

**2007**

**THE LEGISLATIVE ASSEMBLY FOR THE  
AUSTRALIAN CAPITAL TERRITORY**

**ELECTORAL LEGISLATION AMENDMENT BILL 2007**

**EXPLANATORY STATEMENT**

Circulated with the authority of

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## ELECTORAL LEGISLATION AMENDMENT BILL 2007

### OUTLINE

The Electoral Legislation Amendment Bill 2007 makes amendments to the *Electoral Act 1992*, the *Referendum (Machinery Provisions) Act 1994* and the *Electoral Regulation 1993* to:

- Break the nexus with the Commonwealth disclosure scheme to introduce a stand-alone ACT disclosure scheme, by retaining a \$1 500 disclosure threshold, minimising opportunities for avoiding disclosure and making publication of disclosure details more timely;
- Provide that expenditure made using funds provided to MLAs by the Legislative Assembly will be excluded from disclosure by MLAs in their annual returns;
- Bring the ACT requirements for completing and witnessing electoral enrolment forms into line with Commonwealth provisions;
- Provide that an elector is not eligible to apply for a postal vote if they are able to attend at a pre-poll voting centre in the ACT before polling day;
- Allow electors to apply for postal votes by phone, email, internet, fax or post, without the need for a signature or a witness;
- Simplify the requirements for authorisation of published electoral material;
- Remove publications of the ACT Legislative Assembly from the meaning of “electoral matter” so that its publications do not need to contain an authorisation statement;
- Add bumper-stickers and items of 10 words or less to the list of items that are exempt from authorisation;
- Provide that an application for registration of a political party that includes the name of a person in the party’s name must include a statement signed by that person indicating their consent to the party name;
- Remove the provision for non-party groups to be listed on ballot papers;
- Repeal the offence of defamation of a candidate (relying instead on civil law defamation procedures);
- Provide that it is an offence to take a photo of a person’s marked ballot paper so as to violate the secrecy of the ballot;
- Remove the requirement to publish the personal residential address of a party’s registered officer and replace it with a requirement to publish either a residential address, a business address or an address of the party (but not a post office box); and
- Make a series of minor technical changes.

## DETAILED EXPLANATION

### ***Formal clauses***

**Clauses 1, 2 and 3** are formal requirements. They refer to the short title of the Act, commencement and to the legislation being amended. The Act is to commence on the day after its notification day.

### ***Offences against Act—application of Criminal Code etc***

**Clause 4** amends section 3A of the Electoral Act to insert additional references to offences inserted in the Electoral Act by this bill to which the Criminal Code applies.

### ***Meaning of electoral matter***

**Clause 5** amends section 4 of the Electoral Act to provide that a publication of the ACT Legislative Assembly is not to be taken as electoral matter for the purposes of the Electoral Act. This will have the effect of removing publications of the Assembly from the authorisation and disclosure provisions of the Electoral Act.

### ***Investigation of objections***

**Clause 6** amends section 49 of the Electoral Act to correct a drafting error made by the *Legislation (Consequential Amendments) Act 2001*. Section 49 currently requires an Augmented Electoral Commission to hold a public hearing into an objection to a proposed redistribution unless the matters raised in objection were raised in suggestions or comments given to the Redistribution Committee and the objection is frivolous or vexatious. This amendment changes the “and” to “or”, enabling the Augmented Commission to decide not to hold public hearings where either case applies, not where both cases apply. This amendment will restore this provision to its original meaning before it was incorrectly changed by the *Legislation (Consequential Amendments) Act 2001*.

### ***Enrolment etc***

**Clause 7** amends section 76 of the Electoral Act to bring the ACT requirements for completing and witnessing electoral enrolment forms into line with recent changes to the *Commonwealth Electoral Act 1918*. The amendment provides that a claim for enrolment must be signed as required for an enrolment claim under the Commonwealth Electoral Act; and the identity of the claimant must be verified in the same way as the identity of a claimant for enrolment must be verified under the Commonwealth Electoral Act. The effect of this change is to remove the requirement for a claim to be signed by a witness and replaces this requirement with the identity verification requirements set out in the Commonwealth Electoral Act.

### ***Definitions—pt 7***

**Clause 8** amends section 87 of the Electoral Act by inserting a new definition of **address**, the purpose of which is to remove the requirement to publish the personal residential address of a party's registered officer and replace it with a requirement to publish either a residential address, a business address or an address of the party (but not a post office box).

### ***Application for registration of political party***

**Clause 9** amends section 89 of the Electoral Act to provide that an application for registration of a political party that includes the name of a particular living person in the party's name or abbreviation must include a notice signed by that person indicating his or her consent to use of the person's name in the party name. The notice must also include the person's address, or if the person's address is suppressed from the electoral roll, an indication that the person's address is suppressed.

However, this amendment also provides that the consent of a living person to the use of the person's name in the name or abbreviation of a political party is not required where the use of the person's name does not suggest that there is a connection between the party and the person.

### ***Notification and publication of applications***

**Clauses 10 and 11** amends section 91 of the Electoral Act to provide that, where an application for registration of a political party that includes the name of a living person in the party's name or abbreviation is accompanied by a notice signed by that person indicating his or her consent to use of the person's name in the party name, the notice is to be made available for public inspection by the Electoral Commissioner.

### ***Refusal of applications for registration***

**Clauses 12 and 13** amend section 93 of the Electoral Act to provide that the Commissioner must refuse an application for the registration of a party if the party's name or abbreviation includes the name of a particular living person and the application is not accompanied by a required notice signed by that person indicating his or her consent to use of the person's name in the party name.

Section 93 (2) (h) – which provides that an MLA must consent to use of the MLA's name in a party name – is being omitted as its substance is contained in the new provision.

### ***Grouping of candidates' names***

**Clause 14** amends section 115 of the Electoral Act to remove the facility for non-party groups to be listed on ballot papers. As a result, only two or more candidates nominated by the registered officer of a registered party may be grouped on ballot papers. All other candidates must be listed in the "ungrouped" column or columns on the right hand side of the ballot paper.

### ***Approval of computer programs for electronic voting and vote counting***

**Clause 15** amends section 118A of the Electoral Act to make a minor change to make it clear that the Electoral Commissioner may approve computer programs for either electronic voting or electronic counting. As the section is currently drafted, it could be taken to require that electronic counting can only be used when electronic voting is also used. As electronic counting of paper ballots is now standard practice for Legislative Assembly elections, this change will ensure that electronic counting of paper ballots can be used even where electronic voting is not used. In practice, it is most likely that future elections will still be conducted using a mixture of electronic voting and voting on paper ballots.

### ***Definitions for div 10.4***

**Clause 16** amends section 136 of the Electoral Act to omit the definition of ***eligible elector***. This definition is recast in following amendments.

### ***Applications for postal voting papers***

**Clauses 17 and 18** amend section 136A of the Electoral Act to allow an elector (or someone acting on an elector's behalf) to apply for a postal vote orally or in writing, without the need for a signature or a witness. This will make it easier for electors to apply for a postal vote by allowing an application for a postal vote to be made by phone, email, internet, fax or post. The identity of each elector casting a postal vote will still be checked before a postal vote is admitted to the count, by comparing the elector's signature on the postal vote declaration accompanying the elector's ballot paper with a signature of the elector marked on an electoral enrolment form. (Currently, most signature checks are made by comparing the signature on the postal vote application with the signature on the postal vote declaration.) The requirement to conduct a signature check is included in clause 6(2)(a) of Schedule 3 of the Electoral Act.

Section 136A is also being amended to provide that an elector will be eligible to apply for a postal vote only if they expect to be unable to attend at a polling place on polling day or unable to attend at a pre-poll voting centre in the ACT before polling day, or if the elector has "silent" enrolment (that is, the elector's address does not appear on the public electoral roll). Presently, to be eligible to apply for a postal vote, an elector must declare that he or she expects to be unable to attend at a polling place on polling day or must have silent enrolment. The change to section 136A will prevent a person from being eligible to apply for a postal vote if they are able to attend a pre-poll voting centre in the ACT. This change is intended to boost attendance at pre-poll voting centres in preference to postal voting for those electors in the ACT unable to vote on polling day, as electors voting by post are more likely to have their votes rejected on a technicality compared to electors voting in a polling place or pre-poll centre. This change will not prevent a person in the ACT from applying for a postal vote if they are unable to leave their home or workplace or are otherwise unable to attend a pre-poll centre. This change will not affect electors who are outside the ACT and need to apply for a postal vote.

### ***Ordinary or declaration voting in ACT before polling day***

**Clauses 19, 20, 21, 22, 23, 24 and 25** make a series of changes to section 136B of the Electoral Act. Section 136B is being amended as a consequence to the changes made to section 136A, by inserting a definition of ***eligible elector*** that is specific to this section. Grammatical changes are also being made to refer consistently to “person” rather than “elector” or “claimant”. These changes do not effect the substance of this section.

Section 136B is also being amended to provide that pre-poll voting in the ACT can begin no earlier than the third Monday before polling day (rather than no later than the third Monday before polling day as this section currently provides), to correct an apparent mistake in this section.

### ***Declaration voting outside ACT on or before polling day***

**Clauses 26, 27, 28 and 29** make a series of changes to section 136C of the Electoral Act. Section 136C is being amended as a consequence to the changes made to section 136A, by inserting a definition of ***eligible elector*** that is specific to this section. Grammatical changes are also being made to refer consistently to “person” rather than “elector” or “claimant”. These changes do not effect the substance of this section.

Section 136C is also being amended to provide that pre-poll voting outside the ACT can begin no earlier than the third Monday before polling day (rather than no later than the third Monday before polling day as this section currently provides), to correct an apparent mistake in this section.

### ***New section 143 (1A) – Soliciting applications for postal declaration votes***

**Clause 30** amends section 143 of the Electoral Act to provide that it is an offence for a person to apply for declaration voting papers for postal voting for an election for someone else if the person does not have the voter’s consent to make the application. This new offence is consequential to the introduction of the facility to allow a person to apply for a postal vote on behalf of someone else.

**Clause 31** amends section 143 to remove the provision stating that an offence against section 143 is a strict liability offence. This will allow consideration of fault to be taken into account where these offences are prosecuted.

### ***Notice of casual vacancy***

**Clause 32** amends section 191 of the Electoral Act to provide that the Electoral Commissioner can set the time and place for a recount of ballot papers to fill a casual vacancy before the declaration of the candidates contesting the vacancy, rather than after the declaration.

At present, the Commissioner is required by section 194 of the Electoral Act to fix the time and place for a recount of ballot papers to fill a casual vacancy after making the declaration of the candidates contesting the vacancy. The Commissioner is then required to give each candidate written notice of the time and place so fixed. In practice, with the introduction since 2001 of the ability to count a casual vacancy using a computer program, the casual vacancy count can take place immediately after the declaration of candidates. This change to section 191 will allow the Commissioner to set the time and place for a recount at the same time as notifying candidates of the vacancy.

### ***Determination of candidate to fill vacancy***

**Clause 33** amends section 194 of the Electoral Act as a consequence of the change to section 191, to provide that a recount to full a casual vacancy must be conducted, as far as practicable, at the time and place stated for the recount by the Commissioner in the notice given to candidates advising them of the vacancy.

### ***Definitions for pt 14 – Section 198, new definition of fundraising event***

**Clause 34** amends section 198 of the Electoral Act to insert a new definition of ***fundraising event***. This term is used in several of the changes being made by later clauses to the disclosure provisions. Payments made at a fundraising event are to be treated as gifts for disclosure purposes.

A fundraising event will be taken to mean any of the following events held to raise funds:

- a breakfast, lunch or dinner;
- a morning tea, afternoon tea, barbecue or cocktail party;
- an auction (including a dutch auction);
- a raffle or lucky envelope sale;
- a game or quiz night;
- a tipping competition;
- a concert;
- a theatre party;
- a fair or fete;
- a conference or seminar;
- a tour or trip;
- a ball or dance;
- an art, craft or fashion exhibition;
- an event in which fundraising participants are sponsored by someone else;
- a meeting of 2 or more people where at least 1 person has paid to attend the meeting;
- any other event prescribed by regulation.

### ***Section 198, definition of gift***

**Clause 35** amends section 128 of the Electoral Act to amend the definition of **gift** to include payments at a fundraising event and membership subscriptions paid to an associated entity. This term is used extensively in the disclosure provisions.

### ***Section 198, definition of non-party group***

**Clause 36** amends section 198 of the Electoral Act to omit the definition of **non-party group**. This change is consequential to the removal of the ability for candidates to form non-party groups on the ballot papers.

### ***Activities of campaign committees***

**Clause 37** amends section 200 of the Electoral Act to update a cross-reference to division 14.4 as a consequence of changes made to refer consistently to “gifts” rather than “donations”.

### ***Disclosure periods, definition of disclosure day***

**Clause 38** amends section 201 of the Electoral Act to omit references to non-party groups. This change is consequential to the removal of the ability for candidates to form non-party groups on the ballot papers.

### ***Appointed agents***

**Clauses 39 and 40** amend section 203 of the Electoral Act to omit references to non-party groups. These changes are consequential to the removal of the ability for candidates to form non-party groups on the ballot papers.

### ***Non-appointed agents***

**Clause 41** amends section 204 of the Electoral Act to omit a reference to non-party groups. This change is consequential to the removal of the ability for candidates to form non-party groups on the ballot papers.

### ***Register of reporting agents***

**Clause 42** amends section 205 of the Electoral Act to correct a drafting error to the title of the register of party and MLA reporting agents, by inserting the word “reporting”. **Clause 43** amends section 205 to omit a reference to non-party groups. This change is consequential to the removal of the ability for candidates to form non-party groups on the ballot papers.

### ***Who eligible votes are cast for***

**Clause 44** amends section 206 of the Electoral Act to omit a reference to non-party groups. This change is consequential to the removal of the ability for candidates to form non-party groups on the ballot papers.

### ***Entitlement to funds***

**Clause 45** amends section 207 of the Electoral Act to omit a reference to non-party groups. This change is consequential to the removal of the ability for candidates to form non-party groups on the ballot papers.

### ***Making of payments***

**Clauses 46 and 47** amend section 212 of the Electoral Act to omit references to non-party groups. These changes are consequential to the removal of the ability for candidates to form non-party groups on the ballot papers.

### ***Death of candidate***

**Clause 48** amends section 214 of the Electoral Act to omit a reference to non-party groups. This change is consequential to the removal of the ability for candidates to form non-party groups on the ballot papers.

### ***Division 14.4 heading***

**Clause 49** amends the heading to Division 14.4 of the Electoral Act to refer consistently to “gifts” rather than “donations”.

### ***Section 217 – Disclosure of gifts***

**Clause 50** amends section 217 of the Electoral Act to bring disclosure reporting requirements for candidates into line with requirements imposed on MLAs, to only require candidates to disclose, for the defined disclosure period, the total amount of gifts received, the defined details of those donors who gave gifts totalling \$1500 or more to the candidate during the disclosure period, and the total amount received from each such donor (removing the requirements to list the date and amount of each individual gift and the number of persons who made gifts to the candidate).

Section 217 is also being amended to provide that sitting MLAs who are also a candidate will not be required to provide a candidate’s donor return (as they will be disclosing all relevant information in their MLAs’ annual returns – a later amendment provides that interim MLAs’ returns will be due at the same time as candidates’ returns – see new section 231A).

Section 217 is also being amended to require lodgement of candidates’ returns within 8 weeks of the election (currently 15 weeks after an election), as part of a suite of changes bringing forward the deadlines for provision of disclosure returns to provide for more timely disclosure.

### ***Disclosure of gifts—non-party groups***

**Clause 51** omits section 218 of the Electoral Act as a consequence of the removal of the ability for candidates to form non-party groups on the ballot papers.

### ***Certain loans not to be received***

**Clauses 52, 53 and 54** amend section 218A of the Electoral Act to omit references to non-party groups. These changes are consequential to the removal of the ability for candidates to form non-party groups on the ballot papers. **Clause 55** also amends section 218A to correct a drafting error by replacing incorrect references to “gift” with “loan”.

### ***Nil returns***

**Clause 56** omits section 219 of the Electoral Act, as the requirement to submit nil returns if applicable has been included in the changes to section 217.

### ***Disclosure of gifts by persons incurring political expenditure; Disclosure of gifts to candidates***

**Clause 57** inserts new sections 220 and 221 of the Electoral Act. Section 220 has been changed to increase the disclosure threshold related to disclosure of gifts by persons incurring political expenditure from \$1 000 to \$1 500. This change is part of a general standardisation of all disclosure thresholds at \$1 500. Section 220 has also been simplified to remove the requirement to separately list each gift received, requiring instead that the total amount received from each donor be disclosed.

Section 220 has also been changed to require lodgement of returns by persons incurring political expenditure within 8 weeks of the election (currently 15 weeks after an election), as part of a suite of changes bringing forward the deadlines for provision of disclosure returns to provide for more timely disclosure.

Section 221 has been changed to omit references to non-party groups. These changes are consequential to the removal of the ability for candidates to form non-party groups on the ballot papers. The heading of section 221 is also being changed to refer consistently to “gifts” rather than “donations”

Section 221 has also been changed to require lodgement of returns by persons making gifts to candidates within 8 weeks of the election (currently 15 weeks after an election), as part of a suite of changes bringing forward the deadlines for provision of disclosure returns to provide for more timely disclosure.

### ***Annual returns of gifts***

**Clause 58** amends the heading of section 221A of the Electoral Act to refer consistently to “gifts” rather than “donations”.

**Clause 59** amends section 221A to require lodgement of annual returns of gifts by 16 weeks after the end of a financial year (currently 20 weeks after the end of a financial year in a normal year, and 24 weeks after the end of a financial year in an election year), as part of a suite of changes bringing forward the deadlines for provision of disclosure returns to provide for more timely disclosure.

**Clause 60** amends section 221A to increase the disclosure threshold related to disclosure of gifts received by persons making gifts to parties, MLAs and associated entities from \$1 000 to \$1 500. This change is part of a general standardisation of all disclosure thresholds at \$1 500.

**Clause 61** amends section 221A as a consequence of the requirement for lodgement of annual returns of donations by 16 weeks after the end of a financial year.

**Clause 62** amends section 221A as a consequence of the removal of the ability for candidates to form non-party groups on the ballot papers; as a consequence of the requirement for lodgement of annual returns of donations by 16 weeks after the end of a financial year; and to exclude payments of \$100 or less made at or for a fundraising event from inclusion in annual returns of gifts.

### ***Advice about obligations to make returns***

**Clause 63** amends section 221B of the Electoral Act to provide that associated entities must notify donors of their disclosure obligations under the Electoral Act by 1 August each year, as parties and MLAs are currently required to do.

### ***Annual returns of gifts***

**Clause 64** amends section 221B of the Electoral Act to update a cross-reference to section 221A to refer consistently to “gifts” rather than “donations”.

### ***Anonymous gifts***

**Clauses 65, 66, 67, 68, 69, 70, 71 and 72** amend section 222 of the Electoral Act as a consequence of the removal of the ability for candidates to form non-party groups on the ballot papers and to provide that a party, MLA, candidate or associated entity is not entitled to retain anonymous gifts that sum to \$1 500 or more in a financial year, other than amounts of \$100 or less received at a fundraising event. At present, a party, MLA or associated entity can retain any amount of anonymous donations, provided each individual donation is below the \$1 500 disclosure threshold. This amendment is intended to close a potential loophole that could be used to enable recipients to retain large numbers of anonymous donations made in small amounts.

### ***Definitions for div 14.5 – definition of electoral expenditure***

**Clause 73** amends the definition of ***electoral expenditure*** in section 223 of the Electoral Act to alter a reference to “newspaper or periodical” to “news publication” (a new term defined in the Dictionary to include online/electronic news publications as well as printed news publications).

**Clause 74** also amends the definition of ***electoral expenditure*** in section 223 to extend the meaning of electoral expenditure to include expenditure on electronic publications that are subject to the electoral matter authorisation requirements (in addition to expenditure on printed electoral matter).

### ***Definition of participant***

**Clause 75** amends the definition of ***participant*** in section 223 of the Electoral Act as a consequence of the removal of the ability for candidates to form non-party groups on the ballot papers.

### ***Returns of electoral expenditure***

**Clauses 76, 77, 78, 79 and 80** amend section 224 of the Electoral Act to require lodgement of returns of electoral expenditure within 8 weeks of the election (currently 15 weeks after an election), as part of a suite of changes bringing forward the deadlines for provision of disclosure returns to provide for more timely disclosure; and as a consequence of the removal of the ability for candidates to form non-party groups on the ballot papers.

### ***Nil returns***

**Clause 81** amends section 225 of the Electoral Act as a consequence of the removal of the ability for candidates to form non-party groups on the ballot papers.

### ***Returns by broadcasters and publishers***

**Clause 82** amends section 226 of the Electoral Act to alter a reference to “newspaper or periodical” to “news publication” (a new term defined in the Dictionary to include online/electronic news publications as well as printed news publications). This amendment will require publishers of electoral advertisements in online/electronic news publications to submit a broadcasters and publishers return.

**Clause 83** also amends section 226 of the Electoral Act to increase the disclosure threshold related to electoral advertisements published by broadcasters or publishers from \$1 000 to \$1 500. This change is part of a general standardisation of all disclosure thresholds at \$1 500.

### ***Meaning of defined particulars for div 14.6***

**Clause 84** amends the meaning of ***defined particulars*** in section 228 of the Electoral Act to require parties, MLAs and associated entities to identify the purpose for which amounts listed in their annual returns were received by them (if the amounts received are not gifts), so as to distinguish gifts from payments for services.

### ***Annual returns by parties and MLAs***

**Clause 85** amends section 230 of the Electoral Act to alter a reference to “newspaper or periodical” to “news publication” (a new term defined in the Dictionary to include online/electronic news publications as well as printed news publications). This change will require MLAs to disclose expenditure and debts incurred on advertising on online/electronic news publications.

**Clause 86** also amends section 230 to provide that MLAs are required to disclose expenditure and debts incurred on both printed and electronic publications that are subject to the electoral matter authorisation requirements (currently MLAs are only required to disclose expenditure and debts incurred on printed electoral matter).

**Clause 87** also amends section 230 to provide that MLAs are not required to disclose expenditure of any amount paid, or to be paid, using funds provided to the MLA by the Legislative Assembly.

***Returns by parties under Commonwealth Electoral Act / Interim returns by parties and MLAs – election years***

**Clause 88** omits existing section 231A of the Electoral Act to break the nexus between the ACT disclosure scheme and the Commonwealth disclosure scheme, by removing the ability of parties registered at both the ACT and Commonwealth levels to satisfy their disclosure obligations by submitting a copy of their Commonwealth disclosure returns to the ACT Electoral Commissioner.

This clause also inserts a new section 231A to provide for interim returns by parties and MLAs in election years. This new section provides that the reporting agent of a party or MLA must, within 8 weeks after polling day for a general election, give the Electoral Commissioner a return for the period beginning on 1 July in the year in which the election is held and ending 30 days after polling day. This amendment is intended to provide more timely disclosure in election years by requiring parties and MLAs to provide returns according to the same timetable that applies to other election participants. These returns will be publicly released at the same time as the other election returns. Parties and MLAs will still be required to submit annual returns for the full financial year in which an election is held.

***Returns by associated entities under Commonwealth Electoral Act/ Interim returns by associated entities – election years***

**Clause 89** omits existing section 231C of the Electoral Act to further break the nexus between the ACT disclosure scheme and the Commonwealth disclosure scheme, by removing the ability of associated entities active at both the ACT and Commonwealth levels to satisfy their disclosure obligations by submitting a copy of their Commonwealth disclosure returns to the ACT Electoral Commissioner.

This clause also inserts a new section 231C to provide for interim returns by associated entities in election years. This new section provides that the financial controller of an associated entity must, within 8 weeks after polling day for a general election, give the Electoral Commissioner a return for the period beginning on 1 July in the year in which the election is held and ending 30 days after polling day. This amendment is intended to provide more timely disclosure in election years by requiring associated entities to provide returns according to the same timetable that applies to other election participants. These returns will be publicly released at the same time as the other election returns. Associated

entities will still be required to submit annual returns for the full financial year in which an election is held.

### ***Amounts received***

**Clause 90** amends section 232 of the Electoral Act to remove the provision that enables political parties, MLAs and associated entities to disregard individual gifts of less than \$1 500 when determining whether donors had given more than \$1 500 in a financial year; and providing instead that all gifts of all amounts shall be taken into account when reporting gifts, except for amounts of \$100 or less given at defined fund-raising events.

This clause also amends section 232 to provide that associated entities are not required to disclose details of clients who pay the associated entity reasonable market prices for the supply of liquor or food in accordance with a licence under the *Liquor Act 1975*; or details of amounts received through the proceeds of gambling conducted by an associated entity licensed under the *Gaming Machine Act 2004*. This amendment is intended to ensure that associated entities that are also licensed businesses will not need to disclose the identities of normal business clients, particularly given the new requirement to include all amounts received in disclosure calculations. Associated entities will still be required to disclose the identities of persons who make payments to the entity totalling \$1 500 or more that are the proceeds of fundraising, or that are membership fees, or that otherwise fall within the definition of “gift”.

### ***Offences***

**Clause 91** amends section 236 of the Electoral Act as a consequence of the removal of the ability for candidates to form non-party groups on the ballot papers.

### ***Noncompliance with pt 14***

**Clause 92** amends section 241 of the Electoral Act as a consequence of the removal of the ability for candidates to form non-party groups on the ballot papers.

### ***Copies of returns to be available for public inspection***

**Clause 93** amends section 243 of the Electoral Act to update a cross-reference to division 14.4 as a consequence of changes made to refer consistently to “gifts” rather than “donations”.

**Clause 94** amends section 243 to provide for more timely publication of disclosure returns. Returns that are related to elections (including interim annual returns in election years) are to be made public from the beginning of the 12<sup>th</sup> week after polling day for the election. Annual returns are to be made public from the beginning of December in the year in which the return was due. Where late disclosure returns are provided to the Electoral Commissioner after they were due to be published, the Commissioner is required to make the returns publicly available as soon as practicable.

### ***Section 289, discrimination on grounds of making political gifts***

**Clauses 95 and 96** amend section 289 of the Electoral Act to refer consistently to “gifts” rather than “donations”.

**Clause 97** amends section 289 to insert a cross-reference to the definition of “gift” in section 198.

### ***Section 291, definition of address***

**Clause 98** omits the definition of **address** in section 291 of the Electoral Act as the changes to the authorisation provisions no longer require publication of addresses.

### ***Section 291, definition of reportage or commentary***

**Clause 99** amends the definition of **reportage or commentary** in section 291 of the Electoral Act to alter a reference to “newspaper or periodical” to “news publication” (a new term defined in the Dictionary to include online/electronic news publications as well as printed news publications).

### ***Sections 292 to 296, authorisation of electoral matter***

**Clause 100** amends sections 292 to 296 of the Electoral Act to make a range of amendments to the provisions related to authorisation of electoral matter. These changes are intended to simplify the authorisation requirements to reduce the number of inconsequential breaches of the requirements while still satisfying the intent of preventing “irresponsibility through anonymity”. These changes are also intended to clearly extend the authorisation requirements to electronic publications, including emails and the internet.

This clause inserts a new section 292 to provide that a person must not disseminate electoral matter in printed form (either in hard-copy form or electronically) unless the author’s name or the name of the person or organisation authorising the material is clearly stated so as to indicate that the person or organisation is responsible for the material. This change removes the need for an authorisation statement to include an address and removes the requirement that an authorisation statement has to be at the end of the material.

New section 292 retains the existing requirement that provides that, if electoral matter is published for a registered political party or a candidate (including a person who has publicly indicated that he or she intends to be a candidate), the name of the party or candidate must be stated so as to indicate that the material was published for the party or candidate.

New section 292 also makes it clear that an authorisation statement can be in a form in which the matter is disseminated. This means that an authorisation statement for electoral matter in sound or video form can be presented in spoken form (for sound) or spoken form or on-screen printed form (for video).

New section 293 recasts the authorisation requirements related to publication of electoral matter by news publications. Substantive changes include clarifying that the authorisation requirements apply to electronic news publications as well as printed news media, and removing the requirement for news publications to keep a written record of the addresses of authors of letters to the editor.

New section 294 recasts the various exceptions to the authorisation requirements currently included in section 295. The substantive changes are the inclusion of bumper-stickers and items that do not contain more than 10 words in the list of items that are exempt from authorisation; removal of the requirement to publish a sender's address on letters or cards (which will include electronic letters such as emails); and removal of the current requirement that government agency publications containing photographs of MLAs published in the 6 months before an election should carry an authorisation statement.

New section 295 makes it clear that the ACT's authorisation rules do not apply to radio and television electoral broadcasts, where they are required to be authorised under the Commonwealth's *Broadcasting Services Act 1992*.

New section 296 restates the requirement for "advertorials" (paid advertisements that look like editorial reportage or commentary). The only substantive changes are the replacement of a requirement for the word "advertisement" to be printed no smaller than 10 point, with a requirement to print the word "advertisement" in legible form; and to make it clear that the requirement applies to electronic publications.

### ***Defamation of candidates***

**Clause 101** repeals section 300 of the Electoral Act to remove the offence of defamation of a candidate. This repeal is consistent with the recent trend for criminal law to retreat from involvement in defamation actions. While some criminal provisions remain, they tend not to be used, because of the technical complexity of melding what is essentially a civil law action, highly dependant on procedural law, into criminal proceedings. As there are alternative superior avenues for pursuing defamation action using civil law defamation procedures, this amendment is intended to remove the offence of defamation from the Electoral Act.

### ***Evidence of authorisation of electoral matter***

**Clause 102** amends section 306 of the Electoral Act to alter a reference to "newspaper or periodical" to "news publication" (a new term defined in the Dictionary to include online/electronic news publications as well as printed news publications).

### ***Ballot papers—photographs***

**Clause 103** inserts new section 315A of the Electoral Act to create an offence of taking a photo of a person's marked ballot paper (either the person's own ballot paper or someone else's), so as to identify how a person has voted. This offence is intended to preserve the secrecy of the ballot, in the light of the ease of use of digital cameras and mobile phone cameras.

### ***Transitional***

**Clause 104** inserts new section 500 in the Electoral Act to provide that the amendments to the disclosure scheme will apply to that part of the 2007-08 financial year that commences on the day on which the bill is presented to the Legislative Assembly and later financial years. This means in effect that annual returns for 2007-08 and election returns for the 2008 election will need to be in two parts, with the first part complying with the disclosure laws that apply before the changes made by this bill come into effect, and the second part complying with the disclosure laws as amended by this bill, from the date on which the bill is presented.

This clause also inserts new section 501, to permit the Executive to make regulations to prescribe transitional matters necessary or convenient because of the enactment of this legislation. This clause also inserts new section 502, which will expire these transitional clauses after they are spent.

### ***Preliminary scrutiny of declaration voting papers***

**Clause 105** amends Schedule 3, item 4 of the Electoral Act to remove the requirement for an officer conducting a scrutiny of declaration voting papers to produce written applications for postal votes at the scrutiny. This change is consequential to the removal of the requirement for signatures on written applications for postal votes.

### ***Exclusion of candidates***

**Clause 106** amends Schedule 4, clause 8 of the Electoral Act to make a technical change to the election counting schedule to clarify the intent of the principle of breaking a 3-way tie by excluding the candidate with the lowest number of votes at the most recent point in the count.

In a Hare-Clark election count, at the stage in the election where a candidate must be excluded, the candidate with the lowest number of votes is excluded. If there are 2 candidates with the same number of votes, being fewer total votes than any other candidate, then the candidate with the least number of votes at the previous count is excluded. If both candidates are still equal then the next previous count is examined to see which candidate had the fewest votes and should be excluded, and so on. A random draw is conducted to determine which candidate to exclude only if the 2 candidates were tied at all stages of the scrutiny.

The same principle applies if there are 3 (or more) candidates with the same number of votes when one must be excluded. The correct procedure is to examine previous counts to determine the point where 1 of the 3 had fewer votes than any of the others, and that candidate is excluded. However, paragraph 8(2) of Schedule 4, which is meant to describe this procedure, could be read as requiring the Commissioner to go back to the point in the count where all 3 candidates have an unequal number of votes and choose the candidate with the lowest number to exclude. This is unnecessary, as all that is needed is for 1 of the 3 candidates to have fewer votes than any other candidate. This amendment corrects this problem.

***Dictionary, definition of address***

**Clause 107** amends the Electoral Act Dictionary definition of **address** as a consequence of the amendment to section 87, which permits a registered officer of a political party to submit an address other than a residential address when applying for party registration; and as a consequence of the removal of the definition of address from section 291.

***Dictionary, definition of defined details***

**Clause 108** amends the Electoral Act Dictionary definition of **defined details** to update a cross-reference to division 14.4 as a consequence of changes made to refer consistently to “gifts” rather than “donations”.

***Dictionary, definition of eligible elector***

**Clause 109** omits the Electoral Act Dictionary definition of **eligible elector** as a consequence of the amendments to sections 136, 136A, 136B and 136C.

***Dictionary, definition of fundraising event***

**Clause 110** inserts a new Electoral Act Dictionary definition of **fundraising event** as a consequence of an amendment to section 198.

***Dictionary, definition of group***

**Clause 111** amends the Electoral Act Dictionary definition of **group** as a consequence of an amendment to section 115.

***Dictionary, definition of news publication***

**Clause 112** inserts a new Electoral Act Dictionary definition of **news publication**, a term used in several amendments to replace references to newspapers and periodicals, to ensure that online/electronic news publications are covered by the relevant provisions as well as traditional print media.

***Dictionary, definition of non-party group***

**Clause 113** omits the Electoral Act Dictionary definition of **non-party group** as a consequence of the removal of the ability for candidates to form non-party groups on the ballot papers.

***Dictionary, definition of related***

**Clause 114** amends the Electoral Act Dictionary definition of **related** as a consequence of an amendment to section 87.

**Schedule 1 Electoral Act 1992 — technical amendments**

**[1.1] Section 341 (2)**

This amendment regarding the regulation-making power brings language into line with current drafting practice.

**[1.2] Schedule 4, clause 1 (1), definition of count votes**

This amendment is consequential on the relocation of the definition to new clause 1A by another amendment.

**[1.3] Schedule 4, clause 1 (1), definition of quota**

This amendment is consequential on the relocation of the existing definition to new clause 1B by another amendment. This amendment also includes a signpost reference to the definition of the term for part 4.3 of schedule 4 in accordance with current drafting practice.

**[1.4] Schedule 4, clause 1 (1), definition of transfer value**

This amendment is consequential on the relocation of the existing definition to new clause 1C by another amendment. This amendment also includes a signpost reference to the definition of the term for part 4.3 of schedule 4 in accordance with current drafting practice.

**[1.5] Schedule 4, clause 1 (2)**

This amendment is consequential on the relocation of the definition of transfer value to new clause 1C by another amendment.

**[1.6] Schedule 4, new clauses 1A to 1C**

This amendment updates the definitions of *count votes*, *quota* and *transfer value* by bringing them into line with current drafting practice.

**[1.7] Schedule 4, part 4.4, deceased successful candidates**

This amendment remakes the part to correct the operation of a definition and bring it into line with current drafting practice.

**[1.8] Dictionary, note 2, new dot point**

This amendment inserts a reference to the AAT into the dictionary note.

**[1.9] Dictionary, definition of AAT**

This amendment omits an unnecessary definition. The term AAT is defined in the Legislation Act, dictionary, part 1.

**[1.10] Dictionary, definition of ballot paper**

This amendment adds the signpost reference in paragraph (c) in accordance with current drafting practice.

**[1.11] Dictionary, new definitions**

This amendment inserts signpost definitions for terms defined for parts and schedules in accordance with current drafting practice.

## **Schedule 2 Amendments of Electoral Regulation 1993**

### **[2.1] Sections 2, 3 and 6**

This amendment removes unnecessary provisions. The list of prescribed items in section 6 is no longer necessary as this list has been incorporated in the Electoral Act.

### **[2.2] Dictionary**

This amendment removes unnecessary definitions.

## **Schedule 3 Amendments of Referendum (Machinery Provisions) Act 1994**

### **[3.1] Schedule 1, modifications 1.11 and 1.12**

This amendment is consequential to amendments made to sections 218 and 291 of the Electoral Act.

### **[3.2] Schedule 1, modification 1.13, section 220 (1) (c) and (3)**

This amendment is intended to increase the disclosure threshold related to disclosure of gifts by persons incurring expenditure related to a referendum from \$1 000 to \$1 500. This change is part of a general standardisation of all disclosure thresholds at \$1 500.

### **[3.3] Schedule 1, modification 1.16, section 222 (1)**

This amendment brings the provisions relating to anonymous gifts made for the purposes of a referendum into line with the changes made to the Electoral Act relating to anonymous gifts.

### **[3.4] Schedule 1, modification 1.16, new section 222 (6)**

This amendment brings the definition of **anonymous gift** made for the purposes of a referendum into line with the changes made to the Electoral Act relating to anonymous gifts.

### **[3.5] Schedule 1, modification 1.19, section 224 (4)**

This amendment is intended to require lodgement of disclosure returns related to a referendum within 8 weeks of the referendum (currently 15 weeks after a referendum), as part of a suite of changes bringing forward the deadlines for provision of disclosure returns to provide for more timely disclosure.

### **[3.6] Schedule 1, modification 1.22**

This amendment omits a reference to section 236(3) of the Electoral Act as a consequence of the removal of the ability for candidates to form non-party groups on the ballot papers.