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THE PARLIAMENT OF THE COMMONWEALTH
OF AUSTRALIA

THE SENATE

COMMONWEALTH ELECTORAL AMENDMENT BILL 1992

EXPLANATORY MEMORANDUM

(Circulated by authority of the
Minister for Administrative Services,
Senator the Honourable Nick Bolkus)

COMMONWEALTH ELECTORAL AMENDMENT BILL 1992

OUTLINE

In December 1991 Part 3 of the *Political Broadcasts and Political Disclosure Act 1991* came into effect. Part 3 of that Act requires disclosure of all amounts received by or on behalf of a registered political party, all payments made by or on behalf of a registered political party, and all debts outstanding as at the end of the financial year and incurred by or on behalf of a registered political party, in returns to be furnished to the Australian Electoral Commission within 8 weeks after the end of the financial year. The first returns to be furnished under these provisions were to cover the period 19 December 1991 to 30 June 1992.

It has become apparent that, to comply with the requirement to disclose, keeping records of every amount received and paid by or on behalf of a registered political party would place an excessive administrative burden on those parties, particularly in areas largely serviced by volunteer workers.

This legislation seeks to alleviate some of the administrative burden on registered political parties by nominating thresholds below which records need not be kept. Total amounts of income, expenditure and debts will still be required to be disclosed and the enhanced spot audit powers will be available to the Commission to enforce the disclosure provisions. The Bill also amends the commencement of the operation of more detailed disclosure requirement so that the first returns to be furnished will cover the period 1 July 1992 to 30 June 1993. This will afford political parties a better opportunity to ensure administrative procedures are in place to enable completion of returns.

The major provisions of the Bill are designed to:

- . amend the date of effect of the requirement for annual returns by registered political parties so that the first returns are due to be furnished 20 weeks after 30 June 1993.
- . decrease the administrative burden on registered political parties by providing that amounts of less than \$100 received from a person or organisation at a fund raising event need not be recorded in annual returns.
- . decrease the administrative burden on registered political parties by providing that payments of amounts less than \$100 need not be recorded in annual returns.
- . increase the time for agents to complete and furnish annual returns from 8 weeks after the end of the financial year to 20 weeks after the end of the financial year.
- . allow agents furnishing returns to use the provisions of Section 318 if necessary. This enables those who are unable to submit a complete return because someone else is in possession of the relevant information to nominate that person to the Commission and fulfil their obligations under the Act.
- . provide that political parties not included in the Register of Political Parties are treated as "third parties" for disclosure purposes.
- . ease the administrative burden on registered political parties by providing that financial records relating to minor fund raising events such as raffles are not required.
- . provide power to make ancillary regulations which can prescribe subtotals which must be set out in political party annual returns of total income, expenditure and debts.

FINANCIAL IMPLICATIONS

Nil

NOTES ON CLAUSES

Clause 1 - Short Title

1. Clause 1 provides for the short title and specifies that references to the Principal Act mean the *Commonwealth Electoral Act 1918*.

Clause 2 - Commencement

2. Clause 2 provides that the Act commences on the day on which it receives the Royal Assent.

Clause 3 - Interpretation

3. Clause 3 amends the Interpretation Provisions for Part XX in Section 287 of the Principal Act. The definition of "disclosure period" in relation to an election in the case of political parties is deleted. It is no longer required because the requirement for registered political parties to furnish returns following an election is to be replaced by registered political parties making annual returns.

4. The definition of disclosure period in relation to "third parties" is amended to provide that the disclosure period refers to the period between general elections and that it refers to the new Section 305A.

5. The words "donor" and "donee" are removed from the definition of "gift" as they are not referred to in any other section and do not add to the understanding of the meaning of "gift".

6. The definition of "registered industrial organisation" relates to Sections 304, 305, 305A and 306.

Clause 4 - Campaign committee to be treated as part of State branch of party

7. Clause 4 amends Section 287A(1) so that a campaign committee will be treated as part of a State branch of a party for the purposes of new division 5A, as it has been for the purposes of Divisions 4 and 5 in the Principal Act.

Clause 5 - Responsibility for action when agent of party or branch dead or appointment vacant.

8. Clause 5 ensures that the deeming provisions in Section 292B, allowing for the executive of a party or branch to be required to furnish returns where no agent has been appointed or the appointed agent dies, extend to annual returns under Division 5A.

Clause 6 - Disclosure of Gifts

9. Clause 6 provides that Section 304(4)(a) is amended so that the names and addresses of the executive committee members of a registered industrial organisation need not be reported under this legislation as they can already be ascertained through inspection of the relevant Industrial Register in the same way that Directors of Companies can be identified by reference to Company registers.

Clause 7 - Expenditure incurred for political purposes

10. Clause 7 amends Section 305(1) so that only registered political parties can take advantage of the exemption from making a return in Section 305(1). Previously political parties (whether registered or not) could do so. The effect is that unregistered political parties will be treated as "third parties" for the purpose of disclosing details of gifts received.

11. Section 305(3)(a)(iii) is amended to close a potential loophole in the existing legislation which would have allowed a gift by a "third party" made to a political party on condition that it be used for a purpose other than a purpose related to an election or by-election, to be excluded from the disclosure requirements.

12. Section 305(3)(b)(i) is amended for the same reason as Section 304(4)(a).

13. Section 305(4) is amended to make clear that the qualifier "in relation to an election" applies to the disclosure period, not gifts.

14. Section 305(5) is a transitional provision which ensures that "third parties" are not in breach of the Act through failure to return details of a gift made before 1 July 1992, where such details were not required prior to enactment of the *Political Broadcasts and Political Disclosures Act 1991*.

Clause 8 - Donations to candidates and political parties

15. Clause 8 inserts a new Section 305A which requires a person making a donation over a specified amount to a political party, candidate or any person or body specified by the Electoral Commission by notice in the Gazette, during the disclosure period, to furnish a return to the Electoral Commission. Such returns are to be furnished within 15 weeks after polling day and must contain particulars of the gifts made similar to those required of registered political parties in their annual returns.

Clause 9 - Certain gifts not to be received

16. Clause 9 amends Section 306(2B)(a) for the same reason as Section 304(4)(a).

Clause 10 - Interpretation

17. Clause 10 repeals subsection 308(1)(h) which is now covered by new Section 305A.

Clause 11 - Returns of Electoral Expenditure

18. Clause 11 amends Section 309 for the same reason as the amendment to Section 305(1) and also provides that unregistered political parties will be treated as 'third parties' for the purpose of disclosure.

19. Sections 5 to 8 are repealed as they related to subsection 308(1)(h) now covered in Section 305A. New Section 309(5) requires "third parties" to furnish returns of electoral expenditure on those items listed in Section 308 to be reported in the same manner as for candidates.

Clause 12 - Repeal of Division 5A and substitution of new Division 5A

20. Clause 12 replaces division 5A concerning annual returns of income and expenditure with provisions designed to reduce the administrative burden imposed on political parties in complying with the disclosure requirements.

21. Section 314AA inserts a definition of "amount" to ensure that gifts-in-kind are included in returns in addition to monetary amounts received or paid. It also provides for various classes of events to be prescribed as fund raising events for the purposes of Section 314AC(2).

22. Section 314AB will require agents of registered political parties and agents of State branches of registered political parties to furnish returns to the Commission within 20 weeks after the end of each financial year. The returns, to be in an approved form, must set out total amounts received and paid by or on behalf of the party during the financial year and the total

amount of all debts incurred by or on behalf of the party outstanding as at the end of the financial year.

23. Section 314AC, AD and AE provide that certain particulars must or need not be provided in particular circumstances, as follows.

24. For amounts received, Section 314AC provides for reporting of details of receipts from a person or organisation of \$1500 or more in a financial year. It also provides that amounts received from a person or organisation, not exceeding \$100, in the course of a fund-raising event need not be counted. This exemption is to simplify the administrative burden on political parties by eliminating reporting of small amounts and the need to keep records thereof. The section specifies the details to be provided in relation to amounts received in excess of the disclosure threshold and also provides for disclosing particulars of names and addresses of members of the executive committee of unincorporated associations or of trustees of a fund or foundation where apposite.

25. In relation to amounts paid by registered political parties, Section 314AD makes similar provisions in relation to the details required to be reported. It does, however, exclude reporting of amounts paid in the nature of salary or wages. This is intended to preserve the privacy of employees of a political organisation. Payments of amounts less than \$100 are also excluded from the reporting requirements to simplify the administrative burden on political parties.

26. Section 314AE will require particulars of outstanding debts where the sum exceeds \$1500 and, like Sections 314AC and 314AD, will also require that relevant particulars in relation to unincorporated associations, trusts or foundations other than registered industrial organisations be listed in returns where such organisations are creditors of a political party at the end of the financial year.

27. Section 314AF will provide that returns are not to include lists of party membership.

28. Section 314AG will allow the making of regulations to require provision of greater detail in annual returns.

Clause 13 - Interpretations

29. Clause 13 amends Section 314A to enable an agent lodging an annual return under Division 5A to take advantage of the provisions of Section 318. These allow an agent who is unable to complete a return because some other person will not or has not provided some necessary particulars to lodge the return completed to the extent possible and to advise the Commission of the particulars which could not be obtained. In such circumstances the Commission is required to serve notice on the person identified by the agent as having the particulars requiring that person to provide the particulars to the Commission. The agent is not liable to prosecution for furnishing an incomplete return where the provisions of Section 318 have been properly applied.

Clause 14 - Inability to complete returns

30. Clause 14 amends the operation of Section 318 for the same reason as Clause 11 amends Section 314A and ensures that the provisions of Section 318 apply to annual returns.

Clause 15 - Inspection and supply of copies of claims and returns

31. Clause 15 amends Section 320 to provide that annual returns furnished under the provisions of Division 5A be made available for public inspection after the end of January in the year following the year in which the return is made.



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