



Australian Capital Territory

Electoral Amendment Act 2012

A2012-28

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Australian Capital Territory

Electoral Amendment Act 2012

A2012-28

An Act to amend the *Electoral Act 1992*, and for other purposes

The Legislative Assembly for the Australian Capital Territory enacts as follows:

1 Name of Act

This Act is the *Electoral Amendment Act 2012*.

2 Commencement

This Act commences on 1 July 2012.

Note The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

3 Legislation amended

This Act amends the *Electoral Act 1992*.

Note This Act also amends the following legislation (see sch 1):

- *Electoral Regulation 1993*
- *Referendum (Machinery Provisions) Act 1994*.

**4 Offences against Act—application of Criminal Code etc
Section 3A, note 1**

insert

- s 205A (Financial representatives to keep ACT election accounts)
- s 205B (Offence—loans to be repaid from ACT election accounts)
- s 205C (Financial representative to ensure electoral expenditure paid from ACT election account)
- s 205J (Offence—give indirect gift to avoid statutory limit)
- s 236 (Offences)

5 Section 87 heading

substitute

87 Meaning of *address*—pt 7

6 Section 87, definition of *related*

omit

7 Part 14 heading

substitute

Part 14 Election funding, expenditure and financial disclosure**8 Definitions for pt 14
Section 198, new definitions**

insert

called, an extraordinary election is *called* on—

- (a) for an extraordinary election mentioned in section 101 (1) (a) or (b)—the day the notice under the Self-Government Act, section 16 or section 48 is published in the Commonwealth gazette; or
- (b) for an extraordinary election mentioned in section 101 (1) (c) or (d)—the day the determination under section 101 (2) or (3) is notified under the Legislation Act.

capped expenditure period means—

- (a) for an ordinary election—the period starting on 1 January in the year in which the ordinary election is to be held and ending on polling day for the election; or
- (b) for an extraordinary election—the period starting on the day the extraordinary election is called and ending on polling day for the election.

9 Section 198, definition of *disposition of property*

relocate to section 198AA (5)

10 Section 198, new definitions

insert

electoral expenditure, in relation to an election—

- (a) means expenditure incurred on—
 - (i) broadcasting an electoral advertisement; or
 - (ii) publishing an electoral advertisement; or
 - (iii) displaying an electoral advertisement at a theatre or other place of entertainment; or
 - (iv) producing an electoral advertisement mentioned in subparagraph (i), (ii) or (iii); or
 - (v) producing, broadcasting, publishing, displaying or distributing any electoral matter (other than material mentioned in subparagraph (i), (ii) or (iii))—
 - (A) to which section 292 applies, or would apply but for section 294 (1) (a), (b), (e), (f), (g), (h), (i), or (j); and
 - (B) that is not paid for by the Legislative Assembly or the Territory; or
 - (vi) consultant's or advertising agent's fees in relation to—
 - (A) services relating to electoral matter mentioned in subparagraph (i) to (v); or
 - (B) material relating to electoral matter mentioned in subparagraph (i) to (v); or
 - (vii) carrying out an opinion poll or other research undertaken to support the production of electoral matter mentioned in subparagraph (i) to (vi); but
- (b) does not include administrative expenditure.

financial representative means—

- (a) for a party grouping—the reporting agent of the party; or
- (b) for a non-party MLA—the MLA; or
- (c) for a non-party candidate grouping—the candidate; or
- (d) for a non-party prospective candidate grouping—the prospective candidate; or
- (e) for an associated entity—the entity’s financial controller; or
- (f) for a third-party campaigner—
 - (i) if the third-party campaigner is an individual—the third-party campaigner; or
 - (ii) in any other case—the person responsible (however described) for the management of the third-party campaigner.

11 Section 198, definition of *gift*

substitute

gift—see section 198AA.

12 Section 198, new definitions

insert

incurs electoral expenditure—see section 202A.

index number, for a quarter, means the all groups consumer price index number, being the weighted average of the 8 capital cities, published by the Australian statistician for that quarter.

non-party candidate grouping means—

- (a) a candidate for an election who is not a party candidate; and
- (b) any other person who has incurred electoral expenditure with the authority of the candidate to support the candidate in contesting the election.

non-party MLA means an MLA who is not a member of a party.

non-party prospective candidate grouping means—

- (a) a prospective candidate for an election who is not a prospective candidate for a party; and
- (b) any other person who has incurred electoral expenditure with the authority of the prospective candidate to support the prospective candidate in contesting the election.

party grouping means—

- (a) a party; and
- (b) an MLA for the party; and
- (c) an associated entity of the party; and
- (d) an associated entity of an MLA for the party; and
- (e) a candidate for the party; and
- (f) a prospective candidate for the party.

person includes an unincorporated association.

Note ***Person*** includes a corporation (see Legislation Act, s 160).

13 Section 198, definition of *property*

relocate to section 198AA (5)

14 Section 198, new definitions

insert

prospective candidate—a person is a ***prospective candidate*** for an election if—

- (a) the person has—
 - (i) won party preselection, or endorsement, to be a candidate for the party for the election; or
 - (ii) publicly announced that the person intends to be a candidate for the election; or
 - (iii) been nominated to be a candidate for the election under section 105 and the nomination has not been cancelled under section 107 or rejected under section 110; and
- (b) the commissioner has not declared the candidates for the election under section 109.

third-party campaigner—

- (a) means a person or entity that incurs more than \$1 000 in electoral expenditure in the disclosure period for an election; but
- (b) does not include the following:
 - (i) a party, MLA, candidate, prospective candidate, party grouping, non-party candidate grouping or non-party prospective candidate grouping;
 - (ii) a broadcaster;
 - (iii) a publisher of a news publication (except a publication published for, or for the benefit of, an entity mentioned in subparagraph (i));
 - (iv) a government agency;
 - (v) the Legislative Assembly.

15 New section 198AA

insert

198AA Meaning of *gift*—pt 14

- (1) For this part, each of the following is a *gift*:
 - (a) a disposition of property made by a person to another person without consideration in money or money's worth or with inadequate consideration;
 - (b) the provision of a service (other than volunteer labour) for no consideration or inadequate consideration.
- (2) For this part, each of the following is also a *gift*:
 - (a) if an annual subscription paid to a party by a person for the person's membership of the party is more than \$250—the amount of the subscription that is more than \$250;
 - (b) if a fundraising contribution in relation to a single fundraising event is more than \$250—the amount of the contribution that is more than \$250.
- (3) However, for this part, none of the following is a *gift*:
 - (a) a disposition of property under a will;
 - (b) an annual subscription for membership of a party of \$250 or less;
 - (c) if an annual subscription for membership of a party is more than \$250—the first \$250 of the subscription;
 - (d) a fundraising contribution in relation to a single fundraising event of \$250 or less;
 - (e) if a fundraising contribution in relation to a single fundraising event is more than \$250—the first \$250 of the contribution;

- (f) a gift mentioned in subsection (1) if—
 - (i) the gift is given to an individual in a private capacity for the individual's personal use; and
 - (ii) the individual does not use the gift solely or substantially for a purpose related to an election;
- (g) a payment under division 14.3 (Election funding) or division 14.3A (Administrative expenditure funding);
- (h) a payment made by an entity within a party grouping to another entity within the party grouping.

(4) Subsection (3) (h) and this subsection expire on 1 January 2014.

(5) In this section:

fundraising contribution—

- (a) means an amount paid by a person as a contribution, entry fee or other payment to entitle the person or someone else to participate in or otherwise obtain a benefit from a fundraising event; and
- (b) includes an amount paid for—
 - (i) a ticket in a raffle; and
 - (ii) an item at a fundraising auction; and
 - (iii) a meal or beverage; and
 - (iv) attending a conference, seminar or similar function.

fundraising event means an event, however described, where any part of the funds raised are retained by a political party, an MLA, an associated entity, a candidate, or a third-party campaigner.

volunteer labour—

- (a) for a member of a party—a member of a party provides ***volunteer labour*** to the party if the person provides a service to the party for no consideration or for inadequate consideration; or
- (b) in any other case—a person provides ***volunteer labour*** to someone else (the ***recipient***) if the person provides a service to the recipient for no consideration or for inadequate consideration, other than a service for which the person usually charges a fee.

16 Section 200

substitute

200 Activities of candidates and prospective candidates

For this part, gifts received, expenditure incurred, and amounts received, paid or owed, by or on behalf of a party candidate or prospective candidate for a party in relation to the candidate's or prospective candidate's campaign, the party or an election, are taken to be received, incurred, paid or owed by the party.

**17 Disclosure periods
Section 201 (2) (c)**

omit

for a person to whom, or body to which, section 220 or 221 applies

substitute

for a third-party campaigner to which section 220 applies

18 New section 202A

in division 14.1, insert

202A When person or entity *incurs* electoral expenditure—pt 14

For this part, a person or entity *incurs* electoral expenditure when the service or product to which the expenditure relates is provided or delivered.

Examples

- 1 Electoral expenditure on an electoral advertisement is incurred when the advertisement is broadcast.
- 2 Electoral expenditure on electoral matter is incurred when the matter is distributed.
- 3 Electoral expenditure on an electoral matter published on a website is incurred when the matter is first published on the website.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

19 New divisions 14.2A to 14.2C

insert

Division 14.2A ACT election accounts**205A Financial representatives to keep ACT election accounts**

- (1) This section applies to the following entities:
 - (a) a party grouping;
 - (b) a non-party MLA;
 - (c) a non-party candidate grouping;
 - (d) a non-party prospective candidate grouping;
 - (e) an associated entity;
 - (f) a third-party campaigner.

- (2) The financial representative of the entity must keep an account (an *ACT election account*) for the entity with a financial institution.

Maximum penalty: 100 penalty units.

- (3) The financial representative must as soon as practicable after establishing the ACT election account give the commissioner the following details about the account:

- (a) the financial institution;
- (b) the account number;
- (c) the account name.

Maximum penalty: 20 penalty units.

Note If a form is approved under s 340A for this provision, the form must be used.

- (4) The financial representative must give the commissioner any change to the details mentioned in subsection (3) as soon as practicable after the change happens.

Maximum penalty: 20 penalty units.

Note If a form is approved under s 340A for this provision, the form must be used.

205B Offence—loans to be repaid from ACT election accounts

- (1) A person commits an offence if—
- (a) the person is the financial representative of 1 of the following entities:
 - (i) a party grouping;
 - (ii) a non-party MLA;
 - (iii) a non-party candidate grouping;
 - (iv) a non-party prospective candidate grouping;

- (v) an associated entity;
- (vi) a third-party campaigner; and
- (b) the entity receives a loan of money; and
- (c) the money is deposited in the ACT election account for the entity; and
- (d) the loan is repaid other than from the ACT election account.

Maximum penalty: 100 penalty units.

- (2) It is a defence to a prosecution for an offence against this section if the defendant proves that the defendant took reasonable steps to ensure that the loan was repaid from the ACT election account.

Note The defendant has a legal burden in relation to the matters mentioned in s (2) (see Criminal Code, s 59).

205C Financial representative to ensure electoral expenditure paid from ACT election account

- (1) A person commits an offence if—
 - (a) the person is the financial representative of 1 of the following entities:
 - (i) a party grouping;
 - (ii) a non-party MLA;
 - (iii) a non-party candidate grouping;
 - (iv) a non-party prospective candidate grouping;
 - (v) an associated entity;
 - (vi) a third-party campaigner; and
 - (b) the entity pays an amount for electoral expenditure in relation to an election; and

- (c) the amount is not paid from the ACT election account for the entity.

Maximum penalty—100 penalty units.

- (2) It is a defence to a prosecution for an offence against this section if the defendant proves that the defendant took reasonable steps to ensure that the amount was paid from the ACT election account.

Note The defendant has a legal burden in relation to the matters mentioned in s (2) (see Criminal Code, s 59).

Division 14.2B Limitations on electoral expenditure

205D Meaning of *expenditure cap*—div 14.2B

For this division, the *expenditure cap* is—

- (a) for an election held in 2012—\$60 000; or
(b) for an election held in a later year—the amount declared under section 205E for the year.

205E Working out indexation for expenditure cap

- (1) The commissioner must, not later than 1 December in a year, declare an amount for section 205D for the following year.
(2) The amount must be worked out as follows:

$$EC + (EC \times \text{CPI percentage increase})$$

CPI percentage increase, for a year, means the annual percentage increase in the CPI from the September quarter of the previous year to the September quarter of the year the calculation is made.

EC means the expenditure cap for the year the calculation is made.

- (3) If the calculation in subsection (2) results in a reduction of the expenditure cap, the amount declared must be the same amount as the expenditure cap in the previous year.

-
- (4) If the calculation in subsection (2) results in an expenditure cap that is not a multiple of \$5, the amount declared must be rounded up to the next whole dollar amount that is a multiple of 5.
 - (5) A declaration is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

- (6) In this section:

CPI means the all groups consumer price index number, being the weighted average of the 8 capital cities, published by the Australian statistician.

205F Limit on electoral expenditure—party groupings

- (1) This section applies to electoral expenditure in relation to an election that is incurred by or on behalf of a party grouping in the capped expenditure period for the election.
- (2) The electoral expenditure must not exceed the expenditure cap for the election multiplied by the sum of—
 - (a) for each 5-member electorate—the lesser of—
 - (i) 5; and
 - (ii) the number of candidates for the party for election in the electorate; and
 - (b) for the 7-member electorate—the lesser of—
 - (i) 7; and
 - (ii) the number of candidates for the party for election in the electorate.
- (3) If the electoral expenditure exceeds the amount allowed under subsection (2), the party grouping is liable to pay a penalty to the Territory equal to twice the amount by which the electoral expenditure exceeds the amount allowed under subsection (2).

- (4) The commissioner may recover an amount payable under subsection (3) from the party.

205G Limit on electoral expenditure—MLAs, candidates and third-party campaigners

- (1) This section applies to electoral expenditure in relation to an election that is incurred by or on behalf of any of the following (an *expendor*) in the capped expenditure period for the election:
 - (a) a non-party MLA and an associated entity of the MLA;
 - (b) a non-party candidate grouping;
 - (c) a third-party campaigner.
- (2) The electoral expenditure must not exceed the expenditure cap for the election.
- (3) If the electoral expenditure exceeds the expenditure cap for the election, the expender is liable to pay a penalty to the Territory equal to twice the amount by which the electoral expenditure exceeds the expenditure cap for the election.
- (4) The commissioner may recover an amount payable under subsection (3) from—
 - (a) if the expender is a non-party MLA or associated entity of the MLA—the non-party MLA; or
 - (b) if the expender is a non-party candidate grouping—the non-party candidate; or
 - (c) if the expender is a third-party campaigner—the third-party campaigner.

205H Limit on electoral expenditure—third-party campaigner acting in concert with others

- (1) A third-party campaigner must not act in concert with another person to incur electoral expenditure in relation to an election in the capped expenditure period for the election that is more than the expenditure cap for the third-party campaigner for the election.
- (2) If a third-party campaigner contravenes subsection (1), the third-party campaigner is liable to pay a penalty to the Territory equal to twice the amount by which the electoral expenditure exceeds the third-party campaigner's expenditure cap for the election.
- (3) The commissioner may recover an amount payable under subsection (2) from the third-party campaigner.
- (4) In this section:

act in concert—a person *acts in concert* with someone else if the person acts under an agreement (whether formal or informal) with the other person to campaign with the object, or principal object, of having a particular party, MLA or candidate elected.

Division 14.2C Limitations on gifts and other payments**205I Limit on gifts received**

- (1) This section applies to gifts made to any of the following (a *receiver*):
 - (a) a party grouping;
 - (b) a non-party MLA and an associated entity of the MLA;
 - (c) a non-party candidate grouping;
 - (d) a non-party prospective candidate grouping;
 - (e) a third-party campaigner.

- (2) A receiver must not deposit in an ACT election account 1 or more gifts from a person in a financial year that total more than \$10 000.
- (3) For subsection (2)—
 - (a) if a receiver receives a gift from a person that consists of a service or product that would be electoral expenditure if paid for by the receiver—
 - (i) an amount equal to the value of the service or product is taken to have been deposited in the ACT election account when the service or product was provided or delivered; and
 - (ii) the amount is taken to be a gift from the person; and
 - (b) if a receiver receives any other kind of gift from a person that is not an amount of money and uses an amount of money derived from the gift for electoral expenditure—
 - (i) an amount equal to the amount used for electoral expenditure is taken to have been deposited in the ACT election account when the expenditure was incurred; and
 - (ii) the amount is taken to be a gift from the person.
- (4) Also, a receiver other than a third-party campaigner must not accept a gift from a person who is not an individual enrolled to vote in the ACT unless the gift is paid into the federal election account.
- (5) If a receiver contravenes subsection (2), an amount equal to twice the amount by which the gift or gifts exceed \$10 000 is payable to the Territory.
- (6) However—
 - (a) if the receiver returns the amount by which the gift or gifts exceed \$10 000 within 30 days after the amount is received—no amount is payable to the Territory; or

-
- (b) if the receiver takes all reasonable steps to return the amount by which the gift or gifts exceed \$10 000 but is unable to return the amount because the donor cannot be found—the amount by which the gift or gifts exceed \$10 000 is payable to the Territory.
- (7) If a receiver contravenes subsection (4), the receiver is liable to pay a penalty to the Territory equal to twice the amount of the gift.
- (8) However—
- (a) if the receiver pays the amount of the gift into the federal election account within 30 days after the gift is received—no amount is payable to the Territory; or
- (b) if the receiver returns the amount of the gift within 30 days after the gift is received—no amount is payable to the Territory; or
- (c) if the receiver takes all reasonable steps to return the amount of the gift but is unable to return the amount because the donor cannot be found—an amount equal to the amount of the gift is payable to the Territory.
- (9) The commissioner may recover an amount payable under subsection (5), subsection (6) (b) or subsection (8) (b) from—
- (a) if the receiver is a party grouping—the party; or
- (b) if the receiver is a non-party MLA or associated entity of the MLA—the non-party MLA; or
- (c) if the receiver is a non-party candidate grouping—the non-party candidate; or
- (d) if the receiver is a non-party prospective candidate grouping—the non-party prospective candidate; or
- (e) if the receiver is a third-party campaigner—the third-party campaigner.

- (10) This section does not apply to a gift made to a prospective candidate for an election if the prospective candidate is not later declared as a candidate for the election under section 109.
- (11) However, if a non-party prospective candidate is declared as a non-party candidate for the election, any gift received by the non-party prospective candidate's non-party prospective candidate grouping in a financial year is taken to be received by the non-party candidate's non-party candidate grouping in the financial year.

205J Offence—give indirect gift to avoid statutory limit

- (1) A person commits an offence if—
 - (a) the person gives another person or entity (the *donor*) an amount or thing (a *donation*); and
 - (b) the person directs or requests the donor to give all or part of the donation to a party, MLA, candidate, or an associated entity of a party or MLA, in the financial year as a gift; and
 - (c) the gift, together with any gift given by the person to the party, MLA, candidate or associated entity in the financial year is more than \$10 000.

Maximum penalty: 100 penalty units.

- (2) This section does not apply to a gift that is returned to the donor within 30 days after it is received.

205K Limit on payments within parties

- (1) This section applies to a payment made to a party by a related political party.
- (2) The party must not pay into the ACT election account for the party 1 or more payments from 1 or more related political parties in a financial year that total more than \$10 000.

- (3) If the party contravenes subsection (2), an amount equal to twice the amount by which the payment or payments exceed \$10 000 is payable to the Territory.
- (4) However, if the party returns the amount by which the payment or payments exceed \$10 000 within 30 days after the amount is received, no amount is payable to the Territory.
- (5) This section does not apply to payments made to a party under this Act, or a corresponding Act of the Commonwealth, a State or another Territory.

20 Section 207

substitute

207 Entitlement to funds

- (1) The prescribed amount is payable for each eligible vote cast for a candidate or party in an election.
- (2) The prescribed amount is—
 - (a) for an election held in the 6-month period beginning on 1 July 2012—200 cents; and
 - (b) for an election held in a subsequent 6-month period—the prescribed amount for the period worked out under this section.
- (3) The commissioner must work out the prescribed amount for the 6-month period beginning on 1 January 2013 and for each subsequent 6-month period.
- (4) The prescribed amount must be worked out as follows:
 - (a) for a 6-month period beginning on 1 January—

$$P \times \frac{INS}{INM}$$

- (b) for a 6-month period beginning on 1 July—

$$P \times \frac{INM}{INS}$$

INM means the index number for the previous March quarter.

INS means the index number for the previous September quarter.

P means the prescribed amount for the previous 6-month period.

- (5) The prescribed amount, and each number used to work out the prescribed amount, must be worked out—
- (a) if the amount or number, if worked out to 4 decimal places, would end with a number greater than 4—to 3 decimal places and increased by 0.001; and
 - (b) in any other case—to 3 decimal places.
- (6) If the Australian statistician publishes an index number for a quarter in substitution for an index number previously published for that quarter, the commissioner must disregard the publication of the later index number for this section.
- (7) However, if the Australian statistician changes the reference base for the consumer price index, then, in applying this section after the change, the commissioner must have regard only to index numbers published in terms of the new reference base.

21 New division 14.3A*insert***Division 14.3A Administrative expenditure funding****215A Period between polling day and declaration of poll**

For this division, a person is taken to have been an MLA between polling day for an election and the declaration of the poll for the election if the person—

- (a) was an MLA whose term ended on the polling day; and
- (b) was declared re-elected on the declaration of the poll.

215B Eligibility of party for payment for administrative expenditure

A party is eligible for payment for administrative expenditure for a quarter if, for all or part of the quarter, at least 1 MLA is a member of the party.

215C Payment to eligible parties for administrative expenditure

- (1) This section applies if a party is eligible for payment for administrative expenditure for a quarter.
- (2) The commissioner must pay the party the quarterly entitlement of each MLA who was a member of the party in the quarter.
- (3) The quarterly entitlement of an MLA who was a member of the party in the quarter is worked out as follows:

$$A \times \frac{D}{Q}$$

A means—

- (a) for a quarter in 2012—\$5 000; or
- (b) for a quarter in a later year—the quarterly amount for the year declared under section 215F.

D means the number of days in the quarter that the MLA was a member of the party.

Q means the number of days in the quarter.

215D Eligibility of non-party MLAs for payment for administrative expenditure

A non-party MLA is eligible for payment for administrative expenditure for a quarter if the MLA is an MLA for all or part of the quarter.

215E Payment to non-party MLAs for administrative expenditure

- (1) This section applies if a non-party MLA is eligible for payment for administrative expenditure for a quarter.
- (2) The commissioner must pay the non-party MLA the MLA's quarterly entitlement worked out as follows:

$$A \times \frac{D}{Q}$$

A means—

- (a) for a quarter in 2012—\$5 000; or
- (b) for a quarter in a later year—the quarterly amount for the year declared under section 215F.

D means the number of days in the quarter that the MLA is a non-party MLA.

Q means the number of days in the quarter.

215F Working out indexation for administrative expenditure

- (1) The commissioner must declare a quarterly amount for a year for—
 - (a) section 215C (3), definition of *A*, paragraph (b); and
 - (b) section 215E (2), definition of *A*, paragraph (b).
- (2) The quarterly amount is worked out as follows:

$$P \times \frac{INS1}{INS2}$$

INS1 means the index number published for the September quarter in the preceding year.

INS2 means the index number published for the September quarter in the year immediately before the preceding year.

P means—

- (a) for 2013—\$5 000; and
 - (b) for a later year—the amount worked out under this subsection for the preceding year.
- (3) However, if for a particular year the amount under subsection (2) is less than *P*, the amount for the year is *P*.
- (4) The quarterly amount, and each number used to work out the quarterly amount under subsection (2), must be worked out—
 - (a) if the amount or number, if worked out to 3 decimal places, would end with a number greater than 4—to 2 decimal places and increased by 0.01; or
 - (b) in any other case—worked out to 2 decimal places.
- (5) If the Australian statistician publishes an index number for a quarter in substitution for an index number previously published for that quarter, the commissioner must disregard the publication of the later index number for this section.

- (6) However, if the Australian statistician changes the reference base for the consumer price index, then, in applying this section after the change, the commissioner must have regard only to index numbers published in terms of the new reference base.
- (7) A declaration is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

215G Payments for administrative expenditure not to be used for electoral expenditure

- (1) If an amount is paid to a party or non-party MLA for administrative expenditure under this division, the party or non-party MLA must not—
 - (a) deposit any part of the amount in an ACT election account; or
 - (b) use any part of the amount for electoral expenditure in relation to an ACT, federal, state or local election.
- (2) If a party or non-party MLA contravenes subsection (1), the party or MLA is liable to pay a penalty to the Territory equal to twice the amount deposited or used.
- (3) The commissioner may recover an amount payable under subsection (2) from the party or non-party MLA.

22 Division 14.4 heading

substitute

Division 14.4 Gifts and certain loans—records and disclosure

23 New section 215H

in division 14.4, insert

215H Application—div 14.4

- (1) This division does not apply to a gift that is returned to the giver within 30 days after its receipt.
- (2) However, if the gift is returned to the giver within 30 days after its receipt, any return under this division that includes the amount or value of the gift must also include a statement that the gift was returned to the giver.

24 Section 216 heading

substitute

216 Definitions—div 14.4

25 Section 216, new definitions

insert

anonymously—a gift is made ***anonymously*** if the person receiving the gift does not know the defined details for the gift.

small anonymous gift means a gift made anonymously that is less than \$250.

26 New section 216A

insert

216A Records and regular disclosure of gifts

- (1) This section applies if 1 of the following (a *receiver*) receives 1 or more gifts in the relevant period:
 - (a) a party grouping;
 - (b) a non-party MLA and an associated entity of a non-party MLA;
 - (c) a non-party candidate grouping;
 - (d) a non-party prospective candidate grouping.

Note A gift received by or on behalf of a party candidate is taken to be received by the party (see s 200).

- (2) The financial representative of the receiver must record the following information for each gift:
 - (a) the date the gift is received;
 - (b) the amount of the gift;
 - (c) for a gift other than a small anonymous gift—the defined details for the gift;
 - (d) for a small anonymous gift—that the gift is made anonymously.
- (3) The financial representative of the receiver must give the commissioner a return containing the information mentioned in subsection (2) for a gift or gifts—
 - (a) if the total amount of the gifts received from 1 person in the relevant period is \$1 000 or more; and

- (b) if the financial representative has given the commissioner a return under paragraph (a) in relation to a person, and the person makes additional gifts in the relevant period—if the total amount of the additional gifts received from the person in the relevant period is \$1 000 or more.

Note 1 If a form is approved under s 340A for this provision, the form must be used.

Note 2 For how a return may be given, see the Legislation Act, pt 19.5.

- (4) The financial representative must give the return, in writing, to the commissioner not later than—
- (a) if the total amount of the gifts received reaches \$1 000 in the capped expenditure period for an election—7 days after the day the total amount received from the person reaches \$1 000; or
- (b) in any other case—30 days after the day the total amount received from the person reaches \$1 000.

Note The *Electronic Transactions Act 2001*, s 8 provides for the giving of information by means of an electronic communication in certain circumstances.

- (5) If the financial representative for a receiver is not required to give a return to the commissioner under subsection (3), the financial representative must give a return to the commissioner, not later than 60 days after the end of the relevant period, stating that the receiver did not receive a total amount of gifts from 1 person in the relevant period exceeding \$1 000.
- (6) In this section:
- relevant period*** means—
- (a) for a party grouping, non-party MLA or associated entity of a non-party MLA—a financial year; and

- (b) for a non-party candidate grouping or non-party prospective candidate grouping—the period—
 - (i) if the candidate was a candidate at an election the polling day for which was within 5 years before polling day for the election at which the candidate is a candidate—starting on the 31st day after the polling day for the last election at which the candidate was a candidate; and
 - (ii) in any other case—starting on the earlier of—
 - (A) the day when the candidate publicly announced that he or she would be a candidate in the election; and
 - (B) the day when the candidate was nominated as a candidate for the election in accordance with section 105; and
 - (iii) ending on the 30th day after polling day for the election.

27 Section 217 heading

substitute

217 Disclosure of gifts by non-party candidates

28 Section 217

omit

candidate

substitute

non-party candidate

29 Section 217 (1)

omit

15 weeks

substitute

60 days

**30 Certain loans not to be received
Section 218A (1)**

after

candidate

insert

, third-party campaigner

31 Section 218A (1)

after

or more

insert

for electoral expenditure

32 Section 218A (3) and (4)

omit

relevant person

substitute

financial representative for the receiver

33 Section 218A (6), definition of *financial institution*

relocate to section 198

34 Section 218A (6), definition of *loan*

relocate to section 198

35 Section 218A (6), definition of *relevant person*

omit

36 Section 220

substitute

220 Disclosure of gifts by third-party campaigners

- (1) This section applies if a third-party campaigner—
- (a) incurs electoral expenditure in the disclosure period for an election; and
 - (b) receives from a person 1 or more gifts—
 - (i) all or part of which is used by the third-party campaigner to—
 - (A) enable the third-party campaigner to incur electoral expenditure in the disclosure period; or
 - (B) reimburse the third-party campaigner for incurring electoral expenditure in the disclosure period; and
 - (ii) the total amount of which is \$1 000 or more.
- (2) Within 60 days after polling day for the election, the third-party campaigner must give the commissioner a return for the gift or gifts.

Note 1 If a form is approved under s 340A for this provision, the form must be used.

Note 2 For how a return may be given, see the Legislation Act, pt 19.5.

- (3) The return must state, for each gift—
- (a) the date the gift is received; and
 - (b) the amount of the gift; and
 - (c) for a gift other than a small anonymous gift—the defined details for the gift; and
 - (d) for a small anonymous gift—that the gift is made anonymously.

37 Sections 221 to 221B

omit

**38 Anonymous gifts
Section 222**

omit

candidate

substitute

non-party candidate

39 Section 222 (1)

omit

the prescribed amount

substitute

\$1 000

40 New section 222 (2A) and (2B)

substitute

- (2A) A party, MLA or associated entity of a party or MLA must not accept a small anonymous gift in a financial year if acceptance of the gift means that the total of small anonymous gifts given to or for the benefit of the party, MLA or entity would be more than \$25 000 in the financial year.
- (2B) A candidate at an election must not accept a small anonymous gift during the disclosure period for the election if acceptance of the gift means that the total of small anonymous gifts given to or for the benefit of the candidate would be more than \$25 000 in the period.

41 Section 222 (4)

omit

relevant person

substitute

financial representative of the receiver

42 New section 222 (4A)

insert

- (4A) If the receiver contravenes subsection (2A) or (2B), the financial representative of the receiver must pay to the Territory an amount equal to the amount by which the small anonymous gifts exceed \$25 000.

43 Section 222 (5)

omit

relevant person

substitute

financial representative for the receiver

44 Section 222 (6)

omit

**45 Definitions for div 14.5
Section 223, definition of *broadcaster***

omit

46 Section 223, definition of *electoral advertisement*

relocate to section 198

47 Section 223, definitions of *electoral expenditure* and *relates*

omit

48 Section 224

substitute

224 Returns of electoral expenditure

- (1) If electoral expenditure in relation to an election is incurred in the capped expenditure period by a party grouping, the reporting agent of the party must, within 60 days after polling day for the election, give the commissioner a return stating details of the expenditure.

Note 1 If a form is approved under s 340A for a return, the form must be used.

Note 2 For how a return may be given, see the Legislation Act, pt 19.5.

- (2) If electoral expenditure in relation to an election is incurred in the capped expenditure period by a non-party MLA or an associated entity of the MLA, the non-party MLA must, within 60 days after polling day for the election, give the commissioner a return stating details of the expenditure.
- (3) If electoral expenditure in relation to an election is incurred in the capped expenditure period by a non-party candidate grouping, the candidate must, within 60 days after polling day for the election, give the commissioner a return stating details of the expenditure.
- (4) If electoral expenditure in relation to an election is incurred in the capped expenditure period by a third-party campaigner, the third-party campaigner must, within 60 days after polling day for the election, give the commissioner a return stating details of the expenditure.

**49 Annual returns by parties and MLAs
Section 230 (1)**

omit

within 16 weeks

substitute

not later than 31 July

50 Section 230 (6)

omit everything after

position as MLA on

substitute

electoral expenditure.

51 Section 231B heading

substitute

231B Annual returns by associated entities of parties and MLAs

52 Section 231B (1)

omit

within 16 weeks

substitute

not later than 31 July

**53 Amounts received
New section 232 (1) (c)**

insert

- (c) for each amount received—
- (i) the date it was received; and
 - (ii) the amount.

54 Section 232 (2)

omit

55 New section 232 (3) (c)

insert

- (c) for each amount received—
- (i) the date it was received; and
 - (ii) the amount.

56 Section 232 (4) (c)

substitute

- (c) the total of all amounts received by an associated entity from a particular person or organisation in a financial year for membership of the entity, if the total is less than \$250;
- (d) an amount prescribed by regulation.

57 Section 236

substitute

236 Offences

- (1) A person commits an offence if—
 - (a) the person is required to give the commissioner a return under this part within a stated time; and
 - (b) the person fails to give the commissioner the return within the time.

Maximum penalty:

- (a) for a return required to be given by the reporting agent of a party—50 penalty units; and
- (b) for any other return—20 penalty units.

- (2) A person commits an offence if—
 - (a) the person is required to give the commissioner a return under this part; and
 - (b) the person gives the commissioner the return; and
 - (c) the return is incomplete.

Maximum penalty: 20 penalty units.

- (3) A person commits an offence if the person fails to keep records in accordance with section 239.

Maximum penalty: 20 penalty units.

- (4) Subsections (1), (2) and (3) do not apply if the person has a reasonable excuse.

- (5) An offence against subsection (1), (2) or (3) is a strict liability offence.

- (6) A person commits an offence if—

(a) the person is required to give the commissioner a return under this part; and

(b) the person gives a return to the commissioner containing particulars that are, to the person's knowledge, false or misleading in a material particular.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (7) A person (the *informer*) commits an offence if—

(a) another person is required to give the commissioner a return under this part; and

(b) the informer gives the other person information relevant to the return that is, to the informer's knowledge, false or misleading in a material particular.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (8) A prosecution in relation to an offence against this section may be started at any time within 4 years after the offence was committed.

58 **Copies of returns to be available for public inspection**
Section 243 (1)

omit

Disclosure of donations

substitute

Gifts and certain loans—records and disclosure

59 **Section 243 (2)**

omit

(other than a return under section 221A (Annual returns of donations))

60 **Section 243 (2)**

omit

the 25th week after

substitute

February in the year after (or for an extraordinary election, 90 days after)

61 **Section 243 (3)**

omit

section 221A or

62 Section 243 (3)

omit

February in the next year

substitute

September after the end of the financial year to which the return relates

63 New section 243A

in division 14.8, insert

243A Commissioner must publish information given under s 216A

- (1) This section applies if the commissioner is given information under section 216A (Records and regular disclosure of gifts).
- (2) The commissioner must as soon as practicable publish the information in the way the commissioner considers appropriate.

Examples—publishing information

1 on the commission website

2 in a newspaper

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

64 Section 289 heading

substitute

289 Discrimination on grounds of certain gifts

65 Section 289 (1)

omit

donation

substitute

gift

66 Section 289 (2), new definition of *gift*

insert

gift—see section 198AA.

**67 Definitions for div 17.3
Section 291, definition of *disseminate***

omit

68 Section 291, definition of *publish*

omit

**69 Exceptions for dissemination of electoral matter on
certain items
Section 294 (2), definition of *government agency***

relocate to the dictionary

70 New part 31*insert***Part 31 Transitional—Electoral
Amendment Act 2012****505 ACT election account**

- (1) Section 205I (Limit on gifts received) does not apply in relation to gifts received before that section commenced.
- (2) Section 205K (Limit on payments within parties) does not apply in relation to payments received before that section commenced.

506 Capped expenditure period

- (1) This section applies to an ordinary election held in 2012.
- (2) The *capped expenditure period* for the ordinary election is the period starting on 1 July 2012 and ending on polling day for the election.

507 Annual returns of donations

- (1) Despite their repeal—
 - (a) section 221A (Annual returns of donations) continues to apply in relation to gifts made in the financial year ending on 30 June 2012; and
 - (b) section 221B (Advice about obligations to make returns) continues to apply in relation to gifts received in the financial year ending on 30 June 2012.
- (2) However, returns under section 221A for that financial year must be given to the commissioner not later than 31 August 2012.

508 Annual returns by parties and MLAs

- (1) This section applies to a return given to the commissioner by the reporting agent of a party or MLA under section 230 (Annual returns by parties and MLAs) for the financial year ending on 30 June 2012.
- (2) Division 14.6 (Annual returns) as in force immediately before the commencement of the *Electoral Amendment Act 2012* applies to the return.
- (3) However, the return must be given to the commissioner not later than 31 July 2012.

509 Annual returns by associated entities

- (1) This section applies to a return given to the commissioner by the financial controller of an associated entity under section 231B (Annual returns by associated entities of parties and MLAs) for the financial year ending on 30 June 2012.
- (2) Division 14.6 (Annual returns) as in force immediately before the commencement of the *Electoral Amendment Act 2012* applies to the return.
- (3) However, the return must be given to the commissioner not later than 31 July 2012.

510 Transitional regulations

- (1) A regulation may prescribe transitional matters necessary or convenient to be prescribed because of the enactment of this Act.
- (2) A regulation may modify this part (including in relation to another territory law) to make provision in relation to anything that, in the Executive's opinion, is not, or is not adequately or appropriately, dealt with in this part.
- (3) A regulation under subsection (2) has effect despite anything else in this Act or another territory law.

511 Expiry—pt 31

This part expires 1 year after the day it commences.

Note Transitional provisions are kept in the Act for a limited time. A transitional provision is repealed on its expiry but continues to have effect after its repeal (see Legislation Act, s 88).

71 Dictionary, note 2

insert

- person (see s 160)
- quarter

72 Dictionary, new definitions

insert

ACT election account—see section 205A.

anonymously, for division 14.4 (Gifts and certain loans—records and disclosure)—see section 216.

73 Dictionary, definition of *broadcaster*

substitute

broadcaster means—

- (a) the Australian Broadcasting Corporation continued in existence under the *Australian Broadcasting Corporation Act 1983* (Cwlth), section 5; or
- (b) the Special Broadcasting Service Corporation continued in existence under the *Special Broadcasting Service Act 1991* (Cwlth), section 5; or
- (c) the holder of a licence under the *Broadcasting Services Act 1992* (Cwlth); or
- (d) the provider of a broadcasting service under a class licence under that Act.

74 Dictionary, new definitions

insert

called, for an extraordinary election, for part 14 (Election funding, expenditure and financial disclosure)—see section 198.

capped expenditure period, for part 14 (Election funding, expenditure and financial disclosure)—see section 198.

75 Dictionary, definition of *defined details*

omit

Disclosure of donations

substitute

Gifts and certain loans—records and disclosure

76 Dictionary, definition of *disposition of property*

omit

77 Dictionary, definition of *disseminate*

substitute

disseminate electoral matter (whether in printed or electronic form) means print, publish, distribute, produce or broadcast the electoral matter.

78 Dictionary, definitions of *electoral advertisement* and *electoral expenditure*

substitute

electoral advertisement, for part 14 (Election funding, expenditure and financial disclosure)—see section 198.

electoral expenditure, in relation to an election, for part 14 (Election funding, expenditure and financial disclosure)—see section 198.

79 Dictionary, new definitions

insert

expenditure cap, for division 14.2B (Limitations on electoral expenditure)—see section 205D.

financial institution, for part 14 (Election funding, expenditure and financial disclosure)—see section 198.

financial representative, for part 14 (Election funding, expenditure and financial disclosure)—see section 198.

80 Dictionary, definition of gift

substitute

gift, for part 14 (Election funding, expenditure and financial disclosure)—see section 198AA.

81 Dictionary, new definitions

insert

incurs, electoral expenditure, for part 14 (Election funding, expenditure and financial disclosure)—see section 202A.

index number, for part 14 (Election funding, expenditure and financial disclosure)—see section 198.

loan, for part 14 (Election funding, expenditure and financial disclosure)—see section 198.

82 Dictionary, definition of *MLA*

substitute

MLA—

- (a) means a member of the Assembly; and
- (b) in division 14.3A (Administrative expenditure funding)—see section 215A.

83 Dictionary, new definitions

insert

non-party candidate grouping, for part 14 (Election funding, expenditure and financial disclosure)—see section 198.

non-party MLA, for part 14 (Election funding, expenditure and financial disclosure)—see section 198.

non-party prospective candidate grouping, for part 14 (Election funding, expenditure and financial disclosure)—see section 198.

party grouping, for part 14 (Election funding, expenditure and financial disclosure)—see section 198.

person, for part 14 (Election funding, expenditure and financial disclosure)—see section 198.

84 Dictionary, definition of *property*

omit

85 Dictionary, new definition of *prospective candidate*

insert

prospective candidate, for an election, for part 14 (Election funding, expenditure and financial disclosure)—see section 198.

86 Dictionary, definition of *publish*

omit

87 Dictionary, definition of *related*

substitute

related—2 political parties are taken to be ***related*** if—

- (a) 1 is part of the other; or
- (b) both are parts of the same political party.

Example

the ACT branch of a political party and the national secretariat of the same political party

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

88 Dictionary, definition of *relates*

omit

89 Dictionary, new definitions

insert

small anonymous gift, for division 14.4 (Gifts and certain loans—records and disclosure)—see section 216.

third-party campaigner, for part 14 (Election funding, expenditure and financial disclosure)—see section 198.

90 Further amendments, mentions of *Election funding and financial disclosure*

omit

Election funding and financial disclosure

substitute

Election funding, expenditure and financial disclosure

in

- dictionary, definition of *amount*
- dictionary, definition of *associated entity*
- dictionary, definition of *disclosure period*
- dictionary, definition of *disposition of property*
- dictionary, definition of *eligible vote*
- dictionary, definition of *entity*
- dictionary, definition of *financial controller*
- dictionary, definition of *gift*
- dictionary, definition of *party*
- dictionary, definition of *property*
- dictionary, definition of *register*
- dictionary, definition of *registered industrial organisation*
- dictionary, definition of *reporting agent*

Schedule 1 Consequential amendments

(see s 3)

Part 1.1 Electoral Regulation 1993

[1.1] Section 6

omit

Part 1.2 Referendum (Machinery Provisions) Act 1994

[1.2] New section 15 (3) (aa)

insert

- (aa) a reference in the Electoral Act, section 198, to the capped expenditure period for an election is to be taken to be a reference to the capped expenditure period, in relation to a referendum, commencing 37 days before the expiration of polling day for the referendum and ending on the expiration of 30 days after polling day for the referendum; and

[1.3] New section 15 (3) (ba)

insert

- (ba) a reference in the Electoral Act, section 220, to a third-party campaigner is to be taken to be a reference to a person; and

[1.4] Schedule 1, part 1.3, heading

substitute

**Part 1.3 Modifications of part 14—
election funding, expenditure
and financial disclosure**

[1.5] Schedule 1, modifications 1.13 to 1.15

omit

[1.6] Schedule 1, modification 1.19

omit

15 weeks

substitute

60 days

[1.7] Schedule 1, modification 1.32

omit

donation

substitute

gift

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 23 February 2012.

2 Notification

Notified under the Legislation Act on 18 May 2012.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

I certify that the above is a true copy of the Electoral Amendment Bill 2012, which was passed by the Legislative Assembly on 10 May 2012.

Clerk of the Legislative Assembly

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