



## NSW Legislative Assembly Hansard

### Election Funding Amendment Bill

Extract from NSW Legislative Assembly Hansard and Papers Tuesday 17 October 2006.

#### Second Reading

**Mr PAUL McLEAY** (Heathcote—Parliamentary Secretary) [12.12 a.m.], on behalf of Mr Morris Iemma: I move:

That this bill be now read a second time.

The Election Funding Act imposes obligations on parties, candidates, individuals and organisations to disclose political donations and campaign expenditure. It is important legislation which helps ensure the transparency of the electoral process. The Act also provides for the public funding of part of the costs of candidates and political parties during election campaigns. This ensures greater fairness among the relevant candidates and parties and reduces the need for separate fundraising activities. The Act is administered by the Election Funding Authority, which is chaired by the Electoral Commissioner. The Electoral Commissioner has, on behalf of the authority, drawn to the Government's attention the need for two amendments to the Act.

The first amendment relates to the provisions in the Act that require the disclosure of political donations and electoral expenditure incurred in connection with an election. The Electoral Commissioner has highlighted a recent case that shows that the important disclosure provisions of the Act could be undermined. The problem arises because the authority has no power to require a person to provide information to the authority about the identity of another person or organisation that might have failed to disclose a political donation or electoral expenditure. In the particular case highlighted by the Electoral Commissioner, a political organisation organised for a number of individuals and businesses to make a contribution to the cost of electoral advertising. The political organisation arranged for the advertisements to be placed in various local media. The organisation also arranged for the media agency, which ran the advertisements, to bill the individuals and businesses that contributed to the advertisements directly, rather than billing the political organisation. The individuals and businesses that paid for the advertisements were required under the Election Funding Act to disclose this expenditure, but did not do so.

Neither the media agency nor the political organisation had an obligation to disclose the electoral expenditure, as they had not incurred the advertising expenditure themselves. Further, the authority had no power to require either the political organisation or the media agency to identify those individuals and businesses that had paid for the advertisements. Item [2] of schedule 1 to the bill amends the Act to give the authority, or an authorised officer of the authority, the power to demand from a person the name and address of another person where the authority reasonably suspects that the other person has failed to disclose political donations or electoral expenditure, as required by the Act. The power will be able to be exercised only in circumstances where the authority or authorised officer has a reasonable suspicion that the person may have information which enables the person who incurred the electoral expenditure to be identified.

The second amendment affects the provisions of the Act that provide for public funding of election campaigns. Candidates are entitled to make claims for reimbursement of electoral expenditure from the Constituency Fund. Parties, on the other hand, are entitled to make claims on the Central Fund for expenditure they incur. In the past, candidates have been able to claim from the Constituency Fund amounts that have been invoiced to them by political parties in circumstances where the party incurs expenditure on behalf of the candidate. Recently, the authority sought legal advice from the Crown Solicitor about the Macquarie Fields by-election. In that by-election, the Greens candidate submitted invoices received from the Greens party for electoral expenditure incurred by the party on behalf of the candidate.

The authority declined to reimburse those invoices from the Constituency Fund. That was because the Crown Solicitor advised that candidates could only claim for expenditure that they themselves incur or for expenditure which is incurred by the party for its candidates pursuant to a formal agency arrangement. The Greens candidate had not incurred the expenditure personally himself, and he did not have a formal agency arrangement with his party. In the context of the by-election, the Greens were ultimately able to obtain reimbursement from the Constituency Fund by resubmitting their claim to ensure it was made by the party and not by the candidate. This is possible because the Election Funding Act enables parties to claim on the Constituency Fund for by-elections.

However, that is not the case for general elections. If this claim were to be made in a general election, it would be refused because the Act does not enable parties to claim directly on the Constituency Fund for general elections. As a result of the Crown Solicitor's advice, the authority will now need to also refuse those claims made in respect of invoices issued by political parties to individual candidates for expenditure incurred by the party on behalf of the candidate, unless a formal agency arrangement is in place. That is despite such claims

being routinely accepted in the past.

As honourable members would be aware, political parties often arrange advertising and incur other expenditure on behalf of the candidates they endorse. Formal agency arrangements are generally not in place between candidates and political parties. However, in most cases there are informal understandings or arrangements that the party will incur certain expenditure for the benefit of the candidates, such as printing or advertising costs. When parties incur expenditure on behalf of candidates without a formal agency arrangement being in place, without these amendments they would only be able to claim that expenditure from the Central Fund.

It is appropriate that parties are able to invoice candidates for those amounts, and for the candidates to claim the amounts from the Constituency Fund. Item [1] of schedule 1 to the bill, therefore, amends the Act to provide that a candidate is entitled to claim from the authority campaign expenditure which has been incurred by the party for the benefit of a candidate and invoiced by the party to the candidate. This will apply regardless of whether there is a formal agency arrangement in place, or whether the candidate is legally liable to the party for the expenditure. I commend the bill to the House.