

Electoral Amendment Bill 2008

Explanatory Notes

Short Title of the Bill

Electoral Amendment Bill 2008

Objective of the Bill

The main objective of the Bill is to increase transparency with respect to political donations.

Reasons for the Bill

In Queensland, the law governing elections is contained in the *Electoral Act 1992* (the Act). The law pertaining to electoral funding and financial disclosure is contained in the Schedule to the Act based on Part XX of the *Commonwealth Electoral Act 1918* (Commonwealth Electoral Act). The schedule is not a mere adoption or application of the Commonwealth Electoral Act and changes to the text of the Commonwealth Electoral Act are noted in italics in the Schedule.

On 15 May 2008, the Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2008 (the Commonwealth Bill) was introduced into the Senate. The purpose of the Commonwealth Bill is to amend the funding and disclosure provisions contained in the Commonwealth Electoral Act in order to implement certain commitments made in the lead up to the 2007 Federal Election. The anticipated commencement date for the Commonwealth Bill was 1 July 2008.

However, on 18 June 2008 the Senate referred the Commonwealth Bill to the Joint Standing Committee on Electoral Matters (JSCEM) for enquiry and report by 30 June 2009 in conjunction with the JSCEM's enquiry into the 2007 Federal Election.

The original intent was for Queensland to reflect a nationally consistent approach in relation to the receipt of political donations. However, given the delay in the passage of the Commonwealth Bill, the Act should be amended now to reflect the key changes comprised in that Bill in respect of

donations to political parties in order to maintain a high level of scrutiny in respect of such donations.

Achievement of the Objective

The Bill will:

- reduce the electoral donation disclosure threshold from the current \$1,500 to \$1,000;
- increase public scrutiny of donations by reducing disclosure timeframes for donations from 12 months to six months;
- reduce donor lodgement time frames for returns from 20 weeks to 8 weeks and registered political parties and associated entities lodgement time frames for returns from 16 weeks to 8 weeks
- tie election funding to reported and verified electoral expenditure directly incurred by a candidate or a party, with evidence of that expenditure for an election ie election funding will only be paid for expenditure directly incurred by a candidate or a party in an election and for which evidence is provided to the electoral commission;
- ban donations from overseas or non-Australian companies, ensuring donations come from a jurisdiction where Queensland laws will apply and can be enforced;
- require that donations of \$100,000 or more within the six-month reporting period be reported by both the donor and the recipient political party within 14 days of the making of the donation which brings the total from that single donor to \$100,000; and
- deem the amendments to have commenced on 1 July 2008, in line with the financial reporting timeframes.

Alternatives to the Bill

There are no other ways by which the policy objectives of the Bill can be achieved.

Estimated Cost for Government Implementation

It is estimated that the passage of the Bill will result in implementation costs related to:

- modifications to existing information and data systems;
- communication of changes to stakeholders; and
- the revision of forms.

Consistency with Fundamental Legislative Principles

Retrospectivity

There is potentially an infringement of the fundamental legislative principle that rights and liberties should not be adversely affected or obligations imposed retrospectively. The Bill will require disclosure of a number of donations made since 1 July 2008 which would not otherwise have been disclosed (or at least not disclosed until the second half of 2009).

The imposition of retrospective obligations in this case is required in order to bring the new reporting timeframes in line with the existing timeframes. Unless the new reporting obligations in the Bill are made retrospective, the returns filed for the period 1 July 2008 to 31 December 2008 will be subject to two different disclosure thresholds (i.e. \$1,500 for the period up to commencement of the amendments, and \$1,000 for the period after commencement of the amendments).

Consultation

There has been no community consultation on the Bill. Consultation has been undertaken with the Electoral Commissioner.

Notes on Provisions

Part 1 Preliminary

Clause 1 states the short title as the *Electoral Amendment Act 2008*.

Clause 2 provides that the Act commences on 1 July 2008.

Clause 3 provides that the Act amends the *Electoral Act 1992*.

Clause 4 omits s 2 which provides that a note in the text of the Act is part of the Act. Section 2 is redundant: see *Acts Interpretation Act 1954*, section 14(4).

Clause 5 amends s 126A (1) (b) of the Act to provide for six-monthly reporting.

Clause 6 amends s 126B by inserting a provision recognising that, unlike changes to the text of the Commonwealth Electoral Act which are made in italics, amendments in the Bill are based on the Commonwealth Bill and are identified by editor's notes.

Clause 7 clarifies s 126 of the Act to include a reference to the schedule.

Clause 8 inserts a new Part 11, Division 3 of the Act which provides for several transitional provisions comprising: a definition section; continuation of decisions in relation to payments of election funding; application of the new s 301 (variation of claim decisions) to decisions relating to electoral expenditure paid under the pre-amended Act; and recognition that certain donations made between 1 July 2008 and the date of assent will be required to be reported under the new provisions of the Act and providing such donations may reported within 28 days after the day of assent.

Clause 9 amends schedule, s 287(1) (Interpretation) in several respects.

The definition of 'eligible vote' is repealed. This definition is redundant as the new entitlement provisions in clause 12 refer eligibility to formal first-preference votes of at least 4% as the basis for part of the calculation of any entitlement to receive election funding.

A definition of 'electoral expenditure' based on the definition of 'electoral expenditure' contained in the Commonwealth Bill is inserted. This definition sets out the categories of electoral expenditure relating to an election that may be the subject of a claim for election funding. The costs incurred in relation to electoral advertising and electoral matter (whether printed, via the internet and via television and radio), polling and other research costs are the main categories of expenditure that can be claimed. This definition is an exhaustive list of the types of expenditure that can be claimed to obtain election funding.

A definition of 'reporting period' based on the definition of 'reporting period' contained in the Commonwealth Bill is inserted. The 'reporting period' relies on the existing financial year reporting obligations (that

reflect existing reporting periods for income tax and corporate reporting) and overlays the new six-monthly reporting obligations.

Clause 10 amends schedule, s 287A (Campaign committee to be treated as part of (words omitted) party) to include a reference to new Division 4A.

Clause 11 amends schedule, s 292B (Responsibility for action when agent of party (words omitted) dead or appointment vacant) to include a reference to new Division 4A.

Clause 12 sets out the entitlement to election funding for registered political parties. Election funding will only be paid for expenditure directly incurred by a candidate or a party in an election unless the 4% threshold is reached.

A new heading 'Subdivision A Entitlement to election funding' is inserted and the existing sections 293 and 294 replaced.

A registered political party is entitled to election funding for elections where the total number of formal first-preference votes for endorsed candidates is at least 4% of the overall total of formal first-preference votes cast in the election.

Once a registered political party meets the threshold requirements, the amount of the election funding that can be paid is the lesser of the election funding amount calculated under the election funding reimbursement formula for each formal first-preference vote received and the amount of 'electoral expenditure' that has been claimed and accepted by the Electoral Commission.

Clause 13 the reference to 'reimbursement' in s 294A is deleted and the reference to section 294A (1) is replaced with '293(2) (a) or 294(2) (a)'.

Clause 14 provides for claims for election funding.

The Act already provides that the election funding reimbursement amount must not exceed the electoral expenditure for the election. However, to maintain consistency with the Commonwealth Electoral Act, the Bill amends the Act in line with the Commonwealth Bill. This clause replaces the existing ss 295–298 with certain provisions of the Commonwealth Bill.

Provisions 295 and 296 are omitted as they relate to entitlement to funding by groups in Senate elections while provisions 297(2), 297(4) and 297(5) are omitted as they relate to the making of interim claims for electoral funding. The Act provides only for the making of single claims.

In order to be entitled to be paid an amount of election funding, the agent of the party or candidate must make a claim. A claim for election funding must be made on the approved form and must specify all of the electoral expenditure (the definition of which is introduced in clause 9) against which the claim is to be assessed. Details of the types of expenditure, the companies/persons to whom the payments were made or the liability incurred and the basis on which the amount is calculated will be required. Sufficient information and possibly supporting documentation will need to be provided to enable the Electoral Commission to verify the amount claimed.

Claims can be made commencing on the day on which the writ or the last writs for the election are returned. Any claim for funding must be received by the Electoral Commission within 20 weeks of polling day.

Provision 298C is omitted (*new Commonwealth requirement that the Electoral Commission must decide and/or pay a claim within 20 days of receiving it*).

Provisions 298B (1) and 298D of the Commonwealth Bill are omitted (*interim claims*).

A claim can be made at any time after the return of the writ and up to 20 weeks after polling day. In relation to a claim, the Electoral Commission must pay the lesser of the election funding amount calculated under the election funding reimbursement formula for each formal first-preference vote received and the amount of 'electoral expenditure' that the Electoral Commission has accepted to have been incurred.

If a claim is refused, in whole or in part, the Electoral Commission must notify the agent that the claim has been refused and provide reasons for the refusal to the agent. Where a claim has been refused, the agent may apply to the Electoral Commission for a reconsideration of the decision within 28 days of being notified of the decision or any extension of that time that has been granted by the Electoral Commission. An application for a reconsideration of a decision must be in writing and set out the reasons for the application.

The Commission is to reconsider the decision that refused all or part of a claim for election funding and has the power to affirm, vary, set aside and replace that decision with another decision. The Commission is required to give the agent written reasons for its decision on the reconsideration application. If the Commission's decision results in any additional payment of election funding, that payment is to be made within 20 days of its

decision. The Commission is unable to delegate its power to undertake a reconsideration of a final claim for election funding.

Clause 15 reflects the new claims process and makes it clear to whom any payment of the election funding is to be made.

Clause 16 replaces schedule, ss 299A-301 and substitutes new ss 300 and 301 sections with provisions from the Commonwealth Bill to reflect the new claims process and simplify the process for dealing with the situation where there has been a death of a candidate or a member of a group.

A payment of election funding may be made even if the candidate dies. Where a candidate was his or her own agent (for example because he or she was not endorsed by a political party and not a member of a group), the payment of election funding may be made to the candidate's legal personal representative.

The Electoral Commission is given a post-payment variation power to vary previous decisions, and to recover any overpayment. Where the Electoral Commission makes a decision to vary the amount of election funding the agent is able to make a reconsideration application to have that decision reviewed. Where the decision to vary results in a decrease in the amount of the entitlement to election funding, the amount of the previous overpayment can be recovered as a debt due to the State.

Clause 17 inserts a new section into the Act to provide for the treatment under Division 4 (Disclosure of donations) of gifts that are returned within six weeks after their receipt. Gifts that are returned in this period do not have to be disclosed for the purposes of the Division unless that gift was a gift of foreign property.

Clause 18 inserts new s 304(9) to provide for nil returns under the subsection. The new subsections are essentially a relocation of existing section 307 with minor wording changes.

Clause 19 amends schedule, s 305B (Donations to political parties) to allow for rules about related parties, reflect the changes to the reporting period for when returns must be made, and the information that must be included in those returns.

A person is required to furnish a return to the Electoral Commission disclosing all gifts if, in a reporting period (being six months), the person makes gifts totalling \$1,000 or more to the same registered political party. The 'reporting period' is defined in clause 9 to be the first six months of a

financial year or a full financial year. The lodgement period of 20 weeks after the reporting period has also been amended to 8 weeks.

If a person makes a gift to a number of related parties, one of which is a registered political party, the gifts are deemed to be made to the single registered political party. The intention of this subsection is to prevent a person giving multiple gifts under the new \$1,000 threshold to various divisions or branches of the same political party which are then not required to be disclosed by the donor.

If a person makes a gift to any person or body with the intention of benefiting a political party, the gift is deemed to have been made directly to that political party for the purposes of the section. The intent of the provision is to ensure that donors cannot avoid disclosure obligations by using intermediaries.

To reduce any unnecessary duplication of reporting by donors, if a person has furnished a return disclosing gifts to a registered political party in the first six months of a financial year, and makes no further gifts to that registered political party during the remainder of the financial year, the person does not have to furnish a return in respect of the second reporting period that finishes at the end of the full financial year.

If a person making a gift furnishes a return for the second reporting period that finishes at the end of the full financial year, the person does not have to disclose any gift made by the person that has already been disclosed in a return for the first six months of that financial year.

A donor is also required to furnish details of gifts made to all political parties, not just registered political parties. To prevent the use of intermediaries to avoid disclosure obligations a donor is required to include in a return details of gifts which enable a person to make a gift to a political party to be disclosed.

Clause 20 a new section 305C which introduces a requirement for special reporting of large gifts. Donations which total \$100,000 or more from any single donor to a registered political party or associated entity of that party within the six month reporting period must be reported to the Electoral Commission by both the donor and the recipient political party.

The return must be furnished to the Electoral Commission within 14 days of the making of the donation which brings the total from that single donor to \$100,000 or more. These returns are in addition to, and not instead of, the twice-yearly reporting returns and must be made each time subsequent

donations amounting to \$100,000 or more are made by that donor in the reporting period.

Any person, party or entity required to disclose gifts under the section is not required to disclose gifts that have previously been disclosed by the person, party or entity in a return furnished to the Electoral Commission within a particular special reporting period.

A similar provision to that introduced by clause 19 in relation to related parties applies. If a person makes a gift to any person or body with the intention of benefiting a political party, the gift is deemed to have been made directly to that political party for the purposes of the section. The provision details the required content of the return, exempts gifts made by a registered political party, an associated entity or a candidate in an election and requires recipients of gifts to which this section applies to inform the person who gave the gift of the donor's requirement to lodge a return.

Clause 21 rennumbers s 306 (Certain gifts not to be received) as section 306AG and relocates it to schedule, division 4A, subdivision B.

Clause 22 inserts a new Division 4A (Rules about certain gifts and loans) and a new Subdivision A 'Gifts of foreign property' which generally prohibits gifts of foreign property. The subdivision does not apply to a gift that is returned within six weeks after its receipt. The provision establishes what is Australian property, and what is foreign property, for the purposes of the Subdivision.

To ensure that Subdivision A is not avoided by using intermediaries, gifts of foreign property are deemed to include gifts made using foreign property where the original donor's main purpose is to enable a person to make a gift to another person or entity. Similarly, certain transfers or gifts are deemed to be transfers or gifts of foreign property.

It is unlawful for a registered political party a candidate or a member of a group to receive a gift of foreign property. It is also unlawful for a person to receive a gift acting on behalf of one of these political parties or persons.

For candidates, the prohibition only applies during the candidacy period which is the period from when a candidate announces that he or she will be a candidate in an election or when the person nominates as a candidate, and ending 30 days after polling day. If a person or entity receives a gift that is unlawful under the provision, an amount equal to the amount or value of the gift is payable to the State. A table in the provision sets out who is liable to pay the amount.

It also inserts a new heading ‘Subdivision B Anonymous Gifts’

Clause 23 amends schedule, s 306A (Certain loans not to be received) by replacing the designated amount from ‘\$1500’ to ‘\$1000’.

Clause 24 replaces schedule, s 307 (Nil returns) which is moved to s 304 (clause 18)

Clause 25 amends schedule, s 308 (Interpretation) by inserting—‘(1 (omitted)).’.

Clause 26 amends Division 5A heading replacing ‘annual returns’ with ‘Returns’

Clause 27 amends the schedule by inserting a new section 314AAA to provide for the treatment under Division 5A (Returns for Reporting periods by registered political parties and associated entities) of gifts that are returned within six weeks after their receipt. Gifts that are returned in this period do not have to be disclosed for the purposes of Division 5A unless that gift was a gift of foreign property.

Clause 28 amends heading of schedule, s 314AB (Annual returns by registered political parties) by omitting ‘Annual returns’ and inserting ‘Returns for reporting periods’. It also replaces the 16 week reporting period with 8 weeks and the reference to ‘during the financial year’ with ‘during the reporting period’ consequential to the change from annual to six-monthly reporting.

Clauses 29, 30 and 31 amend schedule, s 314AC (Amounts received), s 314AD (Amounts paid) and s 314AE (Outstanding amounts) consequential to the change from annual to six-monthly reporting and the reduction of the disclosure level from 41500’ to ‘\$1000’ and amending the terminology from ‘annual’ or ‘financial year’ to ‘reporting period’.

Clause 32 amends schedule, s 314AEA (Annual returns by associated entities) consequential to the change from annual to six-monthly reporting and amending the terminology from ‘annual’ or ‘financial year’ to ‘reporting period’ and replaces the 16 week reporting period with 8 weeks.

Clause 33 amends schedule, s314A (Interpretation) by inserting ‘Division 4A’ after Division 4.

Clause 34 amends schedule, s315 (Offences) by inserting ‘Division 4A’ after ‘Division 4’ and introduces new offences for the new provision dealing with gifts of foreign property.

When a gift of foreign property is received by specified legal entities the maximum penalty is imprisonment for 12 months or 240 penalty units, or both.

When a gift of foreign property is received by specified non-legal entities, the maximum penalty is imprisonment for 12 months or 240 penalty units, or both. A table sets out who is liable for the offence if a particular entity receives the gift.

A person does not commit an offence if the person does not know of the circumstances because of which the receipt of the gift is unlawful, or the person takes all reasonable steps to avoid those circumstances occurring.

Clause 35 [amends s305AG]

Clause 36 inserts a new s319B which imposes a mandatory requirement on the Electoral Commission to publish on its website returns relating to donations to political parties, and returns by registered political parties and associated entities within 6 weeks after the return is furnished to the Electoral Commission and returns relating to large gifts to political parties within 10 business days after the return is furnished to the Electoral Commission.

Clause 37 amends s 320 (inspection and supply of copies of claims and returns) by inserting a reference to 'Division 4A' in s 320(1)(b) and a reference to 's305C' in ss 320(4)(b).