

# FACT SHEET

## *Electoral Amendment Bill 2012*

The *Electoral Amendment Bill 2012* makes a number of amendments to the *Electoral Act 2004*. Some are to clarify, simplify or correct certain provisions and the others are to prohibit contributions by tobacco firms to political parties and candidates for election purposes.

The Bill amends section 181 to allow for 12 months in which proceedings for failure to vote may be commenced.

Under the Act, 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, may then decide to prosecute the offence under section 181.

It is difficult and in many cases impossible for the Commission to prosecute the elector for failure to vote under section 181 because, pursuant to the *Justices Act 1959*, proceedings must be instituted within 6 months from the time when the matter of complaint arose. The follow up process required by the Act in relation to people who have not voted at an election can take longer than this.

The Bill also clarifies that certain Legislative Council election expenditure restrictions apply not only in relation to candidates who have formally nominated, but also to intending candidates.

In the former *Electoral Act 1985*, 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 dealing with spending.

The Bill also amends sections 158 and 159 to provide that an intending candidate can appoint an election agent and then, only 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.

The Bill provides that Clause 5 of Schedule 3 be deleted because it is inconsistent with clause 1A of that Schedule. 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 to comply with Clause 1A it is not possible to also comply with Clause 5 of the schedule and the Bill therefore provides that it is to be deleted.

The Bill also contains consequential amendments to section 4 and 28.

The bulk of the Bill however deals with the prohibition on tobacco firms making contribution to political parties, candidates and intending candidates and to sitting members of either House.

The Bill provides that tobacco industry business entities – businesses mainly engaged in manufacturing, importing or selling tobacco products and close associates of such an entity – directors, associated companies etc – will not be allowed to make political donations to political parties, candidates and intending candidates and to sitting members of either House.

Political donations include gifts to parties, members, candidates and intending candidates and includes both money and "in-kind" contributions other than volunteer labour.

The Bill also covers the use of "entry fees" to fund raising activities or paying party "membership subscriptions" to disguise what amount to donations.

There are a number of offences aimed at both the donor and recipient of political donations which are made unlawful by this Act including an offence for a tobacco industry business entity to make a political donation and for candidates parties etc to accept a political donation from a tobacco industry business entity.

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. In addition the Bill 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 Bill 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.