

ELECTORAL LEGISLATION AMENDMENT BILL 2018

(Amendments made by the Legislative Council)

1. Clause 2, page 2, line 5, after "Parts" insert "2,".
2. Clause 2, page 2, line 8, omit all words and expressions on this line and insert—
 "(2) Section 47(2) comes into operation on 1 August 2018."
3. Clause 2, page 2, line 9, after "(3)" insert "Part 4 (except section 47(2)), and".
4. Clause 2, page 2, lines 11 to 14, omit all words and expressions on these lines.
5. Clause 8, page 5, line 6, after "made" insert "during the period commencing 115 days before the day of the 2018 general election resulting from the expiration of the Assembly, or".
6. Clause 8, page 5, line 8, omit "a" and insert "any other".
7. Clause 14, page 8, line 10, after "made" insert "during the period commencing 115 days before the day of the 2018 general election resulting from the expiration of the Assembly, or".
8. Clause 14, page 8, line 11, omit "a" and insert "any other".
9. Clause 24, page 13, line 21, after this line insert—
 '(2) For section 101(2)(c) of the **Electoral Act 2002**
 substitute—
 "(c) must not be physically attached to, or form part of,
 other written material issued by a person or
 organisation other than the Commission; and".'

NEW CLAUSE

10. Insert the following New Clause to follow clause 27—
'AA New section 104A inserted and consequential amendments
(1) After section 104 of the **Electoral Act 2002** insert—

"104A Information to be provided to registered political parties and candidates

- (1) Subject to subsection (3), the Commission must provide on request, the name and address of any person whose application to vote by post (whether in writing or electronic form) has been accepted under section 104(1) or (1A) to—
- (a) each registered political party; and
 - (b) each candidate who is not endorsed by a registered political party who is standing for the region or district in which the address of the person is located—

as soon as practicable after the declaration and ballot-paper has been issued under section 104(1A).

- (2) The Commission may provide the information under subsection (1) electronically or in an electronic form.
- (3) The Commission must not provide particulars of silent electors or itinerant electors under this section.
- (4) A person must not use information provided under subsection (1) for any purpose unless the use is for a purpose in connection with the election.

Penalty: In the case of a natural person, 600 penalty units;

In the case of a body corporate or registered political party, 3000 penalty units.

- (5) A person must not disclose information provided under subsection (1) unless the disclosure is for any purpose in connection with the election.

Penalty: In the case of a natural person, 600 penalty units;

In the case of a body corporate or registered political party, 3000 penalty units.

Note

Section 179A applies to an offence against subsection (4) or (5)."

- (2) In section 37(1) of the **Electoral Act 2002**, for "or 34" **substitute** ", 34 or 104A".
- (3) After section 179A(2)(f) of the **Electoral Act 2002 insert**—

"(fa) section 104A(4) and (5);".

11. Insert the following New Clause to follow clause 30—

'BB Part 6A substituted

For Part 6A of the **Electoral Act 2002** substitute—

"Part 6A—Electronic voting and electronic assisted voting

Division 1—Electronic voting

110A Application of Part 6 to electronic voting

Part 6 applies to and in respect of electronic voting subject to the provisions of this Part.

110B No entitlement to electronic voting

This Part does not create an entitlement to vote by electronic voting.

110C Availability of electronic voting

Electronic voting is available at a voting centre which is designated by the Commission as an electronic voting centre.

110D Who can access electronic voting?

- (1) Electronic voting can be accessed by—
 - (a) an eligible class of electors; and
 - (b) any other class of electors prescribed by the regulations for the purposes of this section.
- (2) In this Division, ***eligible class of electors*** means electors who otherwise cannot vote without assistance because of—
 - (a) blindness or low vision; or
 - (b) a motor impairment; or
 - (c) insufficient literacy skills (whether in the English language or in their primary spoken language).

Division 2—Electronic assisted voting

110E Application of Part 6 to electronic assisted voting

Part 6 applies to and in respect of electronic assisted voting subject to the provisions of this Part.

110F Availability of electronic assisted voting

- (1) The Commission must determine that electronic assisted voting is available at an election.
- (2) The Commission must designate a voting centre as an electronic assisted voting centre.

110G Who can access electronic assisted voting?

Electronic assisted voting can be accessed by a prescribed eligible class or classes of electors prescribed by the regulations for the purposes of this section.

110H Commission to approve procedures for electronic assisted voting

- (1) The Commission may approve procedures to facilitate voting by a prescribed eligible class or classes of electors at an election by means of electronic assisted voting.
- (2) The Commission may engage an independent person or auditor to conduct audits of the computer program, systems and information technology used under the approved procedures.

Division 3—General

110HA Definition

In this Part, ***electronic assisted voting*** includes voting by the use of electronic equipment, telephone or other technology.

110HB Approval of computer program or system for electronic voting and electronic assisted voting

- (1) The Commission may approve a computer program or system to enable electronic voting and electronic assisted voting if the Commission is satisfied that the criteria specified in subsection (2) apply.
- (2) The criteria are—
 - (a) the proper use of the computer program or system will give the same result in the recording of votes in an election as would be obtained if no computer program or system was used in the recording of votes;
 - (b) the computer program or system will enable a visual display or auditory description (including the names and order of the candidates and other details about the candidates as they appear on the ballot-paper) of the ballot-paper and voting instructions to be provided to an

elector so that the elector may vote using a touch screen or a keypad;

- (c) the computer program or system will enable an elector to select consecutive preferences beginning with the figure "1" or, in the case of an election for the Legislative Council, to select only one party or group in accordance with section 93A(2)(a);
 - (d) the computer program or system allows an elector to correct a mistake before the vote is processed by the computer program;
 - (e) the computer program or system allows an elector to give an informal vote by selecting no preferences for any candidate or by voting for less than the number of vacancies to be filled at the election;
 - (f) the computer program or system allows an elector to abandon for any reason the electronic ballot-paper without completing the vote;
 - (g) the computer program or system can produce a paper record of each vote cast using an electronic ballot-paper to enable the counting of votes in the election;
 - (h) the computer program or system will prevent any person from ascertaining the vote of a particular elector.
- (3) The Commission may approve a process for capturing preferences into the approved computer program or system for electronic voting or for electronic assisted voting.

110HC Security arrangements

The Commission must ensure that arrangements are in place to ensure that—

- (a) systems, computer programs and electronic devices used or intended to be used for or in connection with electronic voting and electronic assisted voting are kept secure from interference; and
- (b) the integrity of voting is maintained while electronic voting and electronic assisted voting is being used.

110HD Ballot-papers

- (1) For the purposes of this Part, a ballot-paper prepared under section 74 may be in an electronic form.

- (2) The Commission may approve changes to the electronic form of the ballot-paper which are necessary to facilitate the visual display or auditory description of the electronic form.
- (3) The Commission may approve changes to the form of the ballot-paper printed from the ballot-paper in an electronic form.

110HE Voting

- (1) For the purposes of section 92, if section 110D applies to a person entitled to vote, the person may be given access to an electronic ballot-paper.
- (2) For the purposes of section 92, if section 110G applies to a person entitled to vote, the person may authorise an election official to access and complete a ballot-paper on their behalf.
- (3) If an elector given access to an electronic ballot-paper has complied with the voting instructions provided and the vote is processed by the computer program, the elector is to be taken for the purposes of sections 93 and 93A to have marked the elector's vote on the ballot-paper in accordance with those sections.
- (4) For the purposes of section 93(6), an elector using electronic voting or electronic assisted voting is to be taken to have deposited their vote in the ballot-box—
 - (a) in the case of electronic voting, when they submit their electronic ballot-paper using the approved computer program; or
 - (b) in the case of electronic assisted voting, when the election official has confirmed completion of the ballot-paper.
- (5) For the purposes of section 98, a person to whom section 110D applies is entitled to apply to vote at an early voting centre.
- (6) The validity of a vote cast in accordance with this section cannot be disputed on the ground that the elector could have voted without assistance.

110I Offence in relation to electronic voting and electronic assisted voting

- (1) A person must not, without reasonable excuse, destroy or interfere with any computer program, data file or electronic device which is used, or intended to be used, for or in connection with electronic voting and electronic assisted voting.

(2) A person who contravenes subsection (1) is guilty of an indictable offence.

Penalty: Level 6 imprisonment (5 years maximum) or level 6 fine (600 penalty units).

Note

Section 179A applies to an offence against this section."

12. Clause 35, page 19, line 13, omit "**section**" and insert "**sections 152 and**".

13. Clause 35, page 19, line 14, after this line insert—

'(1) After section 152(3) of the **Electoral Act 2002** insert—

"(4) A person must not, subject any person who within 100 metres of the entrance of a building used as a voting centre is handing out how-to-vote cards or supporting a candidate at an election, to violence or intimidation.

(5) A person who contravenes subsection (4) is guilty of an indictable offence.

Penalty: Level 6 imprisonment (5 years maximum) or level 6 fine (600 penalty units)."

14. Clause 36, page 21, lines 14 and 15, omit ", registered political party or organisation may display one sign" and insert "or registered political party may display 2 signs".

15. Clause 40, page 25, line 2, omit all words and expressions on this line.

16. Clause 40, page 25, line 3, omit "(b)" and insert "(a)".

17. Clause 40, page 25, line 6, omit "(c)" and insert "(b)".

18. Clause 40, page 25, line 16, after this line insert—

"election campaigning period means the period—

(a) commencing on 1 October in the year of a general election as a result of the expiration of the Assembly and ending at 6 p.m. on the day of the general election; or

(b) commencing on the day on which the writ is issued for any other election and ending at 6 p.m. on the day of the election;".

19. Clause 40, page 26, lines 28 and 29, omit all words and expressions on these lines and insert—
- "(b) a registered political party; or
 - (c) an elected member—
- but does not include expenditure incurred by an associated entity or third party campaigner on any material that is published, aired or otherwise disseminated outside of the election campaigning period unless the material refers to—
- (d) a candidate or a registered political party; and
 - (e) how a person should vote at an election;".
20. Clause 40, page 27, line 16, after "that" insert "receives political donations or".
21. Clause 40, page 27, line 17, omit "\$2000" and insert "\$4000".
22. Clause 40, page 28, lines 19 to 26, omit all words and expressions on these lines and insert—
- "(g) an annual subscription paid to a registered political party by a person in respect of the person's membership of the registered political party;".
23. Clause 40, page 28, lines 30 to 35, and page 29, lines 1 to 10, omit all words and expressions on these lines and insert—
- "(i) an annual levy paid to a registered political party by—
 - (i) an elected member or a member of staff of the elected member (including an electoral officer); or
 - (ii) an employee or elected official of the registered political party;".
24. Clause 40, page 29, line 17, after this line insert—
- "(ja) a gift made for Commonwealth electoral purposes that is not paid into the State campaign account;".
25. Clause 40, page 31, line 10, omit "expenditure;" and insert—
- "expenditure—
 - in which case, the whole or the part of the gift used, or intended to be used, for the purposes specified in subparagraphs (i) and (ii) is a political donation;".
26. Clause 40, page 31, line 25, omit "expenditure;" and insert—

"expenditure—

in which case, the whole or the part of the gift used, or intended to be used, for the purposes specified in subparagraphs (i) and (ii) is a political donation;".

27. Clause 43, page 37, line 6, omit "An" and insert "Subject to subsection (3), an".
28. Clause 43, page 37, line 22, after this line insert—
- "(3) Despite subsection (2), if the first appointment of an entity as the nominated entity of a registered political party is made before 1 July 2020, an entity is eligible to be appointed as the nominated entity of the registered political party if the entity is an incorporated body—
- (a) that—
- (i) operates for the principal benefit of the members of the registered political party; or
- (ii) is established and maintained, or is the trustee of a trust established and maintained, for the principal benefit of the members of the registered political party; and
- (b) that does not have voting rights in the registered political party."
29. Clause 43, page 37, line 23, omit "(3)" and insert "(4)".
30. Clause 44, page 41, line 6, after this line insert—
- "**administrative expenditure funding** means funding paid to a registered political party or an independent elected member for administrative expenses, including expenses incurred in complying with this Part;".
31. Clause 44, page 41, lines 7 to 9, omit all words and expressions on these lines.
32. Clause 44, page 41, line 15, after "member" insert ",".
33. Clause 45, page 42, line 2, before "After" insert "(1)".
34. Clause 45, page 48, lines 30 to 36, and page 49, lines 1 to 8, omit all words and expressions on these lines and insert—

"(5) If a registered agent of an associated entity or a third party campaigner pays into the State campaign account an amount received as—

(a) an annual subscription paid to the associated entity or third party campaigner by a person in respect of the person's membership of the associated entity or third party campaigner; or

(b) an annual levy paid to the associated entity or third party campaigner by an elected official or employee of the associated entity or third party campaigner—

the amount is to be taken to be a political donation within the meaning of section 206(1) and sections 216, 217D, 217J and 217K apply accordingly."

35. Clause 52, page 60, line 23, omit "(2)(a), (b)" and insert "(2)(b)".

36. Clause 52, page 62, line 27, omit "50(2)" and insert "52(2)".

37. Clause 54, page 67, line 6, after this line insert—

"(9) For the purposes of this section, any amount that is a political donation made or received for Commonwealth electoral purposes and is not paid into a State campaign account of a person or entity—

(a) is not to be included for the purposes of calculating the sum of political donations made by the donor for the purposes of subsection (2)(b); and

(b) does not require the provision of a disclosure return under subsection (2) or (4)."

38. Clause 55, page 69, lines 12 to 14, omit all words and expressions on these lines and insert—

"exceeds the general cap is made for Commonwealth electoral purposes and is not paid into the State campaign account of the person or entity."

39. Clause 55, page 72, line 13, before "The" insert "(1)".

40. Clause 55, page 73, line 31, after this line insert—

"(2) For the purposes of calculating the sum of all amounts received from a person or entity during a financial year under subsection (1)(b)(ii) or the sum of all outstanding debts to a person or entity during a financial year under

subsection (1)(b)(v), any amount that is a political donation made or received for Commonwealth electoral purposes and is not paid into a State campaign account of a person or entity is to be disregarded."

41. Clause 55, page 73, line 33, before "The" insert "(1)".
42. Clause 55, page 75, line 14, after this line insert—

"(2) For the purposes of calculating the sum of all amounts received from a person or entity during a financial year under subsection (1)(b)(ii) or the sum of all outstanding debts to a person or entity during a financial year under subsection (1)(b)(v), any amount that is a political donation made or received for Commonwealth electoral purposes and is not paid into a State campaign account of a person or entity is to be disregarded."
43. Clause 55, page 75, line 17, before "The" insert "(1)".
44. Clause 55, page 76, line 35, after this line insert—

"(2) For the purposes of calculating the sum of all amounts received from a person or entity during a financial year under subsection (1)(b)(ii) or the sum of all outstanding debts to a person or entity during a financial year under subsection (1)(b)(v), any amount that is a political donation made or received for Commonwealth electoral purposes and is not paid into a State campaign account of a person or entity is to be disregarded."
45. Clause 55, page 77, line 2, before "The" insert "(1)".
46. Clause 55, page 78, line 18, after this line insert—

"(2) For the purposes of calculating the sum of all amounts received from a person or entity during a financial year under subsection (1)(b)(ii) or the sum of all outstanding debts to a person or entity during a financial year under subsection (1)(b)(v), any amount that is a political donation made or received for Commonwealth electoral purposes and is not paid into a State campaign account of a person or entity is to be disregarded."
47. Clause 55, page 79, line 12, after this line insert—

"(3) For the purposes of calculating the sum of all amounts received from a person or entity during a financial year

under subsection (1)(b)(ii), any amount that is a political donation made or received for Commonwealth electoral purposes and is not paid into a State campaign account of a person or entity is to be disregarded."

48. Clause 55, page 79, line 18, after this line insert—

"217NA Annual returns in respect of financial year commencing on 1 July 2018

The period in respect of which an annual return is to be provided in respect of the financial year commencing on 1 July 2018 is the period commencing 25 November 2018 and ending on 30 June 2019 and this Division is to be construed accordingly."

49. Clause 55, page 81, in item 3 of the TABLE, omit "\$2000" and insert "\$4000".

NEW CLAUSE

50. Insert the following New Clause to follow clause 62—

'DD New sections 222DB and 222DC inserted

After section 222DA of the **Electoral Act 2002** insert—

"222DB Review to be conducted

- (1) The Minister must cause an independent review of the operation of the amendments of this Act made by the **Electoral Legislation Amendment Act 2018** (the **2018 amendments**) to be conducted by an expert panel appointed under section 222DC.
- (2) The review must be completed within 12 months after 25 November 2022.
- (3) The review must examine and make recommendations in relation to the following—
 - (a) whether this Act should be further amended to provide for a cap on political expenditure and if so—
 - (i) whether the cap should apply generally or to specific persons or entities;
 - (ii) the value of the cap;
 - (iii) the consequences of a failure to comply with the cap;

- (b) the impact of the 2018 amendments upon third party campaigners, small community groups and not-for-profit entities;
 - (c) the operation of the disclosure scheme given effect to by the 2018 amendments including, but not limited to, the operation of disclosure returns;
 - (d) the effectiveness of the 2018 amendments so far as they relate to electronic assisted voting.
- (4) The review may examine and make recommendations in relation to contemporary trends and issues in respect of the electoral funding including, but not limited to, the funding of political parties or candidates (however described).
 - (5) The Minister must cause a copy of a report of the review to be laid before each House of Parliament on or before 10 sitting days after the day on which the review is completed.
 - (6) If the review recommends that this Act be amended, the Minister must use the Minister's best endeavours to ensure that the Act is amended in accordance with the recommendations before the general election to be held in November 2026.

222DC Review to be conducted by expert panel

- (1) The review of the 2018 amendments must be conducted by an expert panel comprised of 3 members appointed by the Minister.
- (2) Before appointing the expert panel, the Minister must propose 3 members to the Electoral Matters Committee established under section 5 of the **Parliamentary Committees Act 2003**, each of whom must have experience in one or more of the following areas—
 - (a) community advocacy and engagement;
 - (b) legal and regulatory compliance;
 - (c) contemporary issues relating to electoral funding.
- (3) A proposed member must not be any of the following—
 - (a) a current employee of a public service body, a public entity or a special body (within the meaning of the **Public Administration Act 2004**);
 - (b) a current employee or executive of a registered political party;

- (c) the current Electoral Commissioner or an employee or other member of staff of the Commission;
 - (d) a current or former Member of the Parliament of Victoria.
- (4) The Electoral Matters Committee may, within 30 days of receiving advice of 3 proposed members of the expert panel from the Minister, veto one or more of the proposed members.
- (5) If the Electoral Matters Committee vetoes one or more of the proposed members, the Electoral Matters Committee must propose 2 alternative member for each vetoed proposed member, each of whom—
- (a) must have experience in an area specified in paragraph (2)(a), (b) or (c); and
 - (b) must not be a person specified in subsection (3).
- (6) If the Electoral Matters Committee proposes 2 alternative members for a vetoed proposed member, the Minister must appoint one of the alternative members instead of appointing the proposed vetoed member, unless the alternative member does not satisfy the requirements of subsection (5)(a) and (b), in which case the Minister must ask the Electoral Matters Committee to propose another member.
- (7) In conducting the review, the expert panel may inform itself as it sees fit, having regard to appropriate privacy considerations relating to electronic assisted voting.".'. .

Certified -

Clerk of the Legislative Council