2001

THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

ELECTORAL AMENDMENT BILL 2001

EXPLANATORY MEMORANDUM

Circulated by authority of

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OUTLINE

This Bill provides for a range of amendments to the *Electoral Act 1992* and the *Referendum (Machinery Provisions) Act 1994*. The amendments made by the Bill include:

(a) Amending the disclosure provisions to:

- break the nexus with the Commonwealth scheme (as the two schemes are now out of step);
- require a greater level of disclosure, such as requiring all donations to be taken into account when disclosure thresholds for parties, ballot groups, MLAs and associated entities are calculated (at present individual donations of less than $500 do not have to be taken into account, creating a potential loophole in the scheme);
- extend the disclosure obligations currently imposed on independent MLAs to cover all MLAs; and
- extend the obligations imposed on associated entities;

(b) Bringing the provisions related to making and witnessing enrolment claims into line with proposed Commonwealth changes (the Commonwealth Parliament has passed amendments to the Commonwealth Electoral Act that have not yet been proclaimed, that will if proclaimed provide for a limited list of persons eligible to witness enrolment claims and will require first time claimants to provide proof of identity – these changes are intended to enhance the integrity of the electoral roll);

(c) Tightening the party registration scheme to require political parties to demonstrate that they have 100 members on the ACT electoral roll (at present, "parliamentary parties" can be registered if they have at least one member represented in any Australian Parliament – this has the effect of allowing parties to register in the ACT without a local support base);

(d) Introducing a scheme of registration of ballot group names for use by Independent MLAs on ballot papers (thereby removing the need for Independent MLAs to register "parties of convenience");

(e) Providing that all registered political parties must provide the Electoral Commissioner with an up-to-date copy of their constitution, which must be made publicly available by the Commissioner (at present, parties must supply their constitution when registering, but are not required to supply up-to-date copies);

(f) Providing that a registered political party (a parent party) can object to the continued use of a similar party name or abbreviation by another party (a party registered after the parent party that at the time of registration was related to the parent party) which is no longer related to the parent party;

(g) Providing that the Electoral Commissioner may reject a candidate's nomination where the name under which the candidate is nominated is obscene, is frivolous or

has been assumed for a political purpose;

(h) Applying the same end-use restrictions to electoral rolls provided to candidates as currently apply to parties and MLAs (currently, no end-use restrictions apply);

(i) Providing that an elector may vote outside a polling place, if the officer in charge is satisfied that the elector is unable to enter the polling place because of a physical disability, illness, advanced pregnancy or other condition (mirroring a recent Commonwealth amendment to increase access to voting facilities);

(j) Delaying the start of the pre-poll period if it is otherwise due to commence on a public holiday;

(k) Providing that, where printed electoral matter is being published by or on behalf of a registered political party, ballot group or a candidate, the name of the party, ballot group or candidate should be included on the authorisation statement with the name and address of the person who authorised the matter (intended to more clearly identify sources of political advertising);

(l) Modifying the definition of "electoral matter", which is used to identify material that requires authorisation, to limit its application to matter more directly concerned with a Legislative Assembly election (at present the definition catches too wide a range of material);

(m) Making a range of other relatively minor changes that are spelt out in the detailed explanation below.

Financial Implications

None.

DETAILED EXPLANATION

Unless otherwise specified, references to ***sections*** in the following detailed explanation refer to sections in the *Electoral Act 1992*.

Formal clauses

Clauses 1, 2, 3 and 4 are formal requirements. They refer to the short title of the Bill, commencement and to the Acts being amended. The Act is to commence on the day it is notified in the *Gazette.*

Meaning of electoral matter

Clause 5 substitutes section 4 to ensure that the expression ***electoral matter*** includes matter in both printed and electronic form. This is intended to remove any doubt as to whether electronically published material falls within the definition.

Substituted section 4 is also changed to alter the meaning of ***electoral matter*** to reduce its current broad application. The term ***electoral matter*** is intended to describe material intended or likely to effect voting at an ACT Legislative Assembly election. It is used to identify material subject to the authorisation requirements (in section 292), and is referred to in various offence and disclosure provisions.

The definition of ***electoral matter*** as it currently stands is very broad, including (among other things) any matter that makes any reference to the ACT Government or an MLA, or in a pre-election period, any reference to the Government or Opposition, or a previous Government, or Opposition of the Commonwealth or another State or another Territory, or a member or former member of the legislature of the Commonwealth or another State or another Territory. The broad nature of this definition has the result of applying to material that does not on the face of it fall within the nature of matter intended or likely to effect voting at an election.

With the intention of restricting this definition to matter intended or likely to effect voting at an election, this clause amends those parts of the definition related to Governments, Oppositions, MLAs, candidates and groups to:

- Restrict its application to matter related to the performance of the Government, the Opposition, a previous Government or a previous Opposition, the performance of a ballot group, the performance of an MLA or former MLA or the performance of a political party or a candidate or a group of candidates; and

- remove the references to Governments or Oppositions of the Commonwealth or another State or another Territory and members of the legislature of the Commonwealth or another State or another Territory.

This clause also inserts a new section 4A to provide a meaning of ***available for public inspection***. This is not a substantive change; it is intended to simplify references to making documents available for public inspection in later sections.

Objections to redistribution proposals

Clauses 6 and **7** provide that the Electoral Commissioner must make copies of objections to proposed redistributions made by a Redistribution Committee (under section 46) or an augmented Commission (under section 52) available to the public at the Electoral Commission office.

At present, while public hearings may be held into objections to redistribution proposals, there is no requirement to make any objections publicly available. These amendments will correct this anomaly.

Use of roll extracts

Clause 8 omits sections 63 and 64 and replaces them with new section 63 to reword the provisions placing restrictions on the use of electoral roll data provided to MLAs and registered parties. This amendment does not make any substantive change, but is made to reflect modern drafting practice and to ensure consistency with the restrictions placed on the use of extracts of electoral rolls provided to candidates under new section 121A, also inserted by this Bill.

Verification and witnessing of claims for enrolment

Clauses 9 and **10** are intended to ensure that the ACT's enrolment claim provisions remain in step with the equivalent Commonwealth provisions, in order to facilitate the operation of the joint Commonwealth/ACT electoral roll.

At present, under section 76(3)(b) claims for enrolment must be witnessed by an elector or a person entitled to be an elector. This mirrors the currently applicable Commonwealth enrolment provisions, thereby ensuring that claims for joint Commonwealth/ACT enrolment are acceptable for both jurisdictions.

The Commonwealth Parliament has recently passed amendments to the *Commonwealth Electoral Act 1918* (not yet proclaimed) that would, if proclaimed, require enrolment forms to be witnessed by an elector in a class of electors prescribed by the regulations. The Commonwealth amendments further provide that the identity of a person making a claim must be verified in a manner prescribed by regulations, unless the Divisional Returning Officer is satisfied that the person has previously been an elector. The amendments also provide that, if a claim is made by a person who claims to be an Australian citizen because of the grant of a certificate of citizenship under the *Australian Citizenship Act 1948*, the person's Australian citizenship must be verified in the manner prescribed by regulations.

These Commonwealth changes are intended to improve the integrity of the electoral roll by limiting the classes of persons who can witness claims for enrolment and requiring persons enrolling for the first time to provide proof of identity. These changes have not been proclaimed as they are dependent on the making of regulations setting out the detailed requirements. The Commonwealth has yet to make the required regulations.

Should the Commonwealth make appropriate regulations and proclaim the changes to the enrolment requirements, this will make the ACT's Electoral Act as it stands out of step with the Commonwealth Electoral Act. The practical effect of this difference would be that some claims for enrolment might be unacceptable for Commonwealth purposes but acceptable for ACT purposes, leading to differences between the two electoral rolls. In order to ensure that the two rolls remain in step, and to avoid the confusion to electors of having two sets of requirements, the amendments set out in these clauses would automatically apply the Commonwealth witnessing and verification requirements, as they apply at any particular time.

Note that, if the Commonwealth does not proclaim its amendments to these provisions, then the existing witnessing requirements will remain unchanged.

For further information, see the amendments to section 98(2) of the Commonwealth Electoral Act made by the Commonwealth *Electoral and Referendum Amendment Act (No. 1) 1999* (No. 134, 1999).

Closed rolls

Clause 11 clarifies the intent of section 80(4A), which allows enrolment claims received before the close of the rolls to be processed after the close of rolls.

At present section 80(4A) allows for the enrolment or transfer of enrolment of a person whose claim is received before the close of roll but whose claim is not processed until after the close of rolls. There is arguably some doubt as to the meaning of ***received*** in this context, as it does not identify the intended recipient. In order to clarify the intent of this provision, these clauses provide that a claim for enrolment can be processed after the close of rolls if it is received before the rolls close by:

- an officer of the ACT Electoral Commission appointed under the Electoral Act;
- a staff member of the ACT Electoral Commission;
- a person authorised by the Electoral Commissioner for this purpose (for example, all employees of ACT Government Shopfronts could be appointed); or
- an employee of the Australian Electoral Commission.

Registration of political parties and ballot groups

Clause 12 substitutes a new Part 7 of the Electoral Act to provide for a series of changes to the scheme for registration of political parties to provide for a scheme of registration of ***ballot groups*** along the following lines:

- MLAs who are not members of a registered political party (Independent MLAs) may apply to register a ballot group name for use on ballot papers.

- Ballot group names would be used on ballot papers in the same way as registered party names or abbreviations.

- Independent MLAs registering a ballot group could appoint a registered officer who would carry the same rights and responsibilities as currently apply to registered officers of registered parties.

- If an Independent MLA who applied to register a ballot group did not appoint a registered officer, the Independent MLA would be taken to be the registered officer.

- A constitution would not be required for registration of a ballot group.

- The same naming restrictions as those that apply to registered party names would apply to ballot group names, with the added restriction that the word "party" may not be used in a ballot group name.

- Public objections to the name of a proposed ballot group would be invited in the same way as objections to a party's registration are currently invited.

Because of the extensive nature of these changes to the various sections in Part 7, the entire Part has been omitted and a new Part 7 substituted. Changes of substance made to the various sections in Part 7 are described below. Where the substance of a provision has not changed, no detailed explanations are given.

The heading of Part 7 is altered as a consequence of the introduction of the scheme for registration of ballot groups.

The definitions of ***eligible political party*** and ***member*** (of a political party) have been removed from old section 87. These provisions, which defined whether a political party was eligible for registration, have been replaced with a list of requirements for registration set out in section 93. The effect of these changes is to provide that a political party is only entitled to registration if it has at least 100 members who are on the ACT electoral roll. Under the Electoral Act as it stands, a political party is entitled to registration if it is either a parliamentary party (that is, a party with at least one representative in any Commonwealth, State or Territory parliament) or a party with at least 100 members entitled to be enrolled in the ACT. This change will ensure that all ACT registered political parties must have a support base within the ACT.

Some other definitions in old section 87 have been moved to other sections.

New section 88 includes the substance of old section 88 (which provides for the Register of Political Parties) and includes provision for a Register of Ballot Groups as a consequence of the introduction of the scheme for registration of ballot groups.

New section 89 is substantially the same as old section 89.

New section 89A provides that an MLA who is not a member of a registered political party can apply to register a ballot group. The MLA must specify the name of a person to be the registered officer of the ballot group (who could be the MLA).

New section 90 includes the substance of old section 90 and clarifies the Electoral Commissioner's power to require an applicant for registration of a political party to give the Commissioner a list of members of the party. The Commissioner may only use this information for the purpose of determining whether a party is eligible to be registered. It is intended that lists of members of political parties obtained under this section would be exempt from disclosure under the *Freedom of Information Act 1989* as disclosure of this information would involve the unreasonable disclosure of information relating to the personal affairs of the persons listed.

New sections 91, 91A, 92 and 93 include the substance of old sections 91, 92 and 93, with changes included as a consequence of the introduction of the scheme for registration of ballot groups. In addition, new section 93 provides further grounds on which a party or ballot group name may be unacceptable for registration. These are:

- A ballot group name cannot include the word "party" (as, by definition, such a group is not a political party); and

- A political party name or ballot group name cannot include the name of an MLA if the applicant does not have the written consent of the MLA to use that name (to prevent anyone registering a party or group name to take advantage of the name of an MLA without that MLA's consent).

New section 93 also extends (at section 93(4)(c)) the definition of ***another political party*** to include another party registered or otherwise lawfully recognised under a law relating to elections for the Commonwealth or a State (note that ***State*** includes the Northern Territory under the *Interpretation Act 1967*). This definition is used to determine whether a party or ballot group name is unacceptable if it is the same as, or so similar as to be likely to be confused with, the name of another party that is unrelated to the party or ballot group name.

Under this provision as it currently stands, only registered ACT parties or parties with representatives in Commonwealth, State or Northern Territory parliaments can be taken into account in determining whether a party applying for registration has used a name the same as or similar to an unrelated party in another jurisdiction. This extension of the definition of ***another political party*** ensures that parties registered in other jurisdictions but not represented in parliament can also be taken into account, to prevent a person registering a recognised party or ballot group name in the ACT without the party or group being related to the same or similar party registered in another jurisdiction.

New sections 94 and 95 are substantially the same as old sections 94 and 95, with additional references to ballot groups.

New section 95A provides for the possibility of two parties with similar names obtaining registration on the basis of being related, where those parties subsequently become unrelated. (For example, where two related branches of a political party both obtain separate registrations, but later split to form two separate parties.) Where this occurs, the registered officer of the earliest registered party can object to the later registered party's continued use of its name. Where an objection is lodged, and the Commissioner is satisfied that the two names are relevantly similar and that the two parties are no longer related, the Commissioner is obliged to cancel the registration of the later registered party. The later registered party must be given the opportunity to change its name before being its registration is cancelled.

New sections 96, 96A and 97 are substantially the same as old sections 96, 96A and 97, with additional references to ballot groups.

New section 97A gives the Electoral Commissioner the power to require the registered officer of a registered party to give the Commissioner information related to the party's entitlement to remain registered as a party. This power would be used by the Commissioner to audit the continuing eligibility of a registered party. Where the Commissioner is not satisfied that a registered party is entitled to be registered, the Commissioner can cancel the registration under section 98. Information requested in new section 97A could include a list of members of a party. It is intended that lists of members of political parties obtained under this section would be exempt from disclosure under the *Freedom of Information Act 1989* as disclosure of this information would involve the unreasonable disclosure of information relating to the personal affairs of the persons listed.

New section 98 has been altered as a consequence of the introduction of the scheme for registration of ballot groups. Changes of substance include:

- The registration of a party can be cancelled if the Commissioner believes on reasonable grounds that the party does not have a constitution (a consequential change to the requirement imposed on parties that they must provide the Commissioner with an up-to-date copy of their constitution under new section 99A);

- The registration of a ballot group must be cancelled if the MLA who applied to register the ballot group ceases to be an MLA (although in this circumstance the name of the ballot group could be used in an application for a political party provided the person applying to register the name had the written consent of the former MLA – see the amendment to section 99).

New section 99 has been altered as a consequence of the introduction of the scheme for registration of ballot groups. It provides that, where the registration of a party or ballot group is cancelled, that name or a relevantly similar name cannot be registered again until after the next general election after the cancellation. However, where the registration of a ballot group is cancelled because the MLA who applied to register the ballot group ceases to be an MLA, the name of the ballot group could be used in an application for a political party provided the person applying to register the name had the written consent of the former MLA.

New section 99A requires a registered party which changes its constitution to provide the Electoral Commissioner with a copy of the changed constitution within 30 days after the change. The Commissioner is also required to make copies of the constitutions of all registered parties available for public inspection at all times. (Under the Electoral Act as it stands, the constitutions of parties applying for registration must be made public, but there is no requirement to make party constitutions publicly available after a party is registered, or for a party to provide copies of changes to constitutions to the Commissioner.)

This change is intended to ensure that up to date constitutions of publicly registered parties remain on the public record, and to enable the Commissioner to judge whether a party (through changes to its constitution) has altered its intention to promote the election of candidates to the Assembly (see the definition of "political party" in section 3). A party that does not have an intention to promote the election of candidates to the Assembly is not eligible for registration.

Nominations of candidates

Clause 13 amends section 105 as a consequence of the introduction of the scheme for registration of ballot groups. Under this amendment the registered officer of a ballot group can nominate candidates in the same way as the registered officer of a party can.

Clause 14 amends new section 105 as a consequence of the introduction of the scheme for registration of ballot groups, to provide for the printing of registered party or ballot group abbreviations on ballot papers.

Clause 15 substitutes a new section 110 to provide an additional ground on which the Electoral Commissioner must reject a nomination.

Under this additional ground, the Commissioner must reject the nomination of a candidate if satisfied that the name used by the candidate is obscene, frivolous or assumed for a political purpose. This provision is intended to prevent a candidate using a contrived name to achieve a political advantage or to trivialise the election process. In particular, this provision would prevent a person circumventing the party registration process by using a name that was effectively a party name.

Under this provision, a name that has been assumed for a ***political purpose*** might be a name that includes, partly or wholly, a slogan, a name similar to a political party name, a message or a grammatical expression.

Recent examples of names under which candidates have nominated for elections in other Australian jurisdictions that would be rejected under this provision include:

- Justice Abolish Child Support & Family Court
- Paul-Ian Handsome Handpuppet
- Prime Minister John Piss the Family Court - Legal Aid
- Informal
- Bruce The Family Court Refuses My Daughter's Right To See Her Father
- Chris Lib For Forest Davies

This clause also retains the effect of the previous provision in that it provides that a nomination may only be rejected under section 110. This prevents the Electoral Commissioner from rejecting a nomination for any other reason, such as a belief that the candidate is not qualified to be a candidate. This ensures that questions related to qualifications of candidates are only to be dealt with by the Court of Disputed Elections.

Ballot papers

Clause 16 amends section 117 as a consequence of the introduction of the scheme for registration of ballot groups. It provides that the registered name or abbreviation of a ballot group is to be printed above a column of two or more candidates standing for a ballot group, or next to the name of a single candidate standing for a ballot group. This mirrors the provisions applying to political party candidates.

Certified lists of electors

Clause 17 inserts new section 121A to provide that a person is not permitted to use certified lists of electors provided to candidates or polling places for a prohibited purpose. This mirrors the restrictions placed on the use of extracts of electoral rolls provided to MLAs and registered parties under sections 63 and 64.

Ordinary or declaration voting in the ACT before polling day and ordinary or declaration voting outside the ACT on or before polling day

Clauses 18 and **19** amend sections 136B and 136C to:

- Delay the start of the pre-poll voting period if it is otherwise due to commence on a public holiday. (Note that, without this change, pre-poll voting would be due to commence for the 20 October 2001 election on the 1 October 2001 Labor Day holiday.)

- Provide that the Electoral Commissioner is to determine the days and hours of pre-poll voting by notice in the *Gazette.*

As these provisions currently stand, it is not clear when pre-poll voting must be provided, and there is some doubt as to whether pre-poll voting would have to be made available outside standard office hours. Under the amended clauses, it is intended that the Electoral Commissioner would determine standard working days and office hours as the minimum times for pre-poll voting, but would have the option of extending those times to include evening voting or weekend voting.

Functions of visiting officers

Clause 20 amends section 151 to limit the number of scrutineers that each candidate can appoint to accompany a mobile polling team to the number of officers in the team. As this provision currently stands, there is no limit on the number of scrutineers who could be appointed.

Assistance to voters unable to enter a polling place

Clause 21 inserts a new section 156A to provide that an elector may vote outside a polling place, if the officer in charge is satisfied that the elector is unable to enter the polling place because of a physical disability, illness, advanced pregnancy or another condition (mirroring a recent Commonwealth amendment to increase access to voting facilities).

Assembly nominees to fill casual vacancies

Clause 22 amends section 195 as a consequence of the introduction of the scheme for registration of ballot groups. This provision is intended to cover the eventuality that a candidate cannot be chosen to fill a casual vacancy under the "count-back" provisions in section 194. In this case, the Assembly is required to choose a candidate to fill the vacancy. If the former MLA was elected as a party candidate, the Assembly is required to choose a replacement who is member of the same party (provided there is such a person available). If the former MLA was not elected as a party candidate (that is, the former MLA was elected as a ballot group candidate, a non-party group candidate or an ungrouped candidate), the Assembly is required to choose a replacement who has not been a member of a registered party during the preceding 12 months.

In the amended provision, no requirement is made to replace a former MLA who was elected as a ballot group candidate with another person who is a member of the ballot group, as it is not expected that a ballot group will be constituted with formal "members" in the same way as a political party is.

Election funding and financial disclosure

Many of the amendments made to Part 14 of the Electoral Act provide for amending the disclosure provisions to break the nexus with the Commonwealth scheme and to require a greater level of disclosure, such as requiring all donations to be taken into account when disclosure thresholds for parties, ballot groups, MLAs and associated entities are calculated (at present individual donations of less than $500 do not have to be taken into account, creating a potential loophole in the scheme) and extending the obligations imposed on associated entities.

Other amendments to Part 14 are made to extend the disclosure obligations currently imposed on independent MLAs to cover all MLAs. This is intended to remove the current anomaly wherein independent MLAs are required to disclose greater levels of detail than are party MLAs.

Further amendments are made to delay the date for submission and publication of annual returns made under Part 14 by 4 weeks, for returns due to be submitted in an election year. A consequence of the change of the election date from February to October is that, as the Electoral Act stands, annual returns fall due in or near the election period. In order to remove the need for political participants and the Electoral Commission to respectively submit and receive annual returns during the election period, these amendments extend the submission and publication deadlines by 4 weeks to allow the returns to be submitted after the election period is over.

Some of the amendments to Part 14 are also made as a consequence of the introduction of the scheme for registration of ballot groups.

Definitions for Part 14

Clauses 23, 24 and **25** amend section 198:

- As a consequence of the introduction of the scheme for registration of ballot groups;
- as a consequence of the extension of the disclosure scheme currently applied to independent MLAs to all MLAs; and
- To extend the definition of ***associated entity*** to include entities that operate ***to a significant extent*** for the benefit of 1 or more registered parties, ballot names or MLAs (as this definition currently stands, only associated entities that operate ***wholly or mainly*** for the benefit of 1 or more registered parties or independent MLAs are covered by the definition, excluding from its operation entities that may contribute substantially to a political entity but do not operate wholly or mainly for that purpose).

Certain loans not to be received

Clause 26 inserts a new section 218A to make it unlawful for parties, ballot groups, MLAs, candidates, non-party groups and associated entities to receive a loan of $1500 or more from a financial provider that is not a recognised financial institution, unless the receiver of the loans keeps records that identify the lender. This amendment would effectively make it unlawful for an entity listed above to receive an anonymous loan of $1500 or more. This is an equivalent provision to section 222, which makes it unlawful for an entity listed above to receive anonymous gifts.

This amendment is similar to a recent amendment made to section 306A of the Commonwealth Electoral Act.

Disclosure of gifts by persons incurring political expenditure

Clause 27 amends section 220 to make two substantive changes to the disclosure obligations of persons incurring expenditure for a political purpose in relation to an election:

- It refers to gifts received at any time, the whole or part of which was used during the relevant disclosure period to enable the person to incur expenditure for a political purpose (compared to the existing provision, which refers only to gifts received during the disclosure period, thereby not covering gifts received outside the disclosure period that were used to incur expenditure within the disclosure period); and
- It requires the value of individual gifts received from one person to be cumulated to determine whether the disclosure threshold of $1000 has been reached, requiring the identity of the donor to be identified (compared to the existing provision, which effectively ignores individual donations of less than $1000, creating a loophole whereby donors could give a series of donations of less than $1000 without any requirement for the donor to be identified).

Annual returns of donations

Clause 28 substitutes new sections 221A, 221B and 222 as a consequence of the introduction of the scheme for registration of ballot groups and as a consequence of the extension of the disclosure scheme currently applied to independent MLAs to all MLAs.

New section 221A extends the deadline for submission of annual returns under the section by 4 weeks for returns due in an election year.

New section 221A also provides that:

- where a person is required to submit an annual return under section 221A (because the person has given gifts totalling $1500 to the same party, ballot group or MLA during the year); and
- the person has received gifts from another person or entity, the total value of which is $1000 or more; and
- the person uses some or all of such gifts to make a gift to a party, ballot group or MLA; then
- the annual return submitted under section 221A must include details related to the amount of such gifts and the identity of the donor.

The intention of this provision is to close a potential loophole, whereby "person A" could make a gift to a "person B", who could then make a gift to a party, ballot group or MLA using some or all of person A's gift. Under section 221A as it stands, person B's identity would have to be disclosed, but not person A's. This amendment would also require the disclosure of person A's identity.

New section 221B is altered as a consequence of the introduction of the scheme for registration of ballot groups and as a consequence of the extension of the disclosure scheme currently applied to independent MLAs to all MLAs.

Anonymous gifts

New section 222 is altered as a consequence of the introduction of the scheme for registration of ballot groups and as a consequence of the extension of the disclosure scheme currently applied to independent MLAs to all MLAs.

New section 222 also extends its operation to associated entities. As it stands, this provision does not prohibit associated entities from receiving anonymous gifts. This corrects an oversight made when the associated entity provisions were introduced.

Annual returns by parties, ballot groups, MLAs and associated entities

Clauses 29 substitutes new sections 230, 231, 231B and 232.

Section 230 is altered as a consequence of the introduction of the scheme for registration of ballot groups, and as a consequence of the extension of the disclosure scheme currently applied to independent MLAs to all MLAs, and to extend the deadline for submission of annual returns under the section by 4 weeks for returns due in an election year.

Section 230 is also amended to require annual returns under this section to identify receipts that are not for gifts and the purpose for which the amount was received. This will enable the Electoral Commission and the public to separate payments for services and other receipts from gifts. This will avoid the current situation, whereby it is not possible to determine whether a payment received from an entity by a party or MLA is a gift or a payment for a service, leading to the mistaken indication, in some cases, that an entity has donated a gift to a particular party or MLA where in fact the payment was for a service. This amendment will assist the Electoral Commission to identify entities that may have to submit donor returns.

Section 231 is altered as a consequence of the introduction of the scheme for registration of ballot groups, and as a consequence of the extension of the disclosure scheme currently applied to independent MLAs to all MLAs.

This clause also omits existing section 231A, which provides that registered parties can comply with their annual return obligations by submitting a copy of their annual return submitted under the Commonwealth Electoral Act. As the amendments made by this bill and recent amendments to the Commonwealth Electoral Act have resulted in differences between the Commonwealth and ACT disclosure schemes, it is no longer practicable to allow parties to submit Commonwealth returns for ACT purposes.

Section 231B is altered to extend the deadline for submission of annual returns under the section by 4 weeks for returns due in an election year. .

Section 231B is also amended to require annual returns under this section to identify receipts that are not for gifts and the purpose for which the amount was received. This will enable the Electoral Commission and the public to separate payments for services and other receipts from gifts. This will avoid the current situation, whereby it is not possible to determine whether a payment received by an associated entity is a gift or a payment for a service, leading to the mistaken indication, in some cases, that an entity has donated a gift to an associated entity where in fact the payment was for a service. This amendment will assist the Electoral Commission to identify entities that may have to submit donor returns.

This clause also omits existing section 231C, which provides that associated entities can comply with their annual return obligations by submitting a copy of their annual return submitted under the Commonwealth Electoral Act. As the amendments made by this bill and recent amendments to the Commonwealth Electoral Act have resulted in differences between the Commonwealth and ACT disclosure schemes, it is no longer practicable to allow associated entities to submit Commonwealth returns for ACT purposes.

New section 232 is also substituted:

- as a consequence of the introduction of the scheme for registration of ballot groups; and

- to remove the provision enabling amounts of less than $500 to be ignored when determining whether a person giving money to a party, MLA or associated entity had reached the $1500 disclosure threshold (thereby removing a potential loophole which allowed a person to escape disclosure in an annual return under this section by giving a series of donations, each of which was less than $500); and
- providing that an associated entity does not have to disclose the identity of persons who give amounts to the associated entity for services provided by the entity of the ordinary course of its business, other than a business established for the purpose of providing political gifts (this is consequential on the broadening of the definition of ***associated entity*** and the dropping of the $500 provision referred to above, and is intended to prevent associated entities that are also businesses from having to disclose identities of patrons and amounts received from individual patrons for provision of services such as food and drink supplied in the ordinary course of business, for example); and
- to reinstate the provision that was enacted in 1994 (before the provision related to ignoring amounts of less than $500 was enacted) that excludes the need to include amounts of less than $100 received at a fundraising event; and
- to define what is meant by ***fundraising event***.

Investigation – notices

Clause 30 substitutes new section 237 and inserts new sections 237A and 237B.

New section 237 is amended to extend the Electoral Commissioner's investigation powers to all persons or entities who are or may be required to submit a return under this Part. At present it is unclear as to whether the Commissioner's investigation powers cover associated entities.

Section 237 is also amended to remove those old subsections that dealt with offences related to investigations – these provisions are moved to new section 237B.

New section 237A gives the Electoral Commissioner powers to investigate whether an entity is, or was at a particular time, an associated entity. This provision is intended to cater for situations where the Commissioner believes on reasonable grounds that an entity is an associated entity, but the entity asserts that it is not an associated entity.

A later amendment made to section 245 makes a decision to conduct such an investigation a reviewable decision under that section. Where a request for a review of a decision under section 237A is unresolved, no action can be taken for failure to comply with section 237A.

New section 237B provides for offences related to failure to comply with investigation notices issued under either section 237 or section 237A.

Copies of returns to be available for public inspection

Clause 31 substitutes section 243 to extend the deadline for publication of annual returns under the section by 4 weeks for returns due in an election year, and corrects a drafting error related to the publication of annual returns of donors under section 221A.

Review by Electoral Commission

Clause 32 amends section 247 to cater for situations where a person may have standing to seek a review of a decision under section 245, but the person is not required to be given a review statement in relate to the decision. This can arise in relation to a decision to register a political party or a ballot group. Under the existing provisions, the time period during which a person who may be affected by a decision may apply for a review of a decision is expressed in terms of when the person was given a review statement. In the case of a decision to register a political party or a ballot group, a person may be affected by the decision but not have any right to receive a review statement. This amendment provides that, in such cases, the relevant period commences on the day the relevant decision is notified in the *Gazette*.

Definitions for Part 17, Division 3 (Campaigning offences)

Clauses 33 and **34** amend section 291 to amend the definitions of ***disseminate*** and ***publish*** to ensure they cover electoral matter whether it is in printed or electronic form.

Dissemination of electoral matter – authorisers and authors

Clause 35 substitutes new section 292 to provide that, in addition to the existing authorisation requirements (that require the name and address of the person who authorised or authored electoral matter to be printed at the end of the electoral matter), where electoral matter is published by or on behalf of a registered party, ballot group or candidate for election, that the authorisation statement also must contain the name of the party, ballot group or candidate.

This provision is intended to ensure that electoral matter published by or on behalf of a registered party, ballot group or candidate is clearly identified as such, so that persons viewing the material can be made aware of that fact.

This provision also clarifies that, in the case of electronic electoral matter, an authorisation statement must be published at the end of each discrete page of material, such as an internet website page.

Exemptions for dissemination of electoral matter on certain items

Clause 36 substitutes new section 295 to incorporate in this section various exceptions to the authorisation requirements that are currently included in the electoral regulations. This places all the exceptions in the one place for ease of reference. No substantive change to the existing law is made by this amendment.

Transitional provisions

Clause 37 inserts new sections 342, 343, 344 and 345, which are transitional provisions relating to some of the amendments made by this bill.

New section 342 allows registered political parties 2 months grace in which to prove to the Electoral Commissioner (if necessary) that they are entitled to remain registered under the new provisions (particularly those amendments to section 93 that alter the requirements for registration of a party). It is envisaged that the Commissioner will review the register of political parties after commencement of this bill in order to determine whether the parties registered fall within the new requirements for registration. Under this section, the Commissioner will not be able to cancel the registration of any party on the ground of ineligibility until 2 months after commencement of the bill.

New section 343 allows registered political parties a 30 day period from commencement of this bill to provide the Commissioner with a copy of their up to date constitution. This will allow the Commissioner to establish a set of up-to-date party constitutions for the purposes of new section 99A.

New section 344 is intended to ensure that the changes to the annual reporting disclosure requirements will not apply to returns relating to the financial year that began on 1 July 2000, to avoid any retrospective application of the changes. The changes allowing annual returns to be submitted and made public 4 weeks later in an election year will apply to the 2000/2001 financial year returns.

New section 345 provides that the transitional provisions made under sections 343 and 343 are to expire 2 months after commencement of this section, while the transitional provision made by section 344 is to expire on 2 March 2002. This is the date after which the annual returns for 2000/2001 are due to be published.

Preliminary scrutiny of declaration voting papers

Clause 38 omits clause 3 of Schedule 3 (Preliminary scrutiny of declaration voting papers). This clause requires an officer to record the condition of each ballot box containing completed declaration voting papers. In practice completed declaration voting papers are not stored in ballot boxes, they are stored in secure custody, thereby making this clause redundant.

Clause 39 omits clause 12 of Schedule 3 (Preliminary scrutiny of declaration voting papers). This clause provides that the Commissioner shall give each elector whose declaration vote has been rejected a notice setting out the reasons for the rejection. In practice this advice is not welcomed by electors and has led to anguish and confusion in some cases (as declaration votes are often rejected because the elector has failed to complete the declaration properly, sometimes because of age or infirmity). Omission of this clause will mean that these notices will not need to be sent.

Schedule 1 – Electoral Act 1992 – minor and consequential amendments

The amendments made by Schedule 1 are generally minor "housekeeping" amendments or amendments consequential to substantive amendments described above.

Most minor or consequential amendments are related to:

- the introduction of the scheme for registration of ballot groups; or
- the introduction of the scheme for registration of ballot groups; or
- the extension of the disclosure scheme currently applied to independent MLAs to all MLAs; or
- the extension of the deadline for submission and publication of annual returns by 4 weeks for returns due in an election year; or
- moving definitions from section 3 to a Dictionary at the end of the Electoral Act; or
- inserting new "signpost" definitions in the Dictionary pointing to other definitions contained in various Parts of the Electoral Act; or
- amending various definitions as a consequence of the consolidation of definitions in the Dictionary; or
- removing or altering words from various provisions as a consequence of the consolidation of definitions in the Dictionary; or
- other amendments consequential to substantial amendments made in the main section of the Bill; or
- various amendments to update provisions to modern drafting style.

Schedule 2 – Amendments of Referendum (Machinery Provisions) Act 1994

This schedule removes an out-of-date reference in section 12 of the Referendum (Machinery Provisions) Act to distribution of how-to-vote cards by mobile polling teams. The equivalent provision in the Electoral Act was removed when the ban on canvassing within 100 metres of a polling place was introduced.

The schedule also updates section 17 of the Referendum (Machinery Provisions) Act to include a reference to a ballot group as a consequence of the introduction of the scheme for registration of ballot groups. This does not change the substance of this clause.