places with electronic voting.

Clause 29 Claims to vote
Section 133 (2)

This is a technical amendment to clarify the process for an officer to provide a ballot paper to a person who claims they are entitled to vote in an electorate at an election.

Clause 30 Applications for postal voting papers
Section 136A (1), definition of *eligible elector*, paragraph (a) (ii)

This is a technical clause that updates the terminology in section 136A (1) to include reference to the new concept of an 'early polling place' in section 136B (clause 30). This will allow an individual who expects to be unable to attend a polling place on election day or an early polling place to apply for postal voting papers.

Clause 31 Section 136A (9)

This is a technical clause to reflect updated drafting practice for dates.

Clause 32 Sections 136B and 136C

This clause inserts new sections 136B to 136I into the Act.

Section 136B makes changes to the early voting period for an election. Under new section 136B, the commissioner may declare places in the ACT as early polling places. The commissioner is required to declare the dates and times the place will be operational. Early polling will be available in the 2 weeks before polling day, commencing on the 2nd Monday before polling day. If that day is a public holiday, early polling will commence on the next business day.

Section 136C expands the eligibility for people to vote at an early polling place. Under the Act currently, only those people who do not expect to be able to attend a polling place on polling day, or whose addresses are suppressed, are entitled to cast an early vote.

New section 136C expands this to allow any person who attends an early polling place and is on the preliminary certified list of electors (and who has not already voted) to vote in the early voting period.

Section 136D provides for declaration voting in the ACT at an early polling place. Declaration voting is necessary for those individuals whose name is not on the preliminary certified list of electors or where the preliminary certified list of electors has been marked as indicating that the person has already been issued a ballot paper (but the individual claims they have not). In these instances, individuals will be able to cast a declaration vote.

New section 136E provides for the arrangements at early polling places. Section 136E amends certain existing requirements listed in current sections 136B(9) to 136B(16) of the Act to better reflect the commission's transparency and integrity measures around handling ballot boxes at polling places. In particular, new section 136E requires the officer in charge at a polling place, in the presence of scrutineers, to close and seal ballot boxes, and parcel and enclose in sealed wrapping any unused ballot papers or other electoral papers, and give these items to the commission at the end of each day.

New section 135F allows the commissioner to declare the days and times when voters may cast a declaration vote outside of the ACT (but in Australia), commencing on the 2nd Monday before polling day (or, if that day is a public holiday, on the next business day), and ending on polling day.

New section 136G will allow a person who claims they are entitled to vote in an ACT election to attend a place outside the ACT (but within Australia) (an *interstate declaration polling place*) to cast a declaration vote for the ACT election.

New section 136H provides for the use of the overseas electronic voting system (OSEV) by the commissioner. Electors eligible to use the OSEV include Antarctic electors and persons who are outside Australia for all or part of the period beginning from the 3rd Monday before polling day and ending at 6pm on polling day in the ACT, and who are not in Australia when they vote. Eligible electors may apply to the commissioner to use the OSEV, from the 3rd Monday before polling day, and applications are accepted until 4pm on polling day in the ACT, to ensure the elector's vote is received by 6pm on polling day in the ACT. The purpose of new section 136H is to enable eligible electors to use OSEV within a 3 week early voting period, as compared to the 2 week early voting period for electors voting in the ACT (per new sections 136B and 136C). This will better support their enfranchisement and encourage the uptake of OSEV, as opposed to postal voting from overseas, which can be subject to delays and other risks.

New section 136I provides for the use of telephone voting by the commissioner in an ACT election. Telephone voting will only be available for electors who are entitled to vote at an election and who have a visual impairment that makes it difficult to vote in private without being assisted to vote.

The telephone voting system is designed for use by individuals who are blind or vision impaired and it is not intended to be available to any other cohorts of people. These electors will be required to apply to the commissioner to use the telephone voting system and applications are accepted beginning on the 2nd Monday before polling day until 4pm on polling day in the ACT to ensure the elector's vote is received by 6pm on polling day in the ACT.

Clause 33 Definitions for div 10.5
Section 149, definition of *visiting officer*

This is a consequential amendment to support the administration of mobile polling at homelessness polling places.

Clause 34 New section 149B

This clause inserts new section 149B into the Act to allow the commissioner to declare a place in the ACT as a homelessness polling place for the purposes of mobile polling under Division 10.5 of the Act.

This amendment will allow the commissioner to establish a polling place at locations across the Territory where people experiencing homelessness are likely to attend or gather. Homelessness polling places may be established in the final week before polling day (being 5 days before polling day). This measure is intended to support political participation by people experiencing homelessness.

Ordinary or declaration votes will be able to be cast at a homelessness polling place. This is important for members of this vulnerable cohort, if their name or address cannot be found on the preliminary certified list of electors, among other circumstances.

Clause 35 New section 150A

This clause supports new section 149B (clause 33) and provides that the commissioner must arrange for an officer to visit a homelessness polling place on the days and times stated in the declaration. This will ensure any person experiencing homelessness who attends a homelessness polling place is able to cast an ordinary or declaration vote.

Clause 36 Functions of visiting officers
Section 151 (1)

This is a technical clause to ensure visiting officers are required to take a ballot box, ballot papers, a preliminary certified list of electors and anything else necessary to enable a person to vote to a homelessness polling place or other mobile polling place. It also ensures the visiting officer is accompanied by at least 1 other officer and any scrutineer who wishes to attend.

Clause 37 Section 151 (2)

This technical clause inserts homelessness polling place in section 151 (2) to support the administration of this new form of mobile polling.

Clause 38 Section 152

This clause updates section 152 of the Electoral Act to provide that a failure to visit an institution or homelessness polling place, or a failure to take votes at one of these polling places, does not invalidate the result of an election.

Clause 39 Custody of ballot boxes and electoral papers
Section 153 (1)

This is a technical clause to update the Act to include gender neutral language and to reflect the introduction of homelessness polling places.

Clause 40 Assistance to voters
Section 156 (2) (a)

This clause updates section 156(2)(a) to ensure that voters can also be assisted when voting using the overseas electronic voting system and telephone voting.

Clause 41 Section 156 (4) (e)

This technical clause clarifies the process for assisting voters with paper ballot papers, noting electors at some polling places can opt to vote on a paper or electronic ballot paper.

Clause 42 Suspension and adjournment of polling
New section 160 (1A)

This clause inserts new section 160 (1A) to state that any suspension of polling at a polling place on polling day does not invalidate the result of an election.

Clause 43 New section 160A

This Bill is permanently providing the commissioner with a discretionary power to utilise electronic voting, including overseas electronic voting and telephone voting, in an election.

This clause inserts a provision, similar to existing section 160, to allow for the commissioner to suspend (and as appropriate) resume the use of any computer program approved for electronic voting under section 118A. The commissioner is able to suspend electronic voting if it is not practicable to proceed with it for any reason (for example, if there is a high cyber security risk).

Section 160A provides that a decision to suspend electronic voting does not invalidate the result of the election. The Commissioner may resume electronic voting at any time before the end of the relevant period, but it is not mandatory to do so.

Clause 44 Scrutiny
Section 178 (3) (a)

This is a technical clause to ensure applications for overseas electronic voting and telephone voting under sections 136H and 136I respectively (clause 31) may be dealt with at scrutiny centres.

Clause 45 Preliminary scrutiny of declaration voting papers etc
Section 179 (1) (a)

This is a technical clause to ensure all declaration voting papers including those used for overseas electronic voting under section 136H (clause 31) may be scrutinised.

Clause 46 Section 179 (5)

This technical clause provides that preliminary scrutiny, other than for overseas electronic voting under section 136H, shall be conducted in accordance with Schedule 3. Scrutiny of overseas electronic voting is captured within section 179 (1) (a) of the Act.

Clause 47 Section 179 (6)

This is a technical amendment to clarify the section applies to polling in Antarctica under Part 11 of the Act.

Clause 48 Formality of ballot papers
New section 180 (2A)

This technical clause clarifies that section 180 (2) (d) does not apply to a declaration vote cast using the overseas electronic voting system under section 136H. Section 180 (2) deals with when ballot papers may be considered informal. Section 180 (2) (d) refers to declaration votes being encased in envelopes, which is not relevant or appropriate for electronic voting.

Clause 49 First count—electronic ballot papers
Section 183A

This technical clause updates terminology to reflect the OIC for a scrutiny centre must arrange for preferences marked on an electronic ballot paper to be entered into an approved computer program.

Clause 50 Recount of electronic scrutiny of ballot papers
Section 187C (2)

This is a consequential amendment to state that a recount may be conducted by recounting data from electronic papers kept on back-up copies of electronic data on an approved electronic device or approved computer program. This change is necessary to recounts can occur using back-up copies of electronic data from forms of electronic voting (for example, telephone voting and overseas electronic voting) as well as electronic voting at polling places.

Clause 51 Definitions for pt 14
Section 198, new definition of *free facilities use*

This is a technical clause to insert the existing definition of 'free facilities use' in existing section 216A to section 198 which provides the definitions for Part 14 of the Act.

Clause 52 Appointed agents
Section 203 (1)

This clause amends section 203 (1) so that a party, MLA or candidate may appoint up to 2 reporting agents, instead of only 1.

Clause 53 Section 203 (3)

This clause is a consequential amendment to clause 51 to deal with the circumstances in which the appointment of a reporting agent ends. At present, the appointment of a new reporting agent automatically ends any other current appointment of a reporting agent. This rule is no longer appropriate in light of the change to permit entities to appoint up to 2 reporting agents.

Accordingly, this clause amends section 203 (3) so that the appointment of a reporting agent ends:

- if a person is taken to be a reporting agent for a party which has ceased to be registered – if the person resigns from the position with the commissioner's consent, or

- in any other case, if the appointing entity, or the reporting agent, gives the commissioner written notice stating that the appointment has ended, or that they have resigned, respectively.

Clause 54 Registers of reporting agents
Section 205 (4) (a) and (b)

This clause is a consequential amendment to clause 52, to align the drafting of existing section 205 with the changes to section 203.

This clause amends section 205 (4) (a) and (b) to provide for the commissioner to cancel the registration of a reporting agent where the commissioner has received written notice under section 203 (3) that the person's appointment has ended or that they have resigned.

Clause 55 Section 205 (4), note

This clause is a consequential amendment to clause 52. It removes the note to existing section 205 (4), as the note is no longer relevant.

Clause 56 New section 205C

This clause inserts new section 205C into Division 14.2B. This new section deals with the meaning of 'electoral expenditure' for the purposes of Division 14.25B, which imposes limits on electoral expenditure.

New section 205C creates a new class of *exempt expenditure.*

Exempt expenditure means expenditure for translated electoral material up to 12.5% of the expenditure cap (as worked out in accordance with sections 205D and 205E).

Expenditure includes any service or material relating to producing, broadcasting, publishing, displaying or distributing *translated electoral matter*.

Electoral matter is *translated electoral matter* where at least 50% of the matter is broadcast, published or displayed in a language other than English.

The purpose of new section 205C is to allow entities incurring electoral expenditure to spend up to 12.5% of the expenditure cap on translating electoral matter into languages other than English, without this expenditure counting towards the expenditure cap.

Clause 57 Entitlement to funds
Section 207 (1), new note

This clause is a consequential amendment to clause 55. It inserts a note to the effect that payment of public election funding under Division 14.3 is subject to a threshold requirement (under section 208).

Clause 58 Sections 216 and 216A

This clause substitutes sections 216 and 216A and inserts new section 216B.

Section 216 provides definitions for Division 14.4, which deals with records and disclosure requirements for gifts and certain loans.

New section 216 defines *anonymous gift* as a gift for which the receiver does not know some or all of the *defined details*.

Defined details is defined (in effect) as the name(s) and address(es) of the person(s) or entity on whose behalf the gift was made. There is no substantial change to the definition of *defined details* in existing section 216.

New section 216A requires *political entities* (as defined in the section) to keep records of gifts received throughout the *relevant period* (as defined in the section), regardless of the quantum of the gift. There is no change to the entities that are required to report, or the definition of *relevant period*, from the existing legislation.

New section 216B introduces new requirements for the regular disclosure of gifts. The purpose of this clause is to introduce 'real time' (within 7 days) political donation reporting, which was a commitment under the Parliamentary and Governing Agreement of the 10th Legislative Assembly of the Australian Capital Territory (**PAGA**). This clause also lowers the threshold for reporting of gifts, from $1000 to $100.

Where a political entity receives a gift that is $100 or more in the relevant period, the financial representative must give the commissioner a return within 7 days of receipt of the gift, containing the information mentioned in subsection 216A (2): the date of receipt; the amount of the gift; and the defined details (defined in section 216, in effect, as the identity of the donor).

Additionally, where a political entity receives 13 or more gifts that are less than $100 each from the same person in the relevant period, the financial representative must give the commissioner a return within 7 days of receipt of the 13th gift and any subsequent gifts, containing the information mentioned in subsection 216A (2).

Free facilities use (as defined in section 198) does not constitute a gift under this section.

New section 216B will allow a person to donate 12 gifts in a relevant period that are less than $100 each in value to a political entity. These gifts are required to be recorded by the political entity in accordance with new section 216A, yet the political entity is not required to disclose these gifts to the commissioner until receipt of the 13th gift from the same person in the relevant period.

Example

Company XYZ gives 9 gifts of $75 to registered political Party ABC over a period of 9 months from 1 July 2025. The financial representative of Party ABC must keep records of each gift as required under section 216A but is not required to give a return to the commissioner concerning these gifts. The Company then begins giving weekly donations of $99 to the Party.

Upon receipt of the 13th gift (i.e. the fourth time that Company XYZ gives $99), the financial representative of Party ABC must give the commissioner a return within 7 days.

The return must specify the date of receipt of the 13th gift; the total amount of the 13 gifts ($1,071); and the defined details (the name and address of Company XYZ) for the gifts.

The following week the party gives its next gift of $99 to the Party. Within 7 days of receipt of this gift, the financial representative of the party must give the commissioner a return which specifies the amount of this subsequent gift and the defined details for the gift. This regular 7 day reporting of subsequent gifts received of under $100 must continue until the relevant period ends on 30 June 2026.

Clause 59 Disclosure of gifts by non-party candidates
Section 217 (2) and (3)

This clause amends the reference to *non-party candidate* in section 217 (2) (a) and (b) and 217 (3) so that it refers instead to *non-party candidate grouping*. The term *non-party candidate grouping* is defined in section 198 as (in effect) the non-party candidate and any other person who has incurred electoral expenditure on their behalf.

The purpose of this clause (together with clause 60) is to correct a minor error and ensure that the disclosure requirements in section 217 apply to gifts received by members of the non-party candidate grouping as well as to gifts received by the candidate themselves (provided the gifts are not for private use).

Clause 60 Section 217 (3)

This clause amends section 217 (3) so that it refers to $100 instead of $1000.

This amendment lowers the threshold for disclosure of details of gifts from $1000 to $100. As a result, the return given to the commissioner by the reporting agent for a non-party candidate after the election under section 217 must specify the date of receipt; amount of the gift; and the *defined details* (defined in section 216, in effect, as the identity of the donor) for each gift of $100 or more, or where the total of all gifts given by a person is $100 or more.

This is a consequential amendment to clause 58, which introduces real time (within 7 days) political donation reporting for gifts to political entities of $100 or more. This amendment will ensure that the new $100 reporting threshold is set consistently across the financial and donation reporting regime in the Act, where appropriate.

Clause 61 Disclosure of gifts by third-party campaigners
Section 220 (1) (b) (ii)

This clause omits the reference to $1000 in section 220 (1) (b) (ii) and replaces it with a reference to $100. As a result, third-party campaigners will be required to give to the commissioner a return within 60 days after the election, containing the information required under section 220, where they received from a person 1 or more gifts totalling $100 or more.

This is a consequential amendment to clause 58, which introduces real time (within 7 days) political donation reporting for gifts to political entities of $100 or more. This amendment will ensure that the new $100 reporting threshold is set consistently across the financial and donation reporting regime in the Act, where appropriate.

Clause 62 Section 220 (3) (d)

This clause amends section 220 (3) (d) to replace the words "made anonymously" with "an anonymous gift". This is a minor and technical amendment, to update the language in section 220 (3) (d) in line with current legislative drafting practice. It is not intended to change the meaning of the section.

Clause 63 Restrictions on acceptance of gifts
Section 222 (1)

This clause omits the reference to $1000 in section 222 (1) and replaces it with a reference to $100. This amendment will restrict parties, MLAs, non-party candidates and associated entities from accepting anonymous gifts of $100 or more.

This is a consequential amendment to clause 58, which introduces real time (within 7 days) political donation reporting for gifts to political entities of $100 or more. This amendment will ensure that the new $100 reporting threshold is set consistently across the financial and donation reporting regime in the Act, where appropriate.

Clause 64 Application—div 14.4A
New section 222A (1) (c) and (d)

This clause provides additional situations where Division 14.4A, Gifts from property developers, will not apply.

This will include where a gift is paid into a federal account as soon as practicable after the gift is received. This acknowledges that some political parties are registered in the Commonwealth and in the Territory and may receive donations specifically for use in only a federal or Territory election. The definition of *federal account*, provided in section 287 of the *Commonwealth Electoral Act 1918* (Cwlth) means an account where:

- the only amount deposited into the account are amounts to be used only for a federal purpose; and
- the only amounts withdrawn or transferred from the account are amounts:
    - withdrawn or transferred for a federal purpose; or
    - transferred to another federal account.

Any funds withdrawn from a federal account by a political party registered under the Electoral Act, which is not used for a federal purpose, or transferred to another federal account, will be subject to Div 14.4A.

This clause also provides that Div 14.4A will not apply to a gift received by a prospective candidate for an election if the prospective candidate is not later declared a candidate for the election under section 109. As these individuals will not be involved in an election as a candidate, these gifts are not required to be disclosed.

Clause 65 New section 222A (3)

This clause is a consequential amendment to clause 64 which provides that Division 14.4A of the Act does not apply to a gift paid into a federal account as soon as practicable after the gift is received. This clause provides that the definition of *federal account* is provided in section 287 of the *Commonwealth Electoral Act 1918* (Cwlth), as outlined above in clause 64.

Clause 66 Definitions—div 14.4A
Section 222B, definition of *political entity*, paragraph (c)

This clause clarifies that Div 14.4A is to apply to a non-party candidate grouping, as it currently only applies to a non-party candidate. Expanding this definition to include a non-party candidate grouping will ensure it also applies to any other person who has incurred electoral expenditure with the authority of the non-party candidate to support the candidate in contesting the election.

Similarly, Div 14.4A does not currently apply to a non-party prospective candidate grouping, yet it applies to prospective party candidates who fall within the definition of 'a party grouping'. This clause ensures non-party prospective party candidates are also subject to Div 14.4A.

Clause 67 Ban on gifts from property developers etc—$250 or more
Section 222G (4) (a)

This is a technical amendment to support the introduction of new sections 222G (4) (aa) and (ab) as outlined in clause 68.

Clause 68 New section 222G (4) (aa) and (ab)

This clause inserts new section 222G (4) (aa) and (ab) to clarify the offence in section 222G. New section 222G (4) (aa) clarifies that the offence will only apply once the second person has given the gift (or part of the gift) to the political entity, as the current offence is unclear as to whether the gift has to be given or not for the offence to be triggered. The person asking the second person to give the gift (the first person) remains the person liable for the offence.

New section 222G (4) (ab) also clarifies the offences only applies where the gift, together with any other gift given to the political entity by the second person at the request of the first person and on behalf of the property developer or their close associate in a financial

year, is $250 or more. This is to align this offence with the other offence provisions in Division 14.4A, which only apply to gifts from the same person that cumulatively total $250 or more.

Clause 69 New division 14.4B

This clause inserts new Division 14.4B into the Act, which prohibits the giving, or receiving, of certain gifts by foreign entities to political entities. This Division creates a new class of prohibited donor and it is structured (insofar as is relevant) similarly to the ban on gifts from certain property developers, in Division 14.4A.

New section 222L deals with the application of new Division 14.4B and provides that it will not apply to the following gifts.

- Gifts that are not money which are given to an MLA by or on behalf of a foreign government or foreign government official and which (together with any other gifts from the same government or official to the same MLA) is worth less than $250. This is intended to ensure that MLAs can receive small gifts during official meetings with foreign dignitaries as may occur from time to time in the conduct of the Territory's relationships with other countries.

- Gifts that are returned to the giver within 30 days of receipt.

- Gifts that are paid into an account for federal election purposes under Commonwealth law.

- Gifts that are received by prospective candidates who are not later declared as candidates for an election.

- Free facilities use, as defined in the Act.

New section 222M defines certain terms for the purposes of Division 14.4B.

A *foreign entity* is defined as any entity who does not meet one of the listed criteria. These criteria are intended to ensure that entities that legitimately live or work or conduct business or affairs in the Territory will not be considered *foreign entities*.

Gift is defined to include a loan that is not given by a financial institution on a commercial basis.

Political entity is defined to include MLAs, party groupings, non-party candidate groupings, non-party prospective candidate groupings, and associated entities.

New section 222N creates a ban on foreign entities (or persons acting on their behalf) giving gifts to political entities.

The ban applies where the gift, together with any other gift given by the person to the political entity in the financial year, is less than $250. The person who gave the gift is liable to pay the amount of the gift to the Territory.

New section 222O creates offences related to gifts to political entities from foreign entities where the gift/s given in a financial year cumulatively total $250 or more.

New section 222O (1) makes it an offence for a foreign entity to give a gift to a political entity, where the gift (together with any other gift given by the foreign entity to the political entity in the financial year) is $250 or more.

New section 222O (2) makes it an offence for a person to give a gift to a political entity on behalf of a foreign entity, where the gift (together with any other gift given by the person to the political entity on behalf of the foreign entity in the financial year) is $250 or more.

New section 222O (3) makes it an offence for a person (the first person) to ask another person to give a gift to a political entity on behalf of a foreign entity, where the gift is given and the gift (together with any other gift given by the same giver to the political entity at the request of the first person and on behalf of the foreign entity in the financial year) is $250 or more.

The maximum penalty for the offences in section 222O is 50 penalty units, 6 months imprisonment, or both. The Criminal Code applies to this offence which means that intention to give the gift is required to be proved.

New section 222P creates a ban on political entities accepting gifts given by or on behalf of foreign entities. The ban applies where the gift (together with any other gift given by the same giver to the political entity in the financial year) is less than $250, and the political entity has not taken reasonable steps to ensure that the gift is not being given by or on behalf of a foreign entity. The political entity is liable to pay the amount of the gift to the Territory.

New section 222Q creates an offence where a political entity accepts a gift given by or on behalf of a foreign entity, and the gift (together with any other gift given by the same giver to the political entity in the financial year) is $250 or more, and the political entity has not taken reasonable steps to ensure that the gift is not being given by or on behalf of a foreign entity.

The maximum penalty for the offence in section 222Q is 50 penalty units, 6 months imprisonment, or both. Further, the political entity is liable to pay the amount of the gift to the Territory. The Criminal Code applies to this offence which means that intention to accept the gift is required to be proved.

Clause 70 Amounts received
Section 232 (1) and (2)

This clause omits the references to $1000 in section 232 (1) and (2) and replaces them with references to $100. These changes will ensure that annual returns by parties and MLAs (under section 230) and by associated entities (under section 231B), respectively, will be required to state the information required under section 232 where one or more donations are received during a financial year that total $100 or more.

This is a consequential amendment to clause 58, which introduces real time (within 7 days) political donation reporting for gifts to political entities of $100 or more. This amendment will ensure that the new $100 reporting threshold is set consistently across the financial and donation reporting regime in the Act, where appropriate.

Clause 71 New section 232 (3) (ba)

An associated entity which provides accommodation is currently required to include details of amounts of $1,000 or more received as payment for accommodation, including the personal details (the name and address) of guests, in its annual return to the commissioner. The intent of the disclosure requirements in the Act is to ensure transparency around amounts which could be perceived to be donations to a political party, but not to require disclosure of amounts received in the ordinary course of business.

This amendment will remove the requirement for associated entities to report on amounts received for the provision of accommodation, provided that the amount is not more than reasonable consideration for the accommodation.

The effect of this clause is that associated entities which operate a hotel, motel, resort, residential park or other short stay accommodation will not need to report on amounts received for these services in their annual return. This will enhance the privacy of guests.

Clause 72 Section 232 (5), new definitions

This clause inserts new definitions of different types of accommodation in section 232 (5) to support the amendments in clause 71, by clarifying the types of accommodation to which this clause applies.

Clause 73 New section 243AA

This clause supports the amendments made in clause 71 of the Bill. Annual returns provided by associated entities are required to be made available for public inspection (and may be published) by the commissioner under section 243 of the Act.

This clause will ensure the Commission is not required to publish any information provided by an associated entity to which section 232 (3) applies.

Clause 74 Validity may be disputed after election
Section 256 (2) (d)

This clause amends section 256 (2) (d) so that if any matter connected with the issue, or scrutiny, of ballot papers by the commissioner or an officer is called into question, the validity of the election is taken to be in dispute. This clause inserts the commissioner into this provision, to reflect the fact that ballot papers may be issued by the commissioner (for example, in electronic voting) as well as by officers.

Clause 75 Section 292

This clause substitutes section 292, which makes it an offence for a person to disseminate electoral matter without an authorisation statement that meets the requirements of the section. The new section 292 differs from the existing provision in that it introduces *language requirements* and *form and access requirements* for authorisation statements.

The *language requirements* are defined in subsection 292 (3). These requirements deal with the use of languages other than English in the dissemination of electoral matter. The purpose of the requirements is to facilitate the understanding of the authorisation statement by non-English speakers, where electoral matter is disseminated in 1 or more languages other than English.

The *form and access requirements* are defined in subsection 292 (4). These requirements are intended to ensure that the authorisation statement will be sufficiently clearly communicated, in a reasonably prominent way, whether in print, audio or audiovisual form, and including in the online environment.

Clause 76 Section 293A

This clause substitutes section 293A, which provides an exception to the offence of disseminating unauthorised electoral matter in section 292.

Currently, the exception in section 293A applies where electoral matter is disseminated through social media, it forms part of an individual's personal political views, and the individual is not paid to express those views.

This clause amends the exception to clarify that it only applies where electoral matter disseminated on or through social media:

- is disseminated in a private capacity; and
- forms part of the expression of the individual's personal political views; and
- the individual is not paid to express the views; and
- for electoral matter that is disseminated using an account that is not in the individual's name – the account was not created for the dominant purpose of disseminating electoral matter.

The intent of this amendment is to ensure that any electoral matter which is disseminated on social media is not anonymous and the author is either named in the social media account name or the matter includes an authorisation statement, as required under section 292.

Clause 77 Responses to official questions
Section 319 (3)

This clause amends the definition of *official question* for the purposes of section 319. Section 319 makes it an offence for a person to make a statement that is false or misleading in a material particular in answer to an *official question*.

The current definition of *official question* in section 319 (3) refers only to questions asked by officers in the exercise of their functions under the Act.

The amendment in this clause expands the definition of *official question* so that it also applies to a question asked by the commissioner in the exercise of the commissioner's functions under the Act, and in a form approved under section 340A of the Act or otherwise authorised by the commissioner.

This change is intended to update section 319 so that it will apply in contemporary situations such as electronic voting, where voters may be required to make declarations online (for example, as to their eligibility to utilise overseas electronic voting under new section 136H).

Clause 78 Interpretation for sch 4
Schedule 4, clause 1, definition of *surplus*

This clause is a technical amendment to amend the definition of *surplus* in Schedule 4 of the Electoral Act to rectify a drafting error.

The new definition of *surplus* will allow the count to consider candidates' total votes above the quota where the surplus is greater than zero but less than 1. The current definition refers to the resulting number being greater than 1. Due to the operation of the Hare-Clark electoral system, which may result in fractions of votes being distributed as preferences, the current definition may result in fractions of votes above the quota but less than 1 not being distributed to remaining candidates.

The new definition of *surplus* will ensure the count is conducted in a way that most accurately reflects voters' preferences.

Clause 79 Dictionary, definition of *approved computer program*

This clause updates the definition of *approved computer program* in the dictionary of the Act to define that it means a computer program approved under section 118A(1)(a).

This will support use of the overseas electronic voting system, telephone voting and other electronic voting that may be employed for an election.

Clause 80 Dictionary, definition of *approved electronic device*

This clause inserts a new definition of *approved electronic device* in the dictionary to mean a device approved under section 118AB of the Act. This will support the use of electronic ballot papers at polling places.

Clause 81 Dictionary, definition of *declaration voting papers,* paragraph (c)

This technical clause amends paragraph (c) of the definition of *declaration voting papers* so that it will include electronic votes cast under section 136H of the Act, using the overseas electronic voting system.

Clause 82 Dictionary, definition of *declaration voting papers*, paragraph (d)

This technical clause amends paragraph (d) of the definition of *declaration voting papers* to clarify that it only applies to declaration votes other than votes cast under section 136H of the Act.

Clause 83 Dictionary, declaration of *OIC*, new paragraph (c)

This clause inserts a new subsection into the definition of *OIC* in the dictionary to support the introduction of the concept of 'early polling place' in the Act.

Part 3 Public Unleased Land Act 2013

Clause 84 Offence–fail to comply with code of practice New section 28 (1A)

This clause inserts new section 28(1A), which introduces offences for the new restrictions being added to the Movable Signs Code:

a. exceeding the number of electoral signs on public land per candidate, intended to be set at 250; and
b. placing electoral signs on public land adjacent to designated public roads, intended to be roads with a standard speed limit of 90km/h (not including roads that are designated areas, as electoral signs are already prohibited from these roads).

The new offences are strict liability and are set at 20 penalty units. This is higher than the penalty for the existing offence at section 28, which is 10 penalty units and applies to all other provisions in the Movable Signs Code, including other electoral sign restrictions (excluding insurance-related, which has a penalty of 50 penalty units). The higher penalty for the new restrictions at new section 28(1A) is due to the higher environmental and road safety objectives these measures support in addition to ensuring the penalty is viewed as more than simply the cost of business during campaign periods.

The existing offence at section 28(1)(b) does not apply to the new restrictions and is not amended by this clause.

Clause 85 New section 28 (3)

This clause inserts new section 28(3), which supports the new offences introduced at new section 28(1A) by setting definitions for 'designated public road', 'electoral advertising sign', and 'electoral matter'.

'Designated public road' is defined as a public road prescribed by the Movable Signs Code. This aligns with the definition for 'public road' at section 9 of the *Public Unleased Land Act 2013* (PULA), meaning any street, road, lane, thoroughfare, footpath, or place that is Territory land and is open to or used by the public.

Designated public roads are to be set out in the Movable Signs Code as any road with a standard speed limit at or exceeding 90km/h. This does not include where temporary speed limits are applied, such as for road works or events, or to any roads already captured as a designated area in the Movable Signs Code. Designated areas are areas with special characteristics of the National Capital and currently require express approval of the National Capital Authority for electoral signs to be placed.

'Electoral advertising sign' means a movable sign containing electoral matter. This is an existing definition in PULA, which is moved from section 105A(5) to new section 28(3).

'Electoral matter' is defined as any matter intended or likely to affect voting in an election or referendum which contains an express or implied reference to an ACT, State, or Commonwealth election or referendum, or any matter which electors are required to vote in one.

This definition aligns with the Electoral Act and other ACT and Commonwealth legislation. As it relates to an offence in PULA and contains some subjectivity, the Magistrates Court (Public Unleased Land Infringement Notices) Regulation 2013 and the Movable Signs Code will require movable signs on public land to self-identify as electoral matter before the offence may apply. This will rely on required self-identifying information on signs, such as information required under section 292 of the Electoral Act for ACT electoral signs, or information required under the *Referendum (Machinery Provisions) Act 1994*, the *Commonwealth Electoral Act 1918* (Cwlth), and the *Referendum (Machinery Provisions) Act 1984* (Cwlth)).

Clause 86 Removal of non-compliant electoral advertising signs by Territory Section 105A (5), definition of *electoral advertising sign*

This clause relocates the definition for 'electoral advertising sign' from section 105A(5) to new section 28(3).

Clause 87 Section 105A (5), definition of *electoral matter* and note

This clause omits the definition and note for 'electoral matter' from section 105A(5), as this is now located at new section 28(3) with superficial wording changes.

Part 4 Road Transport (Offences) Regulation 2005

Clause 88 New part 5

This clause inserts new part 5 (Miscellaneous) in the *Road Transport (Offences) Regulation 2005*. This new part introduces section 23 which provides the Minister with the power to declare matter that is, or is not, advertising for the purposes of certain infringement notice offences against part 12 of the *Road Transport (Road Rules) Regulation 2017* (road rules). This declaration is a disallowable instrument.

The purpose of new section 23 (2) is to ensure that the increased infringement notice penalty amount increases introduced by clause 89, only apply to vehicles displaying matter declared to be advertising. The definition of advertising does not apply to certain offences that do not involve a registrable motor vehicle, including sections 213G, 213H, 213Q, 213R, or new section 213SA introduced by clause 92 in the road rules.

The definition of advertising does not apply to new section 213SA, introduced by clause 92, because that clause introduces a separate declaration power. The declaration power in this clause, and clause 92, provide flexibility when determining what meets the definition of advertisement for the new offence, considering the road safety risk of the advertisement in different circumstances.

Clause 89 Schedule 1, part 1.12A, items 223 to 329

This clause increases the infringement notice penalty amounts, for existing offences against part 12 of the road rules, by $50 if the vehicle displays advertising or electoral matters in or on the vehicle. Clause 90 provides the definitions of advertising and electoral matter. This clause also introduces a new infringement notice penalty of $640 for offences against new section 213SA, introduced in the road rules by clause 92.

Clause 90 Dictionary, new definitions of *advertising* and *electoral matter*

This amendment introduces new definitions of *advertising* and *electoral matter* into the dictionary, consequential to the changes introduced by clause 89. The Minister may declare matter that meets the definition of *advertising* in accordance with new section 23. The definition of electoral matter mirrors the definition introduced by clause 92.

Part 5 Road Transport (Road Rules) Regulation 2017

Clause 91 Application—pt 12—bicycles
Section 166

This amendment has the effect of applying the new offence introduced by clause 91, in section 213SA(1) of the road rules, to bicycles parked at a bicycle rail or in a bicycle rack.

Clause 92 New division 12.12A

This amendment introduces new division 12.12A (Signs attached to vehicles parked in designated place) in the road rules. The division introduces a new offence in section 213SA (1) in the road rules for parking a vehicle in a designated road, road related area or public unleased land, if a sign displaying advertising or electoral matter is attached to the vehicle. The maximum penalty is 20 penalty units or an infringement notice penalty of $640 which is introduced by clause 89.

The offence will not apply to a vehicle that is being used by or for the Territory. This will ensure that trailers and other vehicles with signs attached can continue to display temporary traffic management messages during roadworks or to warn drivers of an approaching road hazard.

New section 213SA (3) and (4) in the road rules, empowers the Minister to declare specific roads, road related areas and public unleased land where the new offence introduced will apply. The declaration will be a Notifiable Instrument and the Minister must be satisfied that the declaration is in the interests of road safety before it is made. Reducing driver distraction will be a key consideration when determining what roads, road related areas and public unleased land are declared as designated place(s). The Minister will consider the road safety risk of where vehicles, that have a dominant purpose to advertise and distract drivers, usually park in the ACT. This declaration will ensure that the offence does not unduly impact on an individual's human rights while protecting the public from distracted drivers.

New section 213SA (5) provides the Minister the power to declare what matters are, and are not, advertising by introducing a definition of advertising for new section 213SA. A bumper sticker displayed anywhere in or on the vehicle and advertising indicating that the vehicle is for sale cannot be declared as an advertisement, this has the effect of exempting these types of common advertisements from the offence provision. The offence will not apply to these forms of advertisements because they are not intended to distract drivers from the driving task.

The term *designated place* and *electoral matter* are defined for this new section. The term *electoral matter* has no legislative meaning in the context of the road rules and is a legislatively created term which makes it necessary to also include a definition within this section. The definition considers the definitions in the *Electoral Act 1992* and the *Referendum (Machinery Provisions) Act 1994*, as well as the equivalent definitions used in Commonwealth and State legislation. The definition considers the definition in section 105A of the *Public Unleased Land Act 2013*, however it specifically excludes bumper stickers.

Schedule 1 *Electoral Act 1992* –Consequential amendments

[1.1] – New section 131 (1)

This clause substitutes section 131 (1) to clarify the ways in which an elector may cast an ordinary or declaration vote, due to the introduction of mobile polling at homelessness polling places, overseas electronic voting and telephone voting.

[1.2] – Section 133 (4)

This clause omits clause section 133 (4) of the Act due to the amendments to section 133 (2) of the Act in this Bill.

[1.3] – Section 137 (1)

This clause makes amendments to section 137 (1) to updates references to new sections inserted by this Bill.

[1.4] – Section 149, new definition of *homelessness polling place*

This clause inserts a new definition of *homelessness polling place* at section 149.

[1.5] – Section 232 (5)

This clause omits section 232 (5) as it is no longer necessary due to the amendments in this Bill.

[1.6] – Section 243A (1)

This clause will commence on 1 July 2024 and will update the reference in section 243A (1) to refer to section 216B, on the commencement of real time political donation reporting as inserted by clause 58 of the Bill.

[1.7] – Section 291, definition of *polling place*, paragraph (a)

This clause updates the definition of *polling place* in section 291 to capture early polling places and interstate declaration polling places for the purpose of campaigning offences.

[1.8] – Section 307 (5) (a)

This clause updates the definition of *polling place* in section 291 to capture early polling places and interstate declaration polling places for the purpose of voting fraud provisions.

[1.9] – Section 320 (6), definition of *voting centre*, paragraph (a)

This clause updates the definition of *voting centre* in section 291 to capture early polling places and interstate declaration polling places for the purpose of control of behaviour at voting centres.

[1.10] – Schedule 3, clause 6 (1), definition of *relevant provision,* paragraphs (b) and (c)

This clause updates reference in the definition of *relevant provision* in Schedule 3 of the Act to reflect the substitution of sections 136B and 136C of the Act by this Bill.

[**1.11] – Dictionary, definition of *anonymously***

This clause omits *anonymously* from the Dictionary.

[1.12] – Dictionary, definition of *declaration vote*

This clause substitutes the definition of *declaration vote* to reflect the introduction of electronic voting and voting at homelessness polling places which will allow for electors to cast a declaration vote.

[1.13] – Dictionary, new definition of *early polling place*

This clause inserts a new definition of *early polling place* in the dictionary.

[1.14] – Dictionary, definitions of *electoral expenditure* and *electronic voting*

This clause substitutes the definitions of electoral expenditure and electronic voting in the dictionary. It clarifies telephone voting is electronic voting.

[1.15] – Dictionary, new definitions of *foreign entity* and *free facilities use*

This clause inserts new definitions of *foreign entity* and *free facilities use* in the dictionary.

[1.16] – Dictionary, definition of *gift*

This clause updates the definition of *gift* in the dictionary to reflect new amendments to ban gifts from foreign entities.

[1.17] – Dictionary, new definitions of *homelessness polling place* and *interstate declaration polling place*

This clause inserts a new definitions of *homelessness polling place* and *interstate declaration polling place* in the dictionary.

[1.18] – Dictionary, definition of *political entity*

This clause updates the definition of *political entity* in the dictionary to reflect amendments in the Bill to ban gifts from foreign entities.

Schedule 2 Technical amendments

Part 2.1 Electoral Act 1992

Clauses 2.1 – 2.75

Part 2.1 of Schedule 2 contains technical amendments of legislation initiated by the Parliamentary Counsel's Office. Each amendment is explained in an explanatory note in the schedule.

The amendments include the correction of minor typographical errors, updating language with gender-neutral language, such as replacing instances of 'he or she' or 'himself or herself' with 'they' of 'themselves' or referring to them as the appropriate individual, for example 'the person', 'the elector' or 'the MLA'. These amendments also update notes and make other minor changes to reflect current drafting practice of including the Northern Territory within the definition of ***State*** as provided under the *Legislation Act 2001*.

Part 2.2 Electoral Regulation 1993

Clauses 2.76 – 2.77

Part 2.2 of Schedule 2 contains two technical amendments to the Electoral Regulation to insert a new cross-reference and to update a note in the Dictionary. Each amendment is explained in an explanatory note in the schedule.