

2012

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

ELECTORAL (LIMIT ON GIFTS) AMENDMENT BILL 2012

EXPLANATORY STATEMENT

**Circulated by
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INTRODUCTION

This explanatory statement relates to the Electoral (Limit on Gifts) Amendment Bill 2012 (the Bill) as presented to the Legislative Assembly. It has been prepared in order to assist the reader of the bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Assembly.

The Statement is to be read in conjunction with the Bill. It is not, and is not meant to be, a comprehensive description of the Bill. What is said about a provision is not to be taken as an authoritative guide to the meaning of a provision, this being a task for the courts.

OVERVIEW

This Bill clarifies or corrects a number of amendments made to the *Electoral Act 1992* (the Electoral Act) made by the *Electoral Amendment Act 2012* (the Amendment Act). The Bill contains no new policy changes or initiatives and deals only with matters arising from the Amendment Act. Given the complexity of the debate and the number of amendments made to the Amendment Act during its passage through the Assembly this Bill is required to ensure that the amended Electoral Act will work efficiently and as intended by the Assembly. It is important that the Bill is passed urgently to ensure that the outstanding issues dealt with by the Bill are corrected before the 1 July commencement of the substantive new scheme created by Amendment Act.

The amendments primarily address two issues; the new prohibition on donations from anyone other than ACT electors and the regulation of anonymous gifts. Currently the prohibition on donations from anyone other than a person enrolled to vote in the ACT and the related enforcement provisions do not adequately cover the issues and this Bill will ensure that donations are effectively regulated and that the scheme is consistent with the Commonwealth Electoral Act. The Bill also clarifies the restrictions in relation to anonymous gifts and ensures that these are consistent with the changes made to the Electoral Act by the Amendment Act.

As the amendments in the Bill relate to changes made by the Amendment Act, which has not yet commenced, as well as to existing sections of the current Electoral Act the Bill must be read by reference to both the Amendment Act and the Electoral Act.

HUMAN RIGHTS

The Bill makes no new limitations on human rights and only modifies the application of the substantive provisions in the Amendment Act to better reflect the intention of the current provisions and improve consistency and administration. The substantive issues relating to human rights in relation to the regulation of electoral donations and expenditure are covered in the Explanatory Statement to the Amendment Act and considered in the Scrutiny of Bills Report no 49 and the Government response to that report published in report no 51.

NOTES ON CLAUSES

Clauses 1 to 3 Name of the Act, Commencement and Legislation amended

These are preliminary clauses setting out the name of the amending act, the acts amended and the commencement date. Note that as an amendment bill, section 89 of the Legislation Act provides for the repeal of the Act the day after the commencement day. Commencement of the new Act is proposed to be immediately after the commencement of the Amendment Act (1 July). In effect this means that the Electoral Act will have the changes made in the Amendment Act and then the changes in this Bill will be made and the final republication then notified on the Legislation register.

Clause 4 Limit on gifts received New section 205I (1A)

This clause clarifies that gifts between entities within a party grouping are captured by the limits on donations in subsections (2) and (4).

Clause 5 Section 205I (4)

This clause substitutes a new subsection (4) that better reflects the intention to prevent gifts by anyone other than ACT electors. The clause modifies the existing subsection (4) to better articulate the operation of the limitation.

Currently section 205I (4) of the Amendment Act provides:

Also, a receiver other than a third-party campaigner must not accept a gift from a person who is not an individual enrolled to vote in the ACT unless the gift is paid into the federal election account.

This section was proposed in an amendment to the Amendment Act. Only part of that amendment was supported by the Assembly and as a consequence we have this provision without the broader context in which it was initially proposed. Clearly it would be desirable to articulate exactly how this prohibition is to work.

This clause provides that a gift may not be received from anyone except an ACT Elector unless the gift is deposited into an account kept exclusively for federal election campaigns. The provision is modeled on sections 95B and 96D of the *Election Funding, Expenditure and Disclosures Act 1981*(NSW).

This amendment will ensure that the prohibition is clear and operational and operates consistently with the *Commonwealth Electoral Act 1918* (Cth).

Clause 6 Section 205I (7)

This clause amends subsection (7) to ensure that the penalty provision for a breach of the prohibition in subsection (4) also applies to non monetary gifts.

Clause 7 Section 205I (8) (a)

This clause amends subsection (8)(a) to ensure that it is consistent with the amendments to subsection (4) in clause 5.

Clause 8 Section 205I (9)

This clause addresses an error in that the current subsection (9) of the Amendment Act refers to the incorrect subsections in relation to the recovery of money by the Commissioner. This clause simply corrects the incorrect numbering.

Clause 9 New section 205I (12)

This clause clarifies what is meant by ‘an account kept only for federal election campaigns’, providing that funds from the account may only be spent on goods or services that are used for a federal election campaign (see clause 5 above).

Clause 10 New section 205IA

The Amendment Act did not deal with the issue of subsequent payments from a federal election campaign account and this clause is designed to ensure that there is no loophole allowing a receiver to pay money into an account to satisfy the requirement in new subsection (4) (see clause 5 above) and then pay the amount out again, frustrating the intention of the section. This clause ensures that this cannot happen and that should a gift that would otherwise be prohibited, be paid into a federal election campaign account it must then be used for that purpose and cannot be paid into any other account.

Clause 11 New section 205JA

This clause ensures that there is a prohibition on indirect gift giving to avoid the prohibition in new section 205I(4). The penalty provision is the same as is provided for in section 205J in relation to prohibited payments into the ACT election account.

Clauses 12 – 18 Section 222

These clauses address errors in the Amendment Act and ensure that new definitions created in the Amendment Act are consistently applied to anonymous gifts in section 222 of the Electoral Act. The amendments also ensure consistency with the definition of small anonymous gift in section 216 and clarify that the total amount a person can give anonymously is \$250.