

WESTERN AUSTRALIA

LEGISLATIVE ASSEMBLY

(Introduced by Dr Gallop MLA)

**LOCAL GOVERNMENT
(POLITICAL DONATIONS AND
ELECTORAL EXPENDITURE)
AMENDMENT BILL 1997**

A BILL FOR

AN ACT to amend the *Local Government Act 1995*.

The Parliament of Western Australia enacts as follows:

Short title

1. This Act may be cited as the *Local Government (Political Donations And Electoral Expenditure) Amendment Act 1997*.

5 Commencement

2. This Act shall come into operation on such day as is fixed by proclamation.

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Principal Act

3. In this Act the *Local Government Act 1995** is referred to as the principal Act.

5 [*For subsequent amendments see 1996 Index to Legislation of
Western Australia at page 1-136.]

Section 4.1 amended

4. Section 4.1 of the principal Act is amended by inserting at the appropriate places by alphabetical order the following definitions —

10 “ **“approved”** means approved by the Electoral
Commissioner;

“disclosure period” for an election (“the
relevant election”) is the period that —

15 (a) commenced one year before the polling day
in the relevant election; and

(b) ended 30 days after polling day in the
relevant election;

20 **“disposition of property”** has the same
meaning as the term is given in section 175 of
the *Electoral Act 1907*;

“donation” includes a gift;

“electoral expenditure” —

25 (a) has the same meaning as the term is given
in section 175 of the *Electoral Act 1907*;
and includes

(b) any expenditure classified as expenditure by the Electoral Commissioner by notice published in the *Government Gazette*;

5 **“electoral matter”** means matter that is intended, calculated or likely to affect voting in an election;

“gift” means —

10 (a) any disposition of property made by a person to another person, otherwise than by will, being a disposition made without consideration in money or money’s worth or with inadequate consideration, and includes the provision of a service (other than volunteer labour) for no consideration;
15 and

20 (b) for the purposes of this Part, the amount or value of a gift consisting of or including a disposition of property other than money shall be calculated in accordance with principles determined and published in the *Government Gazette* by the Electoral Commissioner;

25 **“journal”** means a newspaper, magazine or other periodical, whether published for sale or for distribution without charge;

“person” includes —

(a) a public body, company, or association or body of persons, corporate or unincorporate; and

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- (b) for the purposes of this Part —
- 5 (i) a body corporate and any other body corporate that is related to the first-mentioned body corporate shall be deemed to be the same person; and
- 10 (ii) the question whether a body corporate is related to another body corporate shall be determined in the same manner as the question whether a corporation is related to another corporation is determined under the Corporations Law;
- “property”** includes money;
- 15 **“relevant details”** in relation to a gift are the amount or value of the gift, the date on which the gift was made, and —
- (a) in the case of a gift made to or on behalf of the members of an unincorporated association —
- 20 (i) the name of the association; and
- (ii) the names and addresses of the members of the executive committee (however described) of the association;
- 25 (b) in the case of a gift purportedly paid into or made out of a trust fund or paid into or out of the funds of a foundation —
- (i) the names and addresses of the trustees of the fund or of the funds of the foundation and of the person for

whose benefit the fund or funds are held; and

- 5 (ii) the title or other description of the trust fund or the name of the foundation, as the case requires; and
- (c) in any other case, the name and address of the person who made the gift;

10 “**specified amount**” means \$200 or such greater amount as is determined and published in the *Government Gazette* by the Electoral Commissioner;

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New section 4.100

15 **5.** The principal Act is amended by inserting after section 4.99 the following —

“

Division 13 - Political Donations And Electoral Expenditure

Candidates must disclose donations after an election

20 **4.100** (1) A candidate in an election shall within 8 weeks after polling day in the election lodge a return with the Electoral Commissioner in an approved form setting out —

- (a) the total amount or value of all gifts;
- 25 (b) the number of persons who made gifts; and

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- (c) subject to subsection (2), the relevant details of each gift,

received by the candidate during the disclosure period for the election.

- 5 (2) The return does not have to set out the relevant details of a gift or gifts if —

- (a) the amount or value of the gift; or

- 10 (b) where 2 or more gifts each of \$50 or more are received from the same donor, the aggregated amount or value of those gifts,

is less than the specified amount.

Other persons who incur expenditure for political purposes must disclose donations after an election

- 15 **4.101** (1) Where a person (not being a candidate) incurs expenditure for a political purpose during the disclosure period for an election, the person shall, within 8 weeks after polling day in the election, lodge a return with the Electoral Commissioner in an
20 approved form setting out the relevant details of all gifts received by the person during that disclosure period.

(2) The return does not have to set out the relevant details of a gift unless —

- (a) the whole or part of the gift was used by the person —
 - 5 (i) to incur expenditure for a political purpose; or
 - (ii) to reimburse the person for incurring expenditure for a political purpose, and
- 10 (b) the amount or value of the gift was not less than the specified amount.

15 (3) A person does not have to lodge a return under subsection (1) if the total amount of expenditure incurred by the person for political purposes during the disclosure period for an election is less than the specified amount.

20 (4) In this section a reference to the incurring of expenditure for a political purpose shall be read as a reference to the incurring of expenditure in connection with, or by way of —

- (a) publication by any means (including radio or television) of electoral matter;
- (b) by any other means publicly expressing views on an issue in an election;
- 25 (c) the making of a gift to a candidate in an election; or
- (d) the making of a gift to a person on the understanding that that person or another

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person will apply, either directly or indirectly, the whole or a part of the gift as mentioned in paragraph (a), (b) or (c).

5 (5) For the purposes of subsection (2), 2 or more gifts made by the same person to another person during the disclosure period for an election shall be taken to be one gift.

Certain anonymous donations must not be accepted

10 **4.102** (1) It is unlawful for —

(a) a candidate in an election or a person acting on behalf of a candidate in an election to receive a gift made to or for the benefit of the candidate by another person, being a gift the amount or value of which is equal to or exceeds the specified amount; or

15 (b) a person (not being a candidate) to receive a gift made to or for the benefit of the person for the purpose of the incurring of expenditure for a political purpose, being a gift the amount or value of which is equal to or exceeds the specified amount,

20 unless the name and address of the person making the gift (“the donor”) are known to the person receiving the gift (“the recipient”) or, at the time when the gift is made, the name and address of the donor are given to the recipient and the recipient has no grounds to believe that the name and address so given are not the true name and address of the donor.

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(2) A reference in subsection (1) to the name and address of a person making a gift is —

- 5
- (a) in the case of a gift made on behalf of the members of an unincorporated association, a reference to —
- (i) the name of the association; and
- (ii) the names and addresses of the executive committee (however described) of the association; and
- 10
- (b) in the case of a gift purportedly made out of a trust fund or out of the funds of a foundation, a reference to —
- 15
- (i) the names and addresses of the trustees of the fund or of the funds of the foundation and of the person for whose benefit the fund or funds are held; and
- 20
- (ii) the title or other description of the trust fund or the name of the foundation, as the case requires.

(3) For the purposes of subsection (1) —

- (a) a candidate in an election shall be taken to remain a candidate for 30 days after polling day in the election;
- 25
- (b) 2 or more gifts made in the disclosure period by the same person to or for the benefit of a candidate or other person (not being a candidate) shall be taken to be one gift;

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5 (c) a reference to the incurring of expenditure for a political purpose shall be read in accordance with section 4.101 (4) and a reference to a gift made for the purpose of incurring such expenditure includes a reference to a gift the whole or part of which is used for that purpose.

10 (4) Where a person receives a gift and, by virtue of subsection (1), it is unlawful for the person to receive that gift, an amount equal to the amount or value of the gift is payable by that person to the State and may be recovered by the State as a debt due to the State by action, in a court of competent jurisdiction, against —

15 (a) in the case of a gift to or for the benefit of a candidate - the candidate; or

(b) in the case of a gift to a person (not being a candidate) - that person.

Returns of electoral expenditure

20 **4.103** (1) A candidate in an election shall, before the expiration of 8 weeks after the polling day in the election, furnish to the Electoral Commissioner a return, in an approved form, setting out details of all electoral expenditure in relation to the election
25 incurred by or with the authority of the candidate.

30 (2) Where electoral expenditure in relation to an election was incurred by or with the authority of a person and that expenditure was not incurred with the written authority of a candidate in the election, the person shall, before the expiration of 8 weeks after the polling day in the election, furnish to the Electoral

Commissioner a return, in an approved form, setting out details of that electoral expenditure.

5 (3) A person is not required to furnish a return under subsection (2) in respect of an election if the total amount of the electoral expenditure incurred in relation to the election by or with the authority of the person does not exceed the specified amount.

Offences

10 **4.104** (1) Where a person is required to lodge a return under this Division and that candidate —

(a) fails to lodge the return within the time required; or

(b) lodges a return that is —

(i) incomplete; or

15 (ii) contains particulars that are, to the person's knowledge, false or misleading in a material particular,

the person commits an offence and is liable to a fine not exceeding \$1500.

20 (2) Where a person is required to lodge a return under this Division within a particular period and the person fails to lodge the return within that period —

25 (i) the obligation to lodge the return continues notwithstanding that that period has expired;

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5 (ii) where the person is convicted of an offence that is constituted by failure to lodge the return within that period, that person commits a separate and further offence in respect of each day after the day of the conviction during which the failure to lodge a return continues; and

(iii) the penalty applicable to each separate and further offence is a fine not exceeding \$150.

10 (3) Charges against the same person for any number of offences under subsection (2)(ii) may be joined in the same complaint and if a person is convicted of more than one offence under that subsection the court may impose a penalty in respect
15 of all offences of which the person is so convicted but that penalty shall not exceed the sum of the maximum penalties that could be imposed if a penalty were imposed in respect of each offence separately.

Certain provisions of *Electoral Act 1907* apply

20 **4.105** Section 175V, 175W, 175X and 175ZB of the *Electoral Act 1907* have effect as if those sections were enacted in this Division and for the purposes of this section those sections are to be read *mutatis mutandis* as if —

25 (a) reference to “section 175R(5)” was a reference to “section 4.102(4)”;

(b) references to “this Part” were references to “this Division”;

30 (c) references to “section 175U” were references to “section 4.104”;

- (d) reference to “Division 3 or 4” was a reference to “this Division”;
- (e) references to “section 175U(2)” were references to “section 4.104 (1)(b)(i)”; and
- 5 (f) reference to “section 175U(2),(3) or (4)” was a reference to “section 4.104 (1) (b)”.

Public may obtain copies of returns

10 **4.106** (1) The Electoral Commissioner shall keep a copy of each return under this Division at the principal office of the Western Australian Electoral Commission.

(2) A person is entitled —

- (a) to peruse a copy of a return kept under subsection (1);
- 15 (b) on payment of a fee determined by the Electoral Commissioner to cover the cost of copying, to obtain a copy of a return a copy of which is kept under subsection (1),

20 at any time after the end of 4 weeks after the end of the period during which the return was required to be lodged.

Non-compliance with this Division does not affect election

25 **4.107** (1) A failure of a person to comply with a provision of this Division in relation to an election does not invalidate the election.

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(2) If a candidate who is elected at an election fails to comply with a provision of this Division in relation to the election, that failure does not invalidate the election of the candidate.

5 Regulations

4.108 (1) The Governor may make regulations prescribing all matters that are required or permitted by this Division to be prescribed for giving effect to the purposes of this Division and, in particular —

- 10 (a) prescribing the manner in which the Electoral Commissioner is to determine and publish the specified amount for the purposes of this Division;
- 15 (b) requiring the making, keeping and auditing of records of —
- (i) donations received in respect of elections by candidates and persons (not being candidates); and
- 20 (ii) electoral expenditure incurred in respect of elections by candidates and persons (not being candidates),
- and requiring or otherwise providing for the production, examination and copying of those records; and
- 25 (c) providing that contravention of a regulation under this Division constitutes an offence and providing for penalties not exceeding a fine of \$3 000 for offences against such regulations.

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(2) The regulations referred to in subsection (1)
(a) —

5 (a) shall provide for the specified amount to be
determined in a manner that incorporates
any increase in the amount of \$200 that is
appropriate to reflect the movements that
occur after the commencement of this
10 Division in the Consumer Price Index, All
Groups Index number for Perth, published
from time to time by the Commonwealth
Statistician under the *Census and Statistics
Act 1905* of the Commonwealth; but

15 (b) may provide for such adjustment to be
increased or decreased by an amount of not
more than \$50 in order to ensure that the
specified amount continues to be a multiple
of \$100.

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