

## CLAUSE NOTES

### Electoral Amendment Bill 2012

#### **CLAUSE 1      SHORT TITLE**

This provides the short title to be used when citing the Act for any legal purpose.

#### **CLAUSE 2      COMMENCEMENT**

This Act is to commence on a day or days to be proclaimed. The provisions of Clause 6 (inserting a new Part 5A dealing with tobacco donations) may be commenced at a different time to the rest of the Bill.

#### **CLAUSE 3      PRINCIPAL ACT**

This provides that the Principal Act is the *Electoral Act 2004*.

#### **CLAUSE 4      SECTION 4 AMENDED (ELECTORAL MATTER)**

Section 4 contains the definition of electoral matter for the purposes of the Act. As the sections in the Principal Act containing this definition have potential application prior to the nomination of a candidate, the Bill broadens the definition to include intending candidate.

Under the amendments to section 4(2)(a)(v), matter that contains a reference to, or comment on an intending candidate or group of intending candidates will fall within the definition of electoral matter.

Under amendments to section 4(2)(b)(i) and (ii), a matter containing a photograph or drawing of an intending candidate will fall within the definition of electoral matter.

**CLAUSE 5      SECTION 28 AMENDED (RETURNING OFFICER OF ELECTION OFFICIAL TO CEASE TO HOLD OFFICE ON BECOMING A CANDIDATE)**

Clause 5 amends section 28 to provide that if a returning officer or election official becomes an intending candidate, they cease to hold that office. An intending candidate is also precluded from being appointed as a returning officer or election official.

**CLAUSE 6      NEW PART 5A – PROHIBITION ON DONATIONS FROM TOBACCO INDUSTRY BUSINESS ENTITIES**

**New Section 157C – Interpretation**

Most of the definitions are straightforward with the main one being a “tobacco industry business entity” which is defined as a business undertaking “mainly concerned with the manufacture, import or sale of tobacco products”. The definition further includes a “close associate” of the entity (also defined). The intent is to pick up companies whose main activities revolve around tobacco but not to pick up the supermarkets or shops who sell tobacco products as only a part of a wide range of products.

The definition could pick up 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.

**New Section 157D – Political Donations by tobacco industry business entities unlawful**

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 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 (\$26,000) or imprisonment for up to 12 months – or both.

### **New Section 157E – Meaning of *political donation***

The section defines donations to cover 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 (see s 157C) includes both money and “in-kind” contributions other than volunteer labour.

Subsection 157E(1)(d) also covers indirect payments to third parties or by way of reimbursement that assist the party, member or candidate.

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

### **New Section 157F – Loans intended as political donations**

The section covers what may amount to gifts when given as non-repayable loan. Loans by a tobacco entity will be treated as a political donation unless the loan is from a financial institution.

### **New Section 157G – Exception for membership contributions**

The section provides that subscriptions from a tobacco industry business entity to a political party of up to \$1,000 will not be treated as political donations.

### **New Section 157H – Determination by Commission that person not a tobacco industry business entity**

The section allows a person who may doubt his/her status as a tobacco industry business entity to have the issue clarified by the Electoral Commission when intending to make the donation.

The Commissioner is not obliged to make detailed inquiries but is entitled to rely on the information provided by the applicant. It is also an offence (subclause (7)) to provide false and misleading information to the Commissioner.

The Commissioner can revoke the determination if it is found to be based on incorrect information.

The determination protects the donor and recipients from prosecution for making a political donation only if they were unaware of any false or misleading information which had been provided to the Commissioner to base the determination.

### **New Section 157I – Recovery of unlawful donations etc**

The section provides for the recovery by the Crown of unlawful donations from the party/member/candidate or in the case of Legislative Council members their election agent.

### **New Section 157J - Liability of Directors etc'**

The penalties for each of the offences under the Act include the imposition of fines and/or imprisonment. Obviously a company cannot be gaoled but in the case of such entities it is common to make directors and other senior officers of the bodies liable for the offences which have been committed by the body. The section 157J provides that directors may be held liable and liable to fines and imprisonment.

### **New Section 157K – Time within which proceedings must be taken.**

As the offences under the Part may not come to light for some time an extended period for the institution of proceedings similar to those applying in the consumer affairs area has been included.

## **CLAUSE 7      PART 6, DIVISION I: HEADING AMENDED**

Clause 6 inserts in the heading of this division the words “or intending candidate’s” after “Candidate’s”.

**CLAUSE 8      SECTION 158 AMENDED (ELECTION AGENT)**

Amends section 158 to provide that, along with a candidate, an intending candidate may appoint an election agent, and this election agent may incur or authorise election expenditure on behalf of the intending candidate.

**CLAUSE 9      SECTION 159 AMENDED (WHO MAY INCUR EXPENDITURE)**

Currently, pursuant to section 159 only a candidate, or his or her election agent, may incur or authorise election expenditure in relation to that candidate's campaign. Further, a candidate must not authorise any person other than his or her election agent to incur any such expenditure. This amendment extends these provisions to intending candidates.

**CLAUSE 10      SECTION 162 AMENDED (PARTY NOT TO INCUR ELECTION EXPENDITURE)**

Clause 10 widens section 162 to provide that a party is not to incur election expenditure with a view to promoting or procuring the election of an intending candidate.

This amendment will close a loophole that was inadvertently created with the enactment of the Principal Act, when the definition of candidate (which, under the former Act included a person who had announced his or her intention to stand as a candidate) was split into two separate definitions: candidate and intending candidate. The equivalent section to section 162 in the former Act used to apply to both.

**CLAUSE 11      SECTION 181 AMENDED (OFFENCE OF FAILURE TO VOTE)**

Clause 11 amends section 181 to provide for a period of 12 months in which to institute proceedings for failure to vote. This period runs from polling day at which the failure to vote occurs.

Currently, as the Principal Act is silent, proceedings must be instituted within 6 months in accordance with section 26 of the *Justices Act 1959*.

The amendment will enable the Tasmanian Electoral Commission to complete the detailed follow-up process contained in the Principal Act and to prosecute where appropriate.

**CLAUSE 12      SCHEDULE 3 AMENDED (PRINTING AND COLLATION OF BALLOT PAPERS)**

Clause 12 omits clause 5 (and a reference to clause 5) from Schedule 3 of the Act as it is inconsistent with clause 1A of the Schedule.

Clause 1A was inserted by the *Electoral Amendment Act 2009* and was one of a number of amendments that doubled the number of Robson rotations. As a result of the 2009 amendments to the schedule, it is no longer possible to also comply with clause 5.

**CLAUSE 13      REPEAL OF ACT**

This clause provides that this Act, is repealed on the ninetieth day from the day on which it commences. This is now a standard drafting provision used in all amending Acts to avoid the need for later Repeal Acts for legislation which has absorbed into the principal Acts on commencement.