

TASMANIA

**ELECTORAL AMENDMENT (INTEGRITY OF ELECTIONS)
BILL 2021**

CONTENTS

1. Short title
2. Commencement
3. Principal Act
4. Section 3 amended (Interpretation)
5. Section 5 amended (Election expenditure)
6. Sections 5A and 5B inserted
 - 5A. Meaning of *gift*
 - 5B. Meaning of *political donations*
7. Parts 6A, 6B, 6C and 6D inserted
 - PART 6A – ELECTORAL EXPENDITURE IN RESPECT OF ASSEMBLY ELECTIONS
 - Division 1 – Election expenditure*
 - 165A. Election agent
 - 165B. Candidate’s expenditure limit
 - 165C. Party’s expenditure limit
 - Division 2 – Expenditure returns*
 - 165D. Candidate’s election expenditure return
 - 165E. Party’s election expenditure return
 - 165F. Commission to check returns
 - 165G. Return available for public inspection

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

PART 6B – THIRD PARTY ELECTORAL EXPENDITURE

Division 1 – Registration of third parties

165I. Requirement for registration

165J. Register of third parties

165K. Application for registration

165L. Deciding application

165M. Obligation to notify change to details

165N. Cancellation of registration

Division 2 – Election expenditure

165O. Agent

165P. Third Party expenditure limit

Division 3 – Expenditure returns

165Q. Third party election expenditure return

165R. Commission to check returns

165S. Return available for public inspection

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

PART 6C – POLITICAL DONATIONS

165U. Interpretation

165V. Register of political donations

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

165X. Limitations on eligibility to make donations

165Y. State campaign account

165Z. General cap

165ZA. Limit on political donations to regulated third parties

165ZB. Anonymous political donations

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

165ZD. Register and disclosures to be published

165ZE. Forfeiture of political donations accepted in contravention

of this Division

PART 6D – ELECTION FUNDING

165ZF. Entitlement to election funding

165ZG. Making a claim

165ZH. Deciding claim

165ZI. Reconsideration of decision refusing a claim

165ZJ. Making of payments

165ZK. Advance payments

165ZL. Miscellaneous

8. Section 196 substituted
 196. Candidate names not to be used on how-to-vote cards without authority
9. Section 197 amended (Misleading and deceptive electoral matter)
10. Section 197A inserted
 - 197A. Misleading advertising
11. Section 199 substituted
 199. Offences relating to electoral expenditure
 - 199A. Offences relating to political donations
12. Repeal of Act

ELECTORAL AMENDMENT (INTEGRITY OF ELECTIONS) BILL 2021

(Brought in by Cassandra Stanwell O'Connor MP)

A BILL FOR

An Act to amend the *Electoral Act 2004* to introduce electoral expenditure limits for Assembly Elections, as well as regulation of political donations, electoral expenditure, third party electoral activities, electoral advertising, and related matters

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 (Integrity of Elections) Act 2021*.

2. Commencement

This Act commences on the day on which this Act receives the Royal Assent.

3. Principal Act

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

*No. 51 of 2004

4. Section 3 amended (Interpretation)

Section 3 of the Principal Act is amended as follows:

- (a) by omitting the definition of *election agent* and substituting the following definition:

election agent means –

- (a) in relation to a candidate or intending Candidate at a Council election, a person appointed under section 158; and
 - (b) in relation to a candidate or intending Candidate at an Assembly election, a person appointed under section 165A; and
 - (c) in relation to a third party, a person appointed under section 165O;
- (b) 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 –

- (d) the allotment of shares in a company; and

- (e) the creation of a trust in property; and
 - (f) the grant or creation of any lease, mortgage, charge, servitude, licence, power, partnership or interest in property; and
 - (g) 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
 - (h) the exercise by a person of a general power of appointment of property in favour of any other person; and
 - (i) 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;
- (c) by omitting "poll;" from paragraph (b) of the definition of *expenditure period* and substituting "poll; or";

Electoral Amendment (Integrity of Elections) Act 2021
Act No. of 2021

s. 4

(d) by inserting the following paragraph after paragraph (b) in the definition of ***expenditure period***:

(c) in the case of an Assembly election –

- (i) if the election is held within 12 months of the commencement of section 4 of the *Electoral Amendment (Integrity of Elections) Act 2021*, the period commencing on the commencement of that Act and ending on the day on which the election is held; or
- (ii) if the election is held at any other time, the period of 12 months ending on the day on which the election is held;

(e) by inserting the following definition after the definition of prisoner:

property includes both real and personal property;

(f) by inserting the following definition after the definition of registered party:

regulated third party means –

- (a) a third party registered for an election under section 165N; and

- (b) a third party required to be registered for an election under section 165I;
- (g) by inserting the following definition after the definition of State roll:

third party means an entity other than a party or a candidate;

5. Section 5 amended (Election expenditure)

Section 5(1) of the Principal Act is amended by omitting the definition of ***election expenditure*** and substituting the following definition:

election expenditure, in relation to an election, means expenditure incurred predominantly for an electoral matter that is for –

- (a) designing, producing, printing, broadcasting or publishing material for an election; or
- (b) the cost of distributing material for an election; or
- (c) carrying out an opinion poll or research; or
- (d) contracted services related to an activity mentioned in paragraph (a), (b) or (c); or
- (e) any other matter prescribed.

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.

5B. Meaning of political donation

- (1) For the purposes of this Act, a political donation is –

- (a) a gift or loan made to or for the benefit of a party; or
 - (b) a gift or loan made to or for the benefit of a Member; or
 - (c) a gift or loan made to or for the benefit of a candidate or an intending candidate; or
 - (d) a gift or loan made to a third party for the purposes of election expenditure; or
 - (e) a gift or loan made to 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 or is intended to be 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 fund-raising 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) An annual or other subscription paid to a party by a member of the party, or 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.
- (4) A gift or loan 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. Parts 6A, 6B, 6C and 6D 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. 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 is \$82 000 in the year 2021 and increases by an additional \$1 000 each subsequent year.
- (3) 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.
- (4) For the purposes of subsection (1), expenditure incurred by the election agent of a candidate is taken to have been incurred by the candidate.

165C. 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 \$820 000 in the year 2021 and increases by an additional \$10 000 each subsequent 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.

Division 2 – Expenditure returns

165D. 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 \$20; and
 - (d) be signed and declared before a justice or a commissioner for declarations; and
 - (e) be lodged with the Commission within 120 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 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 \$20; and
- (d) be signed and declared before a justice or a commissioner for declarations; and
- (e) be lodged with the Commission within 120 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.

165F. Commission to check returns

On receiving a return lodged under section 165D or 165E, 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.

165G. Return available for public inspection

- (1) The Commission is to –

- (a) keep returns under sections 165D and 165E for a period of 10 years; 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)(a), the Commission may cause the returns to be disposed of in an approved manner.

165H. 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 recording, compilation or creation of those records to make a statement providing an explanation of them.

Electoral Amendment (Integrity of Elections) Act 2021
Act No. of 2021

s. 7

- (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 – THIRD PARTY ELECTORAL
EXPENDITURE**

Division 1 – Registration of third parties

165I. Requirement for registration

- (1) A third party must be registered for an election under this part if the election expenditure incurred by, or with the authority of, the third party during the expenditure period for the election exceeds \$6 000.
- (2) For the avoidance of doubt, a third party does not commit an offence against this Act or another Act only because the person fails to register for an election under subsection (1).
- (3) For the purposes of this Act, multiple third parties are considered to be the same third party if –
 - (a) The third parties are subsidiaries, within the meaning of section 46 of the *Corporations Act 2001* of the Commonwealth, of the same third party, including the third party to which others are subsidiaries; or
 - (b) The financial controllers of the third parties are the same, and the election expenditure of the third parties can reasonably be considered to be for the

same, or a substantially similar,
purpose; or

- (c) The majority of board members of the third parties are the same, and the election expenditure of the third parties can reasonably be considered to be for the same, or a substantially similar, purpose; or
- (d) Any combination of (a), (b), or (c) applies.

165J. Register of third parties

- (1) The Commission must, for each election, keep a register of the third parties registered for the election under this part.
- (2) A register kept under subsection (1)—
 - (a) is called the register of third parties for the election for which the register is kept; and
 - (b) must be kept up to date; and
 - (c) may be kept in the way and form the Commission considers appropriate.
- (3) The Commission must publish a register of third parties for an election on the Commission's website.

165K. Application for registration

- (1) A third party that intends to incur election expenditure for an election may apply to the Commission for registration for the election.
- (2) An application under subsection (1) application must –
 - (a) be in the approved form; and
 - (b) include such details as may be prescribed; and
 - (c) be accompanied by an appointment of an individual as the third party's agent under section 165O; and
 - (d) be made to the Commission before the polling day for the election.

165L. Deciding application

- (1) As soon as practicable after receiving a third party's application under section 165K, or an amended application under this section, the Commission –
 - (a) must refuse the application, if the application was not made before the day required under section 165K(2)(d); or
 - (b) may refuse the application, if the application does not conform with the

Electoral Amendment (Integrity of Elections) Act 2021
Act No. of 2021

s. 7

- requirements under section 165K(2)(a),(b) or (c); or
- (c) must approve the application, if it does not refuse the application under paragraph (a) or (b).
- (2) As soon as practicable after approving an application under section subsection (1)(c), the Commission must –
- (a) enter the details about the third party stated in the application in the register of third parties kept for the election under section 165J; and
- (b) give the third party written notice that the third party has been registered for the election.
- (3) A third party is registered for an election on the day on which the details of the third party are entered into the register of third parties under section (2)(a).
- (4) If the Commission decides to refuse the application under subsection (1)(a) or (b), the Commission must give the third party written notice of the decision as soon as practicable advising –
- (a) that the Commission has decided to refuse the application for registration; and
- (b) the reason for the refusal; and

- (c) if the reason for the refusal is the application is incomplete or incorrect – that the third party may –
 - (i) amend the application in the way stated in the notice; and
 - (ii) resubmit the application to the Commission within 30 days after receiving the notice.
- (5) An application that is amended and resubmitted to the Commission under subsection (4)(c) is taken to have been made on the day the original application was made.

165M. Obligation to notify change to details

- (1) If a relevant detail about a third party registered under section 165O(2) changes, the agent of the third party must give the commission notice, in the approved form, about the change within 30 days after the change happens.

Penalty: Fine not exceeding 20 penalty units.

- (2) A person does not commit an offence against subsection (1) if the person has a reasonable excuse.
- (3) In this section –
 - relevant detail*, about a registered third party, means –

- (a) a detail about the third party stated in the party's application under section 165K; or
- (b) if a detail mentioned in paragraph (a) has been the subject of a notice under subsection (1) – the changed detail as stated in the notice.

165N. Cancellation of registration

- (1) The agent of a third party may ask the Commission, in writing, to cancel the third party's registration for an election.
- (2) The Commission must cancel the third party's registration for the election if the Commission is satisfied that the obligations that apply to the third party for the election under this Part have ended.
- (3) If the Commission cancels the registration, the Commission must –
 - (a) record the cancellation and the day of the cancellation in the register; and
 - (b) give the third party notice about the cancellation.
- (4) The cancellation takes effect on –
 - (a) the day the third party receives the notice; or

- (b) a later day stated in the notice.
- (5) If the Commission refuses to cancel the registration, the Commission must give the third party a notice that states the Commission's decision and reasons for the decision.

Division 2 – Election expenditure

165O. Agent

- (1) A third party may appoint a person in writing to be the third party's election agent for an election.
- (2) During any period for which no appointment is in force under subsection (1), the third party's election agent is taken to be –
 - (a) If the third party is an individual, the third party; or
 - (b) If the third party is not an individual, the financial controller of the third party.
- (3) Only one person may hold an appointment as the election agent for a particular third party at any one time.
- (4) The election agent of a third party may incur or authorise expenditure on behalf of that candidate or intending candidate.
- (5) In this section –

financial controller means –

- (a) In the case of a corporation, the secretary of the corporation; or
- (b) In the case of a trustee of a trust, the trustee; or
- (c) In the case of a corporation that is the trustee of a trust, the secretary of the corporation; or
- (d) If paragraphs (a), (b), and (c) do not apply, the person responsible for keeping the financial records of the third party.

165P. Third Party expenditure limit

- (1) A third party must not incur election expenditure exceeding the expenditure limit.
- (2) The expenditure limit for a third party is for an Assembly election is \$82 000 in the year 2021, increasing by an additional \$1 000 each subsequent year.
- (3) If a court convicts a person of an offence against subsection (1) it is to, at the time of conviction, make a finding of the amount by which the person's election expenditure exceeded the expenditure limit.
- (4) For the purposes of subsection (1), expenditure incurred by the election agent of a third party is taken to have been incurred by the third party.

Division 3 – Expenditure returns

165Q. Third party election expenditure return

The election agent of a regulated third party at an 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 third party or paid on behalf of the third party by the third party's election agent; and
 - (ii) all disputed claims and all unpaid claims against the third 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 \$20; and
- (d) be signed and declared before a justice or a commissioner for declarations; and
- (e) be lodged with the Commission within 120 days after the day on which the result of an election is declared, or within such extended period, not

exceeding 30 days, as the Commission may allow.

165R. Commission to check returns

On receiving a return lodged under section 165Q, 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.

165S. Return available for public inspection

- (1) The Commission is to –
 - (a) keep returns under section 165Q for a period of 10 years; 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)(a), the Commission may cause the returns to be disposed of in an approved manner.

165T. 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 recording, compilation or creation 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 6C – POLITICAL DONATIONS

165U. Interpretation

In this part –

authorised deposit-taking institution

means –

- (a) a body corporate that is an ADI for the purposes of the *Banking Act 1959* of the Commonwealth; or
- (b) the Reserve Bank of Australia; or
- (c) a person who carries on State banking within the meaning of paragraph

51(xiii) of the
Commonwealth of Australia
Constitution Act 1900.

disclosable donation means –

- (a) a political donation of \$1 000 or more; and
- (b) any number of political donations from the same donor within a 1 year period that cumulatively amount to \$1 000 or more, made to the political participant;

disclosure period, in relation to a disclosable donation, means –

- (a) in relation to a single donation of \$1 000 or more –
 - (i) if the political donation is received within 7 days before a relevant polling day – 24 hours after the political donation is received;
 - (ii) if the political donation is not received within 7 days before a relevant

Electoral Amendment (Integrity of Elections) Act 2021
Act No. of 2021

s. 7

polling day – the seventh business day after the political donation is received.

- (b) in relation to a number of political donations from the same donor within a 1 year period that cumulatively amount to \$1 000 or more, for the political donation that amounts to or exceeds the cumulative total of \$1 000, and for each subsequent political donation where the cumulative total continues to meet or exceed \$1 000 –
 - (i) if the political donation is received within 7 days before a relevant polling day – 24 hours after the political donation is received;
 - (ii) if the political donation is not received within 7 days before a relevant polling day – the seventh business day after the day the

political donation is received;

general cap means –

- (a) a political donation of \$3 000 or more; and
- (b) any number of political donations from the same donor within a 4 year period that cumulatively amount to \$3 000 or more, made to the political participant;

political participant means

- (a) a candidate in an Assembly or Council election; and
- (b) an intending candidate in an Assembly or Council election; and
- (c) a party; and
- (d) a regulated third party;

relevant polling day means a polling day which –

- (a) in the case of a candidate, or an intending candidate, is a polling day in relation to an election in which they are a

Electoral Amendment (Integrity of Elections) Act 2021
Act No. of 2021

s. 7

candidate or an intending candidate; or

(b) in the case of a party, is a polling day in relation to an election in which the party has an endorsed candidate; or

(c) in relation to a third party, is a polling day in relation to an election in which the third party is registered for, or required to be registered for, under Part 6D;

responsible agent, in relation to a political participant, means –

(a) in relation to a candidate, the candidate's election agent; and

(b) in relation to an intending candidate, the intending candidate's election agent; and

(c) in relation to a party, the party secretary;

(d) in relation to a regulated third party, the regulated third party's election agent;

State campaign account means an account for the purposes of section 165Y.

165V. Register of political donations

- (1) The responsible agent of a political participant must keep a register in an approved form of all political donations made in a financial year to the political participant.
- (2) The responsible agent of a political participant must lodge the register referred to in subsection (1) with the Commission within 7 business days of the end of the financial year to which it relates.

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

The responsible agent of a political participant must disclose to the Commission in an approved form any disclosable donations made to the political participant, within the disclosure period in respect of that disclosable donation.

165X. Limitations on eligibility to make donations

- (1) No person or entity other than a natural person who is a citizen or permanent resident of Australia may make a political donation to a political participant.

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

- (2) A person must not make a political donation to a political participant on behalf of another person or entity.

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

- (3) A person or entity must not provide a gift or loan to a person with the intent of facilitating a political donation to a political participant.

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

- (4) A person or entity must not provide a gift or loan to a second person, who is not a political participant, with the intent of that gift or loan being used for election expenditure by the second person once the second person becomes a political participant.

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

165Y. State campaign account

- (1) The responsible agent of a political participant must keep a State campaign account consisting of a separate account or accounts with an authorised deposit-taking institution for the purpose of elections.

- (2) The responsible agent of a political participant must ensure that each political donation received by a political participant is paid into the State campaign account.
- (3) A political participant, or a responsible agent of a political participant, must ensure that any amount kept in any account for Commonwealth electoral purposes is not paid into the State campaign account.
- (4) The responsible agent of a political participant must ensure that no amount of money for election expenditure is paid for unless the amount is paid from the State campaign account.
- (5) The regulations may prescribe –
 - (a) what other amounts of any kind may be paid into a State campaign account; and
 - (b) what other amounts of any kind must not be paid into a State campaign account.
- (6) After debts have been paid, any amount remaining in a State campaign account of a candidate is to be paid –
 - (a) if a candidate made personal contributions to their State campaign account, they may pay themselves an amount not in excess of the total of any personal contributions they made, and

any balance remaining in the State
campaign account is to be paid –

- (i) if the candidate was not a member of a registered political party, to a charity nominated by the candidate;
or
 - (ii) if the candidate was a member of a party, to the party for payment into its State campaign account; or
- (b) if a candidate has not made personal contributions to their State campaign account –
- (i) if the candidate was not a member of a registered political party, to a charity nominated by the candidate;
or
 - (ii) if the candidate was a member of a party, to the party for payment into its State campaign account.

165Z. General cap

- (1) A political donation made to a political participant must not exceed the general cap.
- (2) A responsible agent of a political participant or a political participant must not accept a political

donation if the political donation would exceed the general cap.

- (3) A responsible agent of a political participant or a political participant may accept a political donation in contravention of subsection (2) if the political donation, or that part of the political donation, that exceeds the general cap is made for Commonwealth electoral purposes and is not paid into the State campaign account of the political participant.
- (4) A contribution by a candidate to their own State campaign account is not included in the general cap in respect of that candidate.
- (5) A contribution made by –
 - (a) an endorsed candidate of a party; or
 - (b) a councillor within the meaning of the *Local Government Act 1993*; or
 - (c) a Member of the Australian House of Representatives or Senate; or
 - (d) a Member of the Council or the Assembly –

to a party of which they are a registered member, is not included in the general cap in respect of that party.

- (6) A political donation to an endorsed candidate of a party must also be included as a donation to the party for the purposes of the general cap.

165ZA. Limit on political donations to regulated third parties

It is unlawful for a person to make political donations to more than 6 regulated third parties during a four-year period, unless the total sum of political donations is lower than an amount equal to six-times the general cap.

165ZB. Anonymous political donations

A political participant, or the responsible agent of a political participant, must not accept a disclosable donation made by a person, unless the name of the person making the political donation is known to the political participant, or the responsible agent of the political participant.

165ZC. 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 199A 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.

165ZD. Register and disclosures to be published

- (1) The Commission is to –
 - (a) keep a register lodged under section 165V for a period of 10 years; and
 - (b) publish those parts of a register lodged under section 165V that are approved for publishing by the Commission as soon as practicable, but in any case no later than 24 hours after receipt.
- (2) The Commission is to –
 - (a) keep the information disclosed under section 165W for a period of 10 years; and
 - (b) publish the details of the information disclosed under sections 165W as soon as practicable, but in any case no later than 24 hours after receipt.
- (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.

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

(1) If a political donation is received that results in the political participant, or the responsible agent of a political participant, contravening section 165X, 165Z, 165ZA or 165ZB of this Act, the political participant, or the responsible agent of a political participant must, as soon as practicable –

- (a) take all reasonable steps to return the political donation; or
- (b) if he or she is unable to return the political donation, forfeit the political donation to the State in a manner that is prescribed.

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

(2) An amount payable under subsection (1)(b) is a debt payable to the State by the political participant and may be recovered by proceedings in a court of competent jurisdiction.

PART 6D – ELECTION FUNDING

165ZF. Entitlement to election funding

- (1) The amount of election funding to which a party or candidate is entitled is the lesser of –
 - (a) the election funding amount calculated under subsection (2); and
 - (b) the amount of electoral expenditure claimed in relation to the party or candidate and accepted by the Commission under section 165ZH.
- (2) The election funding amount is –
 - (c) if the entity entitled to the funding is a party – an amount calculated in accordance with section 293(2) of *Commonwealth Electoral Act 1918*, indexed in accordance with section 321 of the same Act; or
 - (d) if the entity entitled to the funding is a candidate – an amount calculated in accordance with section 294(2) of *Commonwealth Electoral Act 1918*, indexed in accordance with section 321 of the same Act.

165ZG. Making a claim

- (1) A claim for election funding may be made by –
 - (a) a candidate; or

- (b) an agent on behalf of a candidate; or
 - (c) the party secretary on behalf of a party.
- (2) A claim must –
- (a) be in the approved form; and
 - (b) be lodged with the Commission—
 - (i) during the period of 20 weeks after the polling day for the election to which the claim relates; or
 - (ii) within a longer period, before the end of the period specified in paragraph (a), that the Commission determines; and
 - (c) state all election expenditure for which election funding is sought; and
 - (d) contain such details as may be prescribed.

165ZH. Deciding claim

- (1) The Commission must, after receiving a claim under section 165ZG –
- (a) decide whether to accept or refuse the claim, in whole or in part; and

Electoral Amendment (Integrity of Elections) Act 2021
Act No. of 2021

s. 7

- (b) to the extent the Commission accepts the claim, pay the amount required by section 165ZG.
- (2) In deciding whether to accept or refuse a claim under subsection (1) in whole or in part, the Commission must only consider –
 - (a) whether expenditure claimed is election expenditure; and
 - (b) if expenditure claimed is election expenditure, whether the election expenditure was incurred for the election.
- (3) The Commission may, by written notice, require the candidate, agent of the candidate, or party secretary to provide further information the commission reasonably requires to decide whether to accept or refuse the claim.
- (4) If the Commission accepts a claim under this Section, in whole or in part, the Commission must pay the amount determined by section 165ZF.
- (5) If the Commission refuses a claim under this Section, in whole or in part, the Commission must give the candidate, agent of the candidate, or party secretary who made the claim a notice that states –
 - (a) that the claim has been refused, in whole or in part; and

(b) the reasons for the refusal.

165ZI. Reconsideration of decision refusing a claim

- (1) If a claim under section 165ZG is refused, in whole or in part, under section 165ZH, the candidate, agent of the candidate, or party secretary who made the claim may apply to the Commission for the Commission to reconsider the decision.
- (2) An application under subsection (1) must –
- (c) be in writing; and
 - (d) set out the reasons for the application; and
 - (e) be made within –
 - (i) 28 days after the day on which the candidate or relevant agent is notified of the refusal; or
 - (ii) if, either before or after the end of that period of 28 days, the commission extends the period within which the application may be made, the extended period for making the application.

- (3) On receiving an application under this section, the Commission must –
 - (a) reconsider the decision; and
 - (b) decide to –
 - (i) affirm the decision; or
 - (ii) vary the decision; or
 - (iii) set aside the decision and make another decision.
- (4) The Commission must give the candidate, agent of the candidate, or party secretary who made the application a notice stating the decision on the reconsideration together with a statement of the reasons for the decision.
- (5) If the Commission's decision on the reconsideration would require an amount, or an additional amount, of election funding to be paid, the Commission must pay the amount within 20 days after the day of its decision.

165ZJ. Making of payments

- (1) If the Commission is satisfied an amount of election funding claimed by a party secretary is payable to the party, the Commission must pay the amount to the party secretary.
- (2) If the Commission is satisfied an amount of election funding claimed by a candidate or the

candidate's agent is payable to the candidate, the Commission must pay the amount –

- (a) to the candidate or candidate's agent; or
 - (b) if the candidate so nominates, to the party secretary of a party to which to candidate is an endorsed candidate.
- (3) If a payment is made under this part and the recipient is not entitled to receive the whole or a part of the amount paid, whether because of a false statement in a claim or otherwise, the amount or the part of the amount may be recovered by the State as a debt due to the State.

165ZK. Advance payments

- (1) For the purposes of this section, a reference to a candidate does not include an endorsed candidate of a party.
- (2) A party or candidate is, subject to and in accordance with this Act, eligible for an advance payment, for election funding, for election expenditure, of an amount determined in accordance with subsection (3).
- (3) The amount payable for an advance payment is –
 - (a) if the advanced payment is in respect of an Assembly election, an amount equal to 50% of the total amount to which the

party or candidate was entitled in the previous Assembly general election; or

- (b) if the advanced payment is in respect of a Council election, an amount equal to 50% of the total amount to which the party or candidate was entitled in the previous Council election.
- (4) The amount payable by way of an advance payment under this section in relation to an election may be paid, as a lump sum or by way of instalments, at any time after the commencement of the election campaign period in relation to the election.
- (5) Any amount paid to a party or candidate by way of advance payment under this section in respect of an election is to be deducted from the amount payable under section 165ZJ in respect of that election.
- (6) If a party or candidate receives an amount, by way of advance payment under this section in respect of an election, in excess of the amount, if any, to which it becomes entitled under section 165ZJ, the amount of the excess must be repaid to the Commission within 60 days after the day for the return of the writs for that election.
- (7) Any amount received by a party or candidate by way of advance payment under this section in respect of an election must be repaid, on demand by the Commission, to the Commission if –

- (a) the party or candidate does not contest the election; or
 - (b) in the case of a party, before the polling day for the election, the party ceases to operate or be registered or it has been, or is being, dissolved or wound up.
- (8) Any amount required to be repaid under this section may be recovered by the Commission as a debt in any court of competent jurisdiction.

165ZL. Miscellaneous

For this part, if a party and a candidate endorsed by the party both claim to have incurred the same item of election expenditure, the election expenditure is taken to be election expenditure incurred by the party.

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

Section 196 of the Principal Act is repealed and the following section is substituted –

196. Candidate names not to be used on how-to-vote cards without authority

- (1) A person must not between the issue of the writ for an election and the close of poll at that election print, publish or distribute any "how to vote" card which contains the name, photograph

or a likeness of a candidate or intending candidate at that election without the written consent of the candidate.

- (2) Subsection (1) does not apply to any matter printed, published or distributed by the Commission or the Commissioner in the course of promoting public awareness of elections and parliamentary matters.

9. Section 197 amended (Misleading and deceptive electoral matter)

Section 197 of the Principal Act is amended by –

- (a) omitting “vote.” From paragraph (c) and substituting “vote; or”; and
- (b) inserting the following paragraph after paragraph (c) –
- (d) print, publish or distribute electoral matter that –
- (i) contains incorrect or misleading information about whether a person is or is not a candidate, a member of, or endorsed by a party;
- (ii) uses the name or derivative of a name of a party in a way intended to or likely to mislead any elector;

- (iii) could result in an elector casting an informal vote;
- (iv) contains a statement, whether express or implied, to the effect that voting is not compulsory; or
- (v) contains a statement intended or likely to mislead an elector that the material is an official communication from the Electoral Commission or Electoral Commissioner; or
- (vi) does any other thing that may be prescribed.

10. Section 197A inserted (Misleading advertising)

After section 197 of the Principal Act, the following section is inserted in Division 5 of Part 7:

197A. Misleading Advertising

- (1) This section applies to advertisements published by any means (including radio or television).
- (2) A person who authorises, causes or permits the publication of an electoral advertisement (an advertiser) is guilty of an offence if the advertisement contains a statement purporting to be a statement of fact that is inaccurate and misleading to a material extent.

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

- (3) It is a defence to a charge of an offence against subsection (2) to establish that the defendant –
- (a) took no part in determining the content of the advertisement; and
 - (b) could not reasonably be expected to have known that the statement to which the charge relates was inaccurate and misleading.
- (4) If the Commissioner is satisfied that an electoral advertisement contains a statement purporting to be a statement of fact that is inaccurate and misleading to a material extent, the Commissioner may require the advertiser to, within a timeframe specified by the Commissioner, do one or more of the following:
- (a) withdraw the advertisement from further publication; or
 - (b) publish a retraction in specified terms and a specified manner and form; or
 - (c) pay costs of any person reasonably incurred in correcting the inaccurate or misleading statement.

11. Section 199 substituted

Section 199 of the Principal Act is repealed, and the following sections are substituted in Division 6 of Part 7:

199. Offences relating to electoral expenditure

- (1) A person who contravenes section 159, 162, 165D, 165E or 165Q 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 person who contravenes section 160, 165B, 165C or 165P by incurring any amount not exceeding \$1 000 in excess of the expenditure limit provided for in sections 160, 165B, 165C, and 165P respectively, is guilty of an offence.

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

- (3) A person who contravenes section 160, 165B, 165C or 165P by incurring any amount exceeding \$1 000 in excess of the expenditure limit provided for in sections 160, 165B, 165C, and 165P respectively, is guilty of an offence.

Penalty: Fine not exceeding 150 penalty units.

- (4) A person who without reasonable excuse, fails to comply with section 161, 165D, 165E or 165Q 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) If a court finds that a candidate who is successful at an election is guilty of –

(a) an offence under subsection (3) and, in respect of that offence, the court makes a finding that the candidate incurred electoral expenditure that exceeded the expenditure limit by more than \$1 000, the court, if it is satisfied with the correctness of that finding, is to declare that candidate's election void unless the court is satisfied that there are special circumstances that make it undesirable or inappropriate for it to make such a declaration; or

(b) an offence under subsection (4), the court is to declare that candidate's election void unless the court is satisfied that there are special circumstances of the kind referred to in paragraph (a).

(6) A person who, in purported compliance with section 161, 165D, 165E, or 165Q 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.

- (7) A person must not, without reasonable excuse, fail to comply with a requirement made under section 165(1), 165H(1) or 165T(1).

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

- (8) A person who, in purported compliance with a requirement made under section 165(1), 165H(1) or 165T(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.

- (9) In any proceedings for an offence under this section, a copy of a record or part of a record made under section 165(2), 165H(2) or 165T(2), as the case may be, 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.

199A. Offences relating to political donations

- (1) A person who contravenes section 165V or 165W is guilty of an offence.

Penalty: Fine not exceeding 200 penalty units.

- (2) A person who, in purported compliance with section 165V or 165W, 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 who contravenes section 165X, 165Z, 165ZA, or 165ZB is guilty of an offence.

Penalty: Fine not exceeding 200 penalty units.

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

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

- (5) A person who, in purported compliance with a requirement made under section 165ZC(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.

- (6) In any proceedings for an offence against this section, a copy of a record or part of a record made under section 165ZC(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.

12. Repeal of Act

This Act is repealed on the three hundred and sixty fifth day from the day on which all of the provisions of this Act commence.