

Election Funding Amendment (Political Donations and Expenditure) Bill 2008

Explanatory note

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

The *Local Government and Planning Legislation Amendment (Political Donations) Bill 2008* is cognate with this Bill.

Overview of Bill

The object of this Bill is to amend the *Election Funding Act 1981* to strengthen the laws regulating political donations and electoral expenditure in relation to State and local government elections and elected members.

The Bill:

- (a) requires biannual disclosures of political donations and electoral expenditure (instead of 4-yearly disclosures following a general State or ordinary council election), and
- (b) extends reporting to elected members of State Parliament and elected local councillors (in addition to reporting by parties and candidates for election), and
- (c) imposes (in line with Commonwealth proposals) an obligation to disclose the details of all political donations of or above \$1,000 (with separate donations from the same person over the same financial year being aggregated for disclosure purposes), and
- (d) requires the disclosure of details of membership or affiliation fees of or above \$1,000 payable to a party by individuals, industrial organisations or other entities, and
- (e) introduces new rules for the management of campaign finances that will prevent elected members and candidates from having personal campaign accounts or having direct involvement with the receipt and handling of political donations (with money paid into and from special campaign accounts for use exclusively for campaign and other authorised purposes and managed by the agent of the party concerned or other official agent of the member or candidate), and
- (f) prohibits entities from making reportable political donations unless they have an ABN, and
- (g) prohibits the making of certain indirect campaign contributions, and
- (h) increases the penalty for failing to make disclosures or making false disclosures and confers increased investigative powers on the Election Funding Authority, and
- (i) applies the disclosure provisions (but not the election funding provisions) of the *Election Funding Act 1981* directly to local government elections (instead of those provisions being applied with modification of terminology by provisions of the *Local Government Act 1993*), and
- (j) makes other miscellaneous changes.

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 a day or days to be appointed by proclamation.

Clause 3 is a formal provision that gives effect to the amendments to the *Election Funding Act 1981* set out in Schedule 1.

Clause 4 consequentially repeals provisions of the *Local Government Act 1993* and the *Local Government (General) Regulation 2005*.

Clause 5 provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

Schedule 1 Amendments

Schedule 1 [1] amends the long title of the Act consequentially.

Schedule 1 [2] changes the name of the Act from the *Election Funding Act 1981* to the *Election Funding and Disclosures Act 1981* to reflect the importance of the disclosure provisions of the Act and their application irrespective of whether election funding is available or paid.

Schedule 1 [3]–[6] amend the general definitions in section 4 of the Act to reflect the application of the Act to local government elections and elected members, and the transfer of definitions relating to disclosures to Part 6 of the Act where they are used.

The definition of **official agent** of elected members, candidates or groups of candidates is substituted to provide for the relevant party agent to be the ex-officio official agent of State elected members or candidates (with provision for others to be specially appointed or for the regulations to designate the Authority or other agency to be the official agent).

Schedule 1 [7], [8], [9] and [45] make consequential changes as a result of the replacement of the term “political contributions” with the term “political donations”.

Schedule 1 [10] prescribes qualifications for party or official agents (including the exclusion of persons who have committed dishonesty offences or who have not completed the requisite training for appointment as an agent).

Schedule 1 [11]–[16], [22], [23], [24], [26] and [35] make consequential amendments as a result of the application of the disclosure provisions (but not the election funding provisions) of the Act directly to local government elections (instead of those provisions being applied with modification of terminology by provisions of the *Local Government Act 1993*).

Schedule 1 [17] provides that (unless a party appoints another person) the party agent is the person who is the registered officer of the party in connection with the registration of the party under the *Parliamentary Electorates and Elections Act 1912* or the *Local Government Act 1993*.

Schedule 1 [18]–[21], [25] and [27]–[32] make other minor or consequential amendments.

Schedule 1 [33] doubles the monetary penalty (to \$22,000) for the offence of making false statements in an application for election funding and enables the court to impose a sentence of imprisonment not exceeding 2 years in addition to or instead of a monetary penalty.

Schedule 1 [34] substitutes Part 6 of the Act (relating to the disclosure of political donations and electoral expenditure) with a new Part containing the following provisions to give effect to the changes outlined in the Overview:

Proposed Division 1 Preliminary

Proposed section 83 provides that the proposed Part applies to State elections (and elected members of Parliament) and local government elections (and elected members of councils).

Proposed section 84 makes provision for the interpretation of the proposed Part. The proposed section defines **donor, entity, expenditure, gift, major political donor** and **relevant disclosure period** for the purposes of the Act.

A **major political donor** is a person who has made a reportable political donation of or exceeding \$1,000 or incurred electoral expenditure of or exceeding \$1,000 during the relevant disclosure period. The proposed section also ensures that disclosure and other requirements for candidates and groups of candidates commence when political donations are accepted (even if they have not yet been duly nominated or registered as candidates or groups) and end 30 days after polling day for the relevant election. Proposed section 85 defines **political donation** for the purposes of the Act. Political donations include gifts to parties, elected members, candidates or groups, and gifts to major political donors for use in making political donations. Proposed section 86 defines **reportable political donation** for the purposes of the Act. Generally, political donations are reportable if they are of or exceeding \$1,000. Separate donations from the same person over the same financial year are to be aggregated for the purposes of that disclosure limit.

Proposed section 87 defines **electoral expenditure** for the purposes of the Act, in line with current provisions.

Proposed Division 2 Disclosure of political donations and electoral expenditure

Proposed section 88 provides that disclosure is required for:

- (a) political donations received, and
- (b) electoral expenditure incurred, by or on behalf of a party, an elected member, a group or a candidate.

Disclosure is also required of:

- (a) reportable political donations made, and
- (b) reportable political donations received, and
- (c) electoral expenditure incurred, by a major political donor.

Proposed section 88 also makes provision for a single declaration to be made by an agent of a party relating to disclosures in respect of the party and members of the party.

Proposed section 89 provides for disclosures to be made for each 6-month period ending on 30 June and 31 December.

The proposed section also provides that the disclosure period for a candidate in a current election commences 31 days after polling day for the previous election (if the candidate was also registered under the Act as a candidate for the previous election) or 12 months before the nomination of the candidate for the current election, whichever first occurs.

Proposed section 90 provides for who is to make a disclosure required under the new Part. The person required to make the disclosure is, in the case of a party—the party agent, in the case of an elected member—the official agent of the member, in the case of a group or candidate—the official agent of the group or candidate, and in the case of a major political donor—the political donor.

Proposed section 91 provides that disclosures are to be made within 8 weeks after the end of each relevant disclosure period and makes provision for the manner in which disclosures are to be made. The proposed section also provides that certain political donations are not required to be disclosed in a declaration if they have been disclosed on a website maintained by the Authority.

Proposed section 92 sets out the details of the political donations that are required to be disclosed. Full details are required of each reportable political donation and the total amounts of smaller donations (together with details relating to fund-raising ventures, membership or affiliation fees and loans).

Proposed section 93 requires that all expenditure for or in connection with promoting or opposing, directly or indirectly, a party or the election of a candidate or candidates or for the purpose of influencing, directly or indirectly, the voting at an election is required to be disclosed.

The proposed section also provides that lodging a copy of a return furnished to the Electoral Commission by the agent of a party under corresponding Commonwealth legislation in respect of the relevant period satisfies the disclosure obligation in respect of such expenditure.

Proposed section 94 provides relief from the obligation to disclose the same item more than once.

Proposed section 95 provides for posting of the disclosures of reportable political donations and electoral expenditure on a website maintained by the Authority as soon as practicable after the due date for making the disclosures. Disclosure documents lodged with the Authority are also to be open to public inspection.

Proposed Division 3 Management of donations and expenditure

Proposed section 96 provides that it is unlawful for political donations to a party to be used otherwise than for the objects and activities of the party (including party administration and community activities).

Proposed section 96A sets out general requirements for donations to, and electoral expenditure by, elected members, groups or candidates.

The proposed section requires political donations to be made to the official agent and not to the elected member, group or candidate, and to be paid into the campaign account kept by the official agent. Payments for electoral expenditure can only be made from that campaign account.

The proposed section also provides for certain exclusions from the obligations under the section, including cases where the total of the relevant political donations or electoral expenditure does not exceed \$1,000.

Proposed section 96B makes provision for campaign accounts of elected members, groups or candidates. A campaign account is to be a separate bank account under the control of the official agent (with provision for combined accounts with separating accounting where members of a party have the same official agent).

The proposed section makes provision for the purposes for which money may be paid out of the account and for the winding up of accounts.

Proposed section 96C provides that it is unlawful for a person to accept a reportable political donation that is required to be disclosed unless the person makes a record of the details required to be disclosed and provides a receipt for the donation.

Proposed Division 4 Prohibition of certain political donations etc

Proposed section 96D provides that it is unlawful for a person to accept a reportable political donation that is required to be disclosed under this Part unless it is made by an individual or an entity that has an Australian Business Number.

Proposed section 96E provides that it is unlawful for a person to make or accept certain indirect campaign contributions to a party, elected member, group or candidate. Indirect campaign contributions extend to office accommodation, vehicles, computers or other equipment; the full or part payment by a person other

than the party, elected member, group or candidate of electoral expenditure for advertising or other purposes incurred or to be incurred by the party, elected member, group or candidate; the waiving of payment for any such advertising expenditure; and other goods or services prescribed by the regulations.

The proposed section excludes certain contributions from the prohibition, including the provision of volunteer labour and contributions whose value is less than \$1,000.

Proposed section 96F provides that it is unlawful for a person to accept a reportable political donation if the person does not know the identity of the donor or is not given relevant details about the donor.

Proposed section 96G provides that it is unlawful for a person to receive a reportable loan unless the person makes a record of the terms and conditions of the loan and the name and address of the entity or other person making the loan.

Proposed Division 5 Miscellaneous

Proposed section 96H creates a number of offences relating to disclosures.

It is an offence if a person who is required to lodge a declaration under section 91 fails to do so by the due date. It is an offence for a person to make a statement in a declaration or other disclosure, or in a request for an extension of the due date for making the disclosure, that the person knows is false, or that the person does not reasonably believe is true. It is an offence for an elected member, member of a group or candidate, in relation to a matter required to be disclosed by the official agent of the elected member, group or candidate, to give or withhold information knowing that it will result in the making of a false statement in a disclosure or request by the agent.

Proposed section 96I provides that it is an offence for a person to do any act knowing that it is unlawful under Division 3 or 4, and that it is an offence to fail to keep political donation records for at least 3 years.

Proposed section 96J provides that if a person accepts a political donation, loan or indirect campaign contribution that is unlawful, an amount equal to the amount or value of the donation, loan or contribution (or double that amount if that person knew that it was unlawful) is payable by that person to the State.

Proposed section 96K provides that a disclosure declaration (other than a declaration lodged by a major political donor) is to be accompanied by a certificate of an auditor and sets out the matters to be stated in the certificate.

The proposed section also provides for the Authority to waive compliance with the audit requirement in certain cases.

Proposed section 96L authorises the Authority to extend the due date for the lodging of a disclosure declaration if satisfied that there is good cause to do so.

Proposed section 96M enables the person who has lodged a disclosure declaration (or that person's successor) to amend the declaration by lodging an amended declaration.

Schedule 1 [36], [38]–[41], [43], [44] and [46] make minor or consequential amendments.

Schedule 1 [37] extends the category of persons that the Authority may appoint as inspectors under the Act.

Schedule 1 [42] authorises the Authority to obtain information for the purposes of compliance audits.

Schedule 1 [47] authorises the making of regulations relating to the valuation of non-monetary political donations and relating to compliance audits.

Schedule 1 [48] inserts provision for the making of savings and transitional regulations consequent on the enactment of the proposed Act.

Schedule 1 [49] makes transitional provisions with respect to the new arrangement for disclosure and management of political donations and electoral expenditure.

Under those provisions:

- (a) the first declaration of disclosures by parties, elected members, candidates and groups is required to be lodged in respect of the period ending 30 June 2008 (ensuring that the disclosures are made before the end of August 2008), and
- (b) the first declaration of disclosures by major political donors is required to be made in respect of the period ending 31 December 2008, and
- (c) the new requirements for the receipt and management of political donations and electoral expenditure, and the prohibition on indirect campaign contributions and certain other political donations, have effect on 1 August 2008.