

ELECTORAL LEGISLATION AMENDMENT BILL 2018

(Amendments suggested by the Legislative Council on the consideration of the Bill in Committee)

1. Clause 45, page 50, line 30, omit "group." and insert 'group.'.
2. Clause 45, page 51, line 1, omit all words and expressions on these lines and insert—
 - '(2) Before section 208 of the **Electoral Act 2002** insert—
"Division 1C—Administrative".
3. Clause 45, page 51, lines 3 to 34, page 52, lines 1 to 31, page 53, lines 1 to 33 and page 54, lines 1 to 27, omit all words and expressions on these lines and insert—

"207G Definitions

In this Division—

claimable expenditure means expenditure for administrative expenses as determined by the Commission, subject to the following—

(a) the following expenditure is included—

- (i) expenditure for the administration or management of the activities of the eligible party or elected member;
- (ii) expenditure for conferences, seminars, meetings or similar functions at which the policies of the eligible party or elected member are discussed or formulated;
- (iii) expenditure in respect of the audit of the financial accounts of, or claims for payment or disclosures under the Act of, the eligible party or elected member;
- (iv) expenditure on the remuneration of staff engaged in the matters referred to in subparagraphs (i) to (iii) for the eligible party or elected member to the extent that that expenditure relates to the time that the staff are engaged in those matters;

- (v) expenditure on equipment or vehicles used by staff whilst engaged in the matters referred to in subparagraphs (i) to (iii) for the eligible party or elected member to the extent that that expenditure relates to use of the equipment or vehicles by the staff whilst engaged in those matters;
 - (vi) expenditure on office accommodation for the staff and equipment referred to in subparagraphs (iv) and (v);
 - (vii) expenditure on interest payments on loans;
- (b) the following expenditure is not included—
- (i) political expenditure;
 - (ii) electoral expenditure;
 - (iii) expenditure for which an elected member has claimed a parliamentary allowance as a member;
 - (iv) expenditure that is incurred substantially in respect of operations or activities relating to the election of members of the eligible party to a Parliament other than the Parliament of Victoria;

election quarter, of a year in which a scheduled general election period occurs, means the quarter of that year beginning on 1 October;

independent elected member means an elected member who is not a member of a registered party;

scheduled general election period means the period commencing on 1 July in a year that a general election under section 61(1)(a) is to be held and ending on the day that the general election is held (both days inclusive).

207GA Entitlement to administrative expenditure funding

- (1) Subject to this section and section 207GB, the following are eligible to receive an annual amount of administrative expenditure funding as follows—

- (a) for an independent elected member, an amount of \$200 000;
 - (b) for a registered political party, an amount of—
 - (i) \$200 000 for the first elected member; and
 - (ii) \$70 000 for the second elected member; and
 - (iii) \$35 000 for each of the third to the forty-fifth elected members.
- (2) The Commission must make payments of administrative expenditure funding under this section quarterly in advance.
- (3) In an election quarter, the Commission must make payments of administrative expenditure funding—
 - (a) in advance on a pro-rata basis for the period—
 - (i) beginning on 1 October of that year; and
 - (ii) ending in the day of the general election; and
 - (b) in arrears on a pro-rata basis for the period—
 - (i) beginning on the day after the day of the general election; and
 - (ii) ending on 31 December in that year.
- (4) The entitlement to receive a quarterly payment of administrative expenditure funding is to be calculated on a pro-rata basis for—
 - (a) each day in the quarter that an elected member is an independent elected member; or
 - (b) each day in the quarter that an elected member is a member of a registered political party.
- (5) In a scheduled general election period—
 - (a) an independent elected member only has an entitlement under subsection (1) if the independent elected member subsequently nominates as a candidate under section 69 and stands for election to the Parliament of Victoria at the general election; and
 - (b) a registered political party only has an entitlement under subsection (1) in respect of each elected member of the registered political party who subsequently nominates as a candidate under section 69 and stands for election to the Parliament of Victoria

at the general election as an endorsed candidate of that registered political party.

- (6) Despite subsection (3), the first payment of administrative expenditure funding is to be—
- (a) payable from 1 August 2018; and
 - (b) paid on a pro-rata basis for the period commencing on 1 August 2018 and ending on 30 September 2018.

207GB Request to Commission to receive administrative expenditure funding

- (1) For the purpose of having an entitlement to receive payments of administrative expenditure funding in respect of a scheduled general election period, the registered officer of a registered political party or the registered agent of an independent elected member must provide a request in writing to the Commission that the registered political party or independent elected member receive payments of administrative expenditure funding for the period.
- (2) A request under subsection (1) must—
- (a) be in the form determined by the Commission; and
 - (b) in the case of a request by the registered agent of an independent elected member, state that the independent elected member intends to stand for election to the Parliament of Victoria at the general election in that year; and
 - (c) in the case of a request by the registered officer of a registered political party, state—
 - (i) that all of the elected members intend to stand for election to the Parliament of Victoria at the general election in that year as endorsed candidates of the registered political party; or
 - (ii) if all of the elected members do not intend to stand for election to the Parliament of Victoria at the general election in that year as endorsed candidates of the registered political party, the number of elected members that do intend to stand for election to the Parliament of Victoria at the general election in that year as endorsed candidates of the registered political party;
 - (d) include an acknowledgement from the registered officer or registered agent that administrative

expenditure funding that is not used to incur claimable expenditure must be repaid to the Commission; and

- (e) include an acknowledgement from the registered officer or registered agent that administrative expenditure funding will not be—
 - (i) paid into the State campaign account; or
 - (ii) used to incur any of the following expenditure—
 - (A) political expenditure;
 - (B) electoral expenditure;
 - (C) expenditure for which an elected member has claimed a parliamentary allowance as a member;
 - (D) expenditure that is incurred substantially in respect of operations or activities relating to the election of members of the eligible party to a Parliament other than the Parliament of Victoria.
- (3) For the purpose of having an entitlement to receive payments of administrative expenditure funding in respect of any period other than a scheduled general election period, the registered officer of a registered political party or the registered agent of an independent elected member must provide a request in writing to the Commission that the registered political party or independent elected member receive payments of administrative expenditure funding for the period.
- (4) A request under subsection (3) must—
- (a) be in the form determined by the Commission; and
 - (b) include an acknowledgement from the registered officer or registered agent that administrative expenditure funding that is not used to incur claimable expenditure must be repaid to the Commission; and
 - (c) include an acknowledgement from the registered officer or registered agent that administrative expenditure funding will not be—
 - (i) paid into the State campaign account; or
 - (ii) used to incur any of the following expenditure—
 - (A) political expenditure;

- (B) electoral expenditure;
 - (C) expenditure for which an elected member has claimed a parliamentary allowance as a member;
 - (D) expenditure that is incurred substantially in respect of operations or activities relating to the election of members of the eligible party to a Parliament other than the Parliament of Victoria.
- (5) A request under subsection (3) continues in effect until—
- (a) a new request is provided under subsection (3); or
 - (b) the commencement of the next scheduled general election period.
- (6) If an elected member ceases to be a member of a registered political party and becomes an independent elected member during the term of the Parliament, the registered agent of the independent elected member must provide a request to the Commission under subsection (1) or (3) for the purpose of having an entitlement to receive payments of administrative expenditure funding.
- (7) If the number of elected members of a registered political party increases during the term of the Parliament, the registered officer of the registered political party must provide a new request to the Commission under subsection (1) or (3) for the purpose of having an entitlement to receive payments of administrative expenditure funding in respect of the increase in the number of elected members.
- (8) If the entitlement of a registered political party decreases during the term of the Parliament because the number of elected members of the registered political party has decreased, the registered officer of the registered political party—
- (a) is not required to provide a new request to the Commission under subsection (1) or (3); and
 - (b) is required to notify the Commission, within 28 days of the decrease in the number of elected members occurring, of the number of elected members of the registered political party so as to enable the Commission to calculate the payment of administrative expenditure funding in accordance with section 207GA(4).

- (9) If the entitlement of an independent elected member decreases during the term of the Parliament because the elected member has ceased to be an independent elected member, the registered agent of the independent elected member—
- (a) is not required to provide a new request to the Commission under subsection (1) or (3); and
 - (b) is required to notify the Commission, within 28 days of the elected member ceasing to be an independent elected member, that the elected member has ceased to be an independent elected member so as to enable the Commission to calculate the payment of administrative expenditure funding in accordance with section 207GA(4).
- (10) For the purposes of a request made under this section before 25 November 2018—
- (a) if the request is made under subsection (1), subsection (2) applies as if subsection (2)(e)(i) were omitted; and
 - (b) if the request is made under subsection (3), subsection (4) applies as if subsection (4)(c)(i) were omitted.
- (11) For the avoidance of doubt, if a request under this section is not provided to the Commission before a payment of administrative expenditure funding is due to be made by the Commission, the entitlement to the payment of administrative expenditure funding is not affected but the Commission cannot make the payment until the request is provided to the Commission.

207GC Annual return

- (1) The registered officer of a registered political party or the registered agent of an independent elected member must, within 16 weeks after the end of each calendar year, provide an annual return to the Commission that—
- (a) is in the form determined by the Commission; and
 - (b) specifies that the registered political party or independent elected member has in relation to the calendar year spent or incurred claimable expenditure—

- (i) not less than the amount of the entitlement to administrative expenditure funding under section 207GA; or
 - (ii) less than the amount of the entitlement to administrative expenditure funding under section 207GA, being the amount specified in the annual return.
- (2) An annual return under subsection (1) must be accompanied by a declaration made by the registered officer of the registered political party or the registered agent of the independent elected member providing the annual return stating that the registered officer or registered agent has no reason to believe that any matter stated in the annual return is not correct.
- (3) If the Commission has not been provided with an annual return within the period specified in subsection (1)—
 - (a) the registered political party or independent elected member is to be taken to have incurred no claimable expenditure in relation to the calendar year; and
 - (b) the registered political party or independent elected member must repay to the Commission in accordance with section 207GF the total amount of payments of administrative expenditure funding received in relation to that calendar year.

207GD Audit of annual return

- (1) An annual return under section 207GC(1) by the registered officer of a registered political party must be provided to the Commission with the certificate of a registered company auditor within the meaning of the Corporations Act.
- (2) An annual return under section 207GC(1) by the registered agent of an independent elected member must be provided to the Commission with the certificate of an independent auditor advising that the statement has been audited in accordance with Australian Accounting Standards as specified in section 334(1) of the Corporations Act.
- (3) A certificate under subsection (1) or (2) must state that the auditor—
 - (a) was given full and free access at all reasonable times to all accounts, records, documents and papers relating directly or indirectly to any matter required to be specified in the annual return; and

- (b) examined the material referred to in paragraph (a) for the purpose of giving the certificate; and
 - (c) received all information and explanations that the auditor requested in respect of any matter required to be specified in the annual return; and
 - (d) has no reason to believe that any matter stated in the annual return is not correct.
- (4) An annual return is to be taken not to have been provided to the Commission unless the certificate required by this section is attached to the annual return.

207GE Powers of Commission

- (1) If the Commission is satisfied on reasonable grounds that information provided in the annual return or the certificate is materially incorrect, the Commission may by notice in writing request the auditor to provide further information as specified in the notice within 14 days of the date of the notice.
- (2) If the auditor fails to provide the requested information, the Commission may by notice in writing request the registered officer of the registered political party or the registered agent of the independent elected member to provide further information as specified in the notice within 14 days of the date of the notice.
- (3) If the registered officer of the registered political party or the registered agent of the independent elected member fails to provide the requested information, the Commission may—
 - (a) withhold any payment under section 207GA until the requested information is provided; or
 - (b) if a payment has already been made under section 207GA, recover the payment under section 207GF.

207GF Recovery of administrative expenditure funding

- (1) If a registered political party or an independent elected member has received a payment of administrative expenditure funding in respect of any quarter that exceeds the entitlement at the end of that quarter as a result of being calculated on a pro-rata basis under section 207GA or for any other reason, an amount equal to the excess must be—
 - (a) deducted by the Commission from any amount of administrative expenditure funding payable to the registered political party or the independent elected member in respect of any subsequent quarter; or
 - (b) if the Commission makes a request in writing to the registered officer of the registered political party or the registered agent of the independent elected member, repaid to the Commission within the period specified in the request.
- (2) If the total amount of the payments of administrative expenditure funding received in respect of a calendar year by a registered political party or an independent elected member is greater than the amount of claimable expenditure specified in the annual return in respect of that calendar year, an amount equal to the excess must be—
 - (a) deducted by the Commission from any amount of administrative expenditure funding payable to the registered political party or the independent elected member in respect of any subsequent quarter; or
 - (b) if the Commission makes a request in writing to the registered officer of the registered political party or the registered agent of the independent elected member, repaid to the Commission within the period specified in the request; or
 - (c) if the registered political party or independent elected member is not entitled to receive payments of administrative expenditure funding in the subsequent quarter, repaid to the Commission within 60 days of the date of the notice requesting the payment.
- (3) If a registered political party has received any payments of administrative expenditure funding in respect of a scheduled general election period and some or all of the elected members of the registered political party did not stand for election to the Parliament of Victoria at the general election

as an endorsed candidate of that registered political party, the total amount of payments of administrative expenditure funding in the scheduled general election period in respect of the elected members who did not stand must be repaid to the Commission by the registered political party within 60 days of the end of the calendar year in which the payments of administrative expenditure funding were made.

- (4) If an independent elected member has received any payments of administrative expenditure funding in respect of a scheduled general election period and the independent elected member did not stand for election to the Parliament of Victoria at the general election, the total amount of payments of administrative expenditure funding in the scheduled general election period in respect of the independent elected member must be repaid to the Commission by the former independent elected member within 60 days of the end of the calendar year in which the payments of administrative expenditure funding were made.
- (5) If the registered political party, independent elected member or former independent elected member does not repay any amount required to be repaid to the Commission under this section, the Commission may recover the amount as a debt due to the State in a court of competent jurisdiction.

207GG Prohibition on the payment or use of administrative expenditure funding

- (1) The registered officer of a registered political party or the registered agent of an independent elected member must ensure that any payment of administrative expenditure funding received on or after 25 November 2018 is not paid into the State campaign account.
- (2) The registered officer of a registered political party or the registered agent of an independent elected member must ensure that any payment of administrative expenditure funding received by the registered political party or the independent elected member is not used to incur any of the following expenditure—
 - (a) political expenditure;
 - (b) electoral expenditure;
 - (c) expenditure for which an elected member has claimed a parliamentary allowance as a member;

(d) expenditure that is incurred substantially in respect of operations or activities relating to the election of members of the eligible party to a Parliament other than the Parliament of Victoria.

- (3) If the Commission becomes aware that a payment of administrative expenditure funding has been paid or used in contravention of subsection (1) or (2), the Commission must notify the registered officer of the registered political party or the registered agent of the independent elected member that the registered political party or the independent elected member must pay a penalty equal to 200 per cent of the amount paid or used in contravention of subsection (1) or (2) to the Commission within 60 days of the date of the notice.
- (4) If the registered political party or the independent elected member does not pay the amount specified under subsection (3), the Commission may—
- (a) deduct the amount from any amount of administrative expenditure funding payable to the registered political party or the independent elected member in respect of any subsequent quarter; or
 - (b) if the registered political party or independent elected member is not entitled to receive payments of administrative expenditure funding in the subsequent quarter, recover the amount as a debt due to the State in a court of competent jurisdiction."

4. Clause 45, page 53, line 25, omit "paid into the State campaign account or".

5. Clause 45, page 54, line 24, after this line insert—

"(12) In this section, ***election quarter***, of a year in which a general election is held, means the quarter of that year beginning on 1 October."

6. Clause 45, page 54, line 27, after this line insert—

'(3) In section 207G(6) of the **Electoral Act 2002**, after "not" insert "paid into the State campaign account or".'

7. Clause 46, page 55, line 8, after "Division" insert "1C or".

8. Clause 50, page 57, line 18, after this line insert—

- '(3) In section 211(3) of the **Electoral Act 2002**, after "the election" insert "or the candidate is elected at the election".'

NEW CLAUSE

9. Insert the following New Clause to follow clause 53—

'CC New Division 2A inserted in Part 12

After Division 2 of Part 12 of the **Electoral Act 2002** insert—

"Division 2A—Policy development funding

215A Policy development funding

- (1) The Commission must make payments of policy development funding to eligible registered political parties to reimburse costs relating to policy development in accordance with this section.
- (2) An eligible registered political party is entitled to an annual payment of policy development funding equal to the greater of—
 - (a) the sum of \$1.00 for each first preference vote given for a candidate who was endorsed by the registered political party at the previous general election; or
 - (b) \$25 000.
- (3) A registered political party is an eligible registered political party if—
 - (a) the registered political party has been a registered political party for the whole of the calendar year; and
 - (b) the registered officer of the registered political party did not receive a payment under section 212(3) in respect of any election during the calendar year or the previous general election; and
 - (c) the registered political party was not entitled to receive a payment of administrative expenditure funding under section 207G during the calendar year; and
 - (d) the Commission is satisfied that the registered political party operates as a genuine political party; and
 - (e) the registered officer of the registered political party has complied with subsection (4).
- (4) For the purpose of having an entitlement under subsection (2), the registered officer of the registered political party

must, within 20 weeks of the end of the calendar year, provide to the Commission a statement, in the form approved by the Commission, specifying that the registered political party has spent or incurred policy development expenditure in relation to the calendar year—

- (a) not less than the amount of the entitlement under subsection (2); or
 - (b) less than the amount of the entitlement under subsection (2), being the amount specified in the statement.
- (5) For the purposes of subsection (4), ***policy development expenditure*** means expenditure as determined from time to time by the Commission but does not include political expenditure or electoral expenditure.
- (6) The registered officer of the registered political party must ensure that any payment received from the Commission under this section is not—
- (a) paid into the State campaign account; or
 - (b) used for electoral expenditure.

215B Audit of statement

- (1) A statement under section 215A(4) must be provided to the Commission with the certificate of a registered company auditor within the meaning of the Corporations Act.
- (2) A certificate under subsection (1) must state that the auditor—
- (a) was given full and free access at all reasonable times to all accounts, records, documents and papers relating directly or indirectly to any matter required to be specified in the statement; and
 - (b) examined the material referred to in paragraph (a) for the purpose of giving the certificate; and
 - (c) received all information and explanations that the auditor requested in respect of any matter required to be specified in the statement; and
 - (d) has no reason to believe that any matter stated in the statement is not correct.
- (3) A statement is to be taken not to have been provided to the Commission unless the certificate required by this section is attached to the statement.

215C Powers of Commission

- (1) If the Commission is satisfied on reasonable grounds that information provided in the statement or the certificate is materially incorrect, the Commission may by notice in writing request the auditor to provide further information as specified in the notice within 14 days of the date of the notice.
- (2) If the auditor fails to provide the requested information, the Commission may by notice in writing request the registered officer of the registered political party to provide further information as specified in the notice within 14 days of the date of the notice.
- (3) If the registered officer of the registered political party fails to provide the requested information, the Commission may—
 - (a) withhold any payment under section 215A until the requested information is provided; or
 - (b) if a payment has already been made under section 215A, take proceedings to recover the payment under section 215D(4).

215D Making of payments

- (1) An amount is only payable if the statement required to be provided to the Commission has been provided to the Commission.
- (2) The amount payable is—
 - (a) if the statement specifies that not less than the entitlement has been spent or incurred, the whole of the entitlement; or
 - (b) if the statement specifies that an amount that is less than the entitlement has been spent or incurred, an amount equal to the amount specified in the statement.
- (3) If an amount is payable under section 215A, the Commission must make the payment to the registered officer of the registered political party within 30 days after the Commission has been provided the statement.
- (4) If a payment is made and the recipient is not entitled to receive the whole or a part of the amount paid, that amount or that part of that amount may be recovered by the Commission as a debt due to the State by action against the person in a court of competent jurisdiction.".'.

10. Clause 55, page 80, line 10, after "return" insert "provided under this Division".
11. Clause 55, page 81, omit items 4 to 8 of the TABLE and insert—
- "4 Section 207GA(1)(a)—\$200 000
 - 5 Section 207GA(1)(b)(i)—\$200 000
 - 6 Section 207GA(1)(b)(ii)—\$70 000
 - 7 Section 207GA(1)(b)(iii)—\$35 000".
12. Clause 55, page 81, after item 10 of the TABLE insert—
- "10A Section 215A(2)(a)—\$1.00
 - 10B Section 215A(2)(b)—\$25 000".
13. Clause 63, page 87, lines 13 to 30, omit all words and expressions on these lines and insert—
- '(2) Without limiting the generality of subsection (1), the following are entitled to be provided with one Parliamentary adviser—
 - (a) each independent elected member of the Parliament of Victoria;
 - (b) the Leader of any party represented in the Parliament of Victoria which is not a party forming Government and which has only one elected member.
 - (2A) Without limiting the generality of subsection (1), the Leader of any party represented in the Parliament of Victoria which is not a party forming Government and which has more than one elected member but less than 6 elected members, is entitled to be provided with—
 - (a) 2 Parliamentary advisers; and
 - (b) one Parliamentary adviser for each 2 elected members of the party.
 - (2B) Without limiting the generality of subsection (1), the Leader of any party represented in the Parliament of Victoria which is not a party forming Government and which has more than 5 elected members but less than 12 elected members, is entitled to be provided with—
 - (a) one Parliamentary adviser; and

- (b) one Parliamentary adviser for each 2 elected members of the party.
- (2C) Without limiting the generality of subsection (1), the Leader of any party represented in the Parliament of Victoria which is not a party forming Government and which has more than 11 elected members, is entitled to be provided with one Parliamentary adviser for each 2 elected members of the party.
- (2D) For the purposes of determining the entitlement under subsections (2), (2A), (2B) and (2C)—
 - (a) the number of elected members of a party represented in the Parliament of Victoria; and
 - (b) the number of independent elected members of the Parliament of Victoria—

is to be determined as at the date that the result of the general election at which the members are elected is declared by the Commission under section 121 of the **Electoral Act 2002**.
- (2E) The entitlement determined under subsection (2D) is to be recalculated as at the date that the result of an election, other than a general election, is declared by the Commission under section 121 of the **Electoral Act 2002** only in relation to—
 - (a) the elected member who held the seat that became vacant and resulted in the holding of the election; and
 - (b) the candidate that is declared elected at the election and is an elected member of a party represented in the Parliament of Victoria or an independent elected member of the Parliament of Victoria.".'.

14. Clause 63, page 88, line 8, lines 4 to 9, omit all words and expressions on these lines and insert—

'candidate has the same meaning as it has in section 3 of the **Electoral Act 2002**;

electd member has the same meaning as it has in section 206(1) of the **Electoral Act 2002**;

general election has the same meaning as it has in section 3 of the **Electoral Act 2002**;

independent elected member has the same meaning as it has in section 207G of the **Electoral Act 2002**;

party has the same meaning as ***registered political party*** has in section 3 of the **Electoral Act 2002**.".!

Certified -

Clerk of the Legislative Council