

CLAUSE NOTES

Electoral Amendment (Integrity of Elections) Bill 2021

Clause 1: Short Title

The Short title will be the *Electoral Amendment (Integrity of Elections) Act 2021*.

Clause 2: Commencement

The amendment Act will commence on the day on which it receives Royal Assent.

Clause 3: Principal Act

Establishes the *Electoral Act 2004* as the Principal Act for the purposes of this amendment Act.

Clause 4: Section 3 amended (Interpretation)

This clause amends section 3 of the Principal Act to –

- amend the definition of *election agent* to include election agents for candidates for Assembly elections, and for third parties.
- Insert a definition of *disposition of property*.
- Amend the definition of *expenditure period* to include Assembly elections.
- Insert a definition of *property*.
- Include definitions of *third party* and *regulated third party*.

Clause 5: Section 5 amended (Election expenditure)

This clause amends the definition of election expenditure to include a broader range of activities.

Clause 6: Sections 5A and 5B inserted

This clause inserts two new sections (5A and 5B) into the Principal Act. These sections define *gift* and *political donation* respectively.

Clause 7: Parts 6A, 6B, 6C and 6D inserted

Inserts four new Parts into the Principal Act that relate to expenditure in Assembly elections, third party expenditure, political donations and public funding of elections.

PART 6A – ELECTORAL EXPENDITURE IN RESPECT OF ASSEMBLY ELECTIONS

Division 1 – Election expenditure

165A. Election agent

This section allows a candidate or intending candidate at an Assembly election to appoint an election agent, who may authorise or incur expenditure on the candidate's behalf. These provisions are similar to existing provisions within the Principal Act for Legislative Council elections.

165B. Candidate's expenditure limit

This section sets an expenditure limit for candidates at \$82 000 for 2021, increasing by \$1 000 per year. These provisions, other than the value of the expenditure limit, are similar to existing provisions within the Principal Act for Legislative Council elections.

165C. Party's expenditure limit

This section sets an expenditure limit for parties at \$820 000 for 2021, increasing by \$10 000 per year. These provisions, other than the value of the expenditure limit, are similar to existing provisions within the Principal Act for Legislative Council elections.

Division 2 – Expenditure returns

165D. Candidate's election expenditure return

This section requires the lodgement of a candidate's election expenditure return including details of election expenditure and relevant invoices and receipts. These provisions are similar to existing provisions within the Principal Act for Legislative Council elections, however the lodgement period has increased from 60 days to 120 days in light of the higher expenditure limit and the state-wide nature of Assembly elections.

165E. Party's election expenditure return

This section provides similar provisions as section 165D in respect of parties.

165F. Commission to check returns

This section requires the Commission to check the accuracy of election returns under this Division. These provisions are similar to existing provisions within the Principal Act for Legislative Council elections.

165G. Return available for public inspection

This section requires the Commission to keep election expenditure returns and make them available for public inspection. These provisions are similar to existing provisions within the Principal Act for Legislative Council elections, however the period returns have to be kept has been increased from 12 months to 10 years.

165H. Power of Commission to require information relating to election expenditure

This section provides the Commission with powers to require the provision of information for the purposes of verifying election expenditure. The section also contains provisions regarding the admissibility of evidence obtained under this section. These provisions are similar to existing provisions within the Principal Act for Legislative Council elections.

PART 6B – THIRD PARTY ELECTORAL EXPENDITURE

Division 1 – Registration of third parties

165I. Requirement for registration

This section sets out a requirement for third parties to be registered for an election if their election expenditure exceeds \$6 000. This section also sets out when multiple third parties are considered to be the same third party.

165J. Register of third parties

This section requires the Commission to publish a register of third parties for each election.

165K. Application for registration

This section establishes the process for a third party to apply for registration for an election. A third party may apply under this section regardless of whether or not they are required to under section 165I.

165L. Deciding application

This section requires the Commission to approve an application under section 165K, unless the application does not conform with requirements or was not lodged before polling day. This section also provides for notifying a third party if their application is refused, allowing for amendment of the application, and requiring entry of third parties into the register established under section 165J.

165M. Obligation to notify change to details

This section requires a registered third party to notify the Commission if details contained in their application under section 165K are changed.

165N. Cancellation of registration

This section allows for a registered third party to cancel their registration if their obligations under this Part have ended.

Division 2 – Election expenditure

165O. Agent

This section allows a third party to appoint an election agent, who may authorise or incur expenditure on the third party's behalf. If an agent is not appointed, it is taken to be the financial controller of the third party, or in the case of an individual, that individual.

165P. Third Party expenditure limit

This section sets an expenditure limit for third parties at \$82 000 for 2021, increasing by \$1 000 per year for Assembly elections.

Division 3 – Expenditure returns

165Q. Third party election expenditure return

This section requires the lodgement of a third party's election expenditure return including details of election expenditure and relevant invoices and receipts.

165R. Commission to check returns

This section requires the Commission to check the accuracy of election returns under this Division.

165S. Return available for public inspection

This section requires the Commission to keep election expenditure returns and make them available for public inspection.

165T. Power of Commission to require information relating to election expenditure

This section provides the Commission with powers to require the provision of information for the purposes of verifying election expenditure. The section also contains provisions regarding the admissibility of evidence obtained under this section.

PART 6C – POLITICAL DONATIONS

165U. Interpretation

This section defines *authorised deposit-taking institution, disclosable donation, disclosure period, general cap, political participant, relevant polling day, responsible agent, and state campaign account* for the purposes of this Part.

165V. Register of political donations

This section requires a register of political donations to be maintained by the responsible agent of a political participant. The register must be submitted to the Commission within 7 days of the end of a financial year.

165W. Disclosure of political donations of \$1 000 or more

This section requires the disclosure of political donations valued at \$1 000 or more within seven business days of receipt, unless it is within seven days of polling day, in which case it must be disclosed within 24 hours.

165X. Limitations on eligibility to make donations

This section only allows for natural persons to make political donations (i.e. excludes corporations or organisations), as well as limiting donations to citizens or permanent residents of Australia. There are also a number of provisions that prohibit conveyance of political donations through other persons.

165Y. State campaign account

This section requires political participants to keep a State campaign account. All political donations received must be kept in this account, and election expenditure must be paid for from this account.

165Z. General cap

This section sets a cap on political donations of \$3 000, for State election campaign purposes. This section contains exemptions for

candidate's contributions to their own campaign, as well as endorsed candidate and elected members' contributions to their party.

165ZA. Limit on political donations to regulated third parties

This section limits the amount of regulated third parties a person can make a political donation to, to six, unless the total sum of political donations is lower than \$18 000.

165ZB. Anonymous political donations

Provides a prohibition on accepting anonymous donations of \$1 000 or more.

165ZC. Power of Commission to require information relating to political donations

This section provides the Commission with powers to require the provision of information relating to political donations. The section also contains provisions regarding the admissibility of evidence obtained under this section.

165ZD. Register and disclosures to be published

Requires the Commission to keep registers of political donations, as well as real-time disclosed donations, for 10 years and to publish approved information within 24 hours of receipt.

165ZE. Forfeiture of political donations accepted in contravention of this Division

Provides that a donation received in contravention of this Part must be returned to the donor or, if that is not possible, forfeited to the State.

PART 6D – ELECTION FUNDING

165ZF. Entitlement to election funding

This section sets the rate of public funding for elections at the same level as the Commonwealth. Public funding is the lesser amount of –

- (a) The amount calculated based on the Commonwealth formula (currently \$2.871 per first preference vote); or
- (b) The amount electoral expenditure spent by the party or candidate.

165ZG. Making a claim

Allows for a candidate or party to make a claim for election funding, and specifies the requirements of an application.

165ZH. Deciding claim

This section sets out the process for the Commission to decide whether to accept or refuse a claim for election funding.

165ZI. Reconsideration of decision refusing a claim

Allows for a candidate or party to appeal a decision of the Commission to refuse a claim (in whole or in part).

165ZJ. Making of payments

This section provides for the payment of public funding in the event that an application is accepted. It also allows for the recovery of all or part of the payment as a debt in the event that the person becomes ineligible for the payment.

165ZK. Advance payments

This section allows for an advanced payment to a party or independent candidate of 50% of the entitlement of the previous election. Also contains provisions to deduct this payment from the final entitlement, and for repayment in the event that the final entitlement is lower than a payment received under this section.

165ZL. Miscellaneous

This section provides that in the event that a party and an endorsed candidate of a party make a claim for the same item of election expenditure, the party prevails.

Clause 8: Section 196 substituted (Candidate names not to be used on how-to-vote cards without authority)

This clause replaces the current section 196. The current section prohibits the use of a Candidate's name without their consent. This may be unconstitutional, and inhibits freedom of political communication. The section is replaced with a prohibition on the use of a candidate's name or likeness on how-to-vote cards without the permission of the candidate (with the exception of the Commission).

Clause 9: Section 197 amended (Misleading and deceptive electoral matter)

Consequential to the replacement of section 196, this clause amends section 197 to introduce additional prohibitions for Misleading and deceptive electoral matters. This includes:

- incorrect or misleading information about whether a person is or is not a candidate, a member of, or endorsed by a party;
- the misleading use of the name of a party;
- information that could result in an elector casting an informal vote;
- claiming or implying that voting is not compulsory; or
- information purporting to come from the Electoral Commission; or
- anything else prescribed by regulations.

Clause 10: Section 197A inserted (Misleading advertising)

This clause inserts a new section 197A that introduces an offence of misleading advertising (commonly known as truth in political advertising laws). This section allows for the Commission to order a person, in relation to misleading advertising, to –

- withdraw the advertisement from further publication.
- publish a retraction.
- pay costs for correcting the statement.

Clause 11: Section 199 substituted

This clause substitutes the current section 199 with a new section. This clause largely extends existing offences for Legislative Council elections to Assembly elections and to third parties.

Clause 12: Repeal of Act

The *Electoral Amendment (Integrity of Elections) Act 2021* will be repealed 365 days from the day on which all provisions commence.