

TASMANIA

ELECTORAL AMENDMENT BILL 2012

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ELECTORAL AMENDMENT BILL 2012

(Brought in by the Minister for Justice, the Honourable Brian Neal Wightman)

A BILL FOR

An Act to amend the *Electoral Act 2004*

Be it enacted by His 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 Act 2012*.

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.

*No. 51 of 2004

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4. Section 4 amended (Electoral matter)

Section 4(2) of the Principal Act is amended as follows:

- (a) by inserting in paragraph (a)(v) “or intending candidate” after “candidate”;
- (b) by inserting in paragraph (a)(v) “or intending candidates” after “candidates”;
- (c) by inserting in paragraph (b)(i) “or intending candidate” after “candidate”;
- (d) by inserting in paragraph (b)(ii) “or intending candidate” after “a candidate”;
- (e) by inserting in paragraph (b)(ii) “or intending candidate” after “such candidate”.

5. Section 28 amended (Returning officer or election official to cease to hold office on becoming a candidate)

Section 28 of the Principal Act is amended as follows:

- (a) by inserting in subsection (1) “becomes an intending candidate or” after “official”;
- (b) by inserting in subsection (2) “who becomes an intending candidate or” after “A person”;

- (c) by inserting in subsection (2) “became an intending candidate or” after “the person”.

6. Part 5A inserted

After section 157B of the Principal Act, the following Part is inserted:

PART 5A – PROHIBITION ON DONATIONS FROM TOBACCO INDUSTRY BUSINESS ENTITIES

157C. Interpretation

In this Part –

close associate of a corporation means each of the following:

- (a) a director or officer of the corporation or the spouse of such a director or officer;
- (b) a related body corporate of the corporation;
- (c) a person whose voting power in the corporation or a related body corporate of the corporation is greater than 20% or the spouse of such a person;

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- (d) if the corporation or a related body corporate of the corporation is a stapled entity in relation to a stapled security, the other stapled entity in relation to that stapled security;
- (e) if the corporation is a trustee, manager or responsible entity in relation to a trust, a person who holds more than 20% of the units in the trust (in the case of a unit trust) or is a beneficiary of the trust (in the case of a discretionary trust);

entity means –

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

gift means 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;

officer has the same meaning as in the *Corporations Act 2001* of the Commonwealth;

political donation – see section 157E;

related body corporate has the same meaning as in the *Corporations Act 2001* of the Commonwealth;

spouse of a person includes a person who is in a significant relationship, within the meaning of the *Relationships Act 2003*, with that person;

stapled entity means an entity the interests in which are traded along with the interests in another entity as stapled securities and (in the case of a stapled entity that is a trust) includes any trustee, manager or responsible entity in relation to the trust;

tobacco industry business entity means a corporation engaged in a business undertaking that is mainly concerned with the manufacture, import or sale of tobacco products, or a person who is a close associate of such a corporation;

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voting power has the same meaning as in the *Corporations Act 2001* of the Commonwealth.

157D. Political donations by tobacco industry business entities unlawful

- (1) A tobacco industry business entity must not make a political donation.

Penalty: Fine not exceeding 200 penalty units or imprisonment for a term not exceeding 12 months, or both.

- (2) A person must not accept a political donation on behalf of a tobacco industry business entity.

Penalty: Fine not exceeding 200 penalty units or imprisonment for a term not exceeding 12 months, or both.

- (3) A person must not accept a political donation that was made (wholly or partly) by a person on behalf of a tobacco industry business entity.

Penalty: Fine not exceeding 200 penalty units or imprisonment for a term not exceeding 12 months, or both.

- (4) A tobacco industry business entity must not solicit another person to make a political donation.

Penalty: Fine not exceeding 200 penalty units or imprisonment for a term not exceeding 12 months, or both.

- (5) A person must not solicit another person on behalf of a tobacco industry business entity to make a political donation.

Penalty: Fine not exceeding 200 penalty units or imprisonment for a term not exceeding 12 months, or both.

157E. 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 intending candidate; or
- (d) a gift made to or for the benefit of an entity or other person (not being a party, Member, or candidate or intending candidate), the whole or part of which was used or is intended to be used by the entity or person –

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- (i) to enable the entity or person to make, directly or indirectly, a political donation; or
 - (ii) to reimburse the entity or person for making, directly or indirectly, a political donation.
- (2) An amount paid by a person as a contribution, entry fee or other payment to entitle that person or any other person to participate in, or otherwise obtain any benefit from, a fund-raising venture or function organised for the benefit of a candidate or intending candidate (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) Subject to section 157G, an annual or other subscription paid to a party by –
 - (a) a member of the party; or
 - (b) a person or entity (including an industrial organisation) for affiliation with the party –is taken to be a gift to the party for the purposes of this section.

157F. Loans intended as political donations

- (1) A loan that, if it had been a gift, would be a political donation is to be regarded as a political donation for the purposes of this Part unless the loan is from a financial institution.
- (2) In this section –

financial institution means an entity whose principal business is the provision of financial services or financial products, and includes a bank, credit union, building society or other entity prescribed by the regulations;

loan means an advance of money, the provision of credit or any other transaction that in substance effects a loan of money.

157G. Exception for membership contributions

An annual or other subscription paid to a party by an individual or an organisation as a member of the party or for the individual's or organisation's affiliation with the party is not a political donation for the purposes of this Part unless it is a political donation that exceeds \$1 000 or such other amount as may be prescribed by the regulations.

157H. Determination by Commission that person not a tobacco industry business entity

- (1) A person who proposes to make a political donation (the *applicant*) may apply to the Commission for a determination by the Commission that the applicant or another person in respect of whom the applicant is making the application is not a tobacco industry business entity for the purposes of this Part.
- (2) The Commission –
 - (a) is authorised to make such a determination if the Commission is satisfied that it is more likely than not that the person is not a tobacco industry business entity; and
 - (b) is to make its determination solely on the basis of information provided by the applicant.
- (3) The Commission's determination remains in force for 12 months after it is made but can be revoked by the Commission at any time by notice in writing to the applicant.
- (4) The Commission's determination is conclusively presumed to be correct in favour of any person for the purposes of a political donation that the person makes or accepts while the determination is in

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force (even if the determination is subsequently found to be incorrect).

- (5) The Commission's determination is not presumed to be correct in favour of any person who makes or accepts a political donation knowing that information provided to the Commission in connection with the making of the determination was false or misleading in a material particular.
- (6) The Commission is to maintain a public register of the determinations made under this section and is to publish the register on a website maintained by the Commission.
- (7) A person who provides information to the Commission in connection with an application for a determination by the Commission under this section knowing that the information is 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 12 months, or both.

- (8) The Commission may establish and publicise policies as to how the Commission will deal with applications for determinations under this section.

157I. Recovery of unlawful donations, &c.

If a person accepts a political donation, loan or indirect campaign contribution that is unlawful because of this Part, an amount equal to the amount or value of the donation, loan or contribution (or double that amount if that person knew that it was unlawful) is payable by that person to the State and may be recovered as a debt due to the Crown from –

- (a) in the case of a donation, loan or contribution received by a party, the party secretary; or
- (b) in any other case, the person who received the donation, loan or contribution or the election agent of the person.

157J. Liability of directors, &c.

If a body corporate commits an offence against this Part, each director or other person concerned in the management of the body corporate is guilty of the offence and is liable to a penalty not exceeding that prescribed for the offence if it is proved that the director or other person –

- (a) was in a position to influence the relevant conduct or omission constituting the offence; or

- (b) failed to exercise all due diligence to prevent the relevant conduct or omission constituting the offence; or
- (c) failed to take all reasonable steps to prevent the relevant conduct or omission constituting the offence; or
- (d) encouraged or assisted in the commission of the offence.

157K. Time within which proceedings must be taken

Proceedings for an offence against a provision of this Part must be made –

- (a) within 3 years from the time when the matter to which the proceedings relate arises; or
- (b) within 6 months from the time when the matter to which the proceedings relate comes to the attention of the Electoral Commissioner.

7. Part 6, Division 1: Heading amended

Division 1 of Part 6 of the Principal Act is amended by inserting in the heading to that

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Division “*or intending candidate’s*” after
“*Candidate’s*”.

8. Section 158 amended (Election agent)

Section 158 of the Principal Act is amended as follows:

- (a) by inserting in subsection (1) “or intending candidate” after “candidate”;
- (b) by inserting in subsection (2) “or intending candidate” after “candidate”;
- (c) by inserting in subsection (3) “or intending candidate” after “candidate”;
- (d) by inserting in subsection (4) “or intending candidate” after “a candidate”;
- (e) by inserting in subsection (4) “or intending candidate” after “that candidate”.

9. Section 159 amended (Who may incur expenditure)

Section 159 of the Principal Act is amended as follows:

- (a) by inserting in subsection (1) “or intending candidate” after “than a candidate”;

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- (b) by inserting in subsection (1) “or intending candidate” after “of a candidate”;
- (c) by inserting in subsection (1) “or intending candidate” after “the candidate”;
- (d) by inserting in subsection (2) “or intending candidate” after “a candidate”;
- (e) by inserting in subsection (2) “or intending candidate” after “the candidate”;
- (f) by inserting in subsection (3) “or intending candidate” after “candidate”;
- (g) by inserting in subsection (3) “or intending candidate’s” after “candidate’s”.

10. Section 162 amended (Party not to incur election expenditure)

Section 162 of the Principal Act is amended as follows:

- (a) by inserting “or intending candidate” after “a candidate”;
- (b) by inserting “or intending candidate” after “the candidate”;
- (c) by inserting “or intending candidate” after “endorsed candidate”.

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11. Section 181 amended (Offence to fail to vote)

Section 181 of the Principal Act is amended by omitting subsection (3) and substituting the following subsection:

- (3) Proceedings for an offence under subsection (1) –
 - (a) may be instituted only by the Commission or the Director of Public Prosecutions; and
 - (b) may be instituted within the period of 12 months from the polling day of the election in respect of which the offence occurred.

12. Schedule 3 amended (Printing and collation of ballot papers)

Schedule 3 to the Principal Act is amended as follows:

- (a) by omitting from clause 1A(3) “clauses 2, 3, 4 and 5” and substituting “clauses 2, 3 and 4”;
- (b) by omitting clause 5.

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13. Repeal of Act

This Act is repealed on the ninetieth day from the day on which all of the provisions of this Act commence.