

# **Election Donations Disclosure and Public Funding Bill**

## **EXPLANATORY MEMORANDUM**

### **PART 1—PRELIMINARY**

*Clause 1* states the purpose of the Bill.

*Clause 2* is the commencement provision.

*Clause 3* defines certain words or expressions.

### **PART 2—FUNCTIONS, POWERS AND DUTIES OF THE ELECTORAL COMMISSIONER**

*Clause 4* sets out the functions, powers and duties of the Electoral Commissioner. In particular, the Electoral Commissioner is required to exercise his or her functions and powers in a manner that is not biased against or in favour of any particular party, candidate, organisation, person or body.

*Clause 5* empowers the Electoral Commissioner to issue guidelines for or with respect to the disclosure of donations and electoral expenditure and public funding.

### **PART 3—AGENTS**

*Clause 6* provides for the appointment of agents by political parties for the purposes of the Bill.

*Clause 7* provides for the appointment of agents by candidates for the purposes of the Bill.

*Clause 8* sets out the requisites for the appointment of agents and provides that if an agent is convicted of an offence against this Bill or *The Constitution Act Amendment Act 1958*, the person is not eligible to be an agent for a period of 5 years after that conviction.

*Clause 9* provides for the revocation of the appointment of an agent.

*Clause 10* requires the political party or the candidate to give the Electoral Commissioner notice in writing of the death or resignation of an agent.

### **PART 4—DISCLOSURE OF DONATIONS AND ELECTORAL EXPENDITURE**

#### **Division 1—Disclosure of Donations**

*Clause 11* deems gifts received by or on behalf of a branch of the Victorian division of a political party to have been made to, or received by, the Victorian division.

*Clause 12* requires the agent of each political party before the expiry of 20 weeks after an election to give the Electoral Commissioner details of—

- (a) the total amount or value of all gifts; and
- (b) the number of gifts; and
- (c) in relation to each gift—
  - (i) its value; and
  - (ii) the date on which it was made; and

(iii) the name and address of the person who made the gift.

In the case of the candidate, his or her agent must give these details to the Electoral Commissioner before the expiry of 15 weeks after an election.

A political party is not required to disclose details of gifts of less than \$1000 and a candidate is not required to disclose details of gifts of less than \$200. However, if a person makes several gifts totalling more than these limits, the details of the gifts do have to be disclosed.

Gifts made expressly for a non-election purpose do not have to be disclosed.

*Clause 13* requires a person who incurs expenditure for a political purpose in relation to an election to give the Electoral Commissioner before the expiry of 15 weeks after an election details of gifts received by the person and used for an electoral purpose which exceed \$1000 and in particular the amount or value of the gift, the date on which it was made and the name and address of the person making the gift.

*Clause 14* requires a political party or persons acting on behalf of a political party not to receive gifts exceeding \$1000 without disclosing the donor's name and address (except for gifts made expressly for a non-election purpose). The clause also requires candidates or persons acting on their behalf not to receive gifts exceeding \$200 without disclosure of the donor's name and address.

*Clause 15* provides that where no gifts of the kind required to be disclosed are received, a return must be lodged stating this fact.

#### **Division 2—Disclosure of Electoral Expenditure**

*Clause 16* deems any electoral expenditure incurred by or with the authority of a branch of the Victorian division of a political party to be incurred by or with the authority of the Victorian division.

*Clause 17* provides that agents of political parties must lodge returns of electoral expenditure with the Electoral Commissioner before the expiry of 20 weeks after polling day. In the cases of agents of candidates, and of other participants in the election, returns must be lodged before the expiry of 15 weeks after polling day.

*Clause 18* provides that even where no electoral expenditure was incurred in relation to an election by or with the authority of a candidate, a return must be lodged stating this fact.

*Clause 19* provides for one return to be lodged if two or more elections are held on the same day.

#### **PART 5—PUBLIC FUNDING**

*Clause 20* deems electoral expenditure incurred by or with the authority of a candidate or a branch of a registered political party to be incurred by the Victorian division of the party.

*Clause 21* provides for \$2.60 to be paid in respect of each first preference vote given for a candidate in—

- a Legislative Assembly election held as part of a simultaneous election; and
- a Legislative Assembly by-election or a Legislative Council by-election.

*Clause 22* specifies the procedures to be followed in order to receive payments under section 21. In the case of votes received by candidates of registered political parties, claims

for payment may only be made by the agent of the party. Claims must be lodged with the Electoral Commissioner before the expiry of 20 weeks after the polling day.

*Clause 23* requires the Electoral Commissioner to determine claims for payment and specifies that payments are not payable if returns have not been lodged with the Electoral Commissioner.

*Clause 24* specifies that a payment must not be made where a candidate receives less than 4 per cent of the total number of eligible votes polled in favour of all candidates in the election.

*Clause 25* specifies that a payment in relation to a claim must not exceed the electoral expenditure incurred.

*Clause 26* identifies whom the Electoral Commissioner must make the payments to.

*Clause 27* enables payments to be made to specified people where a candidate dies.

*Clause 28* provides for amounts payable to be paid out of the Consolidated Fund which is appropriated accordingly.

## **PART 6—GENERAL**

*Clause 29* provides for the keeping of returns or claims relating to an election for a period of at least one year after the polling day.

*Clause 30* sets out procedures to be followed for incomplete returns.

*Clause 31* enables members of the public to peruse and obtain copies of returns and claims.

*Clause 32* specifies that a failure to comply with the Act does not invalidate election results.

*Clause 33* sets out the procedures for amending returns and claims.

*Clause 34* creates offences and specifies penalties for non-compliance with the Act.

*Clause 35* empowers the Electoral Commissioner to authorise a person, or person included in a class of persons, to investigate possible breaches of the Act, and confers powers on authorised officers.

*Clause 36* empowers an authorised officer to apply to the Magistrates' Court for the issue of a warrant.

*Clause 37* outlines certain evidentiary assumptions which apply in legal proceedings.

*Clause 38* enables prosecutions of unincorporated parties by deeming the proceeding to be against all the persons who were members of the party at the time.

*Clause 39* provides for recovery of penalties from unincorporated parties.

*Clause 40* requires the Electoral Commissioner to lodge with Parliament within 12 months of the holding of an election a report of returns and claims received relating to that election.

*Clause 41* sets out the procedures to be followed to enable indexation of the amount payable for each first preference vote.

*Clause 42* provides for regulations to be made for and under the Act.

*Clause 43* provides for consequential amendments to *The Constitution Act Amendment Act 1958* and the *Magistrates' Court Act 1989*.

## **PART 7—AMENDMENTS TO THE CONSTITUTION ACT AMENDMENT ACT 1958**

*Clause 44* amends *The Constitution Act Amendment Act* to provide for electoral rolls to be sent to State Returning Officers and Registrars.

*Clause 45* substitutes a new section 114A in the *Constitution Act Amendment Act* which requires the Electoral Commissioner to provide without charge, in either electronic or printed form, up-to-date electoral rolls to each political party, member of Parliament and to such other persons or organisations as the Commissioner considers appropriate. The Electoral Commissioner must also provide habitation indexes to each registered political party and additions and deletions to the roll to each member of Parliament.

*Clause 46* amends section 148 (1) of *The Constitution Act Amendment Act* by narrowing the definition of “eligible political party” to a Parliamentary party or a party which has at least 500 members who are electors or are eligible to be electors.

*Clause 47* amends section 166 (4) of *The Constitution Act Amendment Act* to allow for the use of licensed premises as polling booths in exceptional circumstances.

*Clause 48* amends section 175 of *The Constitution Act Amendment Act* to allow for the use of cardboard boxes as ballot-boxes.

*Clause 49* amends section 220 of *The Constitution Act Amendment Act* to allow for the notification of postal voting centres in the *Government Gazette*.

*Clause 50* amends section 243 of *The Constitution Act Amendment Act* to require a candidate or agent to have acted “corruptly” before the candidate or agent could be deemed to have committed the offence of bribery.

*Clause 51* amends section 267G of *The Constitution Act Amendment Act* to make its provisions consistent with the *Broadcasting Act 1942* of the Commonwealth.

*Clause 52* contains statute law revision.