

# **Election Donations Disclosure 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.

### **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 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.

### **Division 3—Annual Returns of Income and Expenditure**

*Clause 20* requires the agent of each registered political party, within 4 weeks after the end of each financial year, to fully disclose to the Electoral Commissioner all income, expenditure and debts of the political party. Gifts of less than \$1,000, however, do not need to be disclosed. The first return to be lodged under this Clause need only include particulars relating to the period after the commencement of the Clause.

## PART 5—GENERAL

*Clause 21* provides for the keeping of returns relating to an election for a period of at least one year after the polling day.

*Clause 22* sets out procedures to be followed for incomplete returns.

*Clause 23* provides that a person's obligations to furnish returns are not diminished simply because the person does not appear on the list produced by the Electoral Commissioner under section 33 (3); and that the fact that a person appears on the list produced by the Electoral Commissioner under section 33 (3) does not by itself place obligations on the person to furnish returns.

*Clause 24* enables members of the public to peruse and obtain copies of returns.

*Clause 25* specifies that a failure to comply with the Act does not invalidate election results.

*Clause 26* sets out the procedures for amending returns.

*Clause 27* creates offences and specifies penalties for non-compliance with the Act.

*Clause 28* 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 29* empowers an authorised officer to apply to the Magistrates' Court for the issue of a warrant.

*Clause 30* outlines certain evidentiary assumptions which apply in legal proceedings.

*Clause 31* 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 32* provides for recovery of penalties from unincorporated parties.

*Clause 33* requires the Electoral Commissioner to lodge with Parliament within 12 months of the holding of an election a report of returns received relating to that election.

*Clause 34* prohibits the Electoral Commissioner from including in reports produced under section 33 particulars of information obtained during an audit of prescribed persons unless in the Electoral Commissioner's view the information relates to an offence which has or may have been committed against the election funding and financial disclosure provisions of the Act.

*Clause 35* provides for regulations to be made for and under the Act.

*Clause 36* provides for consequential amendments to **The Constitution Act Amendment Act 1958** and the **Magistrates' Court Act 1989**. In particular, this Clause amends section 246A of **The Constitution Act Amendment Act 1958** to create an offence of hindering or interfering with the free exercise by a person of his or her right to make a gift to a political party. The penalty prescribed is \$1,000 or imprisonment for 6 months, or both.

