

SECOND READING SPEECH

Electoral Amendment Bill 2012

Mr Speaker, I move that the *Electoral Amendment Bill 2012* be read a second time.

This Bill makes a number of amendments to the *Electoral Act 2004* to clarify or correct certain provisions and to prohibit donations to political parties, candidates and members by tobacco companies.

Mr Speaker, the first issue the Bill addresses is to amend section 181 to allow for 12 months in which proceedings for failure to vote may be commenced.

The *Electoral Act 2004* was amended in 2009 to provide that electors who fail to vote may be issued with an infringement notice which is enforceable under the *Monetary Penalties Enforcement Act 2005*.

An elector who is issued with such an infringement notice may elect to have the matter dealt with by a court. The issuing authority, in this case the Tasmanian Electoral Commission, has then to decide whether to prosecute the offence under section 181.

It is difficult and in many cases impossible for the Commission to institute proceedings against an elector for failure to vote under section 181 within the 6 month period set by section 26 of the *Justices Act 1959*. This is because the Act requires the Commission to take a number of steps in contacting the voter, assessing their reasons for not voting and issuing a notice of failure to vote before the Commission can actually issue an infringement notice. The Act has a number of timelines in relation to the notices to the elector who failed to vote and the elector's responses which cumulatively leave little time for the institution of legal proceedings if the person formally challenges the notice.

The amendments to section 181 in the Bill, which provide 12 months in which to institute such proceedings, will enable the Commission to complete the follow up process required under the Act and to prosecute where appropriate to do so.

Mr Speaker, another issue the Bill seeks to correct is to provide that certain Legislative Council election expenditure restrictions apply not only in relation to nominated candidates, but also to intending candidates.

In the now repealed *1985 Electoral Act*, the definition of candidate included both a nominated candidate and a person who had publicly announced his or her intention to stand. When the *Electoral Act 2004* was drafted, it was considered appropriate to split this definition into two separate definitions, namely “candidate” and “intending candidate”. However “intending candidate” was inadvertently omitted from the provisions relating to electoral expenditure.

The Bill amends sections 158 and 159 to provide that an intending candidate can appoint an election agent and then, only that intending candidate or his or her election agent may incur election expenditure. In addition, under amendments to section 162, parties must not incur any expenditure with a view to promoting the election of intending candidates, in the same way as currently they may not spend money to promote the election of candidates who have nominated.

Section 4 of the Act contains the definition of “electoral matter” for the purposes of the Act and includes references to a comment or reference to a candidate, and photograph of, or drawing of printed matter depicting a candidate.

The provisions that contain this definition of electoral matter have potential application prior to the actual nomination of a candidate, and so the Bill seeks to broaden the definition to include intending candidate.

Section 28 of the Act provides that a returning officer or electoral official ceases to hold office upon becoming a candidate. It is considered that it would not be appropriate for an intending candidate to hold either of these offices after having publicly indicated his or her intention to stand even if that is prior to formal nomination.

Mr Speaker, this Bill provides that Clause 5 of Schedule 3 be deleted as it is inconsistent with clause 1A of the Schedule and the two provisions cannot both be complied with.

Clause 1A was inserted by the *Electoral Amendment Act 2009* and was one of a number of amendments to Schedule 3 which doubled the number of Robson rotations on ballot papers by adding another set of rotations, with the order of names under the top position reversed, for each current rotation. These amendments further reduced any remaining advantage that could have been gained from ‘linear’ or so-called ‘donkey’ voting.

However it is not possible to comply with Clause 5 of the schedule which also deals with the sequence of names on the ballot paper as well as Clause 1A and the Bill therefore provides that it is to be deleted.

The other Clause of this Bill, Clause 6, which is actually also the largest, inserts a new Part 5A in the Electoral Act which is aimed at prohibiting (but for a minor exception) donations by tobacco companies to parties, candidates, intending candidates and members of Parliament.

If I may quote from the member for Braddon Mr O'Halloran earlier this year: "The acceptance of political donations from big tobacco companies is a practice that does not belong in this century and not in a State that so urgently needs to embrace cost-saving preventive health measures. One must wonder how these donations influence Liberal policy."

Shortly after that statement I announced that I would be tabling a Bill that would ban political donations by tobacco companies. This Bill is going to do just that in both the interests of the health of Tasmanians and in the interests of removing the potential for tobacco companies to influence the direction taken by political parties, candidates and members. As was noted in the debate earlier this year New South Wales has legislated to ban political donations from tobacco companies and the Bill here today has used the NSW approach as its basis.

The new Section 157C provides a definition of tobacco industry business entity which is similar to that in the NSW electoral legislation - a business undertaking mainly engaged in manufacturing, importing or selling tobacco products. The intent is to pick up companies primarily engaged in trading in tobacco products but not to pick up the supermarkets or corner shops who sell tobacco products as only one part of a wide range of products.

The definition could pick up the specialist tobacco retailers, if their main activity is selling tobacco products they would be captured. The definition also encompasses a "close associate" of such an entity – directors, associated companies etc – so that the donations cannot be channelled through an intermediary.

Section 157H has been included to establish a process to clear in advance the status of a donation from a body which is concerned that it's contribution to a party or candidate may fall within the prohibited donations. The Bill provides that the Electoral Commissioner may make the determination. The Commissioner's responsibilities already include making determinations as to whether persons would be prosecuted for breaches of the Act (s 237) and this is a similar decision even if being made in advance of the possible breach. If the determination is favourable it means that the persons giving and receiving the approved donation cannot be later prosecuted under section 157D however

there is a capacity to revoke the determination if it has been obtained using false information and to prosecute the applicant for giving the Commissioner false information.

Section 157E defines “political donations”. It covers gifts to parties, members, candidates and intending candidates (the latter are prospective candidates for the Legislative Council whose spending on campaigns is controlled from 1 January in the relevant election year rather than from the close of nominations). A gift (defined in 157C) includes both money and “in-kind” contributions other than volunteer labour.

Subsection 157E(1)(d) captures indirect payments through third parties or by way of reimbursement that assist a party, member or candidate.

Subsection 157E(2) and (3) also cover the ruse of tobacco companies using entry fees to fund raising activities or paying party “membership subscriptions” to disguise what amount to donations. Section 157G creates an exception/defence if the subscription is less than \$1000 or such other amount that might be prescribed in place of the \$1000.

Section 157F covers persons who may try to circumvent the rules of gifts by using what is in effect a non-repayable loan – loans that would otherwise amount to a gift, that is a political donation by a person/body other than a recognised financial institution are outlawed.

There are a number of offences aimed at both the donor and recipient of political donations which are made unlawful by this Act.

Section 157D(1) makes it an offence for a tobacco industry business entity to make a political donation.

Section 157D(2) makes it an offence to accept a political donation from a tobacco industry business entity.

Section 157D(3) makes it an offence to accept a political donation from someone providing it on behalf of tobacco industry business entity.

Section 157D(4) makes it an offence for a tobacco industry business entity to urge others to make a political donation.

Section 157D(5) similarly makes it an offence for a person to solicit on behalf of a tobacco industry business entity the making of a political donation.

In each case the penalty applicable is a fine of up to 200 penalty units (currently \$26,000) or imprisonment for up to 12 months or both.

Section 157I provides for the recovery of the unlawful donations from the party, Member or candidate or in the case of Legislative Council members their “election agent”.

The penalties for each of the offences include the imposition of fines and/or imprisonment. Obviously a company cannot be gaoled but in the case of entities it is common to make directors and other senior officers of the bodies liable for the offences committed by the body. Section 157J provides that directors may be held liable and liable to fines and imprisonment if they were in a position to influence the decision of the organisation to make the donation and failed to exercise due diligence in preventing it occurring..

The Bill as drafted does not make the offence relating to accepting political donations from tobacco entities a crime which would be a corrupt practice under the Act. If it is considered that the taking of such donation is of similar gravity to the other offences which are held to be corrupt practices under the Act it could provide that the offence under s 157D(2) or (3) is a crime for the purposes of the Act and thus a corrupt practice entitling the court to disqualify and bar the person from standing.

New Section 157K extends the usual six month period during which a prosecution may be commenced for breaches of this Part of the Act. Generally, by virtue of the *Justices Act* provisions, charges for breaches of Acts (other than indictable crimes) must be laid within six months of the offence occurring. As it is possible that the type of offences under this Part will not come to light for some time after the event – especially giving the Electoral Commissioner false information - the Bill provides additional time within which charges may be laid. The provisions are similar to those applying to a number of consumer protection offences.

This Bill will rid the political air of the unpalatable influence of tobacco lobbyists and I commend the Bill to the House.