

Election Donations Disclosure and Public Funding Bill

No.

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LEGISLATIVE ASSEMBLY

Read 1 15 November 1989

(Brought in by Mr Walsh and Mr Roper)

A BILL

to require the disclosure of election donations and electoral expenditure, to provide for the public funding of elections, to make miscellaneous amendments to *The Constitution Act Amendment Act 1958*, to make a consequential amendment to the *Magistrates' Court Act 1989* and for other purposes.

Election Donations Disclosure and Public Funding Act 1990

The Parliament of Victoria enacts as follows:

PART I—PRELIMINARY

Purpose of Act

- 5 1. The purpose of this Act is to—
- (a) require the disclosure of election donations and electoral expenditure; and
 - (b) provide for the public funding of elections; and
 - (c) make miscellaneous amendments to *The Constitution Act Amendment Act 1958*.

10 **Commencement**

2. This Act comes into operation on a day or days to be proclaimed.

Definitions

3. (1) In this Act—

“**Agent**” means an agent appointed under Part 3.

“**Authorised officer**” means a person authorised by the Electoral Commissioner for the purposes of this Act. 5

“**Branch**”, in relation to the Victorian division of a political party, means a branch of the Victorian division of the political party.

“**Broadcast**” includes televise.

“**By-election**” means— 10

(a) an election of a member of the Legislative Council that is not part of a periodical election of members of the Legislative Council; or

(b) an election of a member of the Legislative Assembly that is not part of a general election of members of the Legislative Assembly. 15

“**Candidate**” means a person nominated as a candidate at an election in accordance with *The Constitution Act Amendment Act 1958*.

“**Disposition of property**” means any conveyance, transfer, assignment, settlement, delivery, payment or other alienation of property, and includes— 20

(a) the allotment of shares in a company; and

(b) the creation of a trust in property; and

(c) the grant or creation of any lease, mortgage, charge, servitude, licence, power, partnership or interest in property; and 25

(d) the release, discharge, surrender, forfeiture or abandonment, at law or in equity, of any debt, contract or chose in action or of any interest in property; and 30

(e) the exercise by a person of a general power of appointment of property in favour of any other person; and

(f) any transaction entered into by any person with intent thereby to diminish, directly or indirectly, the value of that person’s property and to increase the value of the property of any other person. 35

“**Election**” means—

(a) a simultaneous election; or

(b) a by-election. 40

“**Election period**” means the period commencing on the day of the issue of the writ for an election and ending at the expiry of the polling day in the election.

“**Electoral Commissioner**” means the Electoral Commissioner appointed under section 144 of *The Constitution Act Amendment Act 1958*.

5 “**Electoral expenditure**”, in relation to an election, for the purposes of Part 4 means expenditure incurred (whether or not incurred during the election period) on—

(a) the broadcasting, during the election period, of an advertisement relating to the election; or

10 (b) the publishing in a newspaper or journal, during the election period, of an advertisement relating to the election; or

(c) the display, during the election period, at a theatre or other place of entertainment of an advertisement relating to the election; or

15 (d) the production of an advertisement relating to the election being an advertisement that is broadcast, published or displayed as mentioned in paragraph (a), (b) or (c); or

20 (e) the production of any material (not being material referred to in paragraph (a), (b) or (c)) that is required under section 267A or 267E of *The Constitution Act Amendment Act 1958* to include the name and address of the author of the material or of the person authorising the material and that is used during the election period; or

25 (f) consultant’s or advertising agent’s fees in respect of—
(i) services provided during the election period, being services relating to the election; or

30 (ii) material relating to the election that is used during the election period; or

(g) the carrying out, during the election period, of an opinion poll, or other research, relating to the election.

“**Eligible vote**” means a vote in respect of which by virtue of section 21 a payment may be made under Part 5.

35 “**Endorsed**”, in relation to a party, means endorsed, selected or otherwise accredited to stand as a representative of the party.

40 “**Gift**” means any disposition of property, otherwise than by will, made without consideration in money or money’s worth or with inadequate consideration, and includes the provision of a service (other than volunteer labour) for no consideration or for inadequate consideration but does not—

(a) include a payment under Part 5; or

45 (b) an annual subscription paid to a political party, to the Victorian division of a political party or to a branch of the Victorian division of a political party by a person

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in respect of the person’s membership of the party, division or branch.

“**Officer**”, in relation to a party, means a person who is occupying or acting in an office or position concerned with the management of the party. 5

“**Political party**” means a body or organisation, incorporated or unincorporated, having as one of its objects or activities the promotion of the election to Parliament of a candidate or candidates endorsed by it or by a body or organisation of which it forms a part. 10

“**Polling day**”, in relation to an election, means the day fixed for polling in the election.

“**Property**” includes money.

“**Registered political party**” means a political party registered under Division 1A of Part V of *The Constitution Act Amendment Act 1958*. 15

“**Secretary**”, in relation to a political party or the Victorian division of a political party, means the person who holds the office (however described) the duties of which involve responsibility for the carrying out of the administration and for the conduct of the correspondence of the party or division. 20

“**Simultaneous election**” means a general election for the Legislative Assembly and a periodical election for the Legislative Council the writs for which are issued on the same day and for which the same day of nomination and day of polling are appointed. 25

“**Victorian division**”, in relation to a political party, means a division of the party that is organised on the basis of Victoria.

(2) If a notice or return is to be given to the Electoral Commissioner the notice or return is to be taken to be so given if it is posted to the Electoral Commissioner at the address of the Electoral Commissioner. 30

(3) A reference in Part 4 to things done by or with the authority of a political party, the Victorian division of a political party or a branch of the Victorian division of a political party is if the party, division or branch is not a body corporate to be read as a reference to things done by or with the authority of members or officers of the party, division or branch on behalf of the party, division or branch. 35

(4) A reference in Part 4 to a political party, other than a reference to the endorsement of a candidate in an election, is to be read as not including a reference to a part of the political party. 40

(5) For the purposes of Part 4 the amount or value of a gift consisting of or including a disposition of property other than money is, if the regulations so provide, to be determined in accordance with principles set out or referred to in the regulations. 45

(6) For the purposes of Part 4—

(a) a body corporate and any other body corporate that is related to the first-mentioned body corporate is deemed to be the same person; and

5 (b) the question whether a body corporate is related to another body corporate is to be determined in the same manner as the question whether a corporation is related to another corporation is determined under the *Companies (Victoria) Code*.

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

Functions, powers and duties of the Electoral Commissioner

4. (1) The Electoral Commissioner has the functions, powers and duties conferred on the Electoral Commissioner under this Act.

15 (2) It is the duty of the Electoral Commissioner to ensure that the Electoral Commissioner exercises 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.

20 (3) Without limiting sub-section (1), the Electoral Commissioner must deal with—

(a) applications for appointment of agents; and

(b) returns of donations and electoral expenditure; and

(c) claims for public funding.

Guidelines

25 5. (1) The Electoral Commissioner may determine and issue guidelines for or with respect to any matters dealt with in Parts 4 and 5.

(2) The guidelines must not be inconsistent with this Act or the regulations.

30 (3) In the operation and application of Parts 4 and 5 regard must be given to the guidelines and in particular the Electoral Commissioner must have regard to the guidelines in dealing with applications, returns and claims.

PART 3—AGENTS

35 **Appointment of agents by parties**

6. (1) A political party may appoint an agent of the party for the purposes of this Act.

(2) The Victorian division of a political party may appoint an agent of the division for the purposes of this Act.

(3) Subject to section 8 (2), the secretary of a political party or of the Victorian division of a political party is to be taken to be the agent of the party or division during any period for which an appointment of an agent is not in force.

Appointment of agents by candidates

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7. (1) A candidate may appoint an agent of the candidate for the purposes of this Act.

(2) Subject to section 8 (2), the candidate is to be taken to be his or her own agent during any period for which an appointment of an agent is not in force.

10

Requisites for appointment

8. (1) An appointment of an agent has no effect unless—

(a) the person appointed is a natural person who has attained the age of 18 years; and

(b) notice of the appointment is given to the Electoral Commissioner signed by—

15

(i) if the appointment is made by a political party or the Victorian division of a political party—the secretary of the party or division; or

(ii) if the appointment is made by a candidate—the candidate making the appointment; and

20

(c) the name and address of the person appointed are specified in the notice; and

(d) the person appointed signs a form of consent to the appointment, being a form set out in the notice.

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(2) If a person who is the agent of—

(a) a political party; or

(b) the Victorian division of a political party; or

(c) a candidate—

is convicted of an offence against this Act or *The Constitution Act Amendment Act 1958*, the person is not eligible to be appointed or to hold office as an agent for a period of 5 years after that conviction.

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Revocation of appointment of agent

9. (1) A political party, the Victorian division of a political party or a candidate may revoke the appointment of a person as its, his or her agent by written notice to the Electoral Commissioner.

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(2) A notice of revocation has no effect unless it is signed by—

(a) the secretary of—

(i) the political party; or

(ii) the Victorian division of a political party; or

40

(b) the candidate—
as the case may be.

Death or resignation of agent

10. If an agent dies or resigns—

- 5 (a) the political party; or
(b) the Victorian division of a political party; or
(c) the candidate—

as the case may be, must give notice in writing of the death or resignation to the Electoral Commissioner.

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

Division 1—Disclosure of Donations

Application of Division

15 11. (1) This Division applies to any gifts made on or after the commencement of this Division.

(2) Any gift made to, or received by or on behalf of, a branch of the Victorian division of a political party is deemed to have been made to, or received by, the Victorian division.

Disclosure of gifts

20 12. (1) Before the expiry of 20 weeks after the polling day in a current election the agent of each political party and of the Victorian division of each political party must give the Electoral Commissioner a return in the prescribed form specifying—

- 25 (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
30 (iii) the name and address of the person who made the gift—

received by the political party or division during the period that commenced on the day after polling day in the previous election and ended at 6 p.m. on the polling day in the current election.

35 (2) Before the expiry of 15 weeks after the polling day in a current election, the agent of each person who is a candidate or a candidate who is his or her own agent in an election or by-election must give the Electoral Commissioner a return in the prescribed form specifying in respect of gifts received by the candidate during the current period—

- (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. 5
- (3) In sub-section (2) “**current period**” means the period that commenced—
 - (a) if the person was not a candidate—
 - (i) in a periodical election of members of the Legislative Council or a by-election for the Legislative Council, the polling day in which occurred not more than 9 years before the polling day in the current election; or 10
 - (ii) in a general election of members of the Legislative Assembly or a by-election for the Legislative Assembly, the polling day in which occurred not more than 5 years before the polling day in the current election— 15
 - on the day on which the person announced the intention to be a candidate in the current election or on the day on which the person nominated as a candidate in the current election, whichever first occurred; or 20
 - (b) in any other case—on the day after the polling day in the election or by-election in which the person was most recently a candidate—
- and ended at 6 p.m. on the polling day in the current election.
- (4) An agent or a candidate who is his or her own agent is not required to specify the details referred to in sub-section (1) (c) or (2) (c) if— 25
 - (a) in the case of a gift made to a political party or the Victorian division of a political party—
 - (i) the gift was made on the condition that it be used by the party or division for a purpose other than a purpose related to an election or a by-election and the party or division has used, or will use, the gift accordingly; or 30
 - (ii) the amount or value of the gift is less than \$1000; or
 - (b) in the case of a gift made to a candidate— 35
 - (i) the gift was made in a private capacity to the candidate for the personal use of the candidate and the candidate has not used, and will not use, the gift solely or substantially for a purpose related to an election or a by-election; or 40
 - (ii) the amount or value of the gift is less than \$200.
- (5) Sub-section (4) (a) (ii) or (4) (b) (ii) does not apply in relation to a gift made by a person if—

5 (a) in the case of a gift made to a political party or the Victorian division of a political party—the sum of the amount or value of that gift and of all other gifts (not being gifts of the kind referred to in sub-section (4) (a) (i)) made by that person to that party or to the Victorian division, as the case may be, during the period to which the return relates is equal to or exceeds \$1000; or

10 (b) in the case of a gift made to a candidate—the sum of the amount or value of that gift and of all other gifts (not being gifts of the kind referred to in sub-section (4) (b) (i)) made by that person to that candidate during the period to which the return relates is equal to or exceeds \$200.

15 (6) An agent is not required to specify the total amount or value of, or the number of, gifts of the kind referred to in sub-section (4) (a) (i) or (4) (b) (i).

Expenditure incurred for political purposes

13. (1) In this section—

20 “**The incurring of expenditure for a political purpose in relation to an election**” means the incurring of expenditure in connection with or by way of—

(a) publication by any means (including radio or television) of electoral matter; or

(b) by any other means publicly expressing views on an issue in the election; or

25 (c) the making of a gift to a political party or the Victorian division of a political party (not being a gift made on the condition that it be used by the party or division for a purpose other than a purpose related to an election or by-election); or

30 (d) the making of a gift to a candidate in the election; or

(e) the making of a gift to a person on the understanding that that person or another person will apply, either directly or indirectly, the whole or a part of the gift as mentioned in paragraph (a), (b), (c) or (d).

35 “**Disclosure period**”, in relation to an election, means the period that—

(a) commenced on the day after the polling day in the preceding election; and

(b) ends on the polling day in the first-mentioned election.

40 (2) This section applies to a person who—

(a) is not a political party, the Victorian division or a branch of a political party or a candidate; and

45 (b) incurs expenditure for a political purpose in relation to an election the total amount of which during the disclosure period is equal to or exceeds \$1000.

(3) Before the expiry of 15 weeks after the polling day in an election, a person who incurs expenditure for a political purpose in relation to the election must give the Electoral Commissioner a return in the prescribed form specifying the amount or value, the date on which it was made and the name and address of the person making the gift, in respect of all gifts received by the person during the disclosure period—

- (a) the whole or part of each of which was used by the person to enable the person to incur expenditure for a political purpose in relation to the election or to reimburse the person for incurring expenditure for a political purpose in relation to the election; and
- (b) the amount or value of each of which is equal to or exceeds \$1000.

(4) For the purposes of sub-section (3), two or more gifts made by the same person to another person during the disclosure period in relation to an election are to be taken to be one gift.

Certain gifts not to be received

14. (1) It is unlawful for a political party or the Victorian division of a political party or a person acting on behalf of a political party or the Victorian division of a political party to receive a gift made to or for the benefit of the party or division by another person, being a gift the amount or value of which is equal to or exceeds \$1000, unless—

- (a) the name and address of the person making the gift are known to the person receiving the gift; or
- (b) at the time when the gift is made, the person making the gift gives to the person receiving the gift the name and address of the person making the gift and the person receiving the gift has no grounds to believe that the name and address so given are not the true name and address of the person making the gift; or
- (c) the person receiving the gift receives the gift on the condition that it be used by the party or division for a purpose other than a purpose related to an election or a by-election.

(2) Sub-section (1) (c) does not apply to a gift received on the condition that it be used by a political party for a purpose other than a purpose related to an election or a by-election if the gift or any part of the gift is subsequently used for a purpose related to an election or by-election.

(3) It is unlawful for a candidate or a person acting on behalf of a candidate to receive a gift made to or for the benefit of the candidate, being a gift the amount or value of which is equal to or exceeds \$200 unless—

- (a) the name and address of the person making the gift are known to the person receiving the gift; or

5 (b) at the time when the gift is made, the person making the gift gives to the person receiving the gift the name and address of the person making the gift and the person receiving the gift has no grounds to believe that the name and address so given are not the true name and address of the person making the gift.

(4) For the purposes of sub-sections (1) and (3), two or more gifts made by the same person to another person during the election period in relation to an election are to be taken to be one gift.

10 (5) If a person receives a gift rendered unlawful by sub-section (1) or (3) that person must pay an amount equal to the amount or value of the gift to the Crown.

15 (6) The amount payable to the Crown may be recovered by the Crown as a debt due to the Crown by action, in a court of competent jurisdiction, against—

(a) in the case of a gift to or for the benefit of a political party or the Victorian division of a political party—

(i) if the party or division is a body corporate—the party or division; or

20 (ii) in any other case—the agent of the party; or

(b) in any other case—the candidate or the agent of the candidate.

Nil returns

25 15. If a political party or the Victorian division of a political party or a candidate does not receive any gifts of the kind required to be disclosed and no details are required to be included in a return under this Division in respect of that party, division or candidate, a return—

(a) must be lodged; and

30 (b) must include a statement to the effect that no gifts of a kind required to be disclosed were received.

Division 2—Disclosure of Electoral Expenditure

Application of Division

35 16. (1) Any electoral expenditure incurred by or with the authority of a branch of the Victorian division of a political party is deemed to have been incurred by or with the authority of the Victorian division.

(2) In this Division “**participant in an election**” means—

(a) a political party, the Victorian division of a political party, a branch of the Victorian division of a political party or a candidate; or

40 (b) a person (not being a political party, the Victorian division of a political party, a branch of the Victorian division of a political party or a candidate) by whom or with the authority

of whom electoral expenditure in relation to the election was incurred.

Returns of electoral expenditure

17. (1) Before the expiry of 20 weeks after polling day in an election, the agent of any political party or of the Victorian division of any political party which has incurred electoral expenditure or under whose authority electoral expenditure has been incurred in relation to the election must give the Electoral Commissioner a return in the prescribed form specifying details of the electoral expenditure. 5

(2) Before the expiry of 15 weeks after polling day in an election, the agent of each person who was a candidate in the election must give the Electoral Commissioner a return in the prescribed form specifying details of the electoral expenditure in relation to the election incurred by or with the authority of the candidate. 10

(3) Before the expiry of 15 weeks after polling day in an election, a person— 15

(a) who has incurred electoral expenditure or under whose authority electoral expenditure has been incurred the total amount of which exceeds \$200 in relation to an election; and 20

(b) has done so without the written authority of a political party, the Victorian division of a political party or a candidate in the election—

must give the Electoral Commissioner a return in the prescribed form specifying details of the electoral expenditure. 25

Nil returns

18. Even though no electoral expenditure in relation to an election was incurred by or with the authority of a particular candidate, a return under this Division in respect of the candidate—

(a) must be lodged; and 30

(b) must include a statement to the effect that no expenditure of the kind required to be disclosed was incurred by or with the authority of the candidate.

Two or more elections on the same day

19. (1) If— 35

(a) the polling at two or more elections took place on the same day; and

(b) a person would, but for this sub-section, be required to give two or more returns under this Division relating to those elections— 40

the person may, in lieu of giving those returns, give one return, in the prescribed form, setting out the particulars that the person would have been required to set out in those returns.

(2) If—

- (a) a return is given by a person under sub-section (1); and
- (b) particular electoral expenditure details of which are required to be set out in the return relates to more than one election—

5 it is sufficient compliance with this Division if the return sets out details of the expenditure without showing the extent to which it relates to any particular election.

PART 5—PUBLIC FUNDING

Electoral expenditure

10 **20.** (1) Electoral expenditure in relation to an election incurred by or with the authority of a candidate who is endorsed by a registered political party is deemed to be electoral expenditure in relation to the expenditure incurred by the Victorian division of the political party.

15 (2) Electoral expenditure in relation to an election incurred by or with the authority of—

(a) a political party in relation to Victoria is deemed to be electoral expenditure in relation to the election incurred by the Victorian division of the party; and

20 (b) a branch of the Victorian division of a political party is deemed to have been incurred by the Victorian division.

(3) In this Part, a reference to electoral expenditure in relation to an election is a reference to any electoral expenditure incurred in connection with the election campaign (whether or not incurred during the election period).

25 General entitlement to funds

21. (1) In this section, “**first preference vote**” does not include a vote that has been rejected as informal in the poll concerned.

30 (2) There is payable in respect of each first preference vote given for a candidate in a Legislative Assembly election held as part of a simultaneous election the amount of \$2.60.

(3) There is payable in respect of each first preference vote given for a candidate in a Legislative Assembly by-election or a Legislative Council by-election the amount of \$2.60.

Claims for payment

35 **22.** (1) A payment under section 21 can only be made upon the making of a claim to the Electoral Commissioner for payment.

40 (2) If a candidate for whom eligible votes were given in an election was endorsed in the election by a registered political party, a claim for a payment in respect of the eligible votes given for the candidate may be made only by the agent of the registered political party.

(3) If a candidate for whom eligible votes were given in an election was not endorsed by a registered political party, a claim for a payment in respect of the eligible votes given for the candidate may be made only by the agent of the candidate, or if the candidate has no agent, by the candidate. 5

(4) A claim for a payment must be—

(a) made in the prescribed form; and

(b) accompanied by such information as the Electoral Commissioner requires concerning—

(i) in the case of a claim made by the agent of a registered political party or the Victorian division of a registered political party—the total electoral expenditure in relation to the election to which the claim relates incurred by or with the authority of the political party or division; or 10

(ii) in the case of a claim made by the agent of a candidate, or if the candidate has no agent, by the candidate—the total electoral expenditure in relation to the election to which the claim relates incurred by or with the authority of the candidate; and 15

(c) lodged with the Electoral Commissioner before the expiry of 20 weeks after the polling day in the election to which the claim relates. 20

Determination of claims

23. (1) The Electoral Commissioner must determine claims for payment in accordance with this Part. 25

(2) A political party, the Victorian division of a political party or a candidate is not eligible for any payment in respect of any election if any return which is required under Part 4 in respect of that election to be given by that party, division or candidate has not been given. 30

Payment not to be made in certain circumstances

24. A payment must not be made in respect of votes given in an election for a candidate unless the total number of eligible votes polled in the candidate's favour is at least 4% of the total number of eligible votes polled in favour of all of the candidates in the election. 35

Amount of payment not to exceed electoral expenditure

25. The amount of a payment in relation to a claim must not exceed—

(a) where the claim is made by the agent of a registered political party or the Victorian division of a registered political party—the electoral expenditure in relation to the election incurred by or with the authority of the party or division; or 40

- (b) where the claim is made by the agent of a candidate, or if the candidate has no agent, by the candidate—the electoral expenditure in relation to the election incurred by or with the authority of the candidate.

5 Making of payments

26. (1) If the Electoral Commissioner is satisfied that an amount is payable in relation to a claim under section 22 (2) in respect of votes given in an election for a candidate endorsed by a registered political party, the Electoral Commissioner must make the payment to the agent of the political party or of the Victorian division of the political party.

(2) If the Electoral Commissioner is satisfied that an amount is payable in relation to a claim under section 22 (3) in respect of votes given in an election for a candidate, the Electoral Commissioner must make the payment to the agent of the candidate, or if the candidate has no agent, to the candidate.

Death of a candidate

27. (1) If a candidate for whom eligible votes were given in an election dies, a payment in respect of the eligible votes given for the candidate may be made.

(2) If a candidate for whom eligible votes were given in an election dies and the candidate was not endorsed in the election by a registered political party and was his or her own agent a claim for payment may be made by, and the payment made to, his or her legal personal representative.

25 Appropriation

28. Amounts payable under this Part are payable out of the Consolidated Fund which is appropriated accordingly.

PART 6—GENERAL

Records to be kept

29. If a person makes or obtains a document or other thing that is or includes a record relating to a matter particulars of which are, or could be, required to be set out in a return or claim relating to an election, not being a record that, in the normal course of business or administration, that person would transfer to another person, the first-mentioned person must retain that record for a period of at least one year commencing on the polling day in that election.

Inability to complete returns

30. (1) If a person required to give a return under Division 1 or 2 of Part 4 feels unable to complete the return because of an inability to obtain particulars that are required for the preparation of the return, the person may—

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- (a) prepare the return to the extent that it is possible to do so without those particulars; and
 - (b) give the return so prepared to the Electoral Commissioner; and
 - (c) give to the Electoral Commissioner a notice in writing— 5
 - (i) identifying the return; and
 - (ii) stating that the person considers that the return is incomplete by reason of an inability to obtain certain particulars; and
 - (iii) identifying those particulars; and 10
 - (iv) setting out the reason why the person is unable to obtain those particulars; and
 - (v) if the person believes, on reasonable grounds, that another person whose name and address are known to the first-mentioned person can give those particulars— 15
 - specifying the name and address of that other person and stating that the first-mentioned person believes, and setting out the reasons for the belief, that that other person can supply those particulars. 20
- (2) If the Electoral Commissioner has been informed under sub-section (1) (c) or (4) (c) that a person can supply particulars that have not been included in a return, the Electoral Commissioner may by notice in writing served on that person require the person to give a return in the prescribed form to the Electoral Commissioner within the period specified in the notice specifying those particulars. 25
- (3) Except as provided in sub-section (4), a person must comply with a requirement under sub-section (2).
- (4) If a person required to give a return under sub-section (2) feels unable to complete the return because of an inability to obtain particulars that are required to be set out in the return, the person must— 30
- (a) prepare the return to the extent that it is possible to do so without those particulars; and
 - (b) give the return so prepared to the Electoral Commissioner; and 35
 - (c) give to the Electoral Commissioner a notice in writing—
 - (i) stating that the person considers that the return is incomplete by reason of an inability to obtain certain particulars; and
 - (ii) identifying those particulars; and 40
 - (iii) setting out the reasons why the person is unable to obtain those particulars; and
 - (iv) if the person believes, on reasonable grounds, that another person whose name and address are known to

5 the first-mentioned person can give those particulars—
specifying the name and address of that other person
and stating that the first-mentioned person believes,
and setting out the reasons for the belief, that that other
person can supply those particulars.

(5) If a person complies with sub-section (1) or (4), the person is not to be taken by reason only of the omission of those particulars to have given a return that is incomplete for the purposes of section 34 (2).

Public may obtain copies of returns and claims

10 **31.** (1) The Electoral Commissioner must cause to be kept at the State Electoral Office a copy of—

(a) each return given to the Electoral Commissioner under Division 1 or 2 of Part 4; and

(b) each claim for a payment under Part 5; and

15 (c) each return given to the Electoral Commissioner under section 30 (2).

(2) A person is entitled without charge to peruse a copy of a return or claim kept under sub-section (1).

20 (3) A person is entitled, on payment of a fee determined by the Electoral Commissioner to cover the cost of copying, to obtain a copy of a return or claim kept under sub-section (1).

(4) A person is not entitled to peruse or obtain a copy of a return or claim until after the expiry of 24 weeks after the polling day in the election to which the return or claim relates.

25 **Failure to comply does not affect election**

32. (1) A failure of a person to comply with this Act in relation to an election does not invalidate that election.

(2) Without limiting the generality of sub-section (1), where—

(a) a political party endorsed a candidate in an election; and

30 (b) the candidate was elected at the election—

any failure by the agent of the political party or by the agent of the Victorian division of the political party to comply with a provision of Part 4 in relation to the election does not invalidate the election of the candidate.

35 (3) Without limiting the generality of sub-section (1), if the agent of a candidate who is elected at an election fails to comply with a provision of Part 4 in relation to the election, that failure does not invalidate the election of the candidate.

Amendment of returns and claims

33. (1) If the Electoral Commissioner is satisfied that a return or claim contains a formal error or is subject to a formal defect, the Electoral Commissioner may amend the return or claim to the extent necessary to correct the error or remove the defect. 5

(2) A person who has given a return or made a claim may by notice in writing signed by the person request the permission of the Electoral Commissioner to make a specified amendment of the return or claim for the purpose of correcting an error or omission.

(3) If the Electoral Commissioner refuses a request the Electoral Commissioner must give the person making the request written notice of the reasons for the decision. 10

(4) The amendment of a return or claim under this section does not affect the liability of a person to be convicted of an offence against section 34 arising out of the giving of the return or the making of the claim. 15

Offences

34. (1) A person who fails to give a return as required under Division 1 or 2 of Part 4 or section 30 (2) within the required time, is guilty of an offence and liable to a penalty not exceeding— 20

(a) in the case of a return required to be given by the agent of a political party or of the Victorian division of a political party—50 penalty units; or

(b) in any other case—10 penalty units.

(2) A person who— 25

(a) gives an incomplete return under Division 1 or 2 of Part 4 or section 30 (2); or

(b) fails to retain records in accordance with section 29—

is guilty of an offence and liable to a penalty not exceeding 10 penalty units. 30

(3) An agent of a political party or the Victorian division of a political party who gives a return under Division 1 or 2 of Part 4 or section 30 (2) or makes a claim under Part 5 that contains particulars that are to the knowledge of the agent, false or misleading in a material particular, is guilty of an indictable offence and liable to a penalty not exceeding 100 penalty units. 35

(4) A person other than the agent of a political party or the Victorian division of a political party who gives a return under Division 1 or 2 of Part 4 or section 30 (2) or makes a claim under Part 5 that contains particulars that are to the knowledge of the person, false or misleading in a material particular is guilty of an offence and liable to a penalty not exceeding 50 penalty units. 40

(5) Any person who gives to another person who is required to give a return under Division 1 or 2 of Part 4 or section 30 (2) information

that relates to the return that is to the knowledge of the first-mentioned person, false or misleading in a material particular is guilty of an offence and liable to a penalty not exceeding 10 penalty units.

5 (6) If a person required to give a return under Division 1 or 2 of Part 4 or section 30 (2) within a particular period fails to give the return within that period, the following applies:

- (a) The obligation to give the return continues even though the period has expired;
- 10 (b) If a person is convicted of an offence that is constituted by a failure to give the return within that period, the person is guilty of a separate offence in respect of each day after the day of the conviction during which the failure continues;
- (c) The penalty applicable to each separate offence is a penalty not exceeding 1 penalty unit;
- 15 (d) If a person is convicted of more than one offence under paragraph (b), the court may impose one penalty in respect of all offences of which that person is convicted but the penalty must not exceed the sum of the maximum penalties that could be imposed if a penalty were imposed in respect
- 20 of each offence separately.

Investigations

35 (1) The Electoral Commissioner may by instrument in writing authorise a person or a person included in a class of persons to be an authorised officer.

25 (2) If an authorised officer has reasonable grounds to believe that a person is capable of producing documents or other things or giving evidence relating to a contravention, or possible contravention of section 34, or relating to matters that are set out in, or are required to be set out in a return under Division 1 or 2 of Part 4 or section 30 (2),

30 the authorised officer may, by notice served personally or by post on that person, require that person—

- (a) to produce within the period and in the manner specified in the notice the documents or other things referred to in the notice; or
- 35 (b) to appear, at a time and place specified in the notice before the authorised officer to give evidence, either orally or in writing and to produce the documents or other things referred to in the notice.

40 (3) An authorised officer may require any evidence that is to be given to the authorised officer in compliance with a notice under sub-section (2) to be given on oath or affirmation and for that purpose the authorised officer may administer an oath or affirmation.

45 (4) A person must not, without reasonable excuse, refuse or fail to comply with a notice under sub-section (2) to the extent that the person is capable of complying with the notice.

Penalty: 10 penalty units.

(5) A person must not, in purported compliance with a notice under sub-section (2), give evidence that is, to the knowledge of that person, false or misleading in a material particular.

Penalty: 10 penalty units or imprisonment for 6 months, or both. 5

Issue of warrant

36. (1) If—

- (a) an authorised officer has reasonable grounds for suspecting that there may be, at any time within the next following 24 hours, upon any land or upon or in any premises, vessel, aircraft or vehicle, a document or other thing that may afford evidence relating to a contravention of section 34; and 10
- (b) the authorised officer has reasonable grounds to believe that, if a notice under section 35 (2) were issued for the production of the document or other thing, the document or other thing might be concealed, lost, mutilated or destroyed— 15

the authorised officer may apply to the Magistrates' Court for the issue of a warrant. 20

(2) Subject to sub-section (3), the Magistrates' Court may issue a warrant authorising the authorised officer or any other person named in the warrant, with such assistance as that officer or other person thinks necessary and if necessary by force to—

- (a) enter upon the land or upon or into the premises, vessel, aircraft or vehicle; and 25
- (b) search the land, premises, vessel, aircraft or vehicle for documents or other things that may afford evidence relating to a contravention of section 34, being documents or other things of a kind described in the warrant; and 30
- (c) seize any documents or other things of the kind referred to in paragraph (b).

(3) The Magistrates' Court must not issue a warrant unless—

- (a) an affidavit has been given to the Magistrates' Court setting out the grounds on which the issue of the warrant is being sought; and 35
- (b) the authorised officer applying for the warrant or some other person has given to the Magistrates' Court, either orally or by affidavit, any further information the Magistrates' Court requires concerning the grounds on which the issue of the warrant is being sought; and 40
- (c) the Magistrates' Court is satisfied that there are reasonable grounds for issuing the warrant.

(4) If the Magistrates' Court issues a warrant, the Magistrates' Court must state—

- 5 (a) which of the grounds specified in the affidavit the Magistrates' Court has relied on to justify the issue of the warrant; and
- (b) particulars of any other grounds relied on to justify the issue of the warrant.

(5) A warrant must—

- 10 (a) include a statement of the purpose for which the warrant is issued, which must include a reference to the contravention of section 34 in relation to which the warrant is issued; and
- (b) state whether entry is authorised to be made at any time of day or night or during specified hours of the day or night; and
- 15 (c) include a description of the kind of documents or other things authorised to be seized, and
- (d) specify a date, not being later than one month after the date of issue of the warrant, upon which the warrant ceases to have effect.

20 (6) If a document or other thing is seized by a person under a warrant—

- 25 (a) the person may retain the document or other thing for so long as is reasonably necessary for the purposes of the investigation to which the document or other thing is relevant; and
- (b) when the retention of the document or other thing by the person ceases to be reasonably necessary for those purposes, the person must cause the document or other thing to be delivered to the person who appears to the first-mentioned person to be entitled to possession of the document or other thing.

Evidentiary provisions

37. (1) Until evidence is given to the contrary, proof is not required in any legal proceedings of—

- 35 (a) the appointment of the Electoral Commissioner; or
- (b) any decision of the Electoral Commissioner.

(2) A certificate signed by the Electoral Commissioner or a person authorised generally or specifically by the Electoral Commissioner to do so certifying—

- 40 (a) that a person is or is not appointed as an agent for the purposes of this Act; or
- (b) that a person has been appointed as an authorised officer; or

(c) that a person is a delegate of the Electoral Commissioner—
is admissible in any proceedings as evidence of the matters certified.

Prosecution of unincorporated parties

38. (1) A proceeding in respect of an offence against this Act alleged
to be committed by a party that is unincorporated, or in respect of any
amount recoverable from such a party, may be instituted against an
officer or officers of the party as a representative or representatives of
the members of the party. 5

(2) A proceeding so instituted is deemed to be a proceeding against
all the persons who were members of the party at any relevant time. 10

Recovery of penalties from parties

39. (1) For the purposes of enforcing any judgment or order given
or made in a proceeding under this Act against a party that is
unincorporated, process may be issued and executed against any
property of the party, or any property in which the party has, or any
members of the party have in their capacity as such members, a
beneficial interest, whether vested in trustees or however otherwise
held, as if the party were a corporation and the absolute owner of the
property or interest. 15

(2) No process is to be issued or executed against any other property
of members, or against any property of officers, of the party. 20

Reports to Parliament

40. (1) Within 12 months of the holding of an election the Electoral
Commissioner must prepare and forward to the President of the
Legislative Council and the Speaker of the Legislative Assembly a
report of returns and claims received under this Act relating to that
election. 25

(2) As soon as practicable after the President of the Legislative
Council or the Speaker of the Legislative Assembly receives a report
under this section, the President or Speaker must cause the report to be
laid before the Legislative Council or the Legislative Assembly. 30

Indexation

41. (1) In this section—

“**Index number**”, in relation to a quarter, means the All Groups
Consumer Price Index number, being the weighted average
of the 8 capital cities, published by the Australian Statistician
in respect of that quarter; 35

“**Relevant amount**” means the amount specified in section 21 (2)
or 21 (3);

“**Relevant period**” means the period of 6 months commencing
on 1 July 1989 and each subsequent period of 6 months. 40

5 (2) Subject to sub-section (3), if at any time, whether before or after the commencement of this section, the Australian Statistician has published or publishes an index number in respect of a quarter in substitution for an index number previously published by him or her in respect of that quarter, the publication of the later index number is to be disregarded for the purposes of this section.

10 (3) If at any time, whether before or after the commencement of this section, the Australian Statistician has changed or changes the reference base for the Consumer Price Index, then, for the purposes of the application of this section after the change took place or takes place, regard is to be had only to index numbers published in terms of the new reference base.

15 (4) Where the factor ascertained under sub-section (5) in relation to a relevant period is greater than 1, this Act has effect in relation to any election the polling day in which occurs during that relevant period as if for each relevant amount there were substituted an amount calculated by multiplying by that factor—

- 20 (a) in a case to which paragraph (b) does not apply—the relevant amount; or
(b) if, by virtue of another application or other applications of this section, this Act has had effect as if another amount was substituted, or other amounts were substituted, for the relevant amount—the substituted amount or the last substituted amount, as the case may be.

25 (5) The factor to be ascertained for the purposes of sub-section (4) in relation to a relevant period is the number, calculated to 3 decimal places, ascertained—

- 30 (a) if the relevant period commences on 1 July—by dividing the index number for the last preceding March quarter by the index number for the last preceding September quarter; or
(b) if the relevant period commences on 1 January—by dividing the index number for the last preceding September quarter by the index number for the last preceding March quarter.

35 (6) Where the factor ascertained in accordance with sub-section (5) in relation to a relevant period would, if it were calculated to 4 decimal places, end with a number greater than 4, the factor ascertained in accordance with that sub-section in relation to that relevant period is to be taken to be the factor calculated to 3 decimal places in accordance
40 with that sub-section and increased by 0.001.

Regulations

42. (1) The Governor in Council on the recommendation of the Electoral Commissioner may make regulations for or with respect to—

- 45 (a) prescribing forms to be used for the purposes of this Act; and

- (b) prescribing any matter to be included in any return, application or claim; and
- (c) prescribing the keeping and form of any records, registers or other documents as may be necessary for the administration of this Act; and 5
- (d) any matter or thing authorised or required to be prescribed or necessary to be prescribed for carrying this Act into effect.
- (2) Regulations made under this Act—
 - (a) may be of general or of specially limited application; and
 - (b) may differ according to differences in time, place or circumstance; and 10
 - (c) may leave any matter or thing to be from time to time determined, applied, dispensed with or regulated by a specified person or body; and
 - (d) may confer powers or impose duties in connection with the regulations on a specified person or body; and 15
 - (e) may impose a penalty not exceeding 10 penalty units for any contravention of the regulations.

Consequential amendments

- 43. (1) *The Constitution Act Amendment Act 1958* is amended as follows: 20
 - (a) In section 277 (1), in the definition of “Illegal practice” after “or 20” insert “or under Part 6 of the *Election Donations Disclosure and Public Funding Act 1990*”; 25
 - (b) Division 19 of Part V is repealed; 25
 - (c) In section 281 (1) (e) the expression beginning “, or (if the facts” and ending “electoral expenses” is repealed;
 - (d) The Sixteenth, Seventeenth and Eighteenth Schedules are repealed.
- (2) In Schedule 4 of the *Magistrates’ Court Act 1989* after item 43 insert: 30

“Election Donations Disclosure and Public Funding Act 1990

43A. Offences under section 34 (3) of the *Election Donations Disclosure and Public Funding Act 1990* but the maximum penalty that the Court may impose is a fine of not more than 50 penalty units.”. 35

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

Certification of rolls

- 44. For section 113 (3) of *The Constitution Act Amendment Act 1958* substitute: 40
 - “(3) Forthwith after the printing of the rolls—

- (a) the Electoral Commissioner must sign and send a copy of the roll for each subdivision to the State returning officer for the district; and
- (b) copies of the rolls must be sent to the registrars.”.

5 **Section 114A substituted**

45. For section 114A of *The Constitution Act Amendment Act 1958* substitute:

Provision of rolls and habitation indexes

10 “114A. (1) The Electoral Commissioner must cause to be provided, without charge, at a time during each Assembly—

- (a) to each registered political party—a set of up-to-date rolls for Victoria; and
- 15 (b) to each member of the Council—one up-to-date roll for the province for which the member was elected or, in the case of a member of the Council continuing to represent an old province after the preparation of new rolls for new provinces following a division of electors under the *Electoral Boundaries Commission Act 1982*, one up-to-date roll for each of the subdivisions which together contain the old province for which the member was elected; and
- 20 (c) to each member of the Assembly—one up-to-date roll for the district for which the member was elected; and
- 25 (d) to any other persons or organizations (if any) as the Electoral Commissioner determines to be appropriate—such up-to-date rolls as the Electoral Commissioner considers appropriate.

30 (2) When providing rolls under sub-section (1) or additions and deletions under sub-section (5) the Electoral Commissioner may provide the rolls or additions and deletions in a printed form or in an electronic form.

35 (3) The Electoral Commissioner must, so far as it is practicable to do so, cause to be provided to each registered political party, without charge, during each Assembly, a habitation index for each district, being a list of electors for that district arranged, in a manner determined by the Electoral Commissioner, by reference to the respective places of residence of the electors whose names are entered on the roll for that district.

40 (4) The Electoral Commissioner must not include on a habitation index for a district provided under sub-section (3) the names and addresses of persons whose addresses are not shown on the roll for that district by virtue of section 121A.

(5) The Electoral Commissioner must, so far as it is practicable to do so, cause to be provided to those members of the Council and Assembly who so request, regular additions and deletions to the roll

for each member's respective electorate, but the Electoral Commissioner must not include in any additions the names and addresses of persons whose addresses are not shown on the roll by virtue of section 121A."

Registration of political parties

46. In section 148A (1) of *The Constitution Act Amendment Act 1958* in the definition of "**Eligible political party**" after "500 members" insert "who are electors or are eligible to be electors". 5

Booths at licensed premises

47. For section 166 (4) of *The Constitution Act Amendment Act 1958* substitute: 10

"(4) Subject to sub-section (5), no part of any licensed premises within the meaning of the *Liquor Control Act 1987* is to be used for the purpose of a polling booth.

(5) If the Electoral Commissioner considers that there are exceptional circumstances which so require, the Electoral Commissioner may, subject to any conditions the Electoral Commissioner may impose, authorise the use of any premises which is, or of which any part is, a licensed premises within the meaning of the *Liquor Control Act 1987* for the purpose of a polling booth." 15

Ballot-box to be securely fastened 20

48. In section 175 of *The Constitution Act Amendment Act 1958*—

(a) for "lock" substitute "securely fasten"; and

(b) omit ", and shall keep the key of the said box".

Postal voting centres

49. Section 220 of *The Constitution Act Amendment Act 1958* is amended as follows: 25

(a) In sub-section (4) (b) after sub-paragraph (ii) insert:

“; or

(iii) a postal voting officer at an appointed place on a day that is, and during hours that are, declared by the Electoral Commissioner by notice published in the *Government Gazette* to be an appointed day and appointed hours for the purpose of this section.”; 30

(b) After sub-section (7) insert:

“(8) The Electoral Commissioner may by notice published in the *Government Gazette* declare a place to be an appointed place for the purposes of this Part.”. 35

Actions deemed bribery

50. Section 243 of *The Constitution Act Amendment Act 1958* is amended as follows:

- (a) In sub-section (1) after “candidate who” insert “corruptly”;
- 5 (b) In sub-section (2) after “day of polling” insert “corruptly”.

Matter broadcast or televised

51. Section 267G of *The Constitution Act Amendment Act 1958* is amended as follows:

- 10 (a) In sub-section (1) for “the true name and address or names and addresses of the author or authors thereof” substitute “an announcement in compliance with section 117 of the *Broadcasting Act 1942* of the Commonwealth”;
- (b) Sub-section (2) is repealed.

Statute Law Revision

15 52. *The Constitution Act Amendment Act 1958* is amended as follows:

- (a) In section 30 (1), the definition of “**Railway Service**” is repealed;
- 20 (b) In section 37 (1) in the definition of “**Salary**” for “**Revenue**” substitute “**Fund**”;
- (c) In section 42 (6) (b) (ii) for “person’s” substitute “person”;
- (d) In section 119 (1) (e) for “subdivison” substitute “subdivision”;
- 25 (e) In section 303 (2) for “shall not effect” substitute “shall not affect”.

