

1995

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

COMMONWEALTH ELECTORAL AMENDMENT BILL (NO. 2) 1994

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Administrative
Services, the Honourable Frank Walker, QC, MP)

THIS MEMORANDUM TAKES ACCOUNT OF AMENDMENTS MADE BY THE HOUSE
OF REPRESENTATIVES TO THE BILL AS INTRODUCED

COMMONWEALTH ELECTORAL AMENDMENT BILL (NO. 2) 1994

OUTLINE

In June 1994 the Joint Standing Committee on Electoral Matters (JSC) presented its interim report entitled *Financial Reporting by Political Parties*. The report flowed from the Committee's resolution in May 1994 to take further evidence on the funding and disclosure provisions of the *Commonwealth Electoral Act 1918*.

This Bill amends the *Commonwealth Electoral Act 1918* to give effect to the recommendation made in the JSC's interim report which have been accepted by the Government. The amendments provide that:

- . registered political parties will not have to report minute details of financial transactions in annual returns;
- . registered political parties will be required to furnish a Return of Electoral Expenditure within 15 weeks after polling day in an election;
- . donors to registered political parties will report annually to the Australian Electoral Commission, to bring them in line with party reporting requirements;
- . the agent of a registered political party will have a right to attend compliance investigations into local party units;
- . organisations, such as trust funds, which are closely related to registered political parties will be required to furnish annual returns to the Australian Electoral Commission and will be required to detail the source of capital where income derived has been used wholly or mainly for the benefit of a political party;
- . an anomaly which prevents any person other than the person who furnished a return from having that return amended, will be removed to enable the current party agent to make the request for amendment;
- . election funding payments will be paid on a multiple of votes gained;
- . a minimum of 95% of the election funding entitlement calculated on the 20th day after polling day will be paid as soon as practicable after that date, the balance to be paid as soon as possible after the finalisation of counting;
- . the rate for election funding will be amended so that a Senate vote will be funded at the same rate as a House of Representatives vote and the rate will be increased to \$1.50 per vote (indexed); and
- . payments of election funding entitlements will also be able to be made to the National Secretariat of a registered political party.

The major provisions of the Bill are designed to:

- . facilitate the completion of annual disclosure returns by registered political parties by making them less complex;
- . ensure that there is a cross check of donations by having donors returns cover the same time frame as party returns;

- . tighten a possible loophole by requiring annual returns from entities related to registered political parties;
- . recognise that campaigning for the Senate is as expensive as campaigning for the House of Representatives by making the rate of funding equal for both houses;
- . recognise that the cost of election campaigning has increased substantially by increasing the election funding rate;
- . recognise that national secretariats of registered political parties incur campaign costs by enabling them to receive election funding payments in accordance with a notice lodged with the Electoral Commission by the registered officers of the national organisation and the State branch(es) of the party;
- . change the process of election funding to payment based simply on a multiple of votes gained;
- . introduce a requirement for registered political parties to furnish returns detailing actual electoral expenditure;
- . require the Electoral Commission to calculate the election funding entitlements on the 20th day after polling day in an election and arrange payment of a minimum of 95% of that amount as soon as possible;
- . facilitate the attendance of a party agent at compliance investigations of local branches; and
- . enable a party agent to request that an amendment be made to a return.

The Bill also contains transitional provisions relating to associated entities and returns by donors. These provisions are necessary to avoid the new reporting requirements of associated entities having a retrospective effect and to facilitate the change in reporting requirements of donors from a post election to an annual basis.

FINANCIAL IMPACT STATEMENT

The increase in the rate of election funding amendments will give rise to an additional cost estimated at \$14.656 million based on 1993 election figures for a House of Representatives and half Senate election. Based on the 1993 election payments, an additional cost of \$34 000 will be associated with the new scheme. In addition, the Electoral Commission estimates that an additional \$100 000 per year will be required for additional staff and administrative costs to process and administer the additional returns expected to be furnished with an extra \$25 000 in an election year.

NOTES ON CLAUSES

Clause 1 - Short title, etc

1. This clause provides for the Act to be cited as the *Commonwealth Electoral Amendment Act 1995* and specifies that references to the Principal Act mean the *Commonwealth Electoral Act 1918*.

Clause 2 - Commencement

2. This clause provides that the Act shall come into operation on the day it receives Royal Assent.

Clause 3 - Amendments

3. This clause provides for the amendments set out in the Schedule to be made to the Principal Act.

Clause 4 - Application of amendments

4. This clause provides that the amendments made by specified items of the Schedule apply to the financial year that ends on 30 June 1995 and to all later financial years.

Clause 5 - Transitional - gifts to political parties

5. This clause provides that:

- gifts made to a registered political party between 12 April 1993 and the day on which the Act commences and which totalled \$4500 or more; and
- gifts made to a registered political party between the day after the day on which the Act commences and 30 June 1995 and which total \$1500 or more

are to be listed in a return furnished after the financial year ending on 30 June 1995.

6. This transitional provision is required to allow for the changed reporting requirements of donors from election based reporting to annual reporting and to ensure that reporting of donations under new section 305B(2) will not be retrospective.

Clause 6 - Transitional - returns by associated entities

7. This clause provides that the first returns by associated entities will cover the period from the day on which the Act commences until 30 June 1995.

8. This provision covers the introductory year of the new requirement that entities closely associated with registered political parties furnish annual returns similar to those furnished by parties.

SCHEDULE - AMENDMENTS OF THE PRINCIPAL ACT

Item 1 - Interpretation

9. This item amends subsection 287(1) by inserting definitions of "associated entity", "entitlement", "entity" and "financial controller". The definition of "entitlement" is for the purpose of ascertaining the amount payable under proposed new subsection 299(5D). The other definitions refer to the introduction by this Bill of a requirement for associated entities to furnish annual returns.

Item 2 - Paragraph 290(3)(a)

10. This item deletes the reference to a claim from subsection 290(3)(a). It is a consequential amendment.

Item 3 - Repeal section 293

11. This item repeals section 293 which defines electoral expenditure which could be used to support an election funding claim. Repeal of this section is a consequence of the change from a reimbursement scheme to a direct payment scheme.

Item 4 - General entitlement to funds

12. This item omits subsections 294(1),(2) and (3) which set different election funding rates for House of Representatives and Senate elections. It substitutes new subsections which provide that the same rate of election funding will be payable for both houses and increases the amount payable to \$1.50 per formal first preference vote (indexed).

Items 5, 6, and 7 - Repeal section 295, 296, and 298

13. These items repeal sections 295, 296 and 298 relating to claims for election funding payments. Eligible political parties, candidates and Senate groups will be paid their full entitlement based on the first preference votes polled.

Items 8, 9, 10, 11 - Making of payments

14. These items omit references to a claim in subsections 299(1), (2), (3) and (4).

Item 12 - Making of payments

15. This item omits from subsection 299(5) reference to the time the relevant claim was lodged and substitutes 'before the 20th day after polling day' as the deadline for lodging an agreement dividing the election funding payment in respect of a Senate group jointly endorsed by two registered parties.

Item 13 - Making of payments

16. This item inserts after subsection 299(5) new subsections 299(5A), (5B), (5C) and (5D).

17. Proposed new subsection 299(5A) enables a notice to be lodged with the Electoral Commission requesting that election funding payments that would otherwise be made to the agent of a registered political party specified in the notice are to be paid instead to the agent of another registered political party specified in the notice.

18. Proposed new subsection 299(5B) requires the notice to be signed by the registered officer of each of the registered political parties and provides that such a notice can only be withdrawn by a further notice lodged with the Electoral Commission and signed by the registered officer of each of the parties.

19. Proposed new subsection 299(5C) requires payments to be made in accordance with the notice for elections held between the lodgement and withdrawal (if any) of the notice.

20. Proposed new subsection 299(5D) requires the Electoral Commission to pay at least 95% of the entitlement, calculated on the basis of votes counted as at the 20th day after polling day in an

election, as soon as possible after that date and to pay the balance as soon as possible after the full entitlement is known.

Item 14 - Making of payments

21. This item omits the reference to a claim in subsection 299(6).

Item 15 - Repeal section 299A

22. This item repeals section 299A which relates to revoking determination of claims and which becomes irrelevant under the amended payment provisions.

Item 16 - Death of candidate

23. This item is a consequential amendment which omits reference to the making of a claim in section 300 relating to the death of a candidate.

Item 17 - Death of member of group

24. This item is a consequential amendment which omits reference to making of a claim in section 301 relating to the death of a member of a Senate group.

Item 18 - Expenditure incurred for political purposes

25. This item amends subsection 305(1) to provide that associated entities are not required to furnish returns in accordance with section 305.

26. This amendment is consequential to the insertion of proposed new section 314AEA which will require such organisations to furnish more detailed returns.

Item 19 - Donations to candidates etc.

27. This item amends subsection 305A(1) to provide that associated entities are not required to furnish returns in accordance with section 305A. This amendment is consequential to the insertion of proposed new section 314AEA which will require such organisations to furnish more detailed returns.

Item 20 - Omit paragraph 305A(1)(a)

28. This item omits paragraph 305A(1)(a). The effect is to eliminate the requirement for donors to registered political parties to furnish returns within 15 weeks after polling day in an election. This amendment is consequential to the insertion of proposed new section 305B.

Item 21 - Omit paragraph 305A(2)(a)

29. This item omits paragraph 305A(2)(a). The effect is to eliminate the circumstances under which donors to registered political parties are required to make returns. This amendment is consequential to the insertion of proposed new section 305B.

Item 22 - Donations to political parties

30. This item inserts a new section after section 305A.

31. New section 305B provides that donors of gifts totalling \$1500 or more to the same registered political party or the same State branch of a registered political party during a financial year must furnish a return showing details of the donations made. Where a donation is made to any person

or body with the intention of benefiting a particular registered political party or State branch of a registered political party the gift is deemed to have been made directly to that party or branch. The return must be made to the Australian Electoral Commission within 20 weeks after the end of the financial year. This section applies whether one gift of \$1500 or more or a number of gifts totalling \$1500 or more are made during the financial year.

32. The amendment changes the reporting requirement of donors to registered political parties from election based returns to annual returns. This will enable returns from donors and recipients to more closely correspond, therefore enabling a greater degree of cross-checking. The previous threshold of \$4500 was calculated as \$1500 per year over an anticipated 3 year period. The \$1500 threshold contained in this amendment reflects this and corresponds with the detailed reporting threshold of registered political parties.

Item 23 - Interpretation

33. This item deletes from subsection 308(1) consultant's or advertising agent's fees as categories of electoral expenditure to be disclosed in post-election returns and substitutes the cost of direct mail campaigns.

Item 24 - Returns of electoral expenditure

34. This item inserts before subsection 309(1A) a new subsection 309(1) which requires the agents of registered political parties and State branches of registered political parties to furnish returns of electoral expenditure incurred in relation to an election. Returns are required to be furnished within 15 weeks after polling day in an election.

Item 25 - Returns of electoral expenditure

35. This item amends subsection 309(4) by adding an associated entity to the persons who may authorise electoral expenditure during an election period without being required to furnish a return under section 309. This amendment is consequential to the insertion of proposed section 314AEA which will require such persons to furnish more detailed returns.

Item 26 - Nil returns

36. This item adds to section 313 a new subsection which requires registered political parties and their State branches to furnish 'Nil' returns if they did not incur any electoral expenditure.

Item 27 - Annual returns by registered political parties

37. This item amends the heading of Division 5A of Part XX to include associated entities.

Item 28 - Interpretation

38. This item omits subsections 314AA(2) and (3). The effect is to delete the reference to fund-raising events for the purpose of reporting amounts received by registered political parties. It is consequential to the recommendation that annual returns no longer require the categorisation of amounts received and paid.

Item 29 - Annual returns by registered political parties

39. This item amends section 314AB to reduce the time for party agents to furnish returns from 20 weeks after the end of the financial year to 16 weeks after the end of the financial year. The reduction reflects the decreased detail required to be included in returns and will allow the Australian Electoral Commission additional time to process the returns prior to public inspection.

Item 30 - Amounts received

40. This item amends subsection 314AC(2) to provide that for the purpose of calculating whether an amount received is required to be listed in an annual return, amounts less than \$500 do not need to be included. The effect will be to simplify the record keeping requirements at all levels of the party organisation.

Item 31 - Amounts received

41. This item amends subsection 314AC(3) so that every amount making up a sum received is no longer required to be reported in an annual return. The effect of this amendment is to greatly reduce the amount of detail to be included in an annual return.

Item 32 - Amounts paid

42. This item amends paragraph 314AD(2)(a) to provide that for the purpose of calculating whether an amount paid is required to be listed in an annual return, amounts less than \$500 do not need to be included. The effect will be to simplify the record keeping requirements at all levels of the party organisation.

43. This item increases the disclosure threshold from \$100 to \$500.

Item 33 - Amounts paid

44. This item amends subsection 314AD(3) so that every amount making up a sum paid is no longer required to be reported in an annual return. The effect of this amendment is to greatly reduce the amount of detail required to be included in an annual return.

Item 34 - Annual returns by associated entities

45. This item inserts new section 314AEA after section 314AE.

46. New subsection 314AEA(1) provides that the financial controller of an associated entity must furnish an annual return if at any time during the financial year the entity was an associated entity. The annual return must show total amounts received by, or on behalf of, the entity during the financial year; the total amount paid by, or on behalf of, the entity during the financial year and if the entity is an associated entity at the end of the financial year, the total outstanding amount at the end of the financial year of all debts incurred by, or on behalf of, the entity.

47. New subsection 314AEA(2) provides that amounts received or paid during any period when the entity was not an associated entity are not required to be reported in the annual return.

48. New subsection 314AEA(3) provides that where an amount required to be reported in an annual return by the financial controller of an associated entity was paid to or for the benefit of one or more registered political parties and was paid out of funds generated from capital of the associated entity, details of each person who contributed to that capital must be included in the return.

49. New subsection 314AEA(4) provides that once details of the contributor of a particular contribution to a capital fund have been reported those details need not be reported in a subsequent return. Details of the contributor will be reported in future returns only if further contributions are made.

50. New subsection 314AEA(5) provides that the detail to be shown in an annual return furnished by the financial controller of an associated entity must be similar to the details required to be provided by the agent of a registered political party.

Item 35 - Regulations

51. This item inserts a new subsection in section 314AG to provide that regulations may be made which reduce the amount of detail required to be shown in an annual return by the financial controller of an associated entity.

Item 36 - Investigation etc.

52. This item amends subsection 316(2A) to provide that the financial controller of an associated entity may be subject to compliance investigation by an officer authorised by the Electoral Commission. The effect of this is to place the financial controller of an associated entity subject to the same compliance investigation procedures as an agent of a registered political party.

Item 37 - Investigation etc.

53. This item inserts a new paragraph after paragraph 316(2A)(a) to provide that notice of a compliance investigation may be served on the financial controller of an associated entity. This amendment is consequential to Item 18.

Item 38 - Investigation etc.

54. This item amends subsection 316(2A) to provide that a notice served by an authorised officer of the Electoral Commission may require a financial controller to produce books and documents or give evidence for purposes relating to a compliance investigation. This amendment is consequential to Item 19.

Item 39 - Investigation etc.

55. This item inserts two new subsections after subsection 316(2A).

56. New subsection 316(2B) provides that where a notice relating to a compliance investigation has been served on an officer of a registered political party other than the agent, the agent may attend the investigation or nominate another person to attend on behalf of the agent. The effect of this amendment will be to enable an agent, or the nominee of an agent, to attend compliance investigations of local party units.

57. New subsection 316(2C) provides that if the agent or the nominee of the agent elects not to attend the compliance investigation of a local party unit the powers of the authorised officer to conduct proceedings are not affected.

Item 40 - Amendment of returns

58. This item inserts a new subsection after subsection 319A(2).

59. New subsection 319A(2A) provides that a request to amend a return may be made either by the person who furnished the return or by the current registered agent of the political party. This corrects an anomaly in the Act which only allowed the person who furnished a return to request that an amendment be made to the return; this caused difficulties where that person no longer held the position of party agent.

Item 41 - Inspection and supply of copies of returns

60. This item omits subsections 320(4) and (5) and substitutes new subsections. The effect of new subsection 320(4) is that those returns furnished in relation to an election will be made available for public inspection 24 weeks after polling day in that election.

61. Under new subsection 320(5) returns furnished annually will be made available for public inspection in February of the calendar year after the returns are furnished.

Item 42 - Indexation

62. This item amends subsection 321(1) which defines the "relevant amount" for election funding. It is a consequential amendment reflecting the proposed increase in election funding entitlement.

Item 43 - Indexation

63. This item amends the definition of "relevant period" in subsection 321(1) as a consequence of the amendment to increase the base level of the election funding amount.

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