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

**ELECTORAL LEGISLATION AMENDMENT BILL 2007
GOVERNMENT AMENDMENTS
SUPPLEMENTARY EXPLANATORY STATEMENT**

**Presented by
Simon Corbell MLA
Attorney General**

Electoral Legislation Amendment Bill 2007

Government Amendments — Explanatory Statement

Outline

These Government amendments to the Electoral Legislation Amendment Bill 2007 are intended to make a range of changes related to recent developments, including changes to the Commonwealth electoral legislation.

The changes include:

- Extending the right to enrol and vote to all ACT prisoners otherwise entitled to enrol;
- Removing all the substantive disclosure scheme amendments in the Bill except for the following changes to apply from 1 July 2008:
 - Providing that all disclosure thresholds are to be reduced to \$1000;
 - Providing that political parties and associated entities registered at both the ACT and Commonwealth levels will not be able to satisfy their disclosure obligations by submitting a copy of their Commonwealth disclosure returns to the ACT Electoral Commissioner;
 - Providing that associated entities are to be required to disclose the identities of persons who make payments to the entity of any amount, and the total amount paid by each such person, except that associated entities should not be required to disclose the identities of clients who pay the associated entity for normal business services rendered; and
 - Providing that associated entities are to be required to notify donors of their disclosure obligations;
- Retaining the offence of defamation of a candidate;
- Removing bumper-stickers and items of 10 words or less from the list of items that are exempt from authorisation; and
- Making a technical amendment to clarify that an MLA is not to be required to disclose expenditure made using funds provided by the Legislative Assembly to assist the MLA in exercising his or her functions as an MLA.

Extending enrolment and voting rights to all ACT prisoners

The Government's amendment to extend enrolment and voting rights to all ACT prisoners is in response to the High Court's decision in *Roach v Electoral Commissioner* [2007] HCA 43, which upheld a challenge to the 2006 amendments to the *Commonwealth Electoral Act 1918* that extended the right to enrol to all prisoners for Commonwealth and ACT purposes, but removed the right to vote for federal elections from all prisoners (while extending the right to vote to all prisoners for ACT Legislative Assembly elections). The High Court ruled that the removal of the right to vote from all prisoners was unconstitutional. The effect of the Court's decision was to revert to the Commonwealth provision that applied before the 2006 change. This means that prisoners serving sentences of 3 years or longer are not entitled to enrol for federal or ACT elections under the Commonwealth Electoral Act.

The proposed amendment will provide an entitlement for prisoners to enrol to vote in ACT elections if they are not entitled to be enrolled on the Commonwealth roll only because they are serving a sentence of imprisonment. This amendment will create, for the first time, a special "ACT only" category of enrolment. Prisoners in this category will be enrolled under the ACT's Electoral Act but not the Commonwealth Electoral Act.

This proposed amendment is consistent with the focus in the ACT on human rights and gives effect to section 17 of the *Human Rights Act 2004*, which provides for the right to vote at periodic elections.

Changes to disclosure provisions

The Government's amendments to the disclosure provisions are primarily in response to proposed changes to the Commonwealth disclosure provisions. These changes will apply from 1 July 2008.

On 28 March 2008 the federal Special Minister of State announced the federal government is intending to tighten the Commonwealth disclosure laws. Proposed changes included reducing thresholds to \$1000, banning donations from overseas, tying election funding to expenditure incurred, treating branches of a party as one entity and introducing 6 monthly reporting. The changes are intended to commence for the 2008/2009 reporting year. Further Commonwealth changes to the disclosure laws may follow from a broader review of the electoral laws foreshadowed by the Commonwealth to take place later in 2008.

As a result, the Government has decided to introduce a matching \$1000 threshold from 1 July 2008 to keep in step with the Commonwealth disclosure scheme, while delaying the changes to its disclosure laws included in this Bill pending these changes at the national level. Given the timing of the Commonwealth review, it would be appropriate to re-examine the ACT's disclosure scheme after the Commonwealth has made its changes, likely to be after the 2008 ACT election. It is noted that, if the Commonwealth introduces 6 monthly reporting, this will apply to all ACT parties registered at the Commonwealth level.

These Government amendments accordingly undo most of the changes in the Bill to the disclosure scheme, while reducing all the disclosure thresholds from \$1500 to \$1000.

Another amendment will remove the ability of political parties and associated entities 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 change will ensure that the ACT disclosure provisions will not automatically change if the Commonwealth laws change, as occurred with the recent adoption of a \$10,000 threshold at the Commonwealth level under the previous federal Government.

Another change related to associated entities, to require disclosure of receipt of payments of all amounts other than those for normal business services rendered, is intended to ensure that donors are not able to avoid disclosure by making a series of donations through multiple associated entities. This change is put forward at this time to ensure that a potential loophole is closed before the October 2008 Legislative Assembly election. The amendment providing that associated entities are to be required to notify donors of their disclosure obligations is intended to bring associated entities into line with the requirement imposed on parties.

Retaining the offence of defamation of a candidate

Another Government amendment will retain the offence of defamation of a candidate in the Electoral Act. The Bill proposed to remove this offence, relying instead on civil law defamation procedures. Following criticism of this proposed change, the Government amendment will retain this offence so that it will remain another avenue for candidates to pursue in addition to the civil law alternative.

Removing bumper-stickers and items of 10 words or less from the list of items that are exempt from authorisation

Another Government amendment will remove bumper stickers and items of 10 words or less from the exceptions to the authorisation requirements to be introduced by the Bill. Following criticism of this proposed change, the Government amendment will retain the existing requirement for these items to carry an authorisation statement.

Clarifying that an MLA is not required to disclose expenditure made using funds provided by the Legislative Assembly to assist the MLA in exercising his or her functions as an MLA

A technical amendment is included to clarify the intent of the Bill, which is to ensure that an MLA is not to be required to disclose expenditure made using funds provided by the Legislative Assembly to assist the MLA in exercising his or her functions as an MLA – for example, funds provided in an MLA’s Discretionary Office Allocation. The clause in the Bill is unintentionally too broad and could be interpreted as applying to expenditure made using an MLA’s salary.

**Government Amendments —
Electoral Legislation Amendment Bill 2007
Clauses**

1**Proposed new clause 6A**

This amendment will extend the right to enrol and vote to all ACT prisoners otherwise entitled to enrol, notwithstanding that they may be excluded from enrolling for Federal elections.

2**Amendment to clause 34**

This amendment is one of a series of amendments intended to undo the various changes in the Bill related to disclosure.

3**Amendment to clause 35**

This amendment is one of a series of amendments intended to undo the various changes in the Bill related to disclosure.

4**Amendment to clause 37**

This amendment is one of a series of amendments intended to undo the various changes in the Bill related to disclosure.

5**Amendment to clause 49**

This amendment is one of a series of amendments intended to undo the various changes in the Bill related to disclosure.

6**Amendment to clause 50**

This amendment is one of a series of amendments intended to undo the various changes in the Bill related to disclosure. It also includes an amendment to reduce a disclosure threshold from \$1500 to \$1000.

7**Proposed new clause 52A**

This amendment is one of a series of amendments intended to reduce disclosure thresholds from \$1500 to \$1000.

8**Amendment to clause 56**

This amendment is one of a series of amendments intended to undo the various changes in the Bill related to disclosure.

9**Amendment to clause 57**

This amendment is one of a series of amendments intended to undo the various changes in the Bill related to disclosure.

10**Proposed new clauses 57A and 57B**

This amendment is one of a series of amendments intended to undo the various changes in the Bill related to disclosure. It also includes an amendment to reduce a disclosure threshold from \$1500 to \$1000.

11**Amendment to clause 58**

This amendment is one of a series of amendments intended to undo the various changes in the Bill related to disclosure.

12**Amendment to clause 59**

This amendment is one of a series of amendments intended to undo the various changes in the Bill related to disclosure. It also includes an amendment to reduce a disclosure threshold from \$1500 to \$1000.

13**Amendment to clause 60**

This amendment is one of a series of amendments intended to undo the various changes in the Bill related to disclosure.

14**Amendment to clause 61**

This amendment is one of a series of amendments intended to undo the various changes in the Bill related to disclosure. It also includes an amendment to reduce a disclosure threshold from \$1500 to \$1000.

15**Amendment to clause 62**

This amendment is one of a series of amendments intended to undo the various changes in the Bill related to disclosure.

16**Amendment to clause 64**

This amendment is one of a series of amendments intended to undo the various changes in the Bill related to disclosure. It also includes an amendment to reduce a disclosure threshold from \$1500 to \$1000.

17**Amendment to clause 65**

This amendment is one of a series of amendments intended to undo the various changes in the Bill related to disclosure.

18**Amendment to clause 69**

This amendment is one of a series of amendments intended to undo the various changes in the Bill related to disclosure.

19**Amendment to clause 70**

This amendment is one of a series of amendments intended to undo the various changes in the Bill related to disclosure.

20**Amendment to clause 71**

This amendment is one of a series of amendments intended to undo the various changes in the Bill related to disclosure.

21**Proposed new clause 71A**

This amendment is one of a series of amendments intended to reduce disclosure thresholds from \$1500 to \$1000.

22**Amendment to clause 76**

This amendment is one of a series of amendments intended to undo the various changes in the Bill related to disclosure.

23**Amendment to clause 78**

This amendment is one of a series of amendments intended to undo the various changes in the Bill related to disclosure.

24**Amendment to clause 80**

This amendment is one of a series of amendments intended to undo the various changes in the Bill related to disclosure.

25**Proposed new clause 80A**

This amendment is one of a series of amendments intended to reduce disclosure thresholds from \$1500 to \$1000.

26**Amendment to clause 83**

This amendment is one of a series of amendments intended to undo the various changes in the Bill related to disclosure.

27**Amendment to clause 84**

This amendment is one of a series of amendments intended to undo the various changes in the Bill related to disclosure.

28**Amendment to clause 87**

This amendment is intended to clarify the intent of the Bill, which is to ensure that an MLA is not to be required to disclose expenditure made using funds provided by the Legislative Assembly to assist the MLA in exercising his or her functions as an MLA – for example, funds provided in an MLA's Discretionary Office Allocation. The clause in the Bill is unintentionally too broad and could be interpreted as applying to expenditure made using an MLA's salary.

29**Amendment to clause 88**

This amendment is one of a series of amendments intended to undo the various changes in the Bill related to disclosure. This amendment will also ensure that political parties registered at both the ACT and Commonwealth levels will not be able to satisfy their disclosure obligations by submitting a copy of their Commonwealth disclosure returns to the ACT Electoral Commissioner.

30**Proposed new clause 88A**

This amendment is one of a series of amendments intended to undo the various changes in the Bill related to disclosure.

31**Amendment to clause 89**

This amendment is one of a series of amendments intended to undo the various changes in the Bill related to disclosure. This amendment will also ensure that associated entities will not be able to satisfy their disclosure obligations by submitting a copy of their Commonwealth disclosure returns to the ACT Electoral Commissioner.

32**Amendment to clause 90**

This amendment is one of a series of amendments intended to undo the various changes in the Bill related to disclosure. This amendment will also provide that associated entities are to be required to disclose the identities of persons who make payments to the entity of any amount, and the total amount paid by each such person, except that associated entities should not be required to disclose the identities of clients who pay the associated entity for normal business services rendered

33**Proposed new clause 90A**

This amendment is one of a series of amendments intended to reduce disclosure thresholds from \$1500 to \$1000.

34**Amendment to clause 93**

This amendment is one of a series of amendments intended to undo the various changes in the Bill related to disclosure.

35**Amendment to clause 94**

This amendment is one of a series of amendments intended to undo the various changes in the Bill related to disclosure.

36**Amendment to clause 95**

This amendment is one of a series of amendments intended to undo the various changes in the Bill related to disclosure.

37**Amendment to clause 96**

This amendment is one of a series of amendments intended to undo the various changes in the Bill related to disclosure.

38**Amendment to clause 97**

This amendment is one of a series of amendments intended to undo the various changes in the Bill related to disclosure.

39**Amendment to clause 100**

This amendment is intended to remove bumper-stickers from the list of items that are exempt from authorisation.

40**Amendment to clause 100**

This amendment is intended to remove items of 10 words or less from the list of items that are exempt from authorisation.

41**Amendment to clause 101**

This amendment is intended to retain the offence of defamation of a candidate.

42**Amendment to clause 104**

This amendment applies a series of transitional provisions intended to ensure that the changes to the disclosure provisions, particularly the reduction in thresholds from \$1500 to \$1000, commence from 1 July 2008.

43**Amendment to clause 108**

This amendment is one of a series of amendments intended to undo the various changes in the Bill related to disclosure.

44**Amendment to clause 110**

This amendment is one of a series of amendments intended to undo the various changes in the Bill related to disclosure.

45**Amendment to Schedule 3, Amendment 3.2**

This amendment is one of a series of amendments intended to undo the various changes in the Bill related to disclosure.

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Amendment to Schedule 3, Amendment 3.3

This amendment is one of a series of amendments intended to undo the various changes in the Bill related to disclosure.

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Amendment to Schedule 3, Amendment 3.4

This amendment is one of a series of amendments intended to undo the various changes in the Bill related to disclosure.

48

Amendment to Schedule 3, Amendment 3.5

This amendment is one of a series of amendments intended to undo the various changes in the Bill related to disclosure.