

1996
THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Electoral (Amendment) Bill (No. 3) 1996

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Electoral (Amendment) Bill (No. 3) 1996

A BILL

FOR

**An Act to amend the *Electoral Act 1992* and for
related purposes**

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

PART I—PRELIMINARY

Short title

- 5 1. This Act may be cited as the *Electoral (Amendment) Act (No. 3) 1996*.

Commencement

2. This Act commences on the day on which it is notified in the *Gazette*.

10 **Principal Act**

3. In this Act, "Principal Act" means the *Electoral Act 1992*.¹

PART II—AMENDMENTS OF PRINCIPAL ACT

Interpretation

4. Section 198 of the Principal Act is amended by inserting in subsection (1) the following definitions:

5 “‘associated entity’ means an entity that—

- (a) is controlled by 1 or more registered parties or an independent MLA; or
- (b) operates wholly or mainly for the benefit of 1 or more registered political parties or an independent MLA;

10 ‘entity’ means—

- (a) an incorporated or unincorporated body; or
- (b) a trustee of a trust;

‘financial controller’, in relation to an associated entity, means—

- (a) if the entity is a company—the secretary of the company;
- 15 (b) if the entity is the trustee of a trust—the trustee; or
- (c) in any other case—the person responsible for maintaining the financial records of the entity;”.

Interpretation

20 5. Section 206 of the Principal Act is amended by omitting subsections (1), (3) and (5).

Entitlement to funds

6. Section 207 of the Principal Act is amended—

- (a) by omitting from subsection (2) “Subject to subsection (7), the” and substituting “The”; and
- 25 (b) by omitting subsection (7).

Substitution

7. Section 208 of the Principal Act is repealed and the following section substituted:

Threshold

30 “208. (1) A payment under this Division shall not be made in respect of votes cast for a candidate in an election unless the number of eligible votes cast in the candidate’s favour is at least 2% of the number of eligible

votes cast in the election by the electors of the electorate in respect of which the candidate was nominated.

5 “(2) A payment under this Division shall not be made in respect of the votes cast for a party in an election by the electors of an electorate unless the number of eligible votes cast in the party’s favour is at least 2% of the number of eligible votes cast by those electors in that election.

10 “(3) A payment under this Division shall not be made in respect of votes cast for a non-party group in an election by the electors of an electorate unless the number of eligible votes cast in the group’s favour is at least 2% of the number of eligible votes cast by those electors in that election.”.

Repeal

8. Sections 209, 210 and 211 of the Principal Act are repealed.

Making of payments

9. Section 212 of the Principal Act is amended—

15 (a) by omitting subsections (1) and (2) and substituting the following subsections:

20 “(1) Where an amount is payable under this Division in respect of votes cast in an election for 1 or more candidates endorsed by a party, the Commissioner shall make the payment to the registered officer of the party.

“(2) Where an amount is payable under this Division in respect of votes cast for 1 or more candidates who are members of a non-party group, the Commissioner shall—

25 (a) if the members of the group have, by notice in writing given to the Commissioner, appointed a person to receive payments under this Division on behalf of the group— pay the amount to the person so appointed; or

30 (b) in any other case—pay the amount to the members of the group proportionately according to the number of eligible votes cast for each member.

“(2A) Where an amount is payable under this Division in respect of votes cast in an election for a candidate—

(a) who was not endorsed by a party for the election; and

(b) who is not a member of a non-party group;

35 the Commissioner shall make the payment to the candidate.”; and

- (b) by omitting from subsection (3) “whether because of a false statement in a claim or otherwise,”.

Repeal

10. Section 213 of the Principal Act is repealed.

5 **Death of candidate**

11. Section 214 of the Principal Act is amended by omitting subsection (2) and substituting the following subsection:

“(2) If a candidate referred to in subsection (1) was not—

- (a) endorsed by a party for the election; or
10 (b) a member of a non-party group in respect of which an appointment under paragraph 212 (2) (a) was in effect at the time of his or her death;

the payment may be made to the legal personal representative of the deceased candidate.”.

15 **Application voluntary**

12. Section 215 of the Principal Act is amended by omitting “apply for or”.

Disclosure of gifts by persons incurring political expenditure

20 13. Section 220 of the Principal Act is amended by omitting from subsection (1) “or candidate” and substituting “, a candidate or an associated entity”.

Donations to non-party groups and candidates

14. Section 221 of the Principal Act is amended—

25 (a) by omitting subsection (1) and substituting the following subsection:

“(1) If, during the disclosure period for an election, a person (other than a party, a candidate or an associated entity)—

- (a) makes gifts totalling \$1,500 or more to the same non-party group;
30 (b) makes gifts totalling \$200 or more to the same candidate in the election; or
(c) makes gifts totalling \$1,500 or more to the same specified body;

the person shall, within 15 weeks after the polling day in the election, give the Commissioner a return in the approved form.”;

(b) by omitting from subsection (3) “, independent MLA”; and

5 (c) by omitting from subsection (4) “parties,” and “, independent MLAs”.

Insertion

15 **15.** After section 221 of the Principal Act the following section is inserted:

Annual returns of donations

10 “221A. (1) If, in a financial year, a person—

(a) makes gifts totalling \$1,500 or more to the same party; or

(b) makes gifts totalling \$200 or more to the same independent MLA;

15 the person shall, within 20 weeks after the end of the financial year, give the Commissioner a return in the approved form covering all the gifts that the person made to that party or independent MLA during the financial year.

“(2) If a person makes a gift to any person or body with the intention of benefiting a particular party or independent MLA, the person shall be taken, for the purposes of subsection (1), to have made that gift directly to that party or independent MLA.

20 “(3) For each gift the return shall set out—

(a) the amount of the gift;

(b) the date on which it was made; and

(c) the name of the party or independent MLA.

“(4) This section does not apply to gifts made by—

25 (a) a party;

(b) a member of a non-party group;

(c) an independent MLA;

(d) a candidate in an election; or

(e) an associated entity.

“(5) A reference in this section to a gift shall be read as a reference to a gift other than a gift made in a private capacity to an independent MLA for his or her personal use, being a gift that the receiver has not used, and will not use, solely or substantially for a purpose related to an election.”.

5 **Interpretation**

16. Section 223 of the Principal Act is amended by omitting paragraph (f) of the definition of “electoral expenditure” in subsection (1) and substituting the following paragraph:

10 “(f) producing and distributing electoral matter that is addressed to particular persons or organisations and is distributed during the pre-election period; or”.

Returns of electoral expenditure

17. Section 224 of the Principal Act is amended—

15 (a) by omitting from subsections (1) and (2) “the election” (first occurring) and substituting “an election”;

(b) by inserting after subsection (2) the following subsection:

20 “(2A) Where electoral expenditure in relation to an election is incurred by or with the authority of a party, the reporting agent of the party shall, before the expiration of 15 weeks after polling day for the election, give the Commissioner a return, in writing, in an approved form, setting out details of the expenditure.”; and

(c) by omitting from subsection (3) “non-party group or candidate” and substituting “a non-party group, a candidate or an associated entity”.

25 **Nil returns**

18. Section 225 of the Principal Act is amended by adding at the end the following subsection:

30 “(3) Where no electoral expenditure in relation to an election is incurred by or with the authority of a party that endorsed a candidate in the election, a return under section 224 in respect of the party shall be given to the Commissioner and shall include a statement to the effect that no expenditure of a kind required to be disclosed has been incurred by or with the authority of the party.”.

Repeal

35 19. Section 229 of the Principal Act is repealed.

Annual returns by parties and MLAs

20. Section 230 of the Principal Act is amended—

(a) by omitting subsection (1) and substituting the following subsection:

5 “(1) Subject to sections 231 and 231A, the reporting agent of a party or an independent MLA shall, within 16 weeks after the end of each financial year, give the Commissioner a return in the approved form.”; and

10 (b) by omitting paragraph (4) (f) and substituting the following paragraph:

 “(f) producing and distributing electoral matter that is addressed to particular persons or organisations; or”.

Insertion

15 21. After section 231 of the Principal Act the following sections are inserted:

Returns by parties under Commonwealth Electoral Act

“231A. (1) If—

20 (a) an organisation has corresponding registration as a political party under Part VII of this Act and under Part XI of the Commonwealth Act, whether by the same or a different name;

 (b) the agent of the organisation gives to the Australian Electoral Commission, within the period of 16 weeks after the end of the financial year, a return under section 314AB of the Commonwealth Act in respect of that financial year; and

25 (c) the agent or organisation gives to the ACT Commissioner, within that period, a copy of that return;

the organisation is not required to give to the ACT Commissioner a return under section 230 in respect of that financial year.

30 “(2) For the purposes of subsection (1), an organisation has corresponding registration as a political party under Part VII of this Act and under Part XI of the Commonwealth Act if the same person is specified as the registered officer of the party in the Register of Political Parties kept under section 88 of this Act and in the Register of Political Parties kept under section 125 of the Commonwealth Act.

“(3) In this section—

‘agent’, in relation to an organisation, means the person appointed under section 288 of the Commonwealth Act to be the agent of the organisation in respect of the Territory;

5 ‘Commonwealth Act’ means the *Commonwealth Electoral Act 1918* of the Commonwealth;

‘party’ includes a Territory branch of a political party registered under Part XI of the Commonwealth Act.

Annual returns by associated entities

10 “231B. (1) If an entity is an associated entity at any time during a financial year, the entity’s financial controller shall, within 16 weeks after the end of the financial year, give the Commissioner a return in the approved form.

“(2) A return shall set out—

15 (a) the amount received by, or on behalf of, the entity during the financial year together with the particulars required by subsection 232 (1);

20 (b) the amount paid by, or on behalf of, the entity during the financial year together with the particulars required by subsection 233 (1); and

(c) if the entity is an associated entity at the end of the financial year—the outstanding amount, as at the end of the financial year, of debts incurred by, or on behalf of, the entity together with the particulars required by subsection 234 (2).

25 “(3) Amounts received or paid at a time when the entity was not an associated entity are not to be counted for the purposes of paragraphs (2) (a) and (b).

“(4) If any amount required to be set out under paragraph (1) (b) was—

30 (a) paid to or for the benefit of 1 or more political parties or independent MLAs; and

(b) paid out of funds generated from capital of the associated entity;

the return shall set out the following details of each person who contributed to that capital after the commencement of this section:

(c) the name and address of the person;

35 (d) the amount of the person’s contributions to that capital up to the end of the financial year.

“(5) Subsection (4) does not apply to contributions that have been set out in a previous return under this section.

Returns by associated entities under Commonwealth Electoral Act

5 “231C. (1) This section applies in respect of an associated entity that—

(a) is controlled by 1 or more parties; or

(b) operates wholly or mainly for the benefit of 1 or more parties.

10 “(2) If an entity was, during a financial year, an associated entity in respect of which this section applies and the financial controller of the entity—

(a) gives to the Australian Electoral Commission, within the period of 16 weeks after the end of the financial year, a return under section 314AEA of the *Commonwealth Electoral Act 1918* of the Commonwealth in respect of that financial year; and

15 (b) gives to the Commissioner, within that period, a copy of that return;

the financial controller is not required to give to the Commissioner a return under section 231B in respect of the entity for that financial year.”.

Substitution

20 **22.** Section 232 of the Principal Act is repealed and the following section substituted:

Amounts received

25 “232. (1) If the sum of all amounts received by, or on behalf of, a party, an MLA or an associated entity from a person or organisation during a financial year is \$1,500 or more, the return by the party, MLA or associated entity under section 230 or 231B in respect of the financial year shall specify the amount of the sum and set out the defined particulars in relation to it.

30 “(2) In calculating the sum, an amount of less than \$500 need not be counted.”.

Amounts paid

23. Section 233 of the Principal Act is amended—

(a) by omitting subsection (1) and substituting the following subsection:

35 “(1) If the sum of all amounts paid by, or on behalf of, a party, MLA or associated entity to a person or organisation during

a financial year is \$1,500 or more, the return by the party, MLA or associated entity under section 230 or 231B in respect of the financial year shall specify the amount of the sum and set out the defined particulars in relation to it.”;

- 5 (b) by omitting from subsection (2) “shall” and substituting “need”;
and
(c) by omitting from paragraph (2) (a) “\$100” and substituting
“\$500”.

Outstanding amounts

10 **24.** Section 234 of the Principal Act is amended—

- (a) by inserting “by the party or MLA under section 230” after
“return”; and
(b) by adding at the end the following subsection:

15 “(2) If an entity is an associated entity at the end of a financial
year and, at the end of that year, the sum of all debts within the
meaning of paragraph 231B (2) (c) that are owed by the entity to a
particular person or organisation is \$1,500 or more, the return by
the entity under section 231B in respect of the financial year shall
set out the sum and include the defined particulars.”.

20 Insertion

25. After section 234 of the Principal Act the following section is
inserted in Division 6 of Part XIV:

Regulations

25 “234A. (1) The regulations may require greater detail to be provided
in returns under section 230 or 231B than is required by this Division.

“(2) Without limiting the generality of subsection (1), the regulations
may require that the total amounts referred to in subsection 230 (2) or
231B (2) be broken down in the way specified in the regulations.

30 “(3) The regulations may reduce the amount of information to be
provided in returns under section 231B.”.

Offences

26. Section 236 of the Principal Act is amended—

- (a) by omitting from subsection (4) “make a claim under Division 3,
or”; and

- (b) by omitting subsections (5), (6) and (7) and substituting the following subsection:

5 “(5) A person shall not give to another person who is required to give a return under Division 4, 5 or 6 information relevant to the return that is, to the knowledge of the firstmentioned person, false or misleading in a material particular.

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

Investigation—notices

10 **27. Section 237 of the Principal Act is amended—**

- (a) by omitting “subsection (4)” from the definition of “investigation notice” in subsection (1) and substituting “subsection (3)”; and
(b) by inserting after subsection (4) the following subsections:

15 “(4A) If an investigation notice requires an officer of a party other than its reporting agent to appear before the Commissioner, the reporting agent of the party is entitled—

- (a) to attend the investigation; or
(b) to nominate another person to attend on behalf of the reporting agent.

20 “(4B) If an investigation notice relates to an investigation into—

- (a) a return given to the Commissioner under this Part by the reporting agent of an independent MLA; or
25 (b) a failure of a reporting agent of an independent MLA to give the Commissioner a return under this Part within the time required;

and the notice requires a person other than the reporting agent of the MLA to appear before the Commissioner, the reporting agent of the MLA is entitled—

- 30 (c) to attend the investigation; or
(d) to nominate another person to attend on behalf of the reporting agent.

35 “(4C) Failure of a reporting agent or nominee to attend an investigation under subsection (4A) or (4B) does not affect the power of the Commissioner to conduct the investigation.”.

Records

28. Section 239 of the Principal Act is amended—

- (a) by omitting from subsection (1) “claim or”;
- 5 (b) by omitting from subsection (2) “or independent MLA” and substituting “, independent MLA or associated entity”;
- (c) by omitting from subsection (2) “or MLA” and substituting “, MLA or associated entity”;
- (d) by omitting from subsection (3) “or independent MLA” and substituting “, independent MLA or associated entity”; and
- 10 (e) by omitting from paragraphs (3) (a) and (b) “or MLA” and substituting “, MLA or associated entity”.

Amendment of returns

29. Section 242 of the Principal Act is amended—

- (a) by omitting from subsection (1) “claim or” (twice occurring);
- 15 (b) by omitting from subsection (2) “specified in” and substituting “authorised by”;
- (c) by omitting from subsection (2) “claim or”;
- (d) by omitting subsection (3) and substituting the following subsection:
 - 20 “(3) A request may be made by—
 - (a) the person who gave the return;
 - (b) if the return was given in respect of a party, independent MLA or candidate—the reporting agent of the party, MLA or candidate; or
 - 25 (c) if the return was given in respect of an associated entity—the financial controller of the entity.”;
- (e) by omitting from subsection (4) “claim or”; and
- (f) by omitting from subsection (6) “claim or” (first occurring) and “making of the claim or”.

30 **Inspection and supply of copies of returns**

30. Section 243 of the Principal Act is amended—

- (a) by omitting paragraph (1) (a);
- (b) by omitting from subsections (2) and (3) “claim or”; and

- (c) by omitting subsection (4) and substituting the following subsection:

5 “(4) A person may examine, or obtain a copy of, a return referred to in paragraph (1) (b) from the 25th week after polling day in the election to which the return relates.”.

Reviewable decisions

31. Section 245 of the Principal Act is amended—

- (a) by omitting paragraphs (m), (n) and (o); and
(b) by omitting from paragraph (p) “claim or”.

10

PART III—TRANSITIONAL

Gifts to political parties or MLAs

32. (1) For the financial year ending on 30 June 1997, section 221A of the Principal Act as amended by this Act applies as if subsection (1) were replaced by the following subsection:

15 “(1) If, during the period that commenced on 21 March 1995 and ends on 30 June 1997, a person—

- (a) makes gifts totalling \$1,500 or more to the same party; or
(b) makes gifts totalling \$200 or more to the same independent MLA;

20 the person shall, before 18 November 1997, give the Commissioner a return in the approved form covering all the gifts that the person made to that party or independent MLA during that period.”.

(2) Subsection 221A (2) of the Principal Act as amended by this Act does not apply to gifts made before the day on which this Act commenced.

Annual returns by parties and MLAs

25 33. For the financial year that ended on 30 June 1996, section 230 of the Principal Act as amended by this Act applies as if subsection (1) were replaced by the following subsection:

30 “(1) Subject to sections 231 and 231A, the reporting agent of a party or an independent MLA shall, not later than 18 November 1996, give the Commissioner a return in the approved form.”.

Annual returns by associated entities

34. For the financial year ending on 30 June 1997, section 231B of the Principal Act as amended by this Act applies as if paragraphs (2) (a) and (b) of that section were replaced by the following paragraphs:

- 5 “(a) the amount received by, or on behalf of, the entity in the part of the financial year that commenced on the date of the commencement of the *Electoral (Amendment) Act (No. 3) 1996* and ended at the end of the financial year together with the particulars required by subsection 232 (1);
- 10 (b) the amount paid by, or on behalf of, the entity during the part of the financial year that commenced on the date of the commencement of the *Electoral (Amendment) Act (No. 3) 1996* and ended at the end of the financial year together with the particulars required by subsection 233 (1); and”.

Consequential amendments of *Referendum (Machinery Provisions) Act 1994*

35. The Schedule to the *Referendum (Machinery Provisions) Act 1994* is amended—

- 15 (a) by inserting in Part 3, after the item relating to section 221 of the Principal Act, the following item:
- “Section 221A—
- Omit the section.”; and
- 20 (b) by omitting from Part 3 the heading:
- “Subsections 224 (1) and (2)—”
- and substituting the heading:
- “Subsections 224 (1), (2) and (2A)—”.

NOTE

Principal Act

1 Reprinted as at 31 January 1996. See also Acts Nos and , 1996.

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