

1996

**THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY**

ELECTORAL (AMENDMENT) BILL (NO. 3) 1996

EXPLANATORY MEMORANDUM

**Circulated by authority of
Gary Humphries, Attorney General**

OUTLINE

The purpose of this Bill is to amend the *Electoral Act 1992* to bring the ACT's election funding and financial disclosure laws into line with those of the Commonwealth

When the ACT's election disclosure laws were introduced in 1994, they were modelled on the Commonwealth disclosure scheme. This had the advantage of reducing the work load imposed on political parties registered at the Commonwealth and ACT levels, as the same details were required to be disclosed at both levels

Following Commonwealth amendments to its disclosure scheme in 1995 to make the reporting obligations less onerous for parties and to strengthen the disclosure requirements applicable to donors, the ACT's current disclosure laws are out of step with the Commonwealth laws. This Bill makes changes to the Electoral Act that are equivalent to the Commonwealth changes.

The main provisions of this Bill include amendments to

- simplify the reporting requirements imposed on registered political parties and Independent MLAs by reducing the amount of detail to be set out in their annual returns,
- bring forward the date for submission of party and Independent MLA annual returns to the Electoral Commission to 16 weeks after the end of a financial year;
- enable parties to fulfil their ACT obligations by submitting a copy of their Commonwealth annual returns to the ACT Electoral Commission, rather than submitting a separate return,
- extend the disclosure laws to require a new class of organisations called "associated entities" (bodies controlled by or operating wholly or mainly for the benefit of, political parties or Independent MLAs) to lodge annual returns,
- require donors to registered political parties and Independent MLAs to report annually rather than after each election;
- require political parties to submit election returns showing particular types of electoral expenditure in addition to the details required to be disclosed in annual returns, and
- remove the need for political parties and candidates to prove electoral expenditure in order to receive public funding.

The Bill also makes a range of minor amendments designed to maintain consistency between the ACT and the Commonwealth disclosure laws. Consequential amendments are made to the *Referendum (Machinery Provisions) Act 1994* flowing from the changes to the Electoral Act

This Bill contains transitional arrangements to ensure that the simplified annual reporting arrangements will apply to the annual reports required to be submitted for the financial year 1995/96 by registered political parties and Independent MLAs. Further transitional provisions relate to the new requirements for associated entities and donors to submit annual returns. These returns will be due for the first time for the period ending 30 June 1997.

FINANCIAL IMPLICATIONS

The removal of the need for political parties and candidates to prove electoral expenditure before qualifying for public funding of their election campaigns may lead to an increase in the cost of public funding. As most parties and candidates qualifying for funding normally spend more than their entitlement during an election it is unlikely this change will lead to a substantial increase in funding pay-outs. Any increases in cost will be off set by a reduction in the Electoral Commission's cost of administering the funding scheme.

The changes to the disclosure requirements should not have significant financial implications.

DETAILED EXPLANATION

PART I — PRELIMINARY

Formal clauses

Clauses 1, 2 and 3 are formal requirements. They refer to the short title of the Bill, commencement, and the definition of the Principal Act (the *Electoral Act 1992*). The Bill is to commence on the day on which it is notified in the Gazette.

PART II — AMENDMENTS OF PRINCIPAL ACT

Interpretation

Clause 4 amends section 198 (1) of the Electoral Act by inserting definitions of 'associated entity', 'entity' and 'financial controller'. These definitions refer to terms used in the new requirement for associated entities to submit annual returns.

Interpretation

Clause 5 omits subsections 206(1), (3) and (5) of the Electoral Act. These subsections define what constitutes electoral expenditure for the purpose of the funding scheme. As the funding scheme is being changed to remove the need to prove that electoral expenditure has been incurred, these definitions are no longer necessary.

Entitlement to funds

Clause 6 omits subsection 207(7) of the Electoral Act and removes a reference to subsection 207(7) from subsection 207(2). Subsection 207(7) currently provides that parties, non-party groups and candidates are only entitled to receive public funding as a reimbursement of electoral expenditure incurred. The omission of subsection 207(7) has the effect of changing the nature of the funding scheme so that public funding is to be automatically paid to parties, non-party groups and candidates that reach the thresholds set out in section 208 of the Electoral Act, without the need for proof of electoral expenditure to be provided.

Substitution — Threshold

Clause 7 repeals section 208 of the Electoral Act and substitutes a new section 208. The new section restates the existing provision to provide that parties, non-party groups and candidates that receive at least 2% of the formal first preference votes are entitled to receive public funding. The section has been recast as a consequence of the repeal of section 210, to make it clear that funding is only payable to parties in respect of electorates in which the party receives at least 2% of the votes.

Repeal

Clause 8 repeals sections 209, 210 and 211 of the Electoral Act. These sections deal with making and determining claims for payment for election funding. As public funding payments are to be automatically made, these sections are no longer required.

Making of payments

Clause 9 amends section 212 of the Electoral Act to provide for automatic payments of public funding entitlements, rather than payments made following receipt of a claim for payment.

The clause also changes the method of making payments of public funding. Under the existing scheme, payments are made to reporting agents. Under this clause, payments are to be made

- in the case of a party, to the registered officer of the party,
- in the case of a non-party group, either to a person appointed by the group or, if there is no such person appointed, to each candidate in the group in proportion to the number of first preference votes cast for each candidate, and
- in the case of a candidate who was not endorsed by a party and who was not a member of a non-party group, to the candidate.

The above change is made in response to comments made by political parties that it is not in all cases appropriate for reporting agents to be responsible for receiving public funding payments.

As payment of public funding is to be based simply on the number of formal votes cast, this clause also removes references to the right to review a decision on the determination of a claim for funding.

Repeal

Clause 10 repeals section 213 of the Electoral Act as a consequence of the removal of the concept of making determinations relating to claims for election funding. Section 213 currently provides for revoking determinations and making fresh determinations.

Death of candidate

Clause 11 amends section 214 of the Electoral Act as a consequence of the change to section 212. Under section 212 as amended by clause 9, where a candidate who is entitled to funding was not endorsed by a party and was not a member of a non-party group, the funding payment is to be made to the candidate. The amendment to section 214 provides that, where such a candidate dies before a payment has been made, the payment is to be made to the legal personal representative of the candidate. This provision is in line with the provision made for repayment of deposits to deceased candidates in current section 113.

Application voluntary

Clause 12 amends section 215 of the Electoral Act to remove a reference to applying for public funding, to reflect the change in the nature of the payment scheme. It should be noted that this section continues to provide that no person is required to accept a public funding payment.

Disclosure of gifts by persons incurring political expenditure

Clause 13 amends section 220 of the Electoral Act to provide that this section does not apply to an associated entity.

Donations to non-party groups and candidates

Clause 14 amends section 221 of the Electoral Act to provide that this section does not apply to an associated entity and to remove references to donations to parties and independent MLAs. Donations to parties and independent MLAs are to be covered in annual returns submitted under new section 221A. Section 221 as amended by clause 14 will continue to provide for disclosure returns related to elections, but only in respect to donations to non-party groups, candidates and specified bodies (if any).

Insertion — Annual returns of donations

Clause 15 inserts a new section 221A of the Electoral Act requiring donors who made gifts of \$1500 or more to political parties or gifts of \$200 or more to independent MLAs to lodge annual returns of donations. This brings the reporting period for donors into line with the reporting period for parties and independent MLAs. As the disclosure scheme currently stands, parties and Independent MLAs are required to report annually whereas donors are only required to report after each election.

Interpretation

Clause 16 amends the definition of “electoral expenditure” in paragraph 223(1)(f) of the Electoral Act so that the reporting of campaign expenditure is to include the cost of direct mailing rather than the cost of “consultant’s or advertising agent’s fees” as is currently required. This change mirrors a change made to the Commonwealth scheme

Returns of electoral expenditure

Clause 17 amends section 224 of the Electoral Act by inserting a new subsection 224(2A) requiring political parties to submit a return showing electoral expenditure after an election. Under the current scheme, non-party groups, candidates and third parties are required to disclose specific details of electoral expenditure but parties are not. While parties have to disclose details of all expenditure in their annual returns, these returns do not require disclosure at the same level of detail as required in the election returns. This clause requires parties to disclose the same level of detail as are disclosed by non-party groups, candidates and third parties.

This clause also makes some grammatical changes and excludes associated entities from providing election returns.

Nil returns

Clause 18 amends section 225 of the Electoral Act to ensure that, where a party did not incur electoral expenditure in relation to an election, a nil return is required to be lodged. This is a consequential amendment related to the insertion of subsection 224(2A).

Repeal

Clause 19 repeals section 229 of the Electoral Act, which enables fund raising events to be defined. This is consequential to the removal of the term ‘fund raising event’ from section 232(2)

Annual returns by parties and MLAs

Clause 20 amends section 230 of the Electoral Act by reducing the deadline for lodgement of annual returns by political parties and independent MLAs from 20 weeks to 16 weeks after the end of the financial year. This clause also substitutes a new paragraph 230(4)(f), to be consistent with the change to the definition of “electoral expenditure” under paragraph 223(1)(f) made by clause 16

See also the transitional provision for the 1995/96 financial year at clause 33.

Insertion

Clause 21 adds new sections 231A, 231B and 231C of the Electoral Act

Insertion — Returns by parties under Commonwealth Electoral Act

New section 231A provides that copies of annual returns lodged under the *Commonwealth Electoral Act 1918* by political parties, registered under the Commonwealth and ACT Electoral Acts, may be submitted to the ACT Electoral Commissioner instead of an annual return submitted under the ACT Electoral Act

Under new section 231A, a political party is to be taken as registered under the Commonwealth and ACT Electoral Acts where the same person is specified as the registered officer of the party under both Electoral Acts. The party does not have to have the same name at both levels. A party registered at the Commonwealth level can include a Territory branch of a national party.

Insertion — Annual returns by associated entities

New section 231B requires an associated entity to lodge an annual return, similar to that of a political party. In addition, if expenditure was incurred out of funds generated from capital, details of persons who contributed to that capital must be set out in the return.

Insertion — Returns by associated entities under Commonwealth Electoral Act

New section 231C provides that copies of annual returns lodged under the *Commonwealth Electoral Act 1918* by associated entities may be submitted to the ACT Electoral Commissioner instead of an annual return submitted under the ACT Electoral Act.

Substitution — Amounts received

Clause 22 repeals section 232 of the Electoral Act and substitutes a new section 232. New section 232 simplifies the annual reporting requirements. The clause provides that where a party, independent MLA or associated entity receives a total of \$1500 or more from a person or organisation during a financial year, the relevant annual return should show the defined particulars related to the donor (defined in section 228) and the total amount received from the donor. In calculating the total amount received, individual donations of less than \$500 need not be counted.

Under the current provisions, all individual donations received of any amount must be taken into account to determine whether the \$1500 disclosure threshold has been reached (other than amounts of less than \$100 donated at fund raising events). The current provisions also require disclosure of the amount of each individual donation and the date on which it was received where a donor has given \$1500 or more.

Amounts paid

Clause 23 amends section 233 of the Electoral Act to simplify the reporting in annual returns of expenditure incurred by a party, independent MLA or associated entity along the same lines as the changes made by clause 22 to section 232.

Outstanding amounts

Clause 24 amends section 234 of the Electoral Act to provide that, where an associated entity owes a person or organisation an amount totalling \$1500 or more at the end of a financial year, the defined particulars of the person or organisation must be set out in the associated entity's annual return. This brings associated entities into line with the requirements imposed on parties and Independent MLAs.

Insertion — Regulations

Clause 25 inserts a new section 234A of the Electoral Act to provide that regulations may require greater or lesser detail to be reported in the annual returns lodged by political parties, independent MLAs or associated entities. This amendment will enable the ACT scheme to keep in step with the Commonwealth scheme if the Commonwealth requirements are altered by regulation.

Offences

Clause 26 amends subsection 236(4) and omits subsections 236(5), (6) and (7) of the Electoral Act to remove references to claims for election funding. This is a consequence to the changes to the funding scheme.

This clause also substitutes a new subsection 236(5) stating it is an offence for a person to give to another person false information to be included in an annual or election return, to replace the similar offence omitted in subsection 236(7).

Investigation — notices

Clause 27 amends subsection 237(1) of the Electoral Act by defining "investigation notice" to mean a notice under subsection (3) not under section (4), as section 237(3) gives the power to issue the notice.

This clause also inserts new subsections (4A), (4B) and (4C). Subsection 237(4A) and (4B) provide that the reporting agent of a party or an independent MLA may be present or be represented where a party official or a person acting on behalf of an independent MLA are required to appear before the Electoral Commissioner during an investigation into compliance with the disclosure laws. Subsection 237(4C) provides that failure of a reporting agent or nominee to attend such an investigation does not affect the power of the Commissioner to conduct the investigation.

This change mirrors a similar change made to the Commonwealth Electoral Act.

Records

Clause 28 amends section 239 of the Electoral Act to remove a reference to a claim for public funding and to include references to associated entities. These are consequential amendments.

Amendment of returns

Clause 29 amends section 242 of the Electoral Act to remove references to claims for public funding and to include a reference to associated entities. These are consequential amendments.

Inspection and supply of copies of returns

Clause 30 amends section 243 of the Electoral Act to remove references to claims for public funding. These are consequential amendments.

Reviewable decisions

Clause 31 amends section 245 of the Electoral Act to remove references to reviewable decisions related to claims for public funding. These are consequential amendments.

PART III — TRANSITIONAL

Gifts to political parties or MLAs

Clause 32 provides that where a person or organisation donates to a party or independent MLA gifts totalling \$1500 between 21 March 1995 and 30 June 1997, the person or organisation is required to lodge a return setting out the details of the gifts. This transitional provision is required to allow for the change from an election based return to an annual return.

This provision does not impose a retrospective obligation on donors, since any person or organisation affected by this provision would be required to submit an election return under the existing section 221 of the Electoral Act after the 1998 election.

Annual returns by parties and MLAs

Clause 33 provides that for the 1995/96 period, parties and Independent MLAs may lodge annual returns under the new scheme set out in this Bill, by the deadline of 18 November 1996 as set out in the current Electoral Act.

This transitional provision would not disadvantage parties or Independent MLAs as the new requirements are less onerous than the current requirements.

Annual returns provided under the current provisions before the commencement of this Bill would still comply with the disclosure requirements.

Annual returns by associated entities

Clause 34 provides that, for the year ending on 30 June 1997, associated entities required to lodge an annual return are only required to detail receipts and expenditure covering the period from the date of the commencement of this Bill and ending on 30 June 1997. This transitional provision covers the introductory year of the new requirements related to associated entities.

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

Clause 35 provides for amendments to the Schedule to the *Referendum (Machinery Provisions) Act 1994* as a consequence of insertion of new section 221A and new subsection 224(2A) of the Electoral Act. This clause provides that these two new provisions will not apply to referendums as they refer to parties and Independent MLAs.