LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

ELECTORAL (AMENDMENT) BILL 1998

EXPLANATORY MEMORANDUM

Circulated by authority of
Michael Moore MLA
Independent

ELECTORAL (AMENDMENT) BILL 1998

OUTLINE

The objective of this Bill is restore provisions relating to the disclosure of political donations to those which existed up to 1996, and also to make some minor textual improvements.

DETAILS OF THE BILL

Clauses 1, 2 and 3 — These clauses are standard. Note that the Bill includes a 6 month 'Macklin clause' to ensure its commencement within that time.

Clause 4 — This clause is simply intended to give a clearer meaning to the heading to Division 4, which would be changed from *Disclosure of donations* to *Disclosure of donations made during a reporting period*. This would help to distinguish the provisions relating to the election returns from those dealing with annual returns.

Clause 5 — This clause is consequential upon the relocation of two sections proposed in clause 6, below.

Clause 6 — Division 4 of Part 14 of the Act, currently titled *Disclosure of donations*, contains sections dealing with the special returns reporting on financial events during a pre-election period. Division 6, titled *Annual Returns*, contains sections dealing with annual returns by parties.

The two sections which this clause proposes to 'relocate' are currently placed in the division dealing with election-period returns, namely Division 4. This is inappropriate, as these sections in fact deal with annual returns. They should therefore more logically be placed in Division 6.

Clause 7 — In different places of Part 14 of the Act, some provisions use the term "defined details" in the description of the information which must be reported about donors and expenditures, whilst other provisions use the term "defined particulars". There is no apparent difference in effect. This Bill attempts to simplify the situation by using only the shorter term "details".

Clause 7 therefore proposes to replace the existing definition of "defined particulars" with a substitute definition of "defined details".

Clause 8 — This clause is consequential upon clause 7.

Clause 9 — This clause is consequential upon clause 7.

Clause 10 — The Act currently attempts to 'shadow' the provisions of the Commonwealth legislation regulating political parties in the Commonwealth Parliament. As a result, it has been provided that a political party active in both the ACT and Commonwealth spheres may lodge a Commonwealth return with the ACT Commissioner. This convenience for federal parties was argued to be one of the merits of shadowing the Commonwealth law.

The effect of the changes to disclosure thresholds proposed by this Bill would be to break the shadowing relationship and impose somewhat tighter requirements. Consequentially, it would become inappropriate to keep provisions which provide that all the ACT requirements can be deemed to be met by the lodgement of a Commonwealth return.

Accordingly, this clause proposes the repeal of the section which allows for lodgement of a Commonwealth return.

Clause 11 — This clause is consequential upon clause 7.

Clause 12 — The purpose of this clause is similar to that of clause 10, namely the removal of the provision which currently allows for a Commonwealth return to be lodged to satisfy the ACT law.

Clause 13, 14 and 15 — These clauses contain the main purpose of the Bill.

Clause 13 amends the provisions relating to donations to political parties. Clause 14 deals with the reporting of recipients of expenditure by parties. Clause 15 deals with the reporting of creditors of parties.

There are two distinct financial thresholds involved in these three clauses.

The **first threshold** is the total value of transactions which triggers a requirement that the donor, recipient of expenditure, or creditor must be reported. The Act currently sets that value at $1,500 in each case.

In each of clauses 13, 14 and 15, this Bill proposes that the figure should be $500, as was the law until 1996.

The **second threshold** is the value of individual transactions which must be counted in determining whether the first threshold has been reached. The Act currently sets a general threshold of $500. The effect of this is that all items up to $499 can be disregarded. This makes possible the 'loophole' problem whereby a series of small donations, potentially adding up to a large amount, can go unreported, thus allowing potential evasion of the primary threshold of $1,500.

Clause 13 of this Bill proposes that in regard to donations, the 'disregarding threshold' be lowered to $100, with the added proviso that it is only useable in regard to donations received in the course of fund-raising events. This was the law prior to 1996.

Clause 14 proposes that the disregarding threshold for expenditures be $100.

Note that the second threshold does not apply to the reporting of creditors.

Finally, these three clauses also contain subclauses dealing with the term "details", which are consequential amendments to clause 7.

Clause 16 — The purpose of this clause is related to that of clause 10. The current regulation-making power in subsection (3) was apparently intended to give the Minister a convenient means of ensuring that the 'shadowing' relationship with the Commonwealth scheme could be kept up-to-date as the Commonwealth made changes. This Bill proposes that that connection be abandoned. The subsection is also an unusually bare power allowing the executive to amend the content of the law.

Clause 17 — This clause acts as a direction to the Parliamentary Counsel's Office to officially 'renumber' the Act so as to clean up the numerous sections with numbers such as 231A, 231B etc. This is a new practice which the PCO aims to make use of from time to time to keep legislation as readable as possible.

For the avoidance of uncertainty, it is preferable for the Assembly to direct such renumbering to be carried out, rather than leave it simply to the discretion of the Parliamentary Counsel's Office