

Electoral Amendment Bill 2008

Explanatory Notes for Amendments to be moved during consideration in detail by The Honourable Kerry Shine MP

Title of the Bill

Electoral Amendment Bill 2008

Objectives of the Amendments

The objective of the amendments is to clarify the Bill and ensure the Bill can operate as intended.

Consistency with Fundamental Legislative Principles

The amendments do not conflict with Fundamental Legislative Principles.

Consultation

There has been consultation with the Department of Premier and Cabinet which supports the amendments.

Notes On Provisions

Amendment 1 amends Clause 2 which provides that the Act is taken to have commenced on 1 July 2008 excepting sections 4 (*Omission of s 2 (Note in text)*); 10 (*s287A, reference to Division 4A (Rules about certain gifts and loans)*); 11 (*s 292B, reference to Division 4A (Rules about certain gifts and loans)*); 17 (*s303A - gifts returned within 6 weeks*); 21 (*renumber and relocate s306 (Certain gifts not to be received)*); 22 (*Subdivision A 'Gifts of foreign property'*), 27 (*s 314AAA - treatment of gifts returned*

within 6 weeks) and 33 to 35 (*ss 314A, 315 & 315A (Offences) Unlawful receipt of gift*) which will be deemed to commence on assent.

The amendments contained in the Bill are deemed to commence on 1 July 2008 to maintain consistency with established reporting guidelines.

However the effect of the 1 July 2008 commencement date on the rules relating to foreign gifts could place a person in the position of having committed an offence (maximum penalty of 12 months imprisonment or 240 penalty units) between 1 July 2008 and assent.

The amendment provides that the Act is taken to have commenced on 1 July 2008 except for Subdivision A (Gifts of Foreign Property) and ancillary provisions which will commence from assent in accordance with 15A of the *Acts Interpretation Act 1954* (an Act commences on the date of assent except so far as the Act otherwise expressly provides).

Amendment 2 introduces a new clause 4A which amends section 85 (Deposit to accompany nomination).

Clause 12 of the Bill (new s 293 – Entitlement to Funding) reflects the wording of the Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2008 by providing that “at least” 4% of the vote is required to qualify for electoral funding.

Section 85 allows deposits to be returned where “more than” 4% of the vote is received. Section 85 will be amended to read “at least” 4% for consistency with new section 293.

Amendment 3 amends Clause 9 (Amendment of schedule, s 287 (1) (Interpretation)).

In line with the Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2008, the definition of ‘electoral expenditure’ was moved from Division 5 (reporting of electoral expenditure) to the general interpretation section of the Schedule (section 287(1)).

This move has the potential to limit the categories of expenditure that some parties and some independent candidates can rely on to claim reimbursement of election expenditure as the definition does not cover all electoral expenditure, which is a change from the current situation.

This anomaly has resulted from both the moving of the definition to the beginning of the schedule and incorporating the Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2008 which repealed section 293 (See **Amendment 6**). As it was not the policy intent

in introducing these amendments to affect the status quo in relation to the claiming of election expenditure – in particular by small parties and independents – the amendment in the Bill to move the definition of electoral expenditure from Division 5 is reversed.

Amendment 4 amends Clause 10 (Amendment of schedule, s 287A (Campaign committee to be treated as part of (words omitted) party) by inserting the word ‘schedule’ before the word ‘section’ 287A.

Amendment 5 amends Clause 11 (Amendment of schedule, s 292B (Responsibility for action when agent of party (words omitted) dead or appointment vacant)) by inserting the word ‘schedule’ before the word ‘section’ 292B.

Amendment 6 amends Clause 12 (Amendment of schedule, replacement of ss 293).

Existing section 293 of the Act provides that a reference in Division 5 to electoral expenditure is to be read as a reference to any expenditure incurred for the election campaign. The Commonwealth repealed its section 293 in 1995.

As it was not the policy intent in introducing these amendments to affect the status quo in relation to the claiming of election expenditure – in particular by small parties and independents – the amendments reverse the amendment in the Bill, which would otherwise have moved the definition of ‘electoral expenditure’ from Division 5 in accordance with the Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2008 to the general interpretation provision for the schedule (section 287(1)). Amendment 6 also consequentially renumbers existing section 293 as ‘292E Interpretation’.

Amendments 7 amends Clause 13 (Amendment of s 294A (Election funding reimbursement amount)) by inserting the word ‘schedule’ in the heading and subclauses (1) and (2)

Amendments 8 amends Clause 14 (Replacement of ss 295–298) by inserting the word ‘schedule; before the reference to ‘section’ where it appears.

Amendment 9 amends Clause 14 (Replacement of ss 295–298).

Existing subsections 295(9) and (10) of the Act provide that the claims period, for a particular claim is the period of 20 weeks after the polling day or a longer period determined by the electoral commission, if the circumstances of the case justify such a period.

As a result of incorporating the Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2008 amendments in relation to the tying of electoral funding to reported electoral expenditure, Clause 14 of the Bill provides that a claim in relation to an election must be lodged during the period beginning on the day after the day on which the writ for the election is returned and ending 20 weeks after the polling day for the election.

In addition, the claim period is further limited in that a claim is taken not to have been made if it is lodged before the day after the day on which the writ for the election is returned or after the 20-week period

It is current practice in Queensland that claims for interim payment of campaign advertising entitlement based on votes known at that stage are presented on the Monday after polling day. By following the wording of the Commonwealth Bill, these claims now would not be able to be submitted until after the return of the writs, which in Queensland can be up to two months after polling day.

As it was not the policy intent to change the status quo in relation to the claiming of these types of payment, it is proposed to amend Clause 14 of the Bill to reflect the current subsections 295(9) and (10).

Amendment 10 amends Clause 20 (insertion of new s 305C Special Reporting of Large Gifts).

New subsection 305C(2) requires separate returns of large gifts by donors, parties and associated entities while subsection 305C(11), which specifies what must be included in a return, could be interpreted as though it only applies to a donor return.

For clarity it is proposed to amend subsection 305C(11) to provide that for each gift, the return “required by subsection (2)” must state the listed information.

Amendment 11 amends Clause 21 (Renumbering and relocation of s 306 (Certain gifts not to be received) by inserting the word ‘schedule’ before the word ‘section’ wherever it appears.

Amendment 12 amends Clause 23 (Amendment of schedule, s 306A (Certain loans not to be received)) by inserting the word ‘schedule’ before the word ‘section’ wherever it appears.

Amendment 13 amends Clause 25 of the Bill (s 308 (1) (Interpretation)).

Current section 308 (Interpretation) includes the definition of electoral expenditure which was moved by the Bill to the general interpretation section 287(1).

As detailed in Amendments 3 and 4, this move has the potential to limit the categories of expenditure that some parties and some independent candidates can rely on to claim reimbursement of election expenditure.

The amendment relocates the definition in Division 5 (reporting of electoral expenditure).

Amendment 14 amends Clause 33 (Amendment of schedule, s 314A (Interpretation)) by inserting the word ‘schedule’ before the word ‘section’ wherever it appears.

Electoral Amendment Bill

Explanatory Notes to amendments during consideration in detail to be moved by Mrs. Liz Cunningham, Member for Gladstone.

Amendment 1 and all subsequent amendments have the same intended purpose.

These amendments are intended to require Independent candidates for election in this State to have the same declaration obligations as those candidates endorsed by a party.

Currently, there is a \$ 1500 threshold for declaration of most gifts to political parties. The amendments currently proposed by the Premier will reduce this threshold to \$1000.

Because of the structure of parties , almost all (if not all) party endorsed candidates have donations collected by the party. Therefore, as individuals endorsed by parties, they are not caught by the current threshold which applies to Independent candidates of \$200.

My amendments propose that the declaration threshold for all candidates (Party endorsed and Independents) be the same i.e. \$1000. This will ensure equity and fairness - remove the discriminatory obligations for Independent candidates currently in the Act and in no way undermines the principal of transparency which the Act and the amendments propose.