

2011

THE LEGISLATIVE ASSEMBLY  
FOR THE AUSTRALIAN CAPITAL TERRITORY

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(As presented)

(Mrs Vicki Dunne)

## Electoral (Election Finance Reform) Amendment Bill 2011

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# **Electoral (Election Finance Reform) Amendment Bill 2011**

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## **A Bill for**

An Act to amend the *Electoral Act 1992*, and for other purposes

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The Legislative Assembly for the Australian Capital Territory enacts as follows:

**1 Name of Act**

This Act is the *Electoral (Election Finance Reform) Amendment Act 2011*.

**2 Commencement**

This Act commences on 1 January 2012.

*Note* The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

**3 Legislation amended**

This Act amends the *Electoral Act 1992*.

*Note* This Act also amends the following legislation (see sch 1):

- *Electoral Regulation 1993*
- *Referendum (Machinery Provisions) Act 1994*.

**4 Offences against Act—application of Criminal Code etc  
Section 3A**

*insert*

- s 205C (Offence—exceeding expenditure caps)
- s 205D (Offence—recklessly exceeding expenditure caps)
- s 205E (Offence—acting in concert to avoid expenditure caps)
- s 205F (Certain gifts not to be received)
- s 205G (Prohibition on indirect gifts to avoid statutory limit)

**5 Part 14 heading**

*substitute*

**Part 14 Election funding, expenditure,  
records and financial disclosure**

**6 Definitions for pt 14**  
**Section 198, new definition of *affiliation fee***

*insert*

***affiliation fee*** means an amount payable by an entity to a party to become affiliated with the party whether or not the amount is called an affiliation fee.

**Examples**

1 a 'supporters fee' paid by a union to a party

2 a 'collegiate contribution' paid by an employer organisation to a party

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

**7 Section 198, definition of *associated entity***

*substitute*

***associated entity*** means an entity that—

(a) for a party—

(i) is controlled by the party; or

(ii) operates completely or to a significant extent for the benefit of the party; or

(iii) is affiliated or associated (however described) with a party in a way that allows the entity to be directly involved in the development of policy or the selection of a candidate for a party; or

(iv) pays an affiliation fee to the party; or

(b) for an MLA or a candidate—

(i) is controlled by the MLA or the candidate; or

(ii) operates completely or to a significant extent for the benefit of the MLA or the candidate; or

- (iii) is affiliated or associated (however described) with the MLA or the candidate in a way that allows the entity to be directly involved in the development of policy for the MLA or the candidate.

## **8 Section 198, new definitions**

*insert*

***called***, for an election, means the day that the election day is—

- (a) specified under the Self-Government Act; or
- (b) determined under this Act.

***capped expenditure period*** means—

- (a) for an ordinary election—the period starting on 1 January in the year in which the ordinary election is required and ending on the polling day for the election in that year; or
- (b) for an extraordinary election—the period starting on the day the extraordinary election is called and ending on the polling day for the election.

***electoral expenditure***, for an election, means expenditure incurred on—

- (a) producing, broadcasting, publishing or displaying an electoral advertisement; or
- (b) electoral matter (other than an electoral advertisement); or
- (c) consultant's or advertising agent's fees for services or material relating to the election.

## **9 Section 198, definition of *gift*, paragraph (b)**

*substitute*

- (b) a payment under division 14.3 (Election funding) or 14.3A (Administrative expenditure funding); or



**10 Section 198, definition of *gift*, paragraph (d)**

*omit*

Disclosure of donations

*substitute*

Gifts and certain loans—records and disclosure

**11 Section 198, new definitions**

*insert*

***non-party candidate grouping***, for a candidate who is not a party candidate, means—

- (a) the candidate; and
- (b) an associated entity of the candidate.

***party grouping***, for a party, means—

- (a) the party; and
- (b) an MLA for the party; and
- (c) a party candidate for the party; and
- (d) an associated entity of the party; and
- (e) an associated entity of an MLA for the party; and
- (f) an associated entity of a party candidate for the party.

***party MLA*** means an MLA who is a member of a party.

***relevant person***, for a third-party campaigner, means—

- (a) if the third-party campaigner is a person—the third-party campaigner; or
- (b) in any other case—the person responsible for maintaining the financial records of the third-party campaigner.

*third-party campaigner—*

(a) means a person or entity that incurs more than \$1 000 in electoral expenditure in a capped expenditure period for an election; but

(b) does not include a party, MLA, candidate, party grouping or non-party candidate grouping.

**12      Activities of campaign committees**  
**Section 200 (1)**

*omit*

Disclosure of donations

*substitute*

Gifts and certain loans—records and disclosure

**13      Disclosure periods**  
**Section 201 (2) (c)**

*omit*

for a person to whom, or body to which, section 220 or 221 applies

*substitute*

for a third-party campaigner to which section 220 applies

**14 New section 202A***in division 14.1, insert***202A When person or entity *incurs* electoral expenditure—pt 14**

For this part, a person or entity *incurs* electoral expenditure when the service or product that constitutes the electoral expenditure is provided or delivered.

**Examples**

- 1 Electoral expenditure on an electoral advertisement is incurred when the advertisement is broadcast.
- 2 Electoral expenditure on electoral matter is incurred when the matter is distributed.

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

**15 New divisions 14.2A and 14.2B***insert***Division 14.2A Limitations on election expenditure****205A Meaning of *expenditure cap*—div 14.2A**

- (1) For this division, the *expenditure cap* for a capped expenditure period for an election is—
  - (a) for a party grouping—\$60 000, or, if an amount is declared under subsection (2), the declared amount, multiplied by the lesser of—
    - (i) the number of seats in the Legislative Assembly; and
    - (ii) the number of party candidates for the party for the election; or

- 1 (b) for an MLA who is not a party MLA and an associated entity  
2 of the MLA—\$120 000, or, if an amount is declared under  
3 subsection (2), the declared amount; or
- 4 (c) for a non-party candidate grouping—\$120 000, or, if an  
5 amount is declared under subsection (2), the declared amount;  
6 or
- 7 (d) for a third-party campaigner—\$30 000, or, if an amount is  
8 declared under subsection (2), the declared amount.
- 9 (2) The commissioner must, before 1 December each year, declare a  
10 CPI indexed expenditure cap for subsection (1) (a) to (d), worked  
11 out under section 205B.
- 12 (3) A declaration is a notifiable instrument.
- 13 *Note* A notifiable instrument must be notified under the Legislation Act.
- 14 (4) Subsection (2) does not apply in relation to the capped expenditure  
15 period starting on 1 January 2012.
- 16 (5) This subsection and subsection (4) expire on 1 January 2016.

17 **205B Working out expenditure cap indexation**

- 18 (1) For section 205A (2), the CPI indexed expenditure cap is worked  
19 out as follows:
- EC + (EC × CPI percentage increase)
- 20 (2) If the calculation in subsection (1) results in a reduction of the  
21 expenditure cap, the commissioner must declare that the expenditure  
22 cap is the same amount as the expenditure cap in the previous year.
- 23 (3) If the calculation in subsection (1) results in an expenditure cap that  
24 is not a multiple of \$5, the commissioner must round up the CPI  
25 indexed expenditure cap to the next whole dollar amount that is a  
26 multiple of 5.

- 1 (4) In this section:
- 2 *CPI* means the all groups consumer price index number, being the
- 3 weighted average of the 8 capital cities, published by the Australian
- 4 statistician.
- 5 *CPI percentage increase*, for a year, means the annual percentage
- 6 increase in the CPI from the September quarter of the previous year
- 7 to the September quarter in the year the calculation is made.
- 8 *EC* means—
- 9 (a) in the first year—the relevant expenditure cap amount
- 10 mentioned in section 205A (1) (a) to (d); and
- 11 (b) in a later year—the amount worked out under subsection (1)
- 12 for the previous year.
- 13 **205C Offence—exceeding expenditure caps**
- 14 (1) The registered officer of a party commits an offence if—
- 15 (a) the party grouping for the party incurs electoral expenditure in
- 16 a capped expenditure period for an election; and
- 17 (b) the total amount of the expenditure is more than the
- 18 expenditure cap for the party grouping for the capped
- 19 expenditure period for the election.
- 20 Maximum penalty: 100 penalty units.
- 21 (2) An MLA who is not a party MLA commits an offence if—
- 22 (a) the MLA or an associated entity of the MLA incurs electoral
- 23 expenditure in a capped expenditure period for an election; and
- 24 (b) the total amount of the expenditure is more than the
- 25 expenditure cap for the MLA and an associated entity of the
- 26 MLA for the capped expenditure period for the election.
- 27 Maximum penalty: 100 penalty units.

- 1           (3) A candidate who is not a party candidate commits an offence if—
- 2               (a) the non-party candidate grouping for the candidate incurs
- 3               electoral expenditure in a capped expenditure period for an
- 4               election; and
- 5               (b) the total amount of the expenditure is more than the
- 6               expenditure cap for the non-party candidate grouping for the
- 7               capped expenditure period for the election.

8           Maximum penalty: 100 penalty units.

- 9           (4) The relevant person for a third-party campaigner commits an
- 10           offence if—
- 11               (a) the third-party campaigner incurs electoral expenditure in a
- 12               capped expenditure period for an election; and
- 13               (b) the total amount of the expenditure is more than the
- 14               expenditure cap for the third-party campaigner for the capped
- 15               expenditure period for the election.

16           Maximum penalty: 100 penalty units.

17   **205D    Offence—recklessly exceeding expenditure caps**

- 18           (1) The registered officer of a party commits an offence if—
- 19               (a) the party grouping for the party incurs electoral expenditure in
- 20               a capped expenditure period for an election; and
- 21               (b) the total amount of the expenditure is more than the
- 22               expenditure cap for the party grouping for the capped
- 23               expenditure period for the election; and
- 24               (c) the officer is reckless about whether the electoral expenditure
- 25               is more than the expenditure cap for the period.

26           Maximum penalty: 1 000 penalty units.

27           *Note*     The fault element of recklessness can be satisfied by proof of intention,

28                      knowledge or recklessness (see Criminal Code, s 20 (4)).

- 1           (2) An MLA who is not a party MLA commits an offence if—
- 2               (a) the MLA or an associated entity of the MLA incurs electoral
- 3                     expenditure in a capped expenditure period for an election; and
- 4               (b) the total amount of the expenditure is more than the
- 5                     expenditure cap for the MLA and an associated entity of the
- 6                     MLA for the capped expenditure period for the election; and
- 7               (c) the MLA is reckless about whether the electoral expenditure is
- 8                     more than the expenditure cap for the period.
- 9           Maximum penalty: 1 000 penalty units.
- 10          (3) A candidate who is not a party candidate commits an offence if—
- 11               (a) the non-party candidate grouping for the candidate incurs
- 12                     electoral expenditure in a capped expenditure period for an
- 13                     election; and
- 14               (b) the total amount of the expenditure is more than the
- 15                     expenditure cap for the non-party candidate grouping for the
- 16                     capped expenditure period for the election; and
- 17               (c) the candidate is reckless about whether the electoral
- 18                     expenditure is more than the expenditure cap for the period.
- 19          Maximum penalty: 1 000 penalty units.
- 20          (4) The relevant person for a third-party campaigner commits an
- 21               offence if—
- 22               (a) the third-party campaigner incurs electoral expenditure in a
- 23                     capped expenditure period for an election; and
- 24               (b) the total amount of the expenditure is more than the
- 25                     expenditure cap for the third-party campaigner for the capped
- 26                     expenditure period for the election; and

- 1 (c) the relevant person is reckless about whether the electoral  
2 expenditure is more than the expenditure cap for the period.

3 Maximum penalty: 1 000 penalty units.

4 **205E Offence—acting in concert to avoid expenditure caps**

- 5 (1) The relevant person for a third-party campaigner commits an  
6 offence if—

7 (a) the third-party campaigner, acting in concert with another  
8 person, incurs electoral expenditure in a capped expenditure  
9 period for an election; and

10 (b) the total amount of the expenditure of the third-party  
11 campaigner and the other person is more than the expenditure  
12 cap for the third-party campaigner for the capped expenditure  
13 period for the election; and

- 14 (c) the relevant person is reckless about whether the electoral  
15 expenditure is more than the expenditure cap for the period.

16 Maximum penalty: 1 000 penalty units.

- 17 (2) In this section:

18 *act in concert*—a person *acts in concert* with someone else if the  
19 person acts under an agreement (whether formal or informal) with  
20 the other person to campaign in a substantially similar way with the  
21 object, or principal object, of having a particular party, MLA or  
22 candidate elected.

23 **Division 14.2B Limitations on gifts**

24 **205F Certain gifts not to be received**

- 25 (1) A registered officer of a party commits an offence if—

26 (a) the party grouping for the party receives a gift or gifts from a  
27 person in a financial year; and



- 1 (b) the total amount of the gift or gifts received from the person in  
2 the financial year is more than \$7 000.

3 Maximum penalty: 1 000 penalty units.

- 4 (2) An MLA who is not a party MLA commits an offence if—

- 5 (a) the MLA or an associated entity of the MLA receives a gift or  
6 gifts from a person in a financial year; and

- 7 (b) the total amount of the gift or gifts received from the person in  
8 the financial year is more than \$7 000.

9 Maximum penalty: 1 000 penalty units.

- 10 (3) A candidate who is not a party candidate commits an offence if—

- 11 (a) the non-party candidate grouping for the candidate receives a  
12 gift or gifts from a person in a financial year; and

- 13 (b) the total amount of the gift or gifts received from the person in  
14 the financial year is more than \$7 000.

15 Maximum penalty: 1 000 penalty units.

- 16 (4) The relevant person for a third-party campaigner commits an  
17 offence if—

- 18 (a) the third-party campaigner receives a gift or gifts from a person  
19 in a financial year; and

- 20 (b) the total amount of the gift or gifts received from the person in  
21 the financial year is more than \$7 000.

22 Maximum penalty: 1 000 penalty units.

## 23 **205G Prohibition on indirect gifts to avoid statutory limit**

24 A person commits an offence if—

- 25 (a) the person gives another person or entity (the *donor*) an  
26 amount or thing (a *donation*); and

(b) the person directs or requests the donor to give all or part of the donation (the *gift*) to a party, MLA, candidate or associated entity in the financial year; and

(c) the gift, together with any gift given by the person to the party, MLA, candidate or associated entity in the financial year is more than \$7 000.

Maximum penalty: 1 000 penalty units.

## **16 Section 207**

*substitute*

### **207 Entitlement to funds**

(1) 85% of the Senate amount on polling day for an election is payable for each eligible vote cast for a candidate or party in the election.

(2) A figure worked out under subsection (1) must be worked out to—

(a) if the figure, if calculated to 4 decimal points, would end with a number greater than 4—3 decimal places and increased by 0.001; or

(b) in any other case—3 decimal places.

(3) In this section:

*Senate amount* means an amount equal to the amount that is payable for each first preference vote given for a candidate or group in a Senate election under the *Commonwealth Electoral Act 1918* (Cwlth), section 294 (General entitlement to funds).

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**17 New division 14.3A***insert***Division 14.3A Administrative expenditure funding****Subdivision 14.3A.1 Preliminary****215A Meaning of *non-party MLA*—div 14.3A**

In this division:

*non-party MLA*—see section 215E.**215B Meaning of *administrative expenditure*—div 14.3A**

- (1) For this division, *administrative expenditure*, for a party or non-party MLA, means expenditure for the administrative and operating expenses of the party or MLA.
- (2) Without limiting subsection (1), *administrative expenditure* includes expenditure on the following:
  - (a) the administration or management of the activities of the party or MLA;
  - (b) conferences, seminars, meetings or other functions at which the policies of the party or MLA are discussed or formulated;
  - (c) giving information to the public, or a section of the public, about the party or MLA;
  - (d) giving information to members and supporters of the party or supporters of the MLA;
  - (e) expenditure in relation to the audit of any of the financial accounts of, or claims for payment or disclosures under this Act of, the party or MLA;

- 1 (f) the remuneration of staff engaged in an activity mentioned in  
2 paragraph (a), (b), (c), (d) or (e) for the party or MLA to the  
3 extent the remuneration relates to the time spent by the staff on  
4 the activity;
- 5 (g) the acquisition or operation of equipment or vehicles used for  
6 an activity mentioned in paragraph (a), (b), (c), (d) or (e) to the  
7 extent the acquisition or operation relates to the use of the  
8 equipment or vehicle for the activity;
- 9 (h) office accommodation for staff mentioned in paragraph (f) and  
10 equipment mentioned in paragraph (g);
- 11 (i) interest payments on loans.
- 12 (3) However, *administrative expenditure* does not include the  
13 following:
- 14 (a) electoral expenditure;
- 15 (b) expenditure for which an MLA may claim an allowance as an  
16 MLA;
- 17 (c) expenditure incurred substantially in relation to operations or  
18 activities that relate to the election of people to a parliament  
19 other than the Legislative Assembly;
- 20 (d) expenditure prescribed by regulation.

**Subdivision 14.3A.2 Eligibility for and amount of payment for administrative expenditure**

**215C Eligibility of party for payment for administrative expenditure**

(1) A party is eligible for payment for administrative expenditure for a quarter if—

(a) it was a registered party on polling day for the last general election and continues to be a registered party at the end of the quarter; and

(b) at least 1 party candidate was elected at the last general election or declared elected under part 13 (Casual vacancies) after the last general election, and the commissioner is satisfied on reasonable grounds that each candidate who was elected or declared elected (an *elected MLA*) claimed to be a party candidate; and

(c) the commissioner is satisfied on reasonable grounds that at least 1 elected MLA continues to be a member of the party at the end of the quarter.

(2) However, if a failure to give a return to the commissioner under this part continues in relation to a party, the party is not eligible for any payment for administrative expenditure until the return is given to the commissioner.

**Example**

The reporting agent of a party candidate who was not elected at the last election fails to give the commissioner a return as required by s 217. The party is not eligible for payment for administrative expenditure until the return is given to the commissioner.

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- 1           (3) In this section:
- 2                 *return* includes a notice under section 240 (1) (c) or (4) (Inability to
- 3                 complete returns).
- 4   **215D     Amount of payment for administrative expenditure for**
- 5                 **eligible parties**
- 6           (1) This section applies if a party is eligible for payment for
- 7                 administrative expenditure for a quarter in a year.
- 8           (2) The amount that the party is entitled to be paid for the quarter is the
- 9                 lesser of—
- 10                 (a) the amount of actual administrative expenditure incurred by the
- 11                     party in the quarter; and
- 12                 (b) \$20 000 or, if an amount is declared under subsection (6) for
- 13                     the year, the declared amount for each MLA who is a member
- 14                     of the party at the end of the quarter.
- 15           (3) However, the party is not entitled to be paid an amount for the year
- 16                 that is more than the total annual entitlements of MLAs who were
- 17                 members of the party during the year.
- 18           (4) The annual entitlement of an MLA who is a member of a party in a
- 19                 year is worked out as follows:
- $$A \times \frac{D}{365}$$
- 20           (5) If, at the end of a year, a party has been paid more than the party is
- 21                 entitled to be paid under this section, the party must pay the
- 22                 overpayment to the commissioner.
- 23           (6) The commissioner must, not later than 1 January in a year, declare
- 24                 an amount for subsection (2) (b) for the year, worked out under
- 25                 section 215G.

- 1 (7) A declaration is a notifiable instrument.
- 2 *Note* A notifiable instrument must be notified under the Legislation Act.
- 3 (8) In this section:
- 4 *A* means \$20 000 or, if an amount is declared under subsection (6)
- 5 for the year, the declared amount.
- 6 *D* means the number of days in the year that the MLA is a member
- 7 of the party.
- 8 (9) Subsection (6) does not apply in relation to 2012.
- 9 (10) This subsection and subsection (9) expire on 1 January 2016.
- 10 **215E Eligibility of non-party MLAs for payment for**
- 11 **administrative expenditure**
- 12 (1) An MLA (a *non-party MLA*) is eligible for payment for
- 13 administrative expenditure for a quarter if—
- 14 (a) either—
- 15 (i) the MLA was not endorsed by a party at the election at
- 16 which the MLA was elected; or
- 17 (ii) the MLA was endorsed by a party at the election at which
- 18 the MLA was elected, but the MLA is not a member of
- 19 the party at the end of the quarter; and
- 20 (b) the commissioner is satisfied on reasonable grounds that the
- 21 MLA is not, at the end of the quarter, a member of a party that
- 22 is entitled to payment for administrative expenditure.
- 23 (2) However, if a failure to give a return to the commissioner under this
- 24 part continues in relation to a non-party MLA, the MLA is not
- 25 eligible for any payment for administrative expenditure until the
- 26 return is given to the commissioner.

- 1           (3) In this section:  
2                 *return* includes a notice under section 240 (1) (c) or (4) (Inability to  
3                 complete returns).

4   **215F       Amount of payment for administrative expenditure for**  
5                 **non-party MLAs**

- 6           (1) This section applies if a non-party MLA is eligible for payment for  
7                 administrative expenditure for a quarter in a year.  
8           (2) The amount that the non-party MLA is entitled to be paid for the  
9                 quarter is the lesser of—  
10                (a) the amount of actual administrative expenditure incurred by the  
11                 non-party MLA in the quarter; and  
12                (b) \$20 000 or, if an amount is declared under subsection (6) for  
13                 the year, the declared amount.  
14           (3) However, the non-party MLA is not entitled to be paid an amount  
15                 for the year that is more than the MLA's annual entitlement.  
16           (4) The annual entitlement of a non-party MLA in a year is worked out  
17                 as follows:

$$A \times \frac{D}{365}$$

- 18           (5) If, at the end of a year, a non-party MLA has been paid more than  
19                 the MLA is entitled to be paid under this section, the MLA must pay  
20                 the overpayment to the commissioner.  
21           (6) The commissioner must, not later than 1 January in a year, declare  
22                 an amount for subsection (2) (b) for the year, worked out under  
23                 section 215G.  
24           (7) A declaration is a notifiable instrument.

25                 *Note*       A notifiable instrument must be notified under the Legislation Act.



(8) In this section:

*A* means \$20 000 or, if an amount is declared under subsection (6) for the year, the declared amount.

*D* means the number of days in the year that the MLA is a non-party MLA.

(9) Subsection (6) does not apply in relation to 2012.

(10) This subsection and subsection (9) expire on 1 January 2016.

## **215G Working out indexation for administrative expenditure**

(1) For section 215D (6) and section 215F (6), an amount for a year (the *relevant year*) is worked out as follows:

$$P \times \frac{INS1}{INS2}$$

(2) However, if for a relevant year the amount under subsection (1) is less than P, the amount for the year is P.

(3) A figure used to work out the amount under subsection (1) must be worked out to—

(a) if the figure, if calculated to 4 decimal points, would end with a number greater than 4—3 decimal places and increased by 0.001; or

(b) in any other case—3 decimal places.

(4) If the Australian statistician publishes an index number in relation to a quarter in substitution for an index number previously published in relation to that quarter, the commissioner must disregard the publication of the later index number for this section.

- 1           (5) However, if the Australian statistician changes the reference base  
2           for the consumer price index, then, in applying this section after the  
3           change, the commissioner must have regard only to index numbers  
4           published in terms of the new reference base.
- 5           (6) In this section:
- 6                 *index number*, in relation to a quarter, means the all groups  
7                 consumer price index number, being the weighted average of the  
8                 8 capital cities, published by the Australian statistician in relation to  
9                 that quarter.
- 10                *INS1* means the index number published for the September quarter  
11                in the preceding year.
- 12                *INS2* means the index number published for the September quarter  
13                in the year immediately before the preceding year.
- 14                *P* means—
- 15                   (a) if the relevant year is 2013—\$20 000; and
- 16                   (b) if the relevant year is a later year—the amount worked out  
17                   under subsection (1) for the preceding year.
- 18                *preceding year* means the year immediately before the relevant  
19                year.

### 20       **Subdivision 14.3A.3 Payment for administrative expenditure**

#### 21       **215H       Application for payment**

- 22           (1) The reporting agent of a party or non-party MLA may apply to the  
23           commissioner for payment for administrative expenditure for a  
24           quarter.
- 25           (2) The application must be—
- 26                (a) in writing; and

1 (b) given to the commissioner within 3 months after the end of the  
2 quarter.

3 *Note 1* If a form is approved under s 340A for this provision, the form must be  
4 used.

5 *Note 2* If particular information is to be included in the form, or a particular  
6 document must be attached to or given with the form, the form is  
7 properly completed only if the requirement is complied with (see  
8 Legislation Act, s 255 (5)).

9 *Note 3* For how documents may be served, see the Legislation Act, pt 19.5.

10 (3) The commissioner may, in writing, require the applicant to give the  
11 commissioner more information in writing or documents that the  
12 commissioner reasonably needs to decide the application.

13 *Note* The Legislation Act, s 170 and s 171 deal with the application of the  
14 privilege against selfincrimination and client legal privilege.

15 (4) If the applicant does not comply with a requirement under  
16 subsection (3), the commissioner may refuse to consider the  
17 application further.

## 18 **215I Deciding application and making payment**

19 (1) If the commissioner receives an application mentioned in  
20 section 215H for payment for administrative expenditure, the  
21 commissioner must—

22 (a) decide whether to pay all or part of the payment, or to refuse  
23 payment; and

24 (b) if the commissioner decides to pay all or part of the payment—  
25 pay the amount required under this division.

26 (2) In deciding whether to pay all or part of the payment, or to refuse  
27 payment, the commissioner must only consider—

28 (a) whether the expenditure claimed is administrative expenditure;  
29 and

(b) if the expenditure is administrative expenditure—

(i) whether the administrative expenditure was incurred by the party or MLA; and

(ii) whether the party or MLA is entitled under this division to the amount claimed.

(3) Entitlement to payment under this division is decided as at the end of the quarter for which the payment is to be made.

(4) If the commissioner decides to pay all or part of the payment, the commissioner must pay the amount to the reporting agent of the party or non-party MLA.

*Note* The commissioner must pay the amount as soon as possible (see Legislation Act, s 151B).

## **18 Division 14.4 heading**

*substitute*

### **Division 14.4 Gifts and certain loans—records and disclosure**

## **19 Section 216 heading**

*substitute*

### **216 Definitions—div 14.4**

## **20 Section 216, new definitions**

*insert*

***anonymously***—a gift is made ***anonymously*** if the person receiving the gift does not know the defined details for the gift.

***small anonymous gift*** means a gift made anonymously that is less than the prescribed amount under section 222.

**21 New section 216A***insert***216A Records and regular disclosure of gifts**

(1) If a candidate or associated entity of a candidate (the *receiver*) receives a gift in the disclosure period for an election, the relevant person for the receiver must—

- (a) record the information mentioned in subsection (3); and
- (b) if the amount of the gift is \$1 000 or more—give the commissioner in writing the information mentioned in subsection (3) not later than 7 days after the day the receiver receives the gift.

*Note* The *Electronic Transactions Act 2001*, s 8 provides for the giving of information by means of an electronic communication in certain circumstances.

(2) If a party, MLA or associated entity of a party or MLA (the *receiver*) receives a gift, the relevant person for the receiver must—

- (a) record the information mentioned in subsection (3); and
- (b) if the amount of the gift is \$1 000 or more—give the commissioner in writing the information mentioned in subsection (3)—
  - (i) if the receiver receives the gift in the capped expenditure period—not later than 7 days after the day the receiver receives the gift; or
  - (ii) in any other case—not later than 30 days after the day the receiver receives the gift.

- 1           (3) The information is—
- 2               (a) the date the gift is received; and
- 3               (b) the amount of the gift; and
- 4               (c) for a gift other than a small anonymous gift—the defined
- 5                     details for the gift; and
- 6               (d) for a small anonymous gift—that the gift is made
- 7                     anonymously.
- 8           (4) In this section:
- 9               *gift* does not include a gift made to a person in a private capacity for
- 10               the person's personal use if the person does not use the gift solely or
- 11               substantially for a purpose related to an election.
- 12               *relevant person*—
- 13               (a) for a party—
- 14                     (i) if the party is a corporation—the party; or
- 15                     (ii) in any other case—the party's reporting agent; or
- 16               (b) for an MLA—the MLA's reporting agent; or
- 17               (c) for a candidate—the candidate's reporting agent; or
- 18               (d) for an associated entity—
- 19                     (i) if the entity is a corporation—the entity; or
- 20                     (ii) in any other case—the entity's financial controller.

**22 Section 217 heading***substitute***217 Disclosure of gifts by candidates****23 Section 220***substitute***220 Disclosure of gifts by third-party campaigners**

- (1) This section applies if a third-party campaigner—
- (a) incurs electoral expenditure in the capped expenditure period for an election; and
  - (b) receives from someone else 1 or more gifts—
    - (i) all or part of which is used by the third-party campaigner to—
      - (A) enable the third-party campaigner to incur electoral expenditure in the capped expenditure period; or
      - (B) reimburse the third-party campaigner for incurring electoral expenditure in the capped expenditure period; and
    - (ii) the total amount of which is \$1 000 or more.
- (2) Within 15 weeks after polling day in the election, the third-party campaigner must give the commissioner a return for the gift or gifts.

*Note 1* If a form is approved under s 340A for this provision, the form must be used.

*Note 2* For how a return may be given, see the Legislation Act, pt 19.5.

- 1           (3) The return must state, for each gift mentioned in subsection (1)—
- 2               (a) the date the gift is received; and
- 3               (b) the amount of the gift; and
- 4               (c) for a gift other than a small anonymous gift—the defined
- 5                     details for the gift; and
- 6               (d) for a small anonymous gift—that the gift is made
- 7                     anonymously.

8   **24           Sections 221 to 221B**

9               *omit*

10   **25           Anonymous gifts**

11               **New section 222 (1A)**

12               *insert*

13           (1A) Also—

- 14               (a) a party, MLA or associated entity of a party or MLA must not
- 15                     accept a gift in a financial year if acceptance of the gift means
- 16                     that the total of small anonymous gifts given to or for the
- 17                     benefit of the party, MLA or entity is more than \$25 000 in the
- 18                     year; and
- 19               (b) a candidate at an election or associated entity of the candidate
- 20                     must not accept a gift in the disclosure period for the election if
- 21                     acceptance of the gift means that the total of small anonymous
- 22                     gifts given to or for the benefit of the candidate or entity is
- 23                     more than \$25 000 in the period.



1	<b>26</b>	<b>Section 222 (2)</b>
2		<i>omit</i>
3		Subsection (1)
4		<i>substitute</i>
5		This section
6	<b>27</b>	<b>Definitions for div 14.5</b>
7		<b>Section 223, definition of <i>electoral advertisement</i></b>
8		<i>relocate to section 198</i>
9	<b>28</b>	<b>Section 223, definitions of <i>electoral expenditure</i> and</b>
10		<b><i>relates</i></b>
11		<i>omit</i>
12	<b>29</b>	<b>Annual returns by parties and MLAs</b>
13		<b>Section 230 (6)</b>
14		<i>omit everything after</i>
15		position as MLA on
16		<i>substitute</i>
17		electoral expenditure.
18	<b>30</b>	<b>Section 231B heading</b>
19		<i>substitute</i>
20	<b>231B</b>	<b>Annual returns by associated entities of parties and</b>
21		<b>MLAs</b>

**31        Amounts received**  
**New section 232 (1) (c)**

*insert*

(c) for each amount received—

(i) the date it was received; and

(ii) the amount.

**32        Section 232 (2)**

*omit*

**33        New section 232 (3) (c)**

*insert*

(c) for each amount received—

(i) the date it was received; and

(ii) the amount.

**34        Section 232 (4) (c)**

*substitute*

(c) the total of all amounts received by an associated entity from a particular person or organisation in a financial year for membership of the entity, if the total is less than \$250.

1	<b>35</b>	<b>Investigation notices generally</b>
2		<b>Section 237 (1), definition of <i>prescribed person</i></b>
3		<i>omit everything after</i>
4		required
5		<i>substitute</i>
6		to—
7		(a) make a record under section 216A (Records and regular
8		disclosure of gifts); or
9		(b) give the commissioner information under section 216A; or
10		(c) give the commissioner a return under this part in relation to an
11		election.
12	<b>36</b>	<b>Copies of returns to be available for public inspection</b>
13		<b>Section 243 (1)</b>
14		<i>omit</i>
15		Disclosure of donations
16		<i>substitute</i>
17		Gifts and certain loans—records and disclosure
18	<b>37</b>	<b>Section 243 (2)</b>
19		<i>omit</i>
20		(other than a return under section 221A (Annual returns of
21		donations))

1	<b>38</b>	<b>Section 243 (3)</b>
2		<i>omit</i>
3		section 221A or
4	<b>39</b>	<b>New section 243A</b>
5		<i>in division 14.8, insert</i>
6	<b>243A</b>	<b>Commissioner must publish information given under</b>
7		<b>s 216A</b>
8	(1)	This section applies if the commissioner is given information under
9		section 216A (Records and regular disclosure of gifts).
10	(2)	The commissioner must publish the information in the way the
11		commissioner considers appropriate.
12		<b>Examples—way publish information</b>
13	1	on the commission website
14	2	in a newspaper
15	<i>Note 1</i>	The commissioner must publish the information as soon as possible (see
16		Legislation Act, s 151B).
17	<i>Note 2</i>	An example is part of the Act, is not exhaustive and may extend, but
18		does not limit, the meaning of the provision in which it appears (see
19		Legislation Act, s 126 and s 132).
20	<b>40</b>	<b>Section 289 heading</b>
21		<i>substitute</i>
22	<b>289</b>	<b>Discrimination on grounds of certain gifts</b>

1     **41       Section 289 (1)**

2             ~~*omit*~~

3             donation

4             ~~*substitute*~~

5             gift

6     **42       Section 289 (2), new definition of *gift***

7             ~~*insert*~~

8             ~~*gift*~~—see section 198 (Definitions for part 14).

9     **43       New section 339**

10            ~~*insert*~~

11    **339       Declaration of commission website**

12            (1) The commissioner may declare a website to be the commission  
13                website.

14            (2) A declaration is a notifiable instrument.

15            *Note*     A notifiable instrument must be notified under the Legislation Act.

**44 New part 31**

*insert*

**Part 31 Transitional—Electoral (Election Finance Reform) Amendment Act 2011**

**505 Transitional—annual returns**

- (1) This section applies to a return given to the commissioner by the reporting agent of a party or MLA under section 230 (Annual returns by parties and MLAs) for the financial year ending on 30 June 2012.
- (2) Section 230 as in force immediately before the commencement of the *Electoral (Election Finance Reform) Amendment Act 2011* applies to the return in relation to an amount paid, or an outstanding amount of debts incurred, by or on behalf of the party or MLA between 1 July 2011 and 31 December 2011.

**506 Expiry—pt 31**

This part expires 1 year after the day it commences.

*Note* Transitional provisions are kept in the Act for a limited time. A transitional provision is repealed on its expiry but continues to have effect after its repeal (see Legislation Act, s 88).

**45 Internally reviewable decisions**  
**Schedule 5, new items 10A and 10B**

*insert*

10A	215I (1) (a)	refuse to pay payment for administrative expenditure	reporting agent of party or non-party MLA
10B	215I (1) (a)	pay part only of payment for administrative expenditure claimed	reporting agent of party or non-party MLA

**46 Dictionary, note 2**

*insert*

- quarter

**47 Dictionary, new definitions**

*insert*

***administrative expenditure***, for a party or non-party MLA, for division 14.3A (Administrative expenditure funding)—see section 215B.

***anonymously***, for division 14.4 (Gifts and certain loans—records and disclosure)—see section 216.

***capped expenditure period***, for part 14 (Election funding, expenditure, records and financial disclosure)—see section 198.

**48 Dictionary, definition of *defined details***

*omit*

Disclosure of donations

*substitute*

Gifts and certain loans—records and disclosure

**49 Dictionary, definitions of *electoral advertisement* and *electoral expenditure***

*substitute*

*electoral advertisement*, for part 14 (Election funding, expenditure, records and financial disclosure)—see section 198.

*electoral expenditure*, for an election, for part 14 (Election funding, expenditure, records and financial disclosure)—see section 198.

**50 Dictionary, new definitions**

*insert*

*expenditure cap*, for a capped expenditure period for an election, for division 14.2A (Limitations on election expenditure)—see section 205A.

*incurs*, electoral expenditure, for division 14.2A (Limitations on election expenditure)—see section 202A.

*non-party candidate grouping*, for a candidate who is not a party candidate, for part 14 (Election funding, expenditure, records and financial disclosure)—see section 198.

*non-party MLA*, for division 14.3A (Administrative expenditure funding)—see section 215A.



*party grouping*, for a party, for part 14 (Election funding, expenditure, records and financial disclosure)—see section 198.

*party MLA*, for part 14 (Election funding, expenditure, records and financial disclosure)—see section 198.

*relevant person*, for a third-party campaigner, for part 14 (Election funding, expenditure, records and financial disclosure)—see section 198.

*small anonymous gift*, for division 14.4 (Gifts and certain loans—records and disclosure)—see section 216.

*third-party campaigner*, for part 14 (Election funding, expenditure, records and financial disclosure)—see section 198.

## **51 Further amendments, mentions of *Election funding and financial disclosure***

*omit*

Election funding and financial disclosure

*substitute*

Election funding, expenditure, records and financial disclosure

*in*

- dictionary, definition of *amount*
- dictionary, definition of *associated entity*
- dictionary, definition of *disclosure period*
- dictionary, definition of *disposition of property*
- dictionary, definition of *eligible vote*
- dictionary, definition of *entity*
- dictionary, definition of *financial controller*
- dictionary, definition of *gift*
- dictionary, definition of *party*
- dictionary, definition of *property*

- 1           • dictionary, definition of *register*
- 2           • dictionary, definition of *registered industrial organisation*
- 3           • dictionary, definition of *reporting agent*

**Schedule 1                      Consequential amendments**

(see s 3)

**Part 1.1                      Electoral Regulation 1993**

**[1.1]                      Section 6**

*omit*

**Part 1.2                      Referendum (Machinery  
Provisions) Act 1994**

**[1.2]                      Schedule 1, part 1.3, heading**

*substitute*

**Part 1.3                      Modifications of part 14—  
election funding, expenditure,  
records and financial disclosure**

**[1.3]                      Schedule 1, modification 1.13**

*substitute*

**[1.13]                      Section 220**

*substitute*

**220                      Disclosure of gifts by person incurring certain  
expenditure**

(1) This section applies if a person—

- (a) incurs expenditure for a referendum in the disclosure period for the referendum; and

- 1 (b) receives from someone else 1 or more gifts—  
2 (i) all or part of which is used by the person to—  
3 (A) enable the person to incur expenditure for the  
4 referendum in the disclosure period; or  
5 (B) reimburse the person for incurring expenditure for  
6 the referendum in the disclosure period; and  
7 (ii) the total amount of which is \$1 000 or more.
- 8 (2) Within 15 weeks after polling day for the referendum, the person  
9 must give the commissioner a return for the gift or gifts.
- 10 *Note 1* If a form is approved under s 340A for this provision, the form must be  
11 used.
- 12 *Note 2* For how a return may be given, see the Legislation Act, pt 19.5.
- 13 (3) The return must state, for each gift mentioned in subsection (1)—  
14 (a) the date the gift is received; and  
15 (b) the amount of the gift; and  
16 (c) for a gift other than a small anonymous gift—the defined  
17 details for the gift; and  
18 (d) for a small anonymous gift—that the gift is made  
19 anonymously.
- 20 (4) However, subsection (1) does not apply to a person if the amount of  
21 expenditure incurred by the person for the referendum in the  
22 disclosure period is less than \$1 000.
- 23 (5) In this section:  
24 ***expenditure***, for a referendum, means expenditure incurred on—  
25 (a) publishing any matter that is intended to or is likely to affect  
26 voting in the referendum; or  
27 (b) otherwise publishing a view on an issue in an election; or

- 1 (c) making a gift to a person on the understanding that the person  
2 or someone else will apply, either directly or indirectly, the  
3 whole or part of the gift in a way mentioned in paragraph (a)  
4 or (b).

5 **[1.4] Schedule 1, modifications 1.14 and 1.15**

6 *omit*

7 **[1.5] Schedule1, modification 1.32**

8 *omit*

9 donation

10 *substitute*

11 gift

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## Endnotes

**1 Presentation speech**

Presentation speech made in the Legislative Assembly on 2011.

**2 Notification**

Notified under the Legislation Act on 2011.

**3 Republications of amended laws**

For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

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