

TASMANIA

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**ELECTORAL AMENDMENT (ELECTORAL EXPENDITURE  
AND POLITICAL DONATIONS) BILL 2020**

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# **ELECTORAL AMENDMENT (ELECTORAL EXPENDITURE AND POLITICAL DONATIONS) BILL 2020**

*(Brought in by the Member for Clark, Ella Haddad MP)*

## **A BILL FOR**

### **An Act to amend the Electoral Act 2004**

Be it enacted by Her Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

#### **1. Short title**

This Act may be cited as the Electoral Amendment (Electoral Expenditure and Political Donations) Act 2020.

#### **2. Commencement**

The provisions of this Act commence on a day or days to be proclaimed.

#### **3. Principal Act**

In this Act, the Electoral Act 2004\* is referred to as the Principal Act.

#### **4. Section 3 amended (Interpretation)**

Section 3 of the Principal Act is amended as follows:

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\* No. 51 of 2004

- (a) by inserting the following definition after the definition of *deputy registered officer*:

**disposition of property** means any conveyance, transfer, assignment, settlement, delivery, payment or other alienation of property, and includes –

- (a) the allotment of shares in a company; and
  - (b) the creation of a trust in property; and
  - (c) the grant or creation of any lease, mortgage, charge, servitude, licence, power, partnership or interest in property; and
  - (d) the release, discharge, surrender, forfeiture or abandonment, at law or in equity, of any debt, contract or chose in action, or of any interest in property; and
  - (e) the exercise by a person of a general power of appointment of property in favour of any other person; and
  - (f) any transaction entered into by any person with intent thereby to diminish, directly or indirectly, the value of the person's own property and to increase the value of the property of any other person;
- (b) by omitting "poll;" from paragraph (b) of the definition of *expenditure period* and substituting "poll; or";
- (c) by inserting the following paragraph after paragraph (b) in the definition of *expenditure period*:
- (c) in the case of an Assembly election, the period of 12 months ending on the day on which the election is held;
- (d) by inserting the following definition after the definition of *first preference*:

**foreign donor** means:

- (a) a body politic of a foreign country;
- (b) a body politic of a part of a foreign country;
- (c) a part of a body politic mentioned in paragraph (a) or (b);
- (d) a foreign public enterprise;

- (e) an entity (whether or not incorporated) that does not meet any of the following conditions:
    - (i) the entity is incorporated in Australia;
    - (ii) the entity's head office is in Australia;
    - (iii) the entity's principal place of activity is, or is in, Australia;
  - (f) an individual who is none of the following:
    - (i) an elector;
    - (ii) an Australian citizen;
    - (iii) an Australian resident;
    - (iv) a New Zealand citizen who holds a Subclass 444 (Special Category) visa under the Migration Act 1958 (or if that Subclass ceases to exist, the kind of visa that replaces that Subclass).
- (e) by inserting the following definition after the definition of *prisoner*:  
***property*** includes both real and personal property;

## 5. Section 5 amended (Election expenditure)

Section 5(1) of the Principal Act is amended by inserting "an Assembly election or" after "at" in the definition of *election expenditure*.

## 6. Sections 5A and 5B inserted

After section 5 of the Principal Act, the following sections are inserted in Part 1:

### 5A. Meaning of *gift*

- (1) For the purposes of this Act, a gift is any disposition of property made by a person to another person, otherwise than by will, being a disposition made without consideration in money or money's worth or with inadequate consideration, and includes the provision of a service (other than volunteer labour) for no consideration or for inadequate consideration.

- (2) For the purposes of this Act –
  - (a) the amount of a donation or expenditure consisting of a disposition of property other than money is taken to be the amount equal to the value of the property disposed of; and
  - (b) the value of property disposed of or the value of a gift may, if the Commission so requires, be determined by valuers appointed or approved by the Commission.
- (3) Fees that constitute membership, affiliation or subscription fees paid to a registered political party are not a gift for the purposes of this Act.

#### **5B. Meaning of political donation**

- (1) For the purposes of this Act, a political donation is –
  - (a) a gift made to or for the benefit of a party; or
  - (b) a gift made to or for the benefit of a Member; or
  - (c) a gift made to or for the benefit of a candidate or an intending candidate; or
  - (d) a gift made to or for the benefit of an entity or other person (not being a party, a Member, a candidate or an intending candidate), the whole or part of which was used by the entity or person –
    - (i) to enable the entity or person to make, directly or indirectly, a political donation or to incur electoral expenditure; or
    - (ii) to reimburse the entity or person for making, directly or indirectly, a political donation or incurring electoral expenditure.
- (2) An amount paid by a person as a contribution, entry fee or other payment to entitle that or any other person to participate in, or otherwise obtain any benefit from, a fundraising venture or function (being an amount that forms part of the proceeds of the venture or function) is taken to be a gift for the purposes of this section.

- (3) A gift to an individual that was made in a private capacity to the individual for his or her personal use, and that the individual has not used, and does not intend to use, solely or substantially for a purpose related to an election or to his or her duties as a Member, is not a political donation.

## **7. Section 160 amended**

Section 160 of the Principal Act is amended as follows:

- (1) by omitting from subsection (2) “\$10,000 in the year 2005” and substituting “\$20,000 in the year 2021”;
- (2) by omitting from subsection (2) “an additional \$500 each subsequent year.” and substituting “the amount of the Hobart Consumer Price Index (as determined by the Australian Bureau of Statistics) for the relevant financial year, updated each financial year.”

## **8. Section 161 amended**

Section 161 is amended as follows:

By omitting from subsection (c) “\$20” and substituting “\$500”.

## **9. Parts 6A and 6B inserted**

After section 165 of the Principal Act, the following Parts are inserted:

### **PART 6A – ELECTORAL EXPENDITURE IN RESPECT OF ASSEMBLY ELECTIONS**

#### ***Division 1 – Election expenditure***

##### **165A. Election agent**

- (1) A candidate or intending candidate at an Assembly election may appoint a person to be his or her election agent.
- (2) An appointment under subsection (1) is to be in writing and signed by the candidate or intending candidate.

- (3) Only one person may hold an appointment as the election agent for a particular candidate or intending candidate at any one time.
- (4) The election agent of a candidate or intending candidate may incur or authorise expenditure on behalf of that candidate or intending candidate.

#### **165B. Who may incur expenditure**

- (1) Subject to subsection (2), a person, other than a candidate or intending candidate or the election agent of a candidate or intending candidate or a party, must not incur any expenditure with a view to promoting or procuring the election of the candidate or intending candidate as a Member of the Assembly.
- (2) Subsection (1) does not preclude the payment or giving of any money, security or equivalent of money directly to a candidate or intending candidate or his or her election agent with a view to promoting or procuring the election of the candidate or intending candidate as a Member of the Assembly.
- (3) A candidate or intending candidate at an Assembly election must not authorise a person other than his or her election agent to incur on his or her behalf expenditure with a view to promoting or procuring the candidate's or intending candidate's election.

#### **165C. Candidate's expenditure limit**

- (1) A candidate at an Assembly election must not, in respect of his or her campaign for that election, incur election expenditure exceeding the expenditure limit.
- (2) The expenditure limit for candidates endorsed by a political party registered in Tasmania is \$100 000 in the year of 2021 and increases by the amount of the Hobart Consumer Price Index (as determined by the Australian Bureau of Statistics) for the relevant financial year, updated each financial year.
- (3) The expenditure limit for candidates who are not endorsed by a political party registered in Tasmania is \$120,000 in the year of 2021 and increases by the amount of the Hobart Consumer Price Index (as determined by the Australian Bureau of



Statistics) for the relevant financial year, updated each financial year.

- (4) If a court convicts a candidate of an offence against subsection (1) it is to, at the time of conviction, make a finding of the amount by which the candidate's election expenditure exceeded the expenditure limit.
- (5) For the purposes of subsection (1), expenditure incurred by the election agent of a candidate is taken to have been incurred by the candidate.

#### **165D. Lodgement of candidate's election expenditure return**

Every candidate at an Assembly election must complete an election expenditure return which is to –

- (a) be in an approved form; and
- (b) include particulars of –
  - (i) all election expenditure that has been paid by the candidate or paid on behalf of the candidate by his or her election agent; and
  - (ii) all disputed claims and all unpaid claims against the candidate in respect of any election expenditure; and
- (c) be accompanied by any invoice account or receipt in respect of each item of election expenditure that exceeds \$500; and
- (d) be signed and declared before a justice or a commissioner for declarations; and
- (e) be lodged with the Commission within 60 days after the day on which the result of an Assembly election is declared, or within such extended period, not exceeding 30 days, as the Commission may allow.

#### **165E. Party's expenditure limit**

- (1) A party must not, in respect of the party's campaign for an Assembly election, incur election expenditure exceeding the expenditure limit.

- (2) If a party, in respect of its campaign for an Assembly election, incurs election expenditure exceeding the expenditure limit, the party secretary is guilty of an offence.
- (3) For the purposes of subsection (1), the expenditure limit is  
\$40 000 in the year of 2021, multiplied by the number of candidates endorsed by the party (as at the close of nominations) to a maximum of 25 candidates, and increases by the amount of the Hobart Consumer Price Index (as determined by the Australian Bureau of Statistics) for the relevant financial year, updated each financial year.
- (4) If a court convicts a party secretary of an offence against subsection (2), it is, at the time of conviction, to make a finding of the amount by which the party's election expenditure exceeded the expenditure limit.

#### **165F. Lodgement of party's election expenditure return**

A party secretary at an Assembly election must complete an election expenditure return which is to –

- (a) be in an approved form; and
- (b) include particulars of –
  - (i) all election expenditure that has been paid by the party or paid on behalf of the party; and
  - (ii) all disputed claims and all unpaid claims against the party in respect of any election expenditure; and
- (c) be accompanied by any invoice account or receipt in respect of each item of election expenditure that exceeds \$500; and
- (d) be signed and declared before a justice or a commissioner for declarations; and
- (e) be lodged with the Commission within 60 days after the day on which the result of an Assembly election is declared, or within such extended period, not exceeding 30 days, as the Commission may allow.

## ***Division 2 – Further provisions relating to expenditure***

### **165G. Commission to check returns**

On receiving a return lodged under section 165D or 165F, the Commission is to satisfy itself as to the authenticity and accuracy of the return and that all particulars required to be included in the return have been included.

### **165H. Return available for public inspection**

- (1) The Commission is to –
  - (a) keep returns for a period of 12 months; and
  - (b) during that period make those returns available for inspection, free of charge, by a member of the public.
- (2) At the expiration of the period referred to in subsection (1), the Commission may cause the returns to be disposed of in an approved manner.

### **165I. Power of Commission to require information relating to election expenditure**

- (1) If the Commission has reason to believe that a person is in possession of information or records relating to election expenditure, the Commission may, by written notice, require –
  - (a) the person to provide that information at a specified time and place; or
  - (b) the person to produce for inspection any of those records at a specified time and place; or
  - (c) the person to answer any question relating to that expenditure at a specified time and place; or
  - (d) any person who was involved with the compilation of those records to make a statement providing an explanation of them.
- (2) The Commission may make and retain copies of any records produced under subsection (1)(b) or of any parts of those records.

- (3) Any information provided, answer given or statement made by a person in response to a requirement made under subsection (1) may not be used in any proceedings against that person except proceedings under section 199(8) in relation to that information, answer or statement.
- (4) A person is not obliged to provide any information, produce records, answer a question or make a statement under this section unless that person has first been informed by the Commission that he or she is required to do so.
- (5) In any proceedings for an offence in relation to this section, a copy of a record or part of a record made under subsection (2) is admissible in evidence in those proceedings and, in the absence of evidence to the contrary, the contents of the copy are presumed to be the same as those on the original record or part.
- (6) In this section –  
  
*records* includes books, accounts, minutes, registers, deeds, writings or documents and any other sources of information compiled, recorded or stored in written form, on micro-film or by electronic process, or in any other manner or by any other means.

## **PART 6B – POLITICAL DONATIONS**

### **165J. Register of political donations**

- (1) A party secretary, a Member, a candidate or an intending candidate must keep a register in an approved form of all political donations made in a financial year.
- (2) A party secretary, a Member, a candidate or an intending candidate must lodge the register referred to in subsection (1) with the Commission within 3 months of the end of the financial year to which it relates.

### **165K. Disclosure of donations of \$1 000 or more**

A party secretary, a Member, a candidate or an intending candidate must disclose to the Commission in an approved form any donations of \$1 000 or more made to the party, Member, candidate or intending candidate within 30 days of the receipt of the donation.

**165L. Disclosure of donations of \$1 000 or more by the same person**

A party secretary, a Member, a candidate or an intending candidate must disclose to the Commission in an approved form donations from the same donor in a financial year that cumulatively amount to \$1 000 or more made to the party, Member, candidate or intending candidate within 30 days of the receipt of the donation that causes the amount of \$1 000 or more to be reached.

**165M. Anonymous political donations**

- (1) A party, a Member, a candidate or an intending candidate must not accept a political donation of \$1 000 or more made by a person, unless the name of the person making the political donation is known to the party secretary, Member, candidate or intending candidate.
- (2) A party, a Member, a candidate or an intending candidate must not accept a political donation if acceptance of the political donation means that the total of political donations, from persons where the person's name is not known to the party secretary, Member, candidate or intending candidate, exceed \$10 000 in a financial year.
- (3) If a political donation is received that results in the party, Member, candidate or intending candidate contravening subsection (1) or (2), the party secretary, Member, candidate or intending candidate must pay to the Commission an amount equal to the amount of the political donation within 30 days of receipt of the political donation.
- (4) The amount payable under subsection (3) is a debt payable to the State by the party, Member, candidate or intending candidate and may be recovered by proceedings in a court of competent jurisdiction.

**165N. Donations from foreign donors**

- (1) A party, a Member, a candidate or an intending candidate must not accept a political donation of \$1 000 or more, if the political donation is from a foreign donor.
- (2) If a political donation is received that results in the party, Member, candidate or intending candidate contravening subsection (1) and the party secretary, Member, candidate or

intending candidate is unable to return the donation to the foreign donor, the party secretary, Member, candidate or intending candidate must pay to the Commission an amount equal to the amount of the political donation within 30 days of receipt of the political donation.

- (3) The amount payable under subsection (2) is a debt payable to the State by the party, Member, candidate or intending candidate and may be recovered by proceedings in a court of competent jurisdiction.

**165O. Power of Commission to require information relating to political donations**

- (1) If the Commission has reason to believe that a person is in possession of information or records relating to political donations, the Commission may, by written notice, require –
  - (a) the person to provide that information at a specified time and place; or
  - (b) the person to produce for inspection any of those records at a specified time and place; or
  - (c) the person to answer any question relating to the donations at a specified time and place; or
  - (d) any person who was involved with the compilation of those records to make a statement providing an explanation of them.
- (2) The Commission may make and retain copies of any records produced under subsection (1)(b) or of any parts of those records.
- (3) Any information provided, answer given or statement made by a person in response to a requirement made under subsection (1) may not be used in any proceedings against that person except proceedings under section 199B or 199C in relation to that information, answer or statement.
- (4) A person is not obliged to provide any information, produce records, answer a question or make a statement under this section unless that person has first been informed by the Commission that he or she is required to do so.

- (5) In any proceedings for an offence in relation to this section, a copy of a record or part of a record made under subsection (2) is admissible in evidence in those proceedings and, in the absence of evidence to the contrary, the contents of the copy are presumed to be the same as those on the original record or part.
- (6) In this section –
- records** includes books, accounts, minutes, registers, deeds, writings or documents and any other sources of information compiled, recorded or stored in written form, on micro-film or by electronic process, or in any other manner or by any other means.

**165P. Register and disclosures to be published**

- (1) The Commission –
- (a) is to keep a register lodged under section 165J for a period of 7 years; and
- (b) may publish those parts of a register lodged under section 165J that are approved for publishing by the Commission.
- (2) The Commission is to –
- (a) keep the information disclosed under section 165K or 165L for a period of 7 years; and
- (b) publish the details of the information disclosed under sections 165K and 165L.
- (3) At the expiration of the period referred to in subsection (1)(a) and (2)(a), the Commission may cause the register or the information disclosed to be disposed of in an approved manner.

**10. Part 7, Division 6: Heading amended**

Division 6 of Part 7 of the Principal Act is amended by inserting in the heading to that Division “**and political donations**” after “**expenses**”.

## **11. Section 199 amended (Offences relating to electoral expenses by candidates)**

Section 199 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “section 159 or 162” and substituting “section 159, 162 or 165B”;
- (b) by inserting in subsection (2) “an Assembly election or” after “at”;
- (c) by omitting from subsection (2) “section 160” and substituting “section 160 or 165C, as the case may be,”;
- (d) by inserting in subsection (3) “an Assembly election or” after “at”;
- (e) by omitting from subsection (3) “section 160” and substituting “section 160 or 165C, as the case may be,”;
- (f) by omitting from subsection (4) “section 161” and substituting “section 161 or 165D”;
- (g) by inserting in subsection (5) “an Assembly election or” after “at”;
- (h) by omitting from subsection (6) “section 161” and substituting “section 161 or 165D”;
- (i) by omitting from subsection (7) “section 165(1)” and substituting “section 165(1) or 165I(1)”;
- (j) by omitting from subsection (8) “section 165(1)” and substituting “section 165(1) or 165I(1)”;
- (k) by omitting from subsection (9) “under” first occurring and substituting “against”;
- (l) by omitting from subsection (9) “section 165(2)” and substituting “section 165(2) or 165I(2)”.

## **12. Sections 199A and 199B inserted**

After section 199 of the Principal Act, the following sections are inserted in Division 6:

### **199A. Offences relating to electoral expenditure by parties**

- (1) A party secretary who contravenes section 165F is guilty of an offence.



Penalty: Fine not exceeding 200 penalty units or imprisonment for a term not exceeding 6 months, or both.

- (2) A party secretary who contravenes section 165E by incurring any amount not exceeding \$1 000 in excess of the expenditure limit is guilty of an offence.

Penalty: Fine not exceeding 0.05 penalty unit for each \$1 of that first-mentioned amount.

- (3) A party secretary who contravenes section 165E by incurring any amount exceeding \$1 000 in excess of the expenditure limit is guilty of an offence.

Penalty: Fine not exceeding 150 penalty units.

- (4) A party secretary who, without reasonable excuse, fails to comply with section 165F, within the period referred to in that section, or, if the Commission has allowed that period to be extended, within that extended period, is guilty of an offence.

Penalty: Fine not exceeding 200 penalty units.

- (5) A party secretary who, in purported compliance with section 165F, files a return, invoice or receipt which is, to his or her knowledge, false or misleading in a material particular is guilty of an offence.

Penalty: Fine not exceeding 200 penalty units or imprisonment for a term not exceeding 6 months, or both.

- (6) A party secretary must not, without reasonable excuse, fail to comply with a requirement made under section 165I(1).

Penalty: Fine not exceeding 100 penalty units or imprisonment for a term not exceeding 3 months, or both.

- (7) A party secretary who, in purported compliance with a requirement made under section 165I(1), provides information, gives an answer or makes a statement which is, or produces records which are, to his or her knowledge, false or misleading in a material particular is guilty of an offence.

Penalty: Fine not exceeding 100 penalty units or imprisonment for a term not exceeding 3 months, or both.

- (8) In any proceedings for an offence against this section, a copy of a record or a part of a record made under section 165I(2) is admissible in evidence in those proceedings and, in the absence of evidence to the contrary, the contents of the copy are to be presumed to be the same as those on the original record or part.

### **199B. Offences relating to political donations**

- (1) A person who contravenes section 165J, 165K, 165L, 165M or 165N is guilty of an offence.

Penalty: Fine not exceeding 200 penalty units.

- (2) A person who, in purported compliance with section 165J, 165K or 165L lodges a register that is, to the person's knowledge, false or misleading in a material particular is guilty of an offence.

Penalty: Fine not exceeding 200 penalty units or imprisonment for a term not exceeding 6 months, or both.

- (3) A person must not, without reasonable excuse, fail to comply with a requirement made under section 165O(1).

Penalty: Fine not exceeding 100 penalty units or imprisonment for a term not exceeding 3 months, or both.

- (4) A person who, in purported compliance with a requirement made under section 165O(1), provides information, gives an answer or makes a statement which is, or produces records which are, to his or her knowledge, false or misleading in a material particular is guilty of an offence.

Penalty: Fine not exceeding 100 penalty units or imprisonment for a term not exceeding 3 months, or both.

- (5) In any proceedings for an offence against this section, a copy of a record or part of a record made under section 165O(2) is admissible in evidence in those proceedings and, in the absence of evidence to the contrary, the contents of the copy are to be presumed to be the same as those on the original record or part.

### **13. Repeal of Act**

This Act is repealed on the three hundred and sixty fifth day from the day on which it commences.