

## Electoral (Gambling Industry) Amendment Bill 2026

This 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*.

### Background

There are currently two classes of banned political donors under the *Electoral Act 1992* (the Electoral Act). A ban on donations from property developers commenced in 2021, and in 2023 the prohibition was extended to include donations from foreign entities. These reforms intended to reduce the risk of corruption and undue influence over government decision-making due to financial or in-kind contributions from cohorts with particular vested interests.

In 2011, the New South Wales Government passed legislation banning political donations from gambling industry corporations. In 2023, that ban was expanded to capture not-for-profit clubs with gambling facilities.

### Overview of the Bill

The Bill amends the Electoral Act to:

- Introduce a new Division 14.4AA banning gifts to a political entity from a gambling industry entity;
- Define gambling industry entity broadly to capture ACT gambling licence holders, wagering operators, racing bodies, gambling equipment suppliers, entities substantially funded by such operators, and specified close associates; and
- Create offences for giving or accepting gifts directly or indirectly from a gambling industry entity, including gifts given on behalf of gambling industry entities and schemes designed to avoid the ban.
- Include discounted or free meeting facilities use among the gifts required to be disclosed under the Act's gift disclosure obligations for political entities. Note: many of the minor technical amendments contained in this Bill are consequential to this amendment.

The scope and structure of the ban is based on the existing bans on gifts to political entities from property developers and foreign entities already contained in the Act.

### 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

inquiry into the operation of 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 made 52 recommendations, which included a recommendation that the ACT Government explore options for banning donations from gambling entities (among other entities) and associated industry representative bodies. On 14 December 2021, in its response to the inquiry report, the ACT Government indicated its agreement in principle with this recommendation.

The Bill implements this recommendation.

In drafting this Bill, peak social services, gambling harm reduction, and public health bodies have been consulted, as well as academics from the Australian National University, representatives from a public policy think tank, an electoral lawyer, and lived experience advocates.

## Climate impact

There are no climate impacts anticipated under the Bill.

## Consistency with human rights

Due consideration was given to the Bill's compatibility with human rights per section 28 of the *Human Rights Act 2004* (HR Act).

### **Rights engaged**

The Bill engages the following rights under the HR Act:

- Section 8 - Recognition and equality before the law
- Section 16 - Freedom of expression
- Section 17 - Taking part in public life
- Section 22 - Rights in criminal proceedings

### **Rights promoted**

The Bill promotes the following human rights:

Section 8 - Recognition and equality before the law

Section 8 provides that everyone is equal before the law and is entitled to equal and effective protection against discrimination.

The Bill promotes this right by limiting the capacity of a particular industry sector to exercise disproportionate influence through financial or in-kind contributions. The Bill supports equality of political participation by helping to ensure that access to political decision-makers is not determined by the financial resources available to particular commercial interests.

### Section 17 - Taking 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. A number of measures in the Bill promote this right by improving transparency, including by ensuring that government decision-making is not influenced by the vested interests of gambling industry entities. The Bill seeks to ensure that elected representatives remain accountable to the broader community rather than to a particular industry sector. By reducing the potential for undue influence and improving public confidence in democratic institutions, the Bill advances the right of ACT residents to participate meaningfully in public affairs.

The Bill engages the rights to freedom of expression and participation in public life recognised in the HR Act. The Bill limits the ability of specified gambling industry entities to provide financial support to political entities for ACT electoral purposes. The limitation is directed to the integrity of the electoral funding system and reducing the risk of undue influence associated with gambling industry donations.

The Bill confines the restriction to gifts from defined gambling industry entities and their close associates, includes exceptions for returned gifts and gifts transferred to a federal account, provides a defence based on reasonable steps for acceptance offences, and establishes a declaration process through the Electoral Commissioner. The limitation is considered reasonable and proportionate to the objective of protecting confidence in ACT electoral processes.

### **Rights limited**

The Bill limits the following human rights:

#### Section 8 - Recognition and equality before the law

Section 8 of the HR Act provides that everyone has the right to enjoy their rights without distinction or discrimination of any kind.

Noting that corporations have no human rights, the Bill limits the rights of individuals who are a gambling industry entity or a close associate of a gambling industry entity, based on their profession or association with particular industry members. However, the

current ability of gambling industry entities and their close associates to make donations to political entities “undermines the fundamental principle of political equality - that each citizen has equal political status, irrespective of their economic and social class.”<sup>1</sup>

### *Nature of the right*

The right to equality can be subject to reasonable and justifiable limits. In this Bill, the ban applies to an entity that would otherwise be able to donate to political entities. The Australian High Court has rejected arguments<sup>2</sup> that the act of donation is an act of political communication, noting that the ability to make substantial donations is not part of the freedom of political communication or expression.

### *Importance of the limitation*

The limitation on gambling industry entities is to ensure that access to political decision-makers is not influenced by the financial resources available to particular entities. It supports the right of the community to have an equal opportunity to participate in the political system, and to have their interests represented without undue influence.

The fact that political donations from gambling industry entities do occur, coupled with the Government’s role in regulating the industry and ability to make decisions that could result in large profits for the industry, creates a high risk of undue influence and the perception of undue influence over political decision-making, and warrants the introduction of this ban.

### *Nature and extent of the limitation*

The limitation on the right to equality is targeted to those who are likely to materially benefit from any influence that is able to be exercised over government decision-making in relation to the gambling industry. This includes individuals or entities that facilitate gambling, wagering or betting activities, who receive 50% of their revenue from such an entity, or who are a close associate of such an entity.

It excludes entities whose only gambling, wagering or betting activities are two-up on Anzac Day or charitable lotteries like a raffle.

### *Relationship between the purpose and limitation*

A prohibition on donations by gambling industry entities will address community concerns about the influence of the industry on political decision-making by ensuring access to decision-makers, and influence over their decisions, is not unduly influenced.

Resistance by parliaments across Australia to implementing substantial gambling reform, despite the significant evidence of gambling harm experienced in the community, suggests that lobbying by gambling industry entities may be effectively impacting policy decision-making. Trends show that donations to political entities from gambling industry entities typically increase when gambling reforms are being

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<sup>1</sup> Commonwealth of Australia, Senate, *Select Committee into the Political Influence of Donations Report* (June 2018) at 3.88

<sup>2</sup> *McCloy v New South Wales* [2015] HCA 34 [25].

discussed or considered by governments. At the very least, the opportunity for lobbying through financial means is available and presents opportunities for undue influence.

The Bill will reduce the risk of such lobbying from unduly influencing and corrupting conduct in the political process in the ACT. There is a rational connection, as the prohibition of gambling industry entity donations reduces the risk of undue industry influence on gambling reform decisions.

### Section 16 - Freedom of expression

Section 16 of the HR Act protects the right to hold opinions without interference and the right to seek, receive and impart information and ideas of all kinds.

Political donations have been recognised by courts in Australia and comparable jurisdictions as capable of facilitating political communication and political participation. By preventing gambling industry entities from making gifts to political entities, and by imposing offences and financial consequences for prohibited gifts, the bill limits one means by which those entities may express political views or support political causes.

#### *Nature of the right*

Freedom of political communication and participation is a fundamental aspect of democratic government. The ability to support political parties, candidates and campaigns through financial contributions may facilitate political expression and engagement in public debate.

However, the right does not guarantee an unrestricted ability to make political donations and may be subject to regulation designed to protect the integrity of democratic institutions.

#### *Importance of the limitation*

The purpose of limitation is to protect public confidence in the integrity of the ACT electoral system and to reduce the risk, or perception, of undue influence arising from financial relationships between gambling industry entities and political entities.

The gambling industry is subject to extensive government regulation and is affected directly by decisions concerning licensing, taxation, gambling harm minimisation, gaming machine regulation and other public policy matters. Restrictions on donations from regulated industries - which currently extend to property developers - aim to prevent actual or perceived conflicts of interest and to maintain public trust in democratic institutions.

#### *Nature and extent of the limitation*

The Bill does not prohibit gambling industry entities from participating in public debate, advocating for policy positions, communicating with elected representatives, making submissions to inquiries, campaigning on issues, or otherwise engaging in political discourse.

The limitation is confined to the provision of gifts to political entities. The Bill further limits the scope of the restriction by excluding gifts paid into a federal account as soon as practicable, providing mechanism for obtaining a declaration that an individual or entity is not a gambling industry entity, and having a delayed commencement date of 1 July 2027 to allow time for affected entities to adjust their practices. The scope of the limitation is therefore contained to only one specific form of political participation.

#### *Relationship between the purpose and limitation*

There is a clear and rational connection between the limitation and its purpose. The prohibition directly reduces financial relationships between gambling industry entities and political entities. By preventing such gifts from being made or accepted, the Bill reduces the possibility that donations may influence, or be perceived to influence, political decision-making concerning gambling regulation.

The limitation is therefore capable of achieving its intended objective.

#### *Any less restrictive means reasonably available*

Less restrictive alternatives could include enhanced gift disclosure requirements, lower disclosure thresholds, or expenditure caps. However, such alternatives would not address the concern that financial contributions from gambling industry entities may create actual or perceived influence over political decision-making, even where those contributions are fully disclosed. The Bill incorporates exceptions, reasonable-step protections, and the ability to have the Electoral Commission declare that an entity is not a gambling industry entity. These mechanisms seek to prevent unreasonable burden on affected entities.

Accordingly, there are no reasonably available alternatives that would achieve the purpose with an equivalent degree of effectiveness while imposing a materially lesser restriction on the right.

#### Section 17 – Taking part in public life

Section 17 of the HR Act protects the right of citizens to participate in public affairs, including through political processes and support for political parties and candidates.

The Bill limits this right to the extent that gambling industry entities are prevented from supporting political entities through financial and in-kind gifts.

#### *Nature of the right*

Participation in public affairs is a fundamental democratic right. Financial support for political parties and candidates may be one method by which citizens participate in political life.

#### *Importance of the limitation*

The limitation seeks to protect electoral integrity, maintain public confidence in democratic institutions and reduce the risk or appearance of undue influence arising from financial relationships between political actors and gambling industry entities.

These objectives are important to the functioning of representative democracy.

### *Nature and extent of the limitation*

The Bill does not prevent gambling industry entities or individuals associated with them from voting, standing for election, joining political parties, or advocating publicly on political issues. The limitation is confined to the making and acceptance of gifts.

Accordingly, the impact on participation rights is relatively narrow.

### *Relationship between the purpose and limitation*

The prohibition directly advances the objective of reducing actual or perceived influence arising from financial or in-kind contributions by gambling industry entities.

The limitation is therefore rationally connected to its purpose.

### *Any less restrictive means reasonably available*

Disclosure requirements alone would not fully address concerns regarding actual or perceived influence arising from donations.

The Bill adopts a targeted industry-specific restriction rather than a broader prohibition on political donations generally. This approach limits the impact on participation rights while addressing the identified risk.

No less restrictive means are reasonably available that would achieve the same objective with equivalent effectiveness.

## Section 22 - Rights in criminal proceedings

Section 22 of the HR Act provides that everyone has the right to be presumed innocent until proved guilty.

### *Nature of the right*

The Bill limits this right as it introduces bans on political entities from accepting gifts from gambling industry entities, and provides that a political entity will be guilty of a criminal offence if they accept a gift given by or on behalf of a gambling industry entity unless they took reasonable steps to ensure the gift is not being given to it by or on behalf of a gambling industry entity.

A defendant has an evidential burden in relation to proving they took reasonable steps.

### *Importance of the limitation*

The limitations on gambling industry entities making donations to political entities, as well as limitations on political entities from accepting gifts from gambling industry entities, are necessary to protect the integrity of the political system by removing the risk of undue influence or corruption.

### *Nature and extent of the limitation*

A prohibition on donations from gambling industry entities will address actual or perceived conflicts of interest and undue influence by the gambling industry over political decision-making.

The prohibition on political entities from accepting gifts from gambling industry entities will also address these concerns as they will assure the community that political entities are not being influenced by gifts from the gambling industry.

By providing that contravening this ban is an offence, the Bill provides reassurance that the ban will be taken seriously, and provides an appropriate level of deterrence for those who may otherwise be tempted to contravene the ban.

*Relationship between the purpose and limitation*

A prohibition on donations from gambling industry entities will address community concerns about the influence of the gambling industry on the priorities and decisions of government, by preventing them from using donations to obtain influence over, and access to, decision makers.

*Any less restrictive means reasonably available*

A cap on donations from gambling industry entities may have been a less restrictive alternative to imposing a ban on donations and gifts from gambling industry entities. However, to achieve the legitimate objective of preventing undue influence from gambling industry entities on political entities, the cap would need to be set at a very low level, and would effectively be a prohibition on donations.

Additionally, the Electoral Act already contains bans on donations from property developers and foreign entities, which aim to achieve the same objective as the ban on donations from gambling industry entities. The Bill has been drafted to mirror these bans.

The penalty units for the offences in the Bill have been aligned with the existing penalties in the Act for bans on gifts from property developers and foreign entities. This indicates that the offences relating to banned political donations are to be treated the same regardless of the entity, and that their acts in giving gifts, or the acts of political entities in accepting gifts from them, attracts the same level of criminality.

By placing the evidential burden on the political entity to prove they took reasonable steps to ensure a gift received is not being given by or on behalf of a gambling industry entity, this limits the right to be presumed innocent. 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 also acknowledges that political entities have a requirement to know who they are accepting gifts from, acknowledging there is a high public interest in the transparency of political donations to ensure decision-making is not unduly influenced.

## Clause notes

### **Clause 1 Name of Act**

This clause provides that the name of the Act will be the *Electoral (Gambling Industry) Amendment Act 2026*.

### **Clause 2 Commencement**

This clause provides that the Act will commence on 1 July 2027.

### **Clause 3 Legislation amended**

This clause identifies that the *Electoral Act 1992* will be amended.

### **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 222KE, 222KG and 222KH.

### **Clause 5 Definitions for pt 14 Section 198, definition of *free facilities use***

This clause is a technical amendment that relocates the definition of *free facilities use* from section 198 to section 222L, as this term is now only used in relation to foreign entities.

### **Clause 6 Section 198, new definition of *political entity***

This clause is a technical amendment that adds a definition of *political entity* to part 14 of the Act, which is consistent with the definition used in other parts of the Act.

### **Clause 7 Section 198, definition of *third-party campaigner*, paragraph (a)**

This clause amends the definition of third-party campaigner to clarify that the definition's reference to \$1000 or more incurred in electoral expenditure includes donations valued at \$1000 or more.

### **Clause 8 Meaning of gift – pt 14 New section 198AA(1)(c) and (d)**

This clause clarifies that the meaning of *gift* in part 14 includes the amount of an annual political party membership subscription that exceeds \$250, and the cost ordinarily charged for meeting facilities if provided for free (or the difference in cost if provided at a discounted rate).

### **Clause 9 Section 198AA(2)**

This clause omits from the part 14 meaning of *gift* that it includes the amount of an annual party membership subscription that exceeds \$250.

**Clause 10 Section 198AA(3)(b)**

This clause amends the part 14 meaning of *gift* to the effect that it does not include an annual party membership subscription to the value of \$250 or less.

**Clause 11 Section 198AA(3)(c)**

This clause amends the part 14 meaning of *gift* to the effect that it does not include the first \$250 of an annual party membership subscription which is valued at over \$250.

**Clause 12 Section 198AA(4), new definition of *use of meeting facilities***

This clause introduces a new definition of *use of meeting facilities*, and provides examples to clarify the definition.

**Clause 13 Records of gifts  
Section 216A(2)(b), new note**

This clause adds a new note that *Amount*, for part 14, includes *value* per section 198.

**Clause 14 Section 216A(3), definitions of *gift* and *political entity***

This clause is a technical amendment that omits that *gift* does not include free facilities use in this section, and omits the definition of *political entity* as the same definition is now prescribed for part 14 at section 198.

**Clause 15 Regular disclosure of gifts  
Section 216(B)(1)**

This clause clarifies that gift disclosure obligations apply to gifts cumulatively valued at \$1000 or more.

**Clause 16 Section 216B(3), definitions of *gift* and *political entity***

This clause omits the definition of *gift* and *political entity*, as they refer to the definition at section 216A(3) which has been omitted by clause 14.

**Clause 17 Disclosure of gifts by non-party candidates  
Section 217(3)**

This clause clarifies that gift disclosure obligations for non-party candidates apply to gifts cumulatively valued at \$1000 or more.

**Clause 18 Restrictions on acceptance of gifts  
Section 222(1)**

This clause clarifies that the restriction on the acceptance of gifts applies to gifts valued at \$1000 or more.

**Clause 19 Section 222(3) and (4)**

This clause clarifies that the restriction on the acceptance of anonymous gifts applies to gifts valued at \$25 000 or more.

**Clause 20 Definitions – div 14.4A  
Section 222B(1), definition of *political entity***

This clause omits the definition of *political entity* as the same definition is now prescribed for part 14 at section 198.

**Clause 21 Sections 222F to 222I**

This clause clarifies that the gifts referred to include gifts in-kind or other non-financial gifts of a certain value.

**Clause 22 New division 14.4AA**

This clause inserts a new division 14.4AA into the Act.

Section 222KA makes clear that the division does not apply to a gift that is returned to the giver within 30 days after its receipt. This mirrors the intent of the existing section 222A, and provides a safeguard in that receivers of gifts are able to inquire into the origin of a gift and to return it if they suspect or establish that it has been made by a gambling industry entity.

It also provides that the division does not apply to a gift that is paid into a federal account as soon as practicable after its receipt. 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.

Section 222KB introduces new definitions of *gambling industry entity* and *gift* for this division.

Section 222KC provides a definition for *gambling industry entity* for this division which includes:

- an individual or entity that holds certain statutory licences related to gambling activities;
- an entity that is a controlling body or approved racing organisation under the *Racing Act 1999*;
- an individual or entity that holds a licence issued under the *Liquor Act 2010* (other than an off licence) and carries on a business at the licensed premises that involves wagering, betting or other gambling;
- an individual or entity that carries on a business, a significant part of which involves watering, betting or other gambling or the manufacture or supply of products or equipment for the purposes of wagering, betting or gambling;
- an entity that receives 50% or more of its revenue or other income from 1 or more individuals or entities included in this definition; or
- an individual or entity that is a close associate of an individual or entity mentioned in this definition.

The definition clarifies that an individual or entity is not a *gambling industry entity* if it only conducts certain wagering, betting or other gambling activities, such as a two-up game on ANZAC Day or a charitable raffle.

The section also provides consequential definitions of the terms *charitable purpose*, *close associate*, *gambling industry trust*, *officer*, *stapled entity*, and *voting power*, which are referred to in this section.

Section 222KD creates a ban on gambling industry 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 and the amount may be recovered through court proceedings.

Section 222KE creates offences related to gifts to political entities from gambling industry entities where the gift or gifts given in a financial year are cumulatively valued at \$250 or more.

The section also prescribes that it is an offence to give such a gift on behalf of a gambling industry entity, or to ask another person to give such a gift on behalf of a gambling industry entity, if the gift is given to the political entity.

The maximum penalty for the offences in this section 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.

Section 222KF creates a ban on political entities accepting gifts given by or on behalf of gambling industry 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 gambling industry entity. The political entity is liable to pay the amount of the gift to the Territory and the amount may be recovered through court proceedings.

Section 222KG creates an offence where a political entity accepts a gift given by or on behalf of a gambling industry 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 gambling industry entity.

The maximum penalty for the offences in this section 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.

The section also provides that the political entity is liable to pay the amount of the gift to the Territory and that the amount may be recovered through court proceedings.

Section 222KH creates an offence where a person enters into or carries out a scheme that seeks to avoid the operation of a provision in this division. The maximum penalty for the offence is 50 penalty units, 6 months imprisonment, or both. The Criminal Code applies to this offence which means that intention to enter into or carry out such a scheme is required to be proved.

The section also provides that if a political entity accepts a gift because of such a scheme, the political entity is liable to pay the amount of the gift to the Territory and the amount may be recovered through court proceedings.

Section 222KI mirrors the existing section 222K in relation to declarations that a corporation is not a property developer. It provides that a person may apply to the commissioner for a declaration that an individual or entity is not a gambling industry entity, and that the commissioner may make such a declaration if it is satisfied that it is more likely than not that the individual or entity is not a gambling industry entity.

The declaration will be conclusive for the validity of any donation made while the declaration is in force, unless it was made on the basis of false or misleading information. This will mean that potential donors will be able to obtain certainty about the lawfulness of any gift given to a political entity.

The declaration will have force for 12 months unless revoked by the Electoral Commission with a least 7 days' written notice.

**Clause 23    Definitions – div 14.4B**  
**Section 222M, definition of *political entity***

This clause is a technical amendment that omits the definition of *political entity* as the same definition is now prescribed for part 14 at section 198.

**Clause 24    Amounts received**  
**Section 232(4)**

This clause is a consequential amendment as the definition of *free facilities use* has been removed.

**Clause 25    Dictionary, definition of *free facilities use***

This clause omits the definition of *free facilities use* from the Dictionary in the Act, as the definition has been removed from part 14.

**Clause 26    Dictionary, new definition of *gambling industry entity***

This clause inserts the definition of *gambling industry entity* to the Dictionary in the Act, as a term used in Division 14.4AA.

**Clause 27    Dictionary, definition of gift, new paragraph (ba)**

This clause amends the definition of *gift* in the Dictionary in the Act, to include the term as used in Division 14.4AA.

**Clause 28    Dictionary, definition of *political entity***

This clause substitutes the definition of *political entity* in the Dictionary in the Act, to apply to part 14 as a whole.