



Queensland

Electoral Amendment Act 2008

Act No. 47 of 2008



Queensland

Electoral Amendment Act 2008

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Queensland

Electoral Amendment Act 2008

Act No. 47 of 2008

An Act to amend the Electoral Act 1992 for particular purposes

[Assented to 19 September 2008]

The Parliament of Queensland enacts—

1 Short title

This Act may be cited as the *Electoral Amendment Act 2008*.

2 Commencement

This Act, other than sections 4, 10, 11, 17, 21, 22, 27 and 33 to 35, is taken to have commenced on 1 July 2008.

3 Act amended

This Act amends the *Electoral Act 1992*.

4 Omission of s 2 (Note in text)

Section 2—

omit.

4A Amendment of s 85 (Deposit to accompany nomination)—

Section 85(4)(c), ‘more than 4%’—

omit, insert—

‘at least 4%’.

5 Amendment of s 126A (Purposes of part)

Section 126A(1)(b), ‘on an annual basis’—

omit, insert—

‘on a 6 monthly basis’.

6 Amendment of s 126B (Law about electoral funding and financial disclosure)

Section 126B(4)—

omit, insert—

- ‘(4) Following the introduction into the Senate of the Parliament of the Commonwealth of the *Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2008* (the **Commonwealth Bill**), amendments of the schedule have been made based on proposed amendments of the Commonwealth Electoral Act by the Commonwealth Bill.
- ‘(5) Amendments of the schedule based on the Commonwealth Bill are identified by editor’s notes.
- ‘(6) The schedule is not a mere adoption or application of the Commonwealth Electoral Act.

Example—

A reference in the schedule to regulations is a reference to regulations made under this Act.’.

7 Amendment of s 126C (Regulations for part)

- (1) Section 126C, example, ‘Section’—

omit, insert—

‘The schedule, section’.

- (2) Section 126C, example, ‘section’—

omit, insert—

‘the schedule, section’.

8 Insertion of new pt 11, div 3

Part 11—

insert—

‘Division 3 Transitional provisions for Electoral Amendment Act 2008

‘185 Definitions for div 3

‘In this division—

amending Act means the *Electoral Amendment Act 2008*.

assent day means the day the amending Act receives assent.

commencement means 1 July 2008.

pre-amended Act means this Act as in force immediately before 1 July 2008.

‘186 Reference to election funding amount for sch, s 294A

‘For the operation of the schedule, section 294A for the financial year starting 1 July 2008, a reference in the schedule, section 294A(5), definition A to ‘election funding amount’ means a reference to ‘election funding reimbursement amount’.

‘187 Continuation of decisions under sch, s 299A

‘(1) It is declared that a decision made under pre-amended section 299A before the assent day continues to have effect after the commencement as if the amending Act had not been enacted.

‘(2) The pre-amended Act continues to apply in relation to the decision as if the amending Act had not been enacted.

‘(3) In this section—

pre-amended section 299A means the schedule, section 299A as in force immediately before the commencement.

‘188 Decisions about electoral expenditure paid under the pre-amended Act

‘(1) This section applies to a claim for an amount of electoral expenditure accepted, and paid, by the electoral commission before the assent day if, after the assent day, the electoral commission becomes satisfied that—

-
- (a) the amount of electoral expenditure should not have been accepted; or
 - (b) only a lesser amount of electoral expenditure should have been accepted.
- ‘(2) The schedule, section 301 applies as if a reference in that section to a claim decision were a reference to a decision about the payment of the amount of electoral expenditure and the schedule, division 3 applies in relation to the decision with necessary changes.

‘189 Donations made or received on or after 1 July 2008 and before the end of a stated period

- ‘(1) This section applies if, under a provision of this Act as in force on the commencement, a person or entity is required to disclose, or otherwise deal with, a donation within a period prescribed by this Act ending on or after the commencement but before the day 13 days after the assent day.
- ‘(2) The person or entity does not contravene the provision if the person or entity discloses, or otherwise deals with, the donation as required under this Act within 28 days after the assent day.
- ‘(3) In this section—
disclose includes report and give a return in relation to.
donation includes gift.’.

9 Amendment of schedule, s 287 (Interpretation)

- (1) Schedule, section 287(1), definition *eligible vote*—
omit.
- (2) Schedule, section 287(1), after the definition *registered industrial organisation*—
insert—
‘*reporting period* means—
(a) *the first 6 months of a financial year; or*

(b) *a full financial year.*

Editor's note—

The definition *reporting period* is based on the proposed definition *reporting period* for the Commonwealth Electoral Act provided in the *Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2008*.

10 Amendment of schedule, s 287A (Campaign committee to be treated as part of *(words omitted)* party)

Schedule, section 287A(1), after 'Divisions 4,'—

insert—

'4A,'.

11 Amendment of schedule, s 292B (Responsibility for action when agent of party *(words omitted)* dead or appointment vacant)

Schedule, section 292B(a), after 'Division 4,'—

insert—

'4A,'.

12 Amendment of schedule, replacement of ss 293 and 294

Schedule, sections 293 and 294—

omit, insert—

'Subdivision AA Preliminary

'292E Interpretation

'(1) A reference in this division to electoral expenditure for an election is to be read as a reference to any expenditure incurred for the election campaign (whether or not incurred during the election period).

'(2) For the purposes of this division, electoral expenditure for an election incurred by or for a candidate who is endorsed by a

registered political party is taken to be electoral expenditure for the election incurred by the party.

‘Subdivision A Entitlement to election funding

‘293 Entitlement to election funding—registered political parties

- ‘(1) *A registered political party is entitled to election funding under this section for all elections held on the same day if, in relation to a candidate whom the party endorses in an election, the total number of formal first preference votes given for the candidate is at least 4% of the total number of formal first preference votes cast in the election.*
- ‘(2) *The amount of election funding to which the registered political party is entitled is the lesser of—*
- (a) the election funding amount calculated under section 294A for each formal first preference vote given for a candidate in relation to whom subsection (1) is satisfied; and*
 - (b) the amount of electoral expenditure—*
 - (i) claimed in relation to the registered political party for all elections held that day; and*
 - (ii) accepted by the electoral commission under section 298C.*

Editor’s note—

This section is based on proposed section 293 for the Commonwealth Electoral Act provided in the Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2008.

‘294 Entitlement to election funding—unendorsed candidates

- ‘(1) *A candidate in an election is entitled to election funding under this section if—*

- (a) *the candidate is not endorsed by a registered political party; and*
 - (b) *the total number of formal first preference votes given for the candidate in the election is at least 4% of the total number of formal first preference votes cast in the election.*
- (2) *The amount of election funding to which the candidate is entitled is the lesser of—*
- (a) *the election funding amount calculated under section 294A for each formal first preference vote given for the candidate in the election; and*
 - (b) *the amount of electoral expenditure—*
 - (i) *claimed in relation to the candidate for the election; and*
 - (ii) *accepted by the electoral commission under section 298C.*

Editor's note—

This section is based on proposed section 294 for the Commonwealth Electoral Act provided in the *Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2008*.

13 Amendment of schedule, s 294A (Election funding reimbursement amount)—

- (1) Schedule, section 294A, '*reimbursement*'—
omit.
- (2) Schedule, section 294A(1), '*294(1)*'—
omit, insert—
'293(2)(a) or 294(2)(a)'.

14 Replacement of schedule, ss 295–298

Schedule, sections 295 to 298—
omit, insert—

‘295 (omitted)

‘296 (omitted)

‘Subdivision B—Claims for election funding

‘297 Need for a claim

‘(1) To be paid an amount of election funding, the agent of a registered political party (words omitted) or candidate must make a claim.

‘(2) (omitted).

‘(3) A (word omitted) claim must specify all electoral expenditure for which election funding is sought (words omitted).

‘(4) (omitted).

‘(5) (omitted).

Editor’s note—

This section is based on proposed section 297 for the Commonwealth Electoral Act provided in the Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2008.

‘298 Electoral expenditure incurred

‘(1) A claim made by the agent of a registered political party must specify electoral expenditure—

(a) incurred by the party, or by candidates endorsed by the party, in relation to all elections held on the same day; and

(b) for which election funding is sought.

‘(2) A claim made by the agent of a candidate in an election must specify electoral expenditure—

(a) incurred by the candidate in relation to the election; and

(b) for which election funding is sought.

‘(3) (omitted).

Editor's note—

This section is based on proposed section 298 for the Commonwealth Electoral Act provided in the *Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2008*.

'298A Form of claim

'A claim must—

- (a) (omitted);*
- (b) be in the approved form; and*
- (c) provide all the information, and be accompanied by any documents, required by the form.*

Editor's note—

This section is based on proposed section 298A for the Commonwealth Electoral Act provided in the *Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2008*.

'298B Lodging of claim

- '(1) A claim in relation to an election or elections must be lodged with the electoral commission—*
 - (a) during the period of 20 weeks after the polling day in the election or elections to which the claim relates; or*
 - (b) within a longer period the electoral commission, before the end of the period specified in paragraph (a), fixes.*
- '(2) The electoral commission must not fix a longer period for the purpose of subsection (1)(b) unless it is satisfied that the circumstances of the case justify the fixing of a longer period.*

'298C Deciding claim

- '(1) The electoral commission must, after receiving a claim—*
 - (a) decide whether to accept or refuse the claim, in whole or in part; and*

- (b) *to the extent that the electoral commission accepts the claim—pay the amount required by section (words omitted) 298E.*
- ‘(2) *In deciding whether to accept or refuse a claim, in whole or in part, the electoral commission must only consider—*
- (a) *whether expenditure claimed is electoral expenditure; and*
- (b) *if expenditure claimed is electoral expenditure—whether the electoral expenditure was incurred.*
- ‘(3) *(omitted).*

Editor’s note—

This section is based on proposed section 298C for the Commonwealth Electoral Act provided in the *Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2008*.

‘298D (omitted)

‘298E Accepting a (word omitted) claim

- ‘(1) *Subsection (2) applies if—*
- (a) *a (word omitted) claim is made by the agent of a registered political party or candidate (words omitted) in relation to an election or elections; and*
- (b) *the electoral commission accepts the claim, in whole or in part.*
- ‘(2) *The electoral commission must pay (words omitted)—*
- (a) *the amount (word omitted) under section 293(2) or 294(2) (words omitted), as applicable; (word omitted)*
- (b) *(omitted);*
- (words omitted).*

Editor’s note—

This section is based on proposed section 298E for the Commonwealth Electoral Act provided in the *Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2008*.

‘298F Refusing a (word omitted) claim

‘If a (word omitted) claim is refused, in whole or in part, the electoral commission must cause to be served on the agent of the registered political party or candidate (words omitted) to which the claim relates, a notice that states that the claim has been refused, in whole or in part, and sets out the reasons for the refusal.

Editor’s note—

This section is based on proposed section 298F for the Commonwealth Electoral Act provided in the *Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2008*.

‘298G Application for reconsideration of decision refusing a (word omitted) claim

‘(1) If a (word omitted) claim is refused, in whole or in part, the agent of the registered political party or candidate (words omitted) to which the claim relates may apply to the electoral commission for the electoral commission to reconsider the decision.

‘(2) The application must—

- (a) be in writing; and*
- (b) set out the reasons for the application.*

‘(3) The application must be made within—

- (a) 28 days after the day on which the relevant agent is notified of the refusal; or*
- (b) if, either before or after the end of that period of 28 days, the electoral commission extends the period within which the application may be made—the extended period for making the application.*

Editor’s note—

This section is based on proposed section 298G for the Commonwealth Electoral Act provided in the *Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2008*.

‘298H Reconsideration by electoral commission

- ‘(1) *On receiving an application mentioned in section 298G, the electoral commission must—*
- (a) reconsider the decision; and*
 - (b) decide to—*
 - (i) affirm the decision; or*
 - (ii) vary the decision; or*
 - (iii) set aside the decision and make another decision.*
- ‘(2) *The electoral commission must give to the relevant agent a notice stating the decision on the reconsideration together with a statement of the reasons for the decision.*
- ‘(3) *If the electoral commission’s decision on the reconsideration would require an amount, or an additional amount, of election funding to be paid, the electoral commission must pay the amount within 20 days after the day of its decision.*
- ‘(4) *The electoral commission may not delegate its power under subsection (1).*

Editor’s note—

This section is based on proposed section 298H for the Commonwealth Electoral Act provided in the *Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2008*.

‘Subdivision C Payments of election funding’.**15 Amendment of schedule, s 299 (Making of payments)**

Schedule, section 299(1) to (3)—

omit, insert—

- ‘(1) *If the electoral commission is satisfied, on a claim under this division, that an amount of election funding is payable in relation to a candidate or candidates endorsed by a registered political party, the electoral commission must make the payment to the agent of (words omitted) the party (words omitted).*

‘(2) *If subsection (1) does not apply and an amount of election funding is payable in relation to a candidate, the electoral commission must pay the amount to the candidate’s agent.*

‘(3) *(omitted).*

Editor’s note—

Subsections (1) to (3) are based on proposed section 299(1) to (3) for the Commonwealth Electoral Act provided in the *Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2008*.’.

16 Replacement of schedule, ss 299A-301

Schedule, sections 299A to 301—

omit, insert—

‘Subdivision D Miscellaneous

‘300 Death of candidates (words omitted)

Death of candidate

‘(1) *If formal first preference votes were given for a candidate in an election, a payment may be made in relation to the candidate even if the candidate dies.*

‘(2) *If the candidate was not endorsed by a registered political party and was his or her own agent for the purposes of this division, the payment may be made to the candidate’s legal personal representative.*

‘(3) *(omitted).*

‘(4) *(omitted).*

Editor’s note—

This section is based on proposed section 300 for the Commonwealth Electoral Act provided in the *Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2008*.

‘301 Varying decisions accepting claims

‘(1) *If—*

- (a) *the electoral commission has made a decision (the **claim decision**) under section 298C to accept an amount of electoral expenditure specified in a (word omitted) claim; and*
- (b) *the electoral commission becomes satisfied that—*
- (i) *the amount of electoral expenditure should not have been accepted; or*
- (ii) *only a lesser amount of electoral expenditure should have been accepted;*

the electoral commission may vary the claim decision accordingly.

‘(2) *If the electoral commission makes a decision (the **variation decision**) to vary the claim decision, sections 298F, 298G and 298H apply in relation to the variation decision as if it were, to the extent of the variation, a decision of the electoral commission to refuse the claim.*

‘(3) *If—*

- (a) *the electoral commission varies the claim decision; and*
- (b) *the total amount of election funding that has been paid to a person in relation to the claim exceeds the amount that, under the claim decision as varied, should have been paid to the person in relation to the claim;*

the amount of the excess is an overpayment, and may be recovered by the State as a debt due to the State by action, in a court of competent jurisdiction, against the person.

‘(4) *(omitted).*

Editor’s note—

*This section is based on proposed section 301 for the Commonwealth Electoral Act provided in the *Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2008*.’.*

17 Amendment of schedule, insertion of new s 303A

Schedule, before section 304—

insert—

‘303A How division applies to gifts that are returned etc. within 6 weeks

Division generally does not apply to gifts returned within 6 weeks of receipt

‘(1) *Subject to subsections (2) and (3), this division does not apply to a gift that is returned within 6 weeks after its receipt.*

Division applies to gifts of foreign property, whether or not returned

‘(2) *This division applies to a gift of foreign property within the meaning of division 4A, subdivision A whether or not the gift is returned within 6 weeks as mentioned in section 306AA.*

‘(3) *If the gift is so returned, any return under this division that includes the amount or value of the gift must also include a statement to the effect that the gift was so returned.*

‘(4) *(omitted).*

‘(5) *(omitted).*

Editor’s note—

This section is based on proposed section 303A for the Commonwealth Electoral Act provided in the Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2008.’.

18 Amendment of schedule, s 304 (Disclosure of gifts)

(1) Schedule, section 304(5)(b)(ii) and (6)(b), *‘the prescribed amount (\$200)’—*

omit, insert—

‘\$1000’.

(2) Schedule, section 304—

insert—

‘Nil returns

‘(9) *If no details are required to be included in a return under this section in relation to a candidate, the return must still be lodged and must include a statement to the effect that no gifts of a kind required to be disclosed were received.*

'(10) (omitted).

Editor's note—

Subsections (9) and (10) are based on proposed section 304(9) and (10) for the Commonwealth Electoral Act provided in the *Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2008*.

18A Amendment of schedule, section 304A (Loans to candidates)—

Schedule, section 304A(3), '\$200'—

omit, insert—

'\$1000'.

18B Amendment of schedule, section 305A (Donations to candidates etc.)—

Schedule, section 305A(2), 'the amount prescribed for the purpose of this *subsection* or, if no amount is prescribed, \$200'—

omit, insert—

'\$1000'.

19 Amendment of schedule, s 305B (Donations to political parties)

(1) Schedule, section 305B(1) to (3A)—

omit, insert—

'Obligation to give returns for reporting periods

'(1) Subject to subsections (2A) and (2B), if, in a reporting period, a person makes gifts totalling \$1000 or more to the same registered political party, the person must give a return to the electoral commission within 8 weeks after the end of the reporting period, disclosing all the gifts that the person made to the registered political party during the reporting period.

Editor's note—

Subsection (1) is based on proposed section 305B(1) for the Commonwealth Electoral Act provided in the *Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2008*.

‘(IAA) Subsection (1) applies to a person even if at the time the person made the gift the person was outside Queensland.

How section applies to political parties that are related

‘(IA) If—

(a) 2 or more political parties are related to each other; and

(b) at least 1 of those parties is a registered political party;

subsection (1) applies as if—

(c) those parties together constituted a single registered political party (rather than being separate political parties); and

(d) a gift made by a person to any of those parties were a gift made by that person to the single registered political party referred to in paragraph (c).

How section applies to gifts made with intention of benefiting a party

‘(2) If a person makes a gift to any person or body with the intention of benefiting a particular political party, the person is taken for the purpose of this section (including subsection (IA)(d)) to have made that gift directly to that political party.

Half-year returns—effect on obligation to give full year return

‘(2A) If a person—

(a) has given a return to the electoral commission disclosing a gift or gifts that the person made to a registered political party during a reporting period that is the first 6 months of a financial year; and

(b) has not made any further gifts to the registered political party during the remainder of the financial year;

the person is not required to give a return to the commission under subsection (1) in relation to the reporting period that is the full financial year.

- ‘(2B) *A return given by a person under subsection (1) in relation to a reporting period that is a full financial year does not have to disclose any gift made by the person that has already been disclosed in a return under subsection (1) in relation to the reporting period that is the first 6 months of that financial year.*

Editor’s note—

Subsections (1A) to (2B) are based on proposed section 305B(1A) to (2B) for the Commonwealth Electoral Act provided in the *Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2008*.

Content of return

- ‘(3) For each gift, the return must *state* the following—
- (a) the amount of the gift;
 - (b) the date on which it was made;
 - (c) the name and address of the political party *that received the gift*.

Editor’s note—

Subsection (3)(c) is based on proposed section 305B(3)(c) for the Commonwealth Electoral Act provided in the *Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2008*.

Disclosure of receipt of gifts in certain circumstances

- ‘(3A) *If—*
- (a) *a person is required to disclose a gift (the **ultimate gift**) in a return under subsection (1); and*
 - (b) *the person received a gift of \$1000 or more (the **enabling gift**) which the person used to make all or a substantial part of the ultimate gift;*

the person must also disclose the relevant details of the enabling gift in the return under subsection (1).

Editor’s note—

Subsection (3A) is based on proposed section 305B(3A) for the Commonwealth Electoral Act provided in the *Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2008*.

- (2) Schedule, section 305B(4), as a heading—

insert—

‘Return to be in approved form’.

- (3) Schedule, section 305B(5), as a heading—

insert—

‘Gifts to which section does not apply’.

- (4) Schedule, section 305B(6), ‘to which this section applies’—

omit, insert—

‘requiring a return to be given under this section’.

- (5) Schedule, section 305B, at the end—

insert—

‘Editor’s note—

The headings to subsections (4) and (5) are based on the proposed headings to section 305B(4) and (5) for the Commonwealth Electoral Act provided in the Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2008.’.

20 Amendment of schedule, insertion of new s 305C

Schedule, after section 305B—

insert—

‘305C Special reporting of large gifts

Application

- ‘(1) This section applies if, in a special reporting period, gifts made by a particular person to a registered political party reach the prescribed amount.*

Obligation to give returns for large gifts

- ‘(2) For each special reporting event within a special reporting period—*
- (a) the person; and*
- (b) the registered political party to which the person made the gifts; and*

- (c) *if the person made any part of the gifts to an associated entity of the registered political party—the associated entity;*

must each give a separate return to the electoral commission within 14 days after the special reporting event disclosing the gifts.

- ‘(3) *For subsection (2), there is a **special reporting event** on each occasion the amount of the gifts made by the person reaches the prescribed amount either since the start of the special reporting period or since the last occasion during the special reporting period that the prescribed amount was reached.*

Example—

Assume that in a special reporting period starting on 1 January a person makes gifts reaching the prescribed amount up to and including 10 January. The first special reporting event happens on 10 January. Assume the person then makes further gifts reaching the prescribed amount after 10 January and up to and including 4 June. The second special reporting event happens on 4 June.

- ‘(4) *Subsection (2) does not require a person, party or entity mentioned in the subsection to disclose gifts made within a particular special reporting period that have previously been disclosed in another return given under the subsection.*

Example—

Assume in the example for subsection (3) the person gives a return for the first special reporting event disclosing the gifts made up to and including 10 January. When the person gives a return for the second special reporting event, the return need not refer to the gifts made up to and including 10 January.

- ‘(5) *The requirement to give a return under subsection (2) is in addition to a requirement to give a return under section 305B, 314AB or 314AEA.*
- ‘(6) *This section applies to the person even if at the time the person makes a gift the person was outside Queensland or Australia.*

How section applies to political parties that are related

- ‘(7) *If—*
- (a) *2 or more political parties are related to each other; and*

(b) *at least 1 of those parties is a registered political party; subsection (2) applies as if—*

(c) *those parties together constituted a single registered political party (rather than being separate political parties); and*

(d) *a gift made by the person to any of those parties were a gift made by the person to the single registered political party referred to in paragraph (c).*

How section applies to a political party and an associated entity that are related

‘(8) *If a political party has an associated entity, subsections (2) and (7) apply as if—*

(a) *the political party and the associated entity together constituted the political party (the **recipient party**); and*

(b) *a gift made by the person to the political party or the associated entity were a gift made by the person to the recipient party.*

How section applies to gifts made with intention of benefiting a party

‘(9) *If the person makes a gift to any person or body, including an associated entity of a political party, with the intention of benefiting a particular political party, the person is taken for the purpose of this section (including subsection (7)(d)) to have made that gift directly to that political party.*

‘(10) *For subsection (8) or (9), the definition ‘associated entity’ in section 287(1) applies as if a reference to registered political parties included a reference to any political parties whether or not registered.*

Content of return

‘(11) *For each gift, the return required under subsection (2) must state the following—*

(a) *the amount of the gift;*

(b) *the date on which it was made;*

(c) *the name and address of the political party that received the gift.*

Return to be in approved form

‘(12) *The return must be in the approved form.*

Gifts to which section does not apply

‘(13) *This section does not apply to gifts made by any of the following—*

(a) *a registered political party;*

(b) *an associated entity;*

(c) *a candidate in an election.*

‘(14) *On receiving a gift requiring a return to be given under this section, a registered political party must inform the person who gave the gift of the donor’s requirement to give a return under this section.*

‘(15) *In this section—*

first special reporting period *means the period starting 1 July 2008 and ending on 31 December 2008.*

later special reporting period *means each of the following periods in any year after 2008—*

(a) *the period starting 1 January and ending 30 June;*

(b) *the period starting 1 July and ending 31 December.*

prescribed amount *means \$100000.*

special reporting period *means either of the following—*

(a) *the first special reporting period;*

(b) *a later special reporting period.’.*

21 Renumbering and relocation of schedule, s 306 (Certain gifts not to be received)

(1) Schedule, section 306(2)(a), ‘\$200’—

omit, insert—

‘\$1000’

(2) Schedule, section 306, as amended—

renumber as schedule, section 306AG and *relocate* to schedule, division 4A, subdivision B.

22 Amendment of schedule, insertion of new div 4A

Schedule, before section 306A—

insert—

‘Division 4A Rules about certain gifts and loans

‘Subdivision A Gifts of foreign property

Editor’s note—

This subdivision is based on proposed Part XX, Division 4A, Subdivision A for the Commonwealth Electoral Act provided in the *Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2008*.

‘306 Interpretation

‘(1) *In this subdivision—*

Australian property means—

- (a) *money standing to the credit of an account kept in Australia; or*
- (b) *other money (for example, cash) that is located in Australia; or*
- (c) *property, other than money, that is located in Australia.*

Note—

For how this subdivision applies to gifts or transfers made using a credit card, see section 306AB(4).

candidacy period, in relation to a candidate, means the period—

- (a) *starting on the earlier of the day on which the person announces that he or she will be a candidate in an*

election, or the day on which the nomination of the person as a candidate in the election is made; and

(b) ending 30 days after the polling day in the election.

credit card means—

(a) any article of a kind commonly known as a credit card; or

(b) any similar article intended for use in obtaining cash, goods or services on credit;

and includes any article of a kind that persons carrying on business commonly issue to their customers or prospective customers for use in obtaining goods or services from those persons on credit.

enables—*a gift or other transfer enables a person or entity to do a particular thing if all or a substantial part of the gift or transfer enables the person or entity—*

(a) to do all or a substantial part of that thing; or

(b) to be wholly or substantially reimbursed for having done that thing.

foreign property means—

(a) money standing to the credit of an account kept outside Australia; or

(b) other money (for example, cash) that is located outside Australia; or

(c) property, other than money, that is located outside Australia.

Note—

For how this subdivision applies to gifts or transfers made using a credit card, see subsection 306AB(4).

gift, *in relation to a candidate, has a meaning affected by subsection (2).*

(definition omitted)

‘(2) A reference in this subdivision to a gift, in relation to a candidate (or a person acting on behalf of a candidate), does

not include a gift made in a private capacity to (or for the benefit of) the candidate if the candidate has not used, and will not use, the gift solely or substantially for a purpose related to an election.

‘(3) (omitted).

‘(4) A reference in this subdivision to a thing done by a person includes a reference to a thing done by a person on behalf of the members of an unincorporated association.

‘306AA Subdivision does not apply to gifts that are returned within 6 weeks

‘This subdivision does not apply to a gift that is returned within 6 weeks after its receipt.

‘306AB Deciding whether a gift or transfer is of Australian or foreign property

Status of property as Australian or foreign to be decided by reference to position immediately before gift or transfer

‘(1) For the purpose of this subdivision (but without limiting the effect of subsections (2) and (3))—

(a) a gift or transfer of property is a gift or transfer of Australian property if the property was Australian property immediately before the gift or transfer was made; and

(b) a gift or transfer of property is a gift or transfer of foreign property if the property was foreign property immediately before the gift or transfer was made.

Transferring foreign property to enable another person to make a gift

‘(2) For the purpose of this subdivision, if—

*(a) a person (the **donor**) transfers foreign property (the **primary transfer**) to another person (the **first recipient**); and*

- (b) *the donor's main purpose in making the primary transfer is to enable (directly or indirectly) the first recipient, or another person, to make a gift to another person or entity (the **ultimate recipient**); and*
- (c) *the first recipient, or another person, makes a gift (the **ultimate gift**) to the ultimate recipient; and*
- (d) *the primary transfer enabled (directly or indirectly) the first recipient, or the other person, to make the ultimate gift;*

the ultimate gift is taken to be a gift of foreign property.

Changing location of foreign property etc. prior to making a gift or transfer

'(3) *For the purpose of this subdivision, if—*

- (a) *a person—*
 - (i) *changes the location of property so that it becomes Australian property; or*
 - (ii) *uses foreign property to acquire Australian property; and*
- (b) *the person's main purpose in changing the location of the property, or in acquiring the Australian property, was to enable the person to make a gift or transfer of property that would be Australian property rather than foreign property; and*
- (c) *the person makes a gift or transfer of Australian property in accordance with that purpose;*

the gift or transfer is taken to be a gift or transfer of foreign property.

How subdivision applies to gifts or transfers made by credit card

'(4) *This subdivision applies to a gift or transfer of money made by use of a credit card as if the gift or transfer were of money standing to the credit of an account kept in the country in which the credit card is based.*

‘306AC Gifts of foreign property—when unlawful for political party, candidate etc. to receive gift

When receiving gift is unlawful

- ‘(1) *It is unlawful for a person or entity to receive a gift of foreign property in any of the following circumstances—*
- (a) *the gift is received by a registered political party (or by a person acting on behalf of a registered political party);*
 - (b) *(omitted);*
 - (c) *the gift is received by a candidate (or by a person acting on behalf of a candidate) during the candidacy period;*
 - (d) *(omitted).*

Liability for unlawful receipt of gift

- ‘(2) *If a person or entity specified in column 2 of an item in the following table receives a gift that, under subsection (1), it is unlawful for the person or entity to receive, an amount equal to the amount or value of the gift is payable to the State by the person or persons specified in column 3 of that item.*

Liability for unlawful receipt of gift

| Column 1 | Column 2 | Column 3 |
|-----------------|--|--|
| Item | If the recipient is ... | the amount is payable by ... |
| 1 | <i>a registered political party that is a body corporate (or a person acting on behalf of a registered political party that is a body corporate)</i> | <i>the registered political party</i> |
| 2 | <i>a registered political party that is not a body corporate (or a person acting on behalf of a registered political party that is not a body corporate)</i> | <i>the agent of the registered political party</i> |
| 3 | <i>(omitted)</i> | <i>(omitted)</i> |
| 4 | <i>(omitted)</i> | <i>(omitted)</i> |

Liability for unlawful receipt of gift

| Column 1 | Column 2 | Column 3 |
|-----------------|---|---|
| Item | If the recipient is ... | the amount is payable by ... |
| 5 | <i>a candidate (or a person acting on behalf of a candidate)</i> | <i>the candidate and the agent of the candidate</i> |
| 6 | <i>(omitted)</i> | <i>(omitted)</i> |
| | <i>‘(3) If, under subsection (2), an amount is payable to the State by 2 or more persons, those persons are jointly and severally liable for the payment of the amount.</i> | |
| | <i>‘(4) An amount that, under subsection (2), is payable by a person or persons to the State may be recovered by the State as a debt due to the State by action, in a court of competent jurisdiction, against that person or any 1 or more of those persons.</i> | |

‘306AD (omitted)**‘Subdivision B Anonymous gifts****‘306AE (omitted)****‘306AF (omitted)****‘306AH (omitted)****‘306AI (omitted)****‘Subdivision C Other gifts and loans’.****23 Amendment of schedule, s 306A (Certain loans not to be received)**

(1) Schedule, section 306A(1), ‘\$1500’—

omit, insert—

‘\$1000’.

- (2) Schedule, section 306A(2), ‘\$200’—

omit, insert—

‘\$1000’.

24 Replacement of schedule, s 307 (Nil returns)

Schedule, section 307—

omit, insert—

‘307 (omitted)’.

26 Amendment of schedule, div 5A, heading

Schedule, division 5A, heading ‘Annual returns’—

omit, insert—

‘Returns’.

27 Amendment of schedule, insertion of new s 314AAA

Schedule, after section 314AA—

insert—

**‘314AAA How division applies to gifts that are returned etc.
within 6 weeks**

Division generally does not apply to gifts returned within 6 weeks of receipt

- ‘(1) Subject to subsections (2) and (3), this division does not apply to a gift that is returned within 6 weeks after its receipt.*

Division applies to gifts of foreign property, whether or not returned

- ‘(2) This division applies to a gift of foreign property within the meaning of division 4A, subdivision A whether or not the gift is returned within 6 weeks as mentioned in section 306AA.*

‘(3) *If the gift is so returned, any return under this division that includes the amount or value of the gift must also include a statement to the effect that the gift was so returned.*

‘(4) *(omitted).*

‘(5) *(omitted).*

‘Editor’s note—

*This section is based on proposed section 314AAA for the Commonwealth Electoral Act provided in the *Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2008.**

28 Amendment of schedule, s 314AB (Annual returns by registered political parties)

(1) Schedule, section 314AB, heading, ‘Annual returns’—

omit, insert—

‘Returns for reporting periods’.

(2) Schedule, section 314AB(1), ‘(16 weeks after the end of each financial year)’—

omit, insert—

‘(8 weeks after the end of each reporting period)’.

(3) Schedule, section 314AB(1)(a), (b) and (c), ‘financial year’—

omit, insert—

‘reporting period’.

29 Amendment of schedule, s 314AC (Amounts received)

(1) Schedule, section 314AC(1), ‘financial year’—

omit, insert—

‘reporting period’.

(2) Schedule, section 314AC(1) and (2), ‘\$1500’—

omit, insert—

‘\$1000’.

30 Amendment of schedule, s 314AD (Amounts paid)

- (1) Schedule, section 314AD(1), ‘financial year’—
omit, insert—
‘reporting period’.
- (2) Schedule, section 314AD(1) and (2), ‘\$1500’—
omit, insert—
‘\$1000’.

31 Amendment of schedule, s 314AE (Outstanding amounts)

- (1) Schedule, section 314AE(1), ‘financial year’—
omit, insert—
‘reporting period’.
- (2) Schedule, section 314AE(1), ‘\$1500’—
omit, insert—
‘\$1000’.

32 Amendment of schedule, s 314AEA (Annual returns by associated entities)

- (1) Schedule, section 314AEA, heading, ‘Annual returns’—
omit, insert—
‘Returns for reporting periods’.
- (2) Schedule, section 314AEA(1), ‘financial year’, first mention—
omit, insert—
‘reporting period’.
- (3) Schedule, section 314AEA(1), ‘(16 weeks after the end of the financial year)’—
omit, insert—
‘(8 weeks after the end of the reporting period)’.

- (4) Schedule, section 314AEA(1)(a), (b) and (c) and (3)(d), ‘financial year’—

omit, insert—

‘reporting period’.

33 Amendment of schedule, s 314A (Interpretation)

Schedule, section 314A, after ‘Division 4,’—

insert—

‘4A,’.

34 Amendment of schedule, s 315 (Offences)

- (1) Schedule, section 315(1), after ‘Division 4,’—

insert—

‘4A,’.

- (2) Schedule, before section 315(11)—

insert—

‘Unlawful receipt of gift—situations other than when political party (word omitted) or associated entity is not a body corporate (words omitted)

‘(10A) A person commits an offence if—

(a) the person (or a person acting on behalf of the person (words omitted)) receives a gift; and

(b) the receipt of the gift is unlawful under section 306AC(1) (words omitted); and

(c) the person is—

(i) a registered political party that is a body corporate; or

(ii) (omitted); or

(iii) a candidate; or

(iv) (omitted); or

[s 34]

(v) *an associated entity that is a body corporate.*

Maximum penalty—12 months imprisonment or 240 penalty units.

Unlawful receipt of gift—registered political parties (words omitted) and associated entities that are not bodies corporate

(10B) *A person commits an offence if—*

(a) *a gift is received by (or by a person acting on behalf of) any of the following (the **recipient**)—*

(i) *a registered political party that is not a body corporate;*

(ii) *(omitted);*

(iii) *an associated entity that is not a body corporate; and*

(b) *the receipt of the gift is unlawful under section 306AC(1) (words omitted); and*

(c) *the recipient is specified in column 2 of an item in the following table, and the person is specified in column 3 of that item.*

Liability for unlawful receipt of gift

| Column 1 | Column 2 | Column 3 |
|-----------------|-------------------------------------|---|
| Item | If the recipient is ... | the person is liable for the offence if the person is ... |
| 1 | <i>a registered political party</i> | <i>the registered officer of the party, the secretary of the party (as defined in section 3), or the agent of the party</i> |
| 2 | <i>(omitted)</i> | <i>(omitted)</i> |
| 3 | <i>(omitted)</i> | <i>(omitted)</i> |
| 4 | <i>an associated entity</i> | <i>the financial controller of the associated entity</i> |

Maximum penalty—12 months imprisonment or 240 penalty units.

'(10C) A person does not commit an offence against subsection (10B) if—

- (a) the person does not know of the circumstances because of which the receipt of the gift is unlawful; or*
- (b) the person takes all reasonable steps to avoid those circumstances occurring.*

(words omitted)

'(10D) (omitted)

(heading omitted)

'(10E) (omitted)

Editor's note—

Subsections (10A) to (10E) are based on proposed section 315(10A) to (10E) for the Commonwealth Electoral Act provided in the *Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2008*.

Prosecutions to be brought within 3 years'.

35 Amendment of schedule, s 315A (Recovery of payments)

Schedule, section 315A(1), '306(5)' and footnote—

omit, insert—

'306AG(5)'.

36 Amendment of schedule, insertion of new s 319B

Schedule, after section 319A—

insert—

'319B Publishing of returns

'(1) The electoral commission must publish on its website the following returns given to the electoral commission—

- (a) a return under section 305B;*
- (b) a return under section 305C;*
- (c) a return under section 314AB;*

(d) a return under section 314AEA.

‘(2) A return mentioned in subsection (1)(a), (c) or (d) must be published within 6 weeks after the return is given to the electoral commission.

‘(3) A return mentioned in subsection (1)(b) must be published within 10 business days after the return is given to the electoral commission.’.

37 Amendment of schedule, s 320 (Inspection and supply of copies of claims and returns)

(1) Schedule, section 320(1)(b), after ‘Division 4’—

insert—

‘, 4A’.

(2) Schedule, section 320(4)(b), after ‘section 305B’—

insert—

‘or 305C’.