Second Reading

The Hon. JOHN HATZISTERGOS (Attorney General, Minister for Justice, and Acting Minister for Education and Training) [11.10 a.m.]: I move:

> That these bills be now read a second time.

On 28 February 2008 the Premier announced that the Government would be introducing wide-ranging reforms to campaign finance laws in New South Wales. The Election Funding Amendment (Political Donations and Expenditure) Bill 2008 and the Local Government and Planning Legislation Amendment (Political Donations) Bill 2008 give effect to the Government's commitment to improve transparency and accountability in this important area. The New South Wales Election Funding Act 1981 was the first such legislation in Australia. It is founded on the principle that the source of political donations should be properly disclosed to the electorate. The Government has long recognised the need for coordinated national reform to strengthen campaign finance laws. Indeed, the Government has raised this issue with its Federal counterparts in the past.

The Hon. Don Harwin: Point of order: Not only is the Attorney General mumbling but there are no copies of the bills in the Chamber available for members to peruse, other than those that have been presented. I ask that this situation be dealt with.

The Hon. JOHN HATZISTERGOS: If members were quiet they would be able to hear me.

The PRESIDENT: Order! I am advised that copies of the bills are now available. The Minister may proceed.

Ms Lee Rhiannon: Mr President, they are not available at this end of the Chamber.

The Hon. JOHN HATZISTERGOS: Here they are!

The PRESIDENT: Order! Copies of the bills are available in the normal manner from the Clerks at the table. The Minister may proceed.

The Hon. JOHN HATZISTERGOS: I do not know that that was a point of order, but I will not be distracted. The legislation being introduced today will be the most significant reform of the Election Funding Act 1981 since its enactment. It will give New South Wales the most robust funding and disclosure regime in Australia. The Government firmly believes that voters have a right to know about political donations accepted by their elected representatives, candidates and political parties. Under the current Election Funding Act, parties, groups, candidates and donors are required to lodge declarations of political contributions only every four years after a general election. In the interests of transparency, the Government believes that information about donations should be made available to the public at more regular intervals. The Election Funding Amendment (Political Donations and Expenditure) Bill 2008 introduces a system of biannual disclosure to achieve this. I note that the Commonwealth Government has also introduced legislation requiring biannual disclosure at the Federal level.

Parties, groups, candidates, members of Parliament, councillors and donors will be required to lodge declarations of all donations made or received and all electoral expenditure incurred in each six-month period to 30 June and to 31 December. Declarations setting out the details of all donations and expenditure must be lodged with the Election Funding Authority within eight weeks of the end of the relevant disclosure period. The authority will be required to publish these declarations as soon as practicable.

The PRESIDENT: Order! There is too much audible conversation in the Chamber. Members who wish to engage in conversations should do so outside the Chamber, if not voluntarily then by direction of the Chair. The Minister may proceed.

The Hon. JOHN HATZISTERGOS: The upcoming local government elections will fall between the six-monthly disclosure cycles provided for in the bill. Transitional arrangements have therefore been made to ensure that disclosures are made before the local government elections in September 2008. All political parties, members of Parliament, councillors, groups and candidates will be required to lodge a declaration by 25 August 2008. This declaration will cover donations received in the period since the last election to 30 June 2008. Donors, however, will not be required to disclose by 25 August. It would not be practicable for the authority to inform such a large class of persons of their new legal obligations in the time available. It is important to note that the authority will simply publish the information that it receives. In the interests of giving the public timely access to information about donations, the authority will not be required to engage in a time-consuming validation process before publication. Responsibility for the accuracy of information contained in declarations will rest with those making the disclosure.

The authority is, however, granted increased enforcement powers to conduct random audits for the purposes of

monitoring compliance with the Election Funding Act. At present, the Election Funding Act provides that a party does not have to disclose the details of political contributions unless they exceed $1,500. The bill reduces the New South Wales disclosure limit for parties to $1,000. This provision is consistent with the Prime Minister's recent announcement that the Federal disclosure limit for parties will be reduced from $10,000—indexed for inflation—to $1,000. Currently, different disclosure limits apply to parties, groups, candidates and donors, while disclosure limits differ between jurisdictions. The Government believes that a consistent disclosure limit would simplify the disclosure process and improve overall compliance with disclosure obligations. The bill therefore applies a uniform disclosure limit of $1,000 to everyone.

The bill also addresses ambiguities in the current Election Funding Act that potentially allow parties, groups, candidates, members of Parliament and councillors to avoid the disclosure of certain loans. As a result of the amendments, the details of any loan of $1,000 or more, other than a loan from a recognised financial institution, must be recorded by the person receiving the loan and disclosed to the authority as part of the six-monthly declaration. Under the current Election Funding Act, groups and candidates—including members of Parliament and councillors—are not prevented from directly receiving political donations and controlling their own campaign accounts. The bill aims to promote more thorough, accurate and timely disclosure of donations and expenditure by establishing new rules for the management of campaign finances. These changes will implement the Premier's proposal to ban individual candidates, members of Parliament and councillors from having personal campaign accounts, and limit the involvement of candidates, members of Parliament and councillors in the fundraising process by ensuring that all donations are organised, received, handled and administered by the central party office.

The bill provides that all groups, candidates, members of Parliament and councillors must have an "official agent". The official agent will control a "campaign account" on behalf of each group, candidate, member of Parliament and councillor. For political parties and their State election candidates and members of Parliament, the "party agent"—who is normally the registered officer of the party—will be designated as the official agent. This will centralise responsibility for donations and disclosure with the central party office. Independent groups, candidates and members of Parliament at State elections, and all candidates, groups and councillors at local government elections, will be required to appoint an "official agent" to administer their campaign finances. While the Government initially considered conferring this function upon the authority or other independent body, significant concerns were raised about this approach in the course of the select committee inquiry into electoral and political party funding and in consultation with Independent members of Parliament.

An "official agent" must be an individual who is enrolled in New South Wales, and has completed the training set down by the authority. It is envisaged that some classes of persons will be exempt from the training requirements due to their professional qualifications, such as accountants. This will reduce the regulatory burden on prospective agents. Under the bill, each candidate, group, member of Parliament and councillor will be required to open a separate account with a bank, credit union or building society. This account will be controlled by the official agent. The official agent may, by authorisation in writing, appoint other persons, except for the candidate, member of Parliament or councillor, to assist with the handling of donations. Election funding will also be paid into the campaign account. Political donations are to be made to the official agent and deposited by the official agent into the campaign account.

All payments for electoral expenditure will be required to come out of the campaign account, and any payments from the campaign account must be used to incur the electoral expenditure of the candidate or their party, or for other permitted purposes. The guidelines of the authority may exclude minor payments from the campaign account rules. It is noted that candidates, members of Parliament and councillors will be entitled to pay their own funds into their campaign accounts and are entitled to be reimbursed for those funds from the campaign account if the funds in the account remain unspent when the account is no longer required. To ensure transparency, the terms on which a person's own funds are paid into the account must be disclosed.

To implement the Premier's commitment that all donations must be spent on election campaigns and not for personal benefit, funds from the campaign account can be used only for prescribed purposes. A similar obligation extends to parties. The new rules regarding official agents and campaign accounts are an important integrity measure. They provide for a segregation of duties and will ensure that the financial records of groups, candidates, members of Parliament and councillors are overseen by a properly trained person. The new rules will also help ensure that reporting is done in accordance with the new legislation. The Government recognises, however, that some candidates, groups, members of Parliament and councillors do not receive large donations or spend a lot of money on their campaigns. Such persons should not be deterred from contesting elections by unnecessary red tape.

The proposed bill, therefore, provides that a candidate, group, member of Parliament or councillor need not comply with the campaign account requirements where he or she does not accept $1,000 or more in donations—either as a single donation or in total—or spend $1,000 or more on electoral expenditure. These persons will still be subject to the general disclosure requirements under the Election Funding Act and will be deemed to be their own official agent for this purpose. The new rules for managing campaign finances will apply from 1 August 2008. The Government recognises that the new rules will fundamentally change the way in which most campaigns are run, and that many people will need time to adjust to the new system. For that reason, the

transitional provisions give the authority discretion to waive compliance with the new requirements where it is satisfied that there is good cause to do so. This grace period will apply until 30 days after the September local government elections.

In-kind donations, such as the provision of offices and cars to candidates for little or no payment, create particular problems in terms of transparency. The bill prohibits the making or acceptance of certain indirect campaign contributions valued at $1,000 or more to parties, groups, candidates, members of Parliament and councillors. The ban on indirect contributions is designed to stop third parties from providing offices, vehicles, computers and other equipment valued at more than $1,000 to political entities for little or no consideration. It will also stop third parties from paying for the electoral expenditure of a party, group or candidate, including advertising costs incurred by a party, group or candidate. Volunteer labour, and the incidental use of vehicles and equipment that belong to volunteers, is not prohibited. Volunteers are a crucial part of the political landscape. Indeed, they are a hallmark of participatory democracy. The authority will be empowered to issue guidelines that will help volunteers resolve any uncertainty arising from the new ban on indirect campaign contributions.

The bill retains the current offences for failing to lodge a declaration in accordance with the Election Funding Act, and deliberately giving or withholding information knowing that it will result in a false declaration. The maximum monetary penalty for these offences will be increased from $11,000 to $22,000 to reflect the severity of non-compliance. The penalty for knowingly making a false statement in a declaration will be subject to a maximum penalty of $22,000 or 12 months imprisonment, or both. Lodging a false declaration to obtain election funding will attract a maximum penalty of $22,000 or two years' imprisonment, or both. Any person who knowingly contravenes the new rules for managing campaign finances will also be guilty of an offence and liable for a penalty of $22,000 in the case of a party, or $11,000 in any other case.

A number of other new offences are created to deal with: accepting a donation or loan of more than $1,000 without recording the relevant details and providing a receipt; failing to keep the prescribed records of reportable donations for a period of three years; accepting a donation of more than $1,000 other than from an individual or an entity that has an Australian business number; and making or accepting certain indirect campaign contributions. The penalties for those offences will be $22,000 in the case of a party, and $11,000 in the case of any other person. The bill also retains the current provisions, which allow for the recovery of any donation, loan or indirect campaign contribution that is unlawfully accepted. If a person knowingly accepts a donation, loan or indirect campaign contribution that is unlawful, an amount equal to double the unlawful contribution is payable by that person to the State.

The bill also includes new enforcement powers for the authority. Specifically, the authority will have the power to conduct compliance audits and will be able to request any person to provide it with relevant information for this purpose. The Government recognises that additional resources must be made available to the authority if it is to administer the new regime effectively. The authority's funding will be increased on an ongoing basis to allow it to carry out its new functions and continue to oversee the Act. Its funding for the immediate period will also be increased to ensure a smooth transition to the new regime in the lead-up to the 2008 local government elections.

The Local Government and Planning Legislation Amendment (Political Donations) Bill 2008 contains measures that are specifically designed to make the planning and development approval process more transparent, both at the State and local levels. Parts of this bill implement a number of the recommendations made by the Independent Commission Against Corruption in its position paper "Corruption risks in NSW development approval processes". The bill requires the general manager of each local council to record which councillors vote for and against each planning decision of the council, and to make this information publicly available. The general manager is also required to keep a public register of all current donations and expenditure declarations lodged by local councillors with the authority under the Election Funding Act.

Under the Model Code of Conduct for Local Councils in New South Wales, councillors are required to disclose and manage all conflicts of interest, including those that arise from a political donation. Under changes to the model code that were recently announced by the Minister for Local Government, donations of $1,000 or more made directly to a councillor are automatically deemed to create a non-pecuniary conflict of interest on the part of councillors. Councillors who have received a political donation of $1,000 or more directly from a political donor will be required to refrain from voting on or discussing matters before council involving that particular donor. The Independent Commission Against Corruption has recommended that the Local Government Act be amended to provide that a failure to declare a non-pecuniary conflict of interest relating to a political donation is a matter falling within the jurisdiction of the Pecuniary Interest and Disciplinary Tribunal.

The bill, therefore, provides that where a general manager reasonably suspects that a councillor has failed to comply with his or her obligation to disclose and manage a conflict arising from a political donation, the general manager must refer the matter to the Director General of the Department of Local Government. The director general may then refer the matter directly to the tribunal. The bill will require public disclosure of all donations made by persons who have a financial interest in a relevant planning application at the time the relevant planning application is lodged. A person who makes a relevant planning application to the Minister for Planning will be required to disclose all donations of $1,000 or more made in the past two years by anyone with a financial

interest in the application. In that context, a relevant planning application includes a request to the Minister or the director general to initiate the making of an environmental planning instrument, and a request for development on a particular site to be made a State-significant development.

Persons with a financial interest in an application include the applicant or the person on whose behalf the application is made, the owner of the site, or other persons who are associated with the applicant or owner, and are likely to make a financial gain if the relevant application is approved. Persons are taken to be associated if they carry on business together in connection with the application, or if they are related companies. A financial gain made by a person in their capacity as a shareholder is specifically excluded from this provision. The Government recognises that in some cases objectors will have as much to gain from the Minister or the director general's decision on a planning application as would the developer. In the interests of fairness, the bill provides that those who make a written public submission either supporting or opposing a particular development must disclose donations of $1,000 or more made in the past two years by them or their associates.

The bill makes similar changes with respect to planning applications at the local council level. A person who makes a relevant planning application to a council, including an application for development consent, will be required to disclose all donations of $1,000 or more to a local councillor of the council in the past two years by anyone with a financial interest in the application. Any gifts made to a local councillor or council employee are also caught by this provision. Equivalent obligations will apply to anyone who makes a public submission to council supporting or opposing a development application. There is no doubt that these reforms will dramatically improve transparency at the local government level. There is a concern, however, that incorporating donations disclosure into the approval process may actually increase the public perception that political donations will influence council decision making.

At present, unless the donation is made directly to the decision maker—as opposed to his or her political party—the decision maker may not know that a donation has been made. In light of that, the legislation has been drafted so that only donations made to individual councillors, rather than donations made to political parties, are required to be disclosed at the time a relevant planning application is lodged with a local council. The Government has informed ICAC about this amendment and has given ICAC the opportunity to provide its views on the Government proposal.

The two bills I have outlined today will mark a new era of transparency and accountability. They are founded firmly on the belief that the integrity of the electoral system can be preserved if the voting public is made aware of the sources of private donations. The Government appreciates the benefits of nationally consistent regulation in this area. To this end, New South Wales is working closely with the Commonwealth and the States and Territories to identify opportunities for coordinated reform as part of the Federal Government's green paper process. A broad range of issues concerning Australian electoral laws will be examined as part of the green paper process. I look forward to working with my counterparts to harmonise and improve our electoral systems. The first meeting of Ministers took place in May and was extremely productive. At that meeting the New South Wales Government advised that it had commissioned Associate Professor Anne Twomey, a leading expert in constitutional and electoral law, to prepare a paper outlining the key issues that need to be addressed for the next stage of donations reform.

These issues include a complete ban on donations, donations and expenditure caps, and full public funding of election campaigns. Associate Professor Twomey's paper will no doubt inform further debate within government and the community. In the meantime the Government has prepared two bills that deliver on the Premier's commitment for transparency and accountability. These watershed reforms will strengthen public confidence in our electoral system. They will cement New South Wales' position as a leader in the area of electoral reform. Most importantly, these reforms will ensure that the New South Wales Electoral Funding Act continues to fulfil the purpose so eloquently put by Premier Wran when he first introduced the legislation, "to declare to the world the great political parties of New South Wales are not up for sale". I commend the bills to the House.