

## **Explanatory note**

This explanatory note relates to this Bill as introduced into Parliament.

### Overview of Bill

The object of this Bill is to amend the *Election Funding and Disclosures Act 1981* (the **principal Act**) to make major reforms to political donations and election campaign expenditure and funding for State elections. In particular, the Bill imposes caps on political donations and electoral communication expenditure and provides instead for an increase in public funding for State election campaigns.

### Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on 1 January 2011.

Explanatory note page 2

Election Funding and Disclosures Amendment Bill 2010

Explanatory note

## **Schedule 1 Amendments to Election Funding and Disclosures Act 1981 No 78 relating to political donations and electoral expenditure**

### **Caps on political donations and electoral communication expenditure**

**Schedule 1 [21]** inserts new provisions relating to caps on political donations and electoral communication expenditure relating to State elections. The provisions include caps on political donations to registered parties, parties that are not registered, elected members, groups, candidates and third-party campaigners. There will be a prohibition on political donations that exceed the applicable cap and it will be unlawful for a person to make or accept political donations to more than 3 third-party campaigners in the same financial year. Party subscriptions (not exceeding \$2,000 per member) are to be disregarded for the purposes of the cap on political donations. There will also be caps on electoral communication expenditure that will apply to expenditure in the capped expenditure period. For the State election to be held on 26 March 2011, that period begins on 1 January 2011. For subsequent general elections, the period begins on 1 October in the year prior to the election and, in any other case, the period begins on the day of the issue of the writs for the election. The cap on donations and expenditure will not apply to Federal or local government campaigns provided a separate account is established for that purpose.

**Schedule 1 [3] and [4]** make consequential amendments.

### **Meaning of political donations, electoral expenditure and electoral communication expenditure**

**Schedule 1 [8] and [9]** clarify when a disposition of property is or is not taken to be a gift (and therefore is or is not a political donation).

**Schedule 1 [10]** makes a consequential amendment to the definition of **reportable political donation** (reportable political donations being donations of or exceeding \$1,000 made to or for the benefit of a party, elected member, group, candidate or third-party campaigner).

**Schedule 1 [12]** sets out what is meant by **electoral expenditure** and **electoral communication expenditure**. **Schedule 1 [7]** generalises a provision that currently only applies to public funding of election campaigns.

### **Disclosure of political donations and electoral expenditure**

**Schedule 1 [13]** requires disclosure of political donations and electoral expenditure by third-party campaigners in the same way as it is required by parties, members, groups and candidates and major political donors. **Schedule 1 [14]** extends the period in respect of which disclosures are to be made from every 6 months to every 12 months. **Schedule 1 [16]** is a consequential amendment. **Schedule 1 [15]** provides that it is the official agent of a third-party campaigner who is responsible for making disclosures. **Schedule 1 [17]** provides that if a third-party campaigner is also a major

Explanatory note page 3  
Election Funding and Disclosures Amendment Bill 2010  
Explanatory note

political donor the disclosure may be made in a single declaration. **Schedule 1 [20]** clarifies that all electoral expenditure is required to be disclosed, whether or not it is incurred during the capped expenditure period. **Schedule 1 [30]** requires a declaration of disclosures by a party to be accompanied by a copy of the duly audited annual financial statement of the party in a form approved by the Election Funding Authority (the **Authority**).

#### **Campaign accounts for parties during State election campaigns**

**Schedule 1 [22]** makes it unlawful for a party to make a payment for electoral expenditure for a State election campaign unless the payment comes from the State campaign account of the party. The State campaign account of a party is to be a separate account. The following may be paid into the account:

- (a) political donations made to the party after 1 January 2011,
- (b) payments made to the party from the Election Campaigns Fund at any time,
- (c) money borrowed by the party at any time,
- (d) money belonging to the party on 1 January 2011.

Party subscriptions, amounts of political donations that exceed the applicable cap and any payments to the party from the Administration Fund or the Policy Development Fund (established under Part 6A of the principal Act. See Schedule 2 [4]) may not be paid into the State campaign account.

#### **Third-party campaigners**

**Schedule 1 [23]** makes it unlawful for a **third-party campaigner** (an entity or other person not being a registered party, elected member, group or candidate) to incur more than \$2,000 of electoral communication expenditure without being registered. It will also be unlawful for third-party campaigners to make payments for electoral communication expenditure, or to use political donations to incur electoral expenditure, unless the payments from that electoral communication expenditure are made by the official agent from the campaign account of the third-party campaigner. Political donations that exceed the applicable cap on donations are not to be paid into the third-party campaigner's campaign account. **Schedule 1 [2]** inserts a definition of **third-party campaigner** and **Schedule 1 [11], [18], [19] and [29]** insert references to third-party campaigners in various provisions.

#### **Offences**

**Schedule 1 [24]** updates the prohibition on accepting certain political donations to provide that it is unlawful for a political donation to a party, elected member, group, candidate or third-party campaigner to be accepted unless the donor is an individual who is enrolled to vote at State or other elections or an entity that has an ABN or similar business number.

**Schedule 1 [25]** provides that it is unlawful for a party (or a candidate elected or endorsed by a party) to make political donations to Independent candidates.

**Schedule 1 [26]** makes a consequential amendment.

Explanatory note page 4  
Election Funding and Disclosures Amendment Bill 2010  
Explanatory note

**Schedule 1 [27] and [28]** provide that a person who does any act that is unlawful under proposed Division 2A (Caps on political donations) or 2B (Caps on electoral expenditure for State election campaigns) or existing Division 3, 4 or 4A of Part 6 is guilty of an offence if the person was, at the time of the act, aware of the facts that result in the act being unlawful (maximum penalty: 200 penalty units in the case of a party and 100 penalty units in any other case).

#### **Other amendments**

**Schedule 1 [1]** changes the name of the Act to the *Election Funding, Expenditure*

and Disclosures Act 1981.

**Schedule 1 [2], [5] and [6]** contain amendments relating to words and expressions used in the proposed Act.

**Schedule 2 Amendments to Election Funding and Disclosures Act 1981 No 78 relating to election and other funding**

**Public funding of election campaigns**

**Schedule 2 [3]** substitutes Part 5 of the principal Act, which deals with public funding of State election campaigns. In the proposed Part, electoral expenditure for a State election is electoral communication expenditure incurred during the capped expenditure period for the election. For the State election to be held on 26 March 2011, that period begins on 1 January 2011. For subsequent general elections, that period begins on 1 October in the year prior to the election and, in any other case, the period begins on the day of the issue of the writs for the election. The proposed Part establishes the Election Campaigns Fund, which is kept by the Authority. Parties and candidates may be eligible for payments from the Election Campaigns Fund in respect of State elections (other than for by-elections for the Assembly). The amount to be distributed from the Election Campaigns Fund to a party or a candidate eligible for payment in respect of a State election is the amount of the actual electoral communication expenditure incurred by the party or candidate in connection with the election, on a sliding scale and subject to the applicable cap on electoral expenditure. In the case of a candidate endorsed by 2 or more registered parties, the parties are taken to constitute one party for the purposes of calculating the amount payable to the party, and the amount calculated is to be divided among the parties. A party is eligible for an advance payment from the Election Campaigns Fund of up to 30% of the amount to which the party was entitled for the previous State election.

The proposed Part also contains general provisions relating to funding, including provisions relating to:

- (a) the claiming of payments from the Election Campaigns Fund by parties and candidates, and the approval of those claims, and
- (b) the review and certification of individual claims by auditors, and

Explanatory note page 5

Election Funding and Disclosures Amendment Bill 2010

Explanatory note

- (c) the making of payments to parties and candidates from the Election Campaigns Fund, including preliminary payments, and
- (d) an offence of making false statements in claims for payment.

**Administration and Policy Development Funds**

**Schedule 2 [4]** substitutes Part 6A of the principal Act. The current Part 6A provides for the Political Education Fund. Proposed Part 6A instead establishes the Administration Fund and the Policy Development Fund, which will both be kept by the Authority. Parties with elected members and Independent members are eligible for annual payments from the Administration Fund for administrative or operating expenses of the party or the Independent member during the year. The amount of payments range from \$80,000 for each elected member of the party (with an annual maximum of \$2 million) and the annual maximum amount of \$80,000 for an independent member). Parties that are not eligible for payment from the Administration Fund may be eligible for payment from the Policy Development Fund of the amount of actual policy development expenditure incurred by or on behalf of the party during the year. The amount of payments range from a maximum of 25 cents per first preference vote received by candidates of the party at the last election, with a minimum payment of \$5,000 during the first 8 years.

The proposed Part also contains general provisions relating to the two Funds,

including provisions relating to the procedure for claiming payments. It will be an offence to make a false statement in relation to a claim under the proposed Part.

**Other provisions**

**Schedule 2 [5]** substitutes Schedule 1 to the principal Act. Proposed Schedule 1 will provide for the adjustment for inflation of political donation caps, electoral communication expenditure caps and administrative funding and policy development caps specified in the proposed provisions.

**Schedule 2 [1] and [2]** make related changes to definitions used in the proposed provisions.

**Schedule 3 Miscellaneous amendments to Election**

**Funding and Disclosures Act 1981 No 78**

**Schedule 3 [11]** requires a candidate or group to appoint one official agent. Elected members and third-party campaigners may appoint an official agent in certain circumstances. **Schedule 3 [1]–[5]** make related consequential amendments to the definition of *official agent* and insert a definition of *ex officio official agent*.

**Schedule 3 [8]** provides for the deemed registration of certain nominated candidates and groups.

**Schedule 3 [15]** clarifies an offence relating to payments for electoral expenditure.

Explanatory note page 6

Election Funding and Disclosures Amendment Bill 2010

Explanatory note

**Schedule 3 [9]** requires the Authority to keep a register of third-party campaigners for each election.

**Schedule 3 [20] and [21]** extend the enforcement powers of the Authority under the principal Act.

**Schedule 3 [22]** provides the Authority with the power to require a person to give the Authority documents and information. It also provides that the Authority may enter into agreements with persons affected by the Act for the purpose of ensuring the persons comply with the Act. The agreements may be enforced by the Supreme Court.

**Schedule 3 [23]** enables penalty notices to be issued for offences against the principal Act or the regulations made under that Act.

**Schedule 3 [10], [12]–[14] and [16]–[19]** contain minor miscellaneous amendments.

**Schedule 3 [24]** enables savings and transitional regulations to be made as a consequence of the proposed Act.