

ELECTORAL AMENDMENT (POLITICAL FINANCE) ACT 1992

No. 75 of 1992

AN ACT to amend the *Electoral Act 1907*.

[Assented to 16 December 1992.]

The Parliament of Western Australia enacts as follows:

Short title

1. This Act may be cited as the *Electoral Amendment (Political Finance) Act 1992*.

Commencement

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

Principal Act

3. In this Act the *Electoral Act 1907** is referred to as the principal Act.

[* *Reprinted as at 1 January 1989.*

For subsequent amendments see 1990 Index to Legislation of Western Australia page 49.]

Part VI inserted

4. After section 174 of the principal Act the following Part is inserted —

“ **PART VI — DISCLOSURE OF GIFTS
 AND OTHER INCOME**

Division 1 — Preliminary

Definitions

175. In this Part, unless the contrary intention appears —

“**agent**” means agent for the purposes of this Part;

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

“**campaign committee**”, in relation to a political party, means a body of persons appointed or engaged to form a committee to assist the campaign in an election of —

- (a) the candidates in a general election who are endorsed by the party;

- (b) a candidate in the election who is endorsed by the party; or
- (c) a group in the election all the persons included in which are endorsed by the party;

“disposition of property” means any conveyance, transfer, assignment, settlement, delivery, payment or other alienation of property, and includes —

- (a) the allotment of shares in a company;
- (b) the creation of a trust in respect of property;
- (c) the grant or creation of any lease, mortgage, charge, easement, licence, power, partnership or interest in respect of property;
- (d) the release, discharge, surrender, forfeiture or abandonment, at law or in equity, of any debt, contract or chose in action, or of any interest in respect of property;
- (e) the exercise by a person of a general power of appointment over property in favour of any other person; and
- (f) any transaction entered into by any person with intent thereby to diminish, directly or indirectly, the value of the person's own property and to increase the value of the property of any other person;

“division”, in relation to a political party, includes a branch or campaign committee of the party;

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

“general election” means a general election for the Assembly or the Council;

“gift” means 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 or for inadequate consideration, but does not include an annual subscription of not more than \$200 paid by a person to a political party or to a division of a political party in respect of the person's membership of the party or division;

“political party” means —

- (a) a body corporate or other body or organization (not being a body corporate or other body or organization described in paragraph (b)) having as one of its objects or activities the promotion of the election to the Parliament of this State of a candidate or candidates endorsed by it or by a body or organization that forms part of it; or

- (b) the branch or division for this State of a body corporate or other body or organization which —
 - (i) is organized on a basis that includes this State and another State or Territory or other States or Territories;
 - (ii) has a branch or division for this State; and
 - (iii) has as one of its objects or activities the promotion of the election to the Parliament of this State of a candidate or candidates endorsed by it or by a body or organization that forms part of it;

“principal officer” of a public agency means —

- (a) in relation to a department of the Public Service or an organization specified in column 2 of the Schedule to the *Public Service Act 1978* — the chief executive officer of that department or organization;
- (b) in relation to the Police Force of Western Australia — the Commissioner of Police;
- (c) in relation to a public agency that consists of one person (not being an incorporated body) — that person;
- (d) in relation to a public agency for which the regulations declare an officer to be the principal officer of the agency — that officer;

- (e) in relation to any other public agency —
 - (i) if it is an incorporated body that has no members — the person who manages the affairs of the body; or
 - (ii) if it is a body (whether incorporated or not) that is constituted by 2 or more persons — the person who is entitled to preside at any meeting of the body at which he or she is present;

“property” includes money;

“public agency” means —

- (a) a department of the Public Service or an organization specified in column 2 of the Schedule to the *Public Service Act 1978*;
- (b) the Police Force of Western Australia;
- (c) a body or office that is established for a public purpose under a written law;
- (d) a body or office that is established by the Governor or a Minister; or
- (e) any other body or office that is declared by the regulations to be a public agency being —
 - (i) a body or office established under a written law; or

- (ii) a corporation or association over which control can be exercised by the State, a Minister, a body referred to in paragraph (a), (c), (d) or (e) (i), or the holder of an office referred to in paragraph (d) or (e) (i);

“specified amount” means \$1 500 or such greater amount as is determined and published by the Electoral Commissioner —

- (a) under the regulations; and
- (b) within the period of 30 days after the polling day in a general election;

“state trade union” means a trade union formed pursuant to the laws of this State;

“trade union” has the same meaning as is attributed to the term ‘employee organisation’ in section 96A of the *Industrial Relations Act 1979* and also includes an organisation of a similar nature incorporated under the law of any State.

References and interpretation

175A. (1) A reference in this Part to things done by or with the authority of a political party or a division of a political party shall, if the party or division is not a body corporate, be read as a reference to things done by or with the authority of members or officers of the party or division on behalf of the party or division.

(2) A reference in this Part to the endorsement by a political party of a candidate or group in an election includes a reference to the endorsement of that candidate or group by a body or organization of which the party forms part or by a division of the party.

(3) A reference in this Part to a political party, other than a reference to the endorsement of a candidate or group in an election, shall be read as not including a reference to a part of the party.

(4) 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, if the regulations so provide, be determined in accordance with principles set out or referred to in the regulations.

(5) For the purposes of this Part —

- (a) 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
- (b) 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.

(6) If the Electoral Commissioner determines and publishes an amount for the purposes of the definition of “specified amount” in section 175, the amount published becomes the specified amount —

- (a) in relation to sections 175O, 175P, 175Q and 175R (1) (b), (c) and (d) — from the end of the period of 30 days mentioned in that definition; and

- (b) in relation to sections 175N, 175R (1) (a) and 175ZE — on and from 1 July next following publication.

Division 2 — Agents

Agents of political parties

175B. (1) A political party shall appoint a person as its agent.

(2) If an appointment under subsection (1) ceases to be in force the political party shall make another appointment under that subsection.

Agents of candidates

175C. (1) A candidate in an election (including a person included in a group) may appoint a person as the agent of the candidate in relation to the election.

(2) When there is no appointment in force under subsection (1) of an agent of a candidate in an election, the candidate is the agent in relation to the election.

Agents of groups

175D. (1) Subject to subsection (2) the persons included in a group in an election may appoint a person as the agent of the group in relation to the election.

(2) Where all the persons included in a group in an election have been endorsed by the same political party, the agent of the political party is the agent of the group in relation to the election.

(3) When there is no appointment in force under subsection (1) of an agent of a group in an election and subsection (2) does not apply to the group, the person whose name is to appear first in the group in the ballot papers under section 113B (1) (c) is the agent of the group in relation to the election.

Eligibility for, and notice of, appointment

175E. (1) An appointment of an agent under section 175B, 175C (1) or 175D (1) has no effect unless —

- (a) the person appointed is a natural person who has attained the age of 18 years;
- (b) notice of the appointment, setting out the name and address of the person appointed, is given to the Electoral Commissioner by the political party, the candidate, or each person included in the group, making the appointment; and
- (c) the person appointed has signed a form of consent to the appointment and a declaration of eligibility for appointment.

(2) The notice under subsection (1) (b) shall be in an approved form incorporating the consent and declaration under subsection (1) (c).

(3) Where a person who is the agent of a political party, of a candidate, or of a group is convicted of an offence against this Part in relation to a particular

election, the person is not eligible to be appointed or hold office as an agent in relation to any subsequent election.

(4) An appointment of an agent under section 175C (1) or 175D (1) is not effective in relation to anything required by this Part to be done —

- (a) in respect of a return under this Part in relation to an election; or
- (b) during a prescribed period after polling day in an election,

if notice of the appointment was given to the Electoral Commissioner after the hour of nomination for the election.

Registration of agents of political parties

175F. (1) The Electoral Commissioner shall keep a register for the purposes of this section ("the party agents register").

(2) The Electoral Commissioner shall enter in the party agents register the name and address of every person appointed to be an agent of a political party.

Effect of registration

175G. The appointment of an agent by a political party —

- (a) takes effect on the entry of the name and address of the agent in the party agents register; and

- (b) ceases to have effect if the name and address of the agent are removed from the party agents register.

Removal of agent's name from register

175H. The name and address of a person shall not be removed from the party agents register unless —

- (a) the person gives to the Electoral Commissioner notice, in an approved form, of having resigned the appointment as agent;
- (b) the political party that appointed the person gives to the Electoral Commissioner notice, in an approved form, that the person's appointment has been revoked or that the person has died or resigned and also gives notice under section 175E (1) (b) of the appointment of another person as agent of the party; or
- (c) the person is convicted of an offence against this Part.

Evidence of appointment

175I. An entry in the party agents register is, for all purposes, conclusive evidence that the person described in the entry is the agent of the political party named in the entry.

**Responsibility when office of agent
of political party vacant**

175J. Where Division 3 imposes an obligation on the agent of a political party and there is no agent of the party, the obligation rests on each of the members of the executive committee of the party and this Act applies to each of those members as if the obligation rested on that member alone.

**Revocation of appointment of
agent of candidate or group**

175K. (1) A candidate or the persons included in a group may, by giving notice to the Electoral Commissioner in an approved form, revoke the appointment of a person as an agent of the candidate or group under section 175C (1) or 175D (1).

(2) A notice under subsection (1) has no effect unless it is signed by the candidate or by each person included in the group, as the case requires.

**Death or resignation of appointed
agent of candidate or group**

175L. If an agent appointed by a candidate or group under section 175C (1) or 175D (1) dies or resigns, the candidate or a person included in the group, as the case requires, shall without delay give to the Electoral Commissioner notice, in an approved form, of the death or resignation.

Division 3 — Disclosure of gifts and other income

Relevant details of gifts

175M. For the purposes of this Division the relevant details of 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 on behalf of the members of an unincorporated association —
 - (i) the name of the association; and
 - (ii) the names and addresses of the members of the executive committee (however described) of the association;
- (b) in the case of a gift purportedly made out of a trust fund 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
 - (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.

**Annual disclosure of gifts and other income
received by political parties**

175N. (1) The agent of a political party shall, by 30 September in each year, lodge a return with the Electoral Commissioner in an approved form setting out details of all gifts and other income received by the party during the financial year which ended on the last preceding 30 June.

(2) The following gifts and income received by the political party do not have to be included in the return —

- (a) gifts made to the party for a purpose related to an election or by-election under the *Commonwealth Electoral Act 1918*;
- (b) other gifts and income which the party has used, or will use, for a purpose related to an election or by-election under the *Commonwealth Electoral Act 1918*.

(3) In the case of gifts the details to be set out in the return are —

- (a) the total amount or value of all gifts;
- (b) the number of persons from whom gifts were received; and
- (c) subject to subsection (4), the relevant details of each gift.

(4) The return does not have to set out the relevant details of a gift if the amount or value of the gift is less than the specified amount.

(5) Subsection (4) does not apply in relation to a gift made by a person to the political party if the sum of the amount or value of that gift and of other gifts

which were made by that person to the political party and are included in the return equals or exceeds the specified amount.

Disclosure of gifts received by candidates

1750. (1) The agent of a person (including a person included in a group) who was a candidate in an election shall, within 15 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;
- (b) the number of persons who made gifts; and
- (c) subject to subsection (4), the relevant details of each gift,

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

(2) For the purposes of subsection (1), the disclosure period for an election (“the relevant election”) shall be determined as follows —

- (a) if the person was a candidate in a previous election and polling day for the previous election was within 5 years before polling day in the relevant election, the disclosure period is the period that —
 - (i) commenced at the end of 30 days after polling day in the most recent previous election in which the person was a candidate; and
 - (ii) ended 30 days after polling day in the relevant election;

(b) in any other case, the disclosure period is the period that —

- (i) commenced one year before the day of the nomination of the person as a candidate in the relevant election; and
- (ii) ended 30 days after polling day in the relevant election.

(3) A gift does not have to be included in the return unless —

- (a) the gift was made to the candidate for a purpose related to an election; or
- (b) the candidate has used, or will use, the gift solely or substantially for a purpose related to an election.

(4) The return does not have to set out the relevant details of a gift if the amount or value of the gift is less than the specified amount.

(5) Subsection (4) does not apply in relation to a gift made by a person to the candidate if the sum of the amount or value of that gift and of other gifts which were made by that person to the candidate and are included in the return equals or exceeds the specified amount.

**Disclosure of gifts received
by groups of candidates**

175P. (1) Subject to subsection (3), the agent of a group in an election shall, within 15 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;

- (b) the number of persons who made gifts; and
- (c) subject to subsection (4), the relevant details of each gift,

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

(2) For the purposes of subsection (1), the disclosure period for an election is the period that —

- (a) commenced when the persons who were included in the group made a claim under section 80 (1) in relation to the election;

and

- (b) ended 30 days after polling day in the election.

(3) Where all the persons included in a group in an election have been endorsed by the same political party, a gift received by the group shall be taken to have been received by the party.

(4) The return does not have to set out the relevant details of a gift if the amount or value of the gift is less than the specified amount.

(5) Subsection (4) does not apply in relation to a gift made by a person to the group if the sum of the amount or value of that gift and other gifts that were made by that person to the group and are included in the return equals or exceeds the specified amount.

**Disclosure of gifts received by other persons
who incur expenditure for political purposes**

175Q. (1) Where a person (not being a political party, a candidate or a group) incurs expenditure for a political purpose during the disclosure period for an election, the person shall, within 15 weeks after polling day in the election, lodge a return with the Electoral Commissioner in an 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 a part of the gift was used by the person —
 - (i) to incur expenditure for a political purpose; or
 - (ii) to reimburse the person for incurring expenditure for a political purpose;
- and
- (b) the amount or value of the gift was not less than the specified amount.

(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.

(4) For the purposes of this section the disclosure period for an election ("the relevant election") is the period that —

- (a) commenced at the end of 30 days after polling day in the last preceding general election; and

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

(5) A reference in this section to the incurring of expenditure for a political purpose is a reference to the incurring of expenditure for or in connection with promoting or opposing, directly or indirectly, a political party or a member of parliament or the election of a candidate or candidates in an election, or for the purpose of influencing, directly or indirectly, voting in an election, and includes a reference to the incurring of expenditure —

- (a) in connection with, or by way of —
 - (i) the publication, broadcasting, display or distribution of electoral matter in relation to an election; or
 - (ii) the expression publicly, by any other means, of views on an issue in an election;
- (b) in connection with, or by way of, the making of a gift to a candidate or group in an election;
- (c) in connection with, or by way of, the making of a gift to a political party;
- (d) in connection with, or by way of, the making of a gift to a person on the understanding that that person or another person will apply, either directly or indirectly, the whole or a part of the gift as mentioned in paragraph (a), (b) or (c).

(6) In subsection (5) “**election**” means the election referred to in subsection (1) or any other election.

(7) 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.

(8) In the case of a conjoint election a person may lodge one return under subsection (1) relating to both general elections without showing the extent to which gifts referred to in the return were used in relation to one general election or the other.

**Gifts must not be accepted from
unidentified donors**

175R. (1) It is unlawful for —

- (a) a political party or a person acting on behalf of a political party to receive a gift made to or for the benefit of the party by another person, being a gift the amount or value of which is not less than the specified amount;
- (b) a candidate in an election (including a person included in a group) 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 not less than the specified amount;
- (c) a person included in a group in an election or a person acting on behalf of a group in an election to receive a gift made to or for the benefit of the group by another person, being a gift the amount or value of which is not less than the specified amount; or

- (d) a person (not being a political party, a candidate or a group) 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 not less than the specified amount,

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.

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

- (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 members of the executive committee (however described) of the association;

and

- (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 —
 - (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

- (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 person who is a candidate in an election shall be taken to remain a candidate for 30 days after polling day in the election;
- (b) a person included in a group in an election shall be taken to continue to be included in that group for 30 days after polling day in the election;
- (c) 2 or more gifts made during a prescribed period by the same person to or for the benefit of a political party, candidate, group or other person shall be taken to be one gift;
- (d) a reference to the incurring of expenditure for a political purpose shall be read in accordance with section 175Q (5) 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.

(4) The reference in subsection (3) (c) to a prescribed period is a reference —

- (a) in the case of a political party, to a financial year;
- (b) in the case of a candidate, to the disclosure period applicable to the candidate under section 175O;

- (c) in the case of a group, to the disclosure period applicable to the group under section 175P;
- (d) in the case of a person (not being a political party, a candidate or a group) to the disclosure period for an election for the purposes of section 175Q.

(5) 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 —

- (a) in the case of a gift to or for the benefit of a political party —
 - (i) if the party is a body corporate, the party; or
 - (ii) in any other case, the agent of the party;
- (b) in the case of a gift to or for the benefit of a candidate, the candidate or the agent of the candidate;
- (c) in the case of a gift to or for the benefit of a group, a person included in the group or the agent of the group;
- (d) in the case of a gift to a person (not being a political party, a candidate or a group), that person.

**Returns as to gifts and income
required in all circumstances**

175S. (1) Where no details are required to be included in a return under section 175N, 175O or 175P, the return shall nevertheless be lodged and shall include a statement to the effect that no gifts of a kind required to be disclosed were received.

(2) Where details of a gift or gifts or income are included in a return under section 175N, 175O, 175P or 175Q, the return shall include a statement to the effect that no other gifts or income of a kind required to be disclosed were received.

Division 4 — Miscellaneous

References

175T. Except in section 175X, a reference in this Division to a return under Division 3 or to a return under this Part includes a reference to particulars required under section 175X (3).

Offences

175U. (1) Where a person fails to lodge a return that the person is required to lodge under Division 3 within the time required by this Part the person commits an offence and is liable to a fine not exceeding —

- (a) in the case of a return required to be lodged by the agent of a political party, \$7 500; or
- (b) in any other case, \$1 500.

(2) Where a person lodges a return that is incomplete, being a return that the person is required to lodge under Division 3, the person commits an offence and is liable to a fine not exceeding \$1 500.

(3) Where the agent of a political party lodges a return that the agent is required to lodge under Division 3 and that return contains particulars that are, to the agent's knowledge, false or misleading in a material particular, the agent commits an offence and is liable to a fine not exceeding \$15 000.

(4) Where a person (not being the agent of a political party) lodges a return that the person is required to lodge under Division 3 and that return 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 \$7 500.

(5) A person shall not supply to another person who is required to lodge a return under Division 3 information that relates to the return and that is, to the knowledge of the first-mentioned person, false or misleading in a material particular.

Penalty: \$1 500.

(6) Where —

(a) a person is required to lodge a return under Division 3 within a particular period;

and

(b) the person fails to lodge the return within that period,

the following provisions of this subsection have effect —

- (c) the obligation to lodge the return continues notwithstanding that that period has expired;
- (d) 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 the return continues; and
- (e) the penalty applicable to each separate and further offence is a fine not exceeding \$150.

(7) Charges against the same person for any number of offences under subsection (6) (d) may be joined in the same complaint.

(8) If a person is convicted of more than one offence under subsection (6) (d), the court may impose one penalty in respect 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.

Recovery of payments

175V. (1) An action in a court to recover an amount due to the State under section 175R (5) may be brought in the name of the State by the Electoral Commissioner.

(2) Any process in the action required to be served on the State may be served on the Electoral Commissioner.

Investigations etc.

175W. (1) In this section “**authorized officer**” means a person authorized by the Electoral Commissioner under subsection (2).

(2) The Electoral Commissioner may, by instrument in writing authorize a person, or a person included in a class of persons, to perform functions under this section.

(3) An authorized person may, for the purpose of finding out whether a person has complied with this Part, serve a notice on the person requiring the person —

- (a) to produce, within the period and in the manner specified in the notice, the documents or other things referred to in the notice; or
- (b) to appear, at a time and place specified in the notice, before the authorized officer to give evidence, either orally or in writing, and to produce the documents or other things referred to in the notice.

(4) Where an authorized officer has reasonable grounds to believe that a person is capable of producing documents or other things or giving evidence relating to a contravention, or possible contravention, of section 175U, or relating to matters that are set out in, or are required to be set out in, a return under this Part, the authorized officer may serve a notice on the person requiring the person —

- (a) to produce, within the period and in the manner specified in the notice, the documents or other things referred to in the notice; or

- (b) to appear, at a time and place specified in the notice, before the authorized officer to give evidence, either orally or in writing, and to produce the documents or other things referred to in the notice.

(5) An authorized officer may require any evidence that is to be given in compliance with a notice under subsection (3) or (4) to be given on oath or affirmation and for that purpose the authorized officer may administer an oath or affirmation.

(6) A person shall not, without reasonable excuse, refuse or fail to comply with a notice under subsection (3) or (4) to the extent that the person is capable of complying with the notice.

Penalty: \$1 500.

(7) A person shall not, in purported compliance with a notice under subsection (3) or (4), give evidence that is, to the knowledge of the person, false or misleading in a material particular.

Penalty: \$1 500.

(8) Where —

- (a) a police officer has reasonable grounds for suspecting that there may be, at any time within the next following 24 hours, upon any land or upon or in any premises, vessel, aircraft or vehicle, a document or other thing that may afford evidence relating to a contravention of section 175U; and
- (b) the police officer has reasonable grounds to believe that, if a notice under this section were issued for the production of the

document or other thing, the document or other thing might be concealed, lost, mutilated or destroyed,

the police officer may make an application to a Judge for the issue of a warrant under subsection (9).

(9) Subject to subsection (10), where an application under subsection (8) is made by a police officer to a Judge, the Judge may issue a warrant authorizing the police officer or any other person named in the warrant, with such assistance as he thinks necessary and if necessary by force —

- (a) to enter upon the land or upon or into the premises, vessel, aircraft or vehicle;
- (b) to search the land, premises, vessels, aircraft or vehicle for documents or other things that may afford evidence relating to a contravention of section 175U, being documents or other things of a kind described in the warrant; and
- (c) to seize any documents or other things of the kind referred to in paragraph (b).

(10) A Judge shall not issue a warrant under subsection (9) unless —

- (a) an affidavit has been given to the Judge setting out the grounds on which the issue of the warrant is being sought;
 - (b) the police officer applying for the warrant or some other person has given to the Judge, either orally or by affidavit, such further information (if any) as the Judge requires concerning the grounds on which the issue of the warrant is being sought;
- and

- (c) the Judge is satisfied that there are reasonable grounds for issuing the warrant.

(11) Where a Judge issues a warrant under subsection (9), the Judge shall state on the affidavit given under subsection (10) (a) which of the grounds specified in that affidavit the Judge has relied on to justify the issue of the warrant and particulars of any other grounds relied on by the Judge to justify the issue of the warrant.

(12) A warrant issued under subsection (9) shall —

- (a) include a statement of the purpose for which the warrant is issued, which shall include a reference to the contravention of section 175U in relation to which the warrant is issued;
- (b) state whether entry is authorized to be made at any time of the day or night or during specified hours of the day or night;
- (c) include a description of the kind of documents or other things authorized to be seized; and
- (d) specify a date, not being later than one month after the date of issue of the warrant, upon which the warrant ceases to have effect.

(13) Where a document or other thing is seized by a person pursuant to a warrant issued under subsection (9) —

- (a) the person may retain the document or other thing so long as is reasonably necessary for the purposes of the

investigation to which the document or other thing is relevant; and

- (b) when the retention of the document or other thing by the person ceases to be reasonably necessary for those purposes, the person shall cause the document or other thing to be delivered to the person who appears to the first-mentioned person to be entitled to possession of the document or other thing.

Inability to complete returns

175X. (1) Where a person who is required to lodge a return under Division 3 considers that it is impossible to complete the return because he is unable to obtain particulars that are required for the preparation of the return, the person may —

- (a) prepare the return to the extent that it is possible to do so without those particulars;
- (b) lodge the return so prepared; and
- (c) give to the Electoral Commissioner notice in writing —
 - (i) identifying the return;
 - (ii) stating that the return is incomplete by reason that the person is unable to obtain certain particulars;
 - (iii) identifying those particulars;
 - (iv) setting out the reasons why the person is unable to obtain those particulars; and

- (v) if the person believes, on reasonable grounds, that another person whose name and address the person knows can give those particulars, stating that belief and the reasons for it and the name and address of that other person.

(2) A person who lodges a return and gives a notice under subsection (1) shall not be taken, for the purposes of section 175U (2), to have lodged a return that is incomplete by reason of the omission of the particulars identified under subsection (1) (c) (iii).

(3) Where the Electoral Commissioner has been informed under subsection (1) (c) or (4) (e) that a person can supply particulars that have not been included in a return, the Electoral Commissioner may, by written notice served on the person, require the person to supply those particulars to the Electoral Commissioner, in writing within the time specified in the notice.

(4) If a person who is required to supply particulars under subsection (3) considers that he is unable to obtain some or all of the particulars, the person shall give to the Electoral Commissioner a written notice —

- (a) setting out the particulars (if any) that the person is able to give;
- (b) stating that the person is unable to obtain some or all of the particulars;
- (c) identifying the particulars the person is unable to obtain;
- (d) setting out the reasons why the person is unable to obtain those particulars; and

- (e) if the person believes, on reasonable grounds, that another person whose name and address the person knows can give those particulars, stating that belief and the reasons for it and the name and address of that other person.

(5) A person who gives a notice under subsection (4) shall not be taken, for the purposes of section 175U (2), to have lodged a return that is incomplete by reason of the omission of the particulars identified under subsection (4) (c).

Extension of period for lodging annual returns

175Y. If during the period from 30 June to 30 September in any year —

- (a) the polling in a general election is conducted; or
- (b) the writs for a general election are issued,

the Electoral Commissioner, by notice published in the *Gazette*, may extend the period within which returns under section 175N have to be lodged so that it ends on a day specified in the notice.

Gifts to be vouched for

175Z. A return under Division 3 shall be deemed not to be validly lodged with the Electoral Commissioner unless all gifts and income referred to in the declaration are vouched for in the prescribed manner.

**Non-compliance with Part
does not affect election**

175ZA. (1) A failure of a person to comply with a provision of this Part in relation to an election does not invalidate that election.

(2) Without limiting the generality of subsection (1), if the agent of a candidate who is elected at an election fails to comply with a provision of this Part in relation to the election, that failure does not invalidate the election of the candidate.

(3) Without limiting the generality of subsection (1), if the agent of a group, being a group one or more of the persons included in which is or are elected at an election, fails to comply with a provision of this Part in relation to the election, that failure does not invalidate the election of the person or persons.

Amendment of returns

175ZB. (1) Where the Electoral Commissioner is satisfied that a return under this Part contains a formal error or is subject to a formal defect, the Electoral Commissioner may amend the return to the extent necessary to correct the error or remove the defect.

(2) A person who has lodged a return under this Part may request the permission of the Electoral Commissioner to make a specified amendment of the return for the purpose of correcting an error or omission.

(3) A request under subsection (2) shall be made by notice in writing signed by the person making the request.

(4) Where —

- (a) a request has been made under subsection (2); and
- (b) the Electoral Commissioner is satisfied that there is an error in, or omission from, the return to which the request relates,

the Electoral Commissioner shall permit the person making the request to amend the return in accordance with the request.

(5) Where the Electoral Commissioner decides to refuse a request under subsection (2), the Commissioner shall give to the person making the request written notice of the reasons for the decision.

(6) An officer authorized for the purpose by the Electoral Commissioner may exercise the power of the Electoral Commissioner under subsection (4).

(7) Where an officer acting under subsection (6) decides to refuse a request under subsection (2) —

- (a) subsection (5) applies as if the officer were the Electoral Commissioner; and
- (b) the person who made the request may, by written notice lodged with the Electoral Commissioner within 28 days after notice of the refusal was given, request the Electoral Commissioner to review the decision.

(8) Where a request is made under subsection (7), the Electoral Commissioner shall review the decision to which the request relates and make a fresh decision.

(9) The amendment of a return under this section does not affect the liability of a person to be convicted of an offence against section 175U (2), (3) or (4) arising out of the furnishing of the return.

Public may obtain copies of returns

175ZC. (1) The Electoral Commissioner shall keep a copy of each return under Division 3 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);
- (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),

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

Proceedings against unincorporated parties

175ZD. (1) A proceeding in respect of an offence against this Part alleged to be committed by a political party that is not a body corporate, or in respect of any amount recoverable from such a party under section 175R (5), may be instituted against an officer or officers of the party as a representative or representatives of the members of the party, and a proceeding so instituted shall be deemed to be a proceeding against all the persons who were members of the party at any relevant time.

(2) For the purposes of enforcing any judgment or order given or made in a proceeding under this Part against a party that is not a body corporate, process may be issued and executed against any property of the party, or any property in which the party has, or any members of the party have in their capacity as such members, a beneficial interest, whether vested in trustees or however otherwise held, as if the party were a body corporate and the absolute owner of the property or interest, but no process shall be issued or executed against any other property of members, or against any property of officers, of the party.

**Public agencies to report
on certain expenditure**

175ZE. (1) If a public agency is required to publish an annual report under the *Financial Administration and Audit Act 1985* or any other written law, the principal officer of the public agency shall ensure that a statement is included in the annual report setting out the details mentioned in subsection (2) of all expenditure incurred by or on behalf of the public agency during the reporting period in relation to the following —

- (a) advertising agencies;
- (b) market research organizations;
- (c) polling organizations;
- (d) direct mail organizations;
- (e) media advertising organizations.

(2) The details to be set out in the statement are —

- (a) the total amount of the expenditure; and

- (b) in relation to each class of expenditure constituted by a paragraph of subsection (1) —
 - (i) the amount of the expenditure for the class; and
 - (ii) the name of each person, agency or organization to whom an amount was paid.

(3) The principal officer does not have to set out the details mentioned in subsection (2) (b) in relation to a class of expenditure if the amount of the expenditure for the class is less than the specified amount.

Regulations under this Part

175ZF. (1) The Governor may make regulations prescribing all matters that are required or permitted by this Part to be prescribed, or are necessary or convenient to be prescribed for giving effect to the purposes of this Part and, in particular —

- (a) prescribing the manner in which the Electoral Commissioner is to determine and publish the specified amount for the purposes of this Part;
- (b) requiring the making, keeping and auditing of records of —
 - (i) gifts and other income received by political parties; and
 - (ii) gifts received in respect of elections by candidates, groups and other persons,

and requiring and otherwise providing for the production, examination and copying of those records;

- (c) providing that contravention of a regulation constitutes an offence and providing for penalties not exceeding a fine of \$3 000 for offences against the regulations.

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

(a) —

- (a) shall provide for the specified amount to be determined in a manner that incorporates any increase in the amount of \$1 500 that is appropriate to reflect movements that have occurred since the commencement of the *Electoral Amendment (Political Finance) Act 1992* 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
- (b) may provide for such an 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.

Report by Electoral Commissioner

175ZG. (1) As soon as practicable after the end of the period within which returns under sections 175N have to be lodged in relation to a financial year, the Electoral Commissioner shall prepare and submit to the Minister a report on the operation of this Part in relation to that financial year.

(2) The Minister shall cause a copy of each report submitted under subsection (1) to be laid before each House of Parliament as soon as practicable after receiving the report.

”.

Section 191B inserted

5. After section 191A of the principal Act the following section is inserted —

Certain government publications prohibited during elections

“ **191B.** (1) During the relevant period in relation to an election an officer of a public agency shall not —

- (a) print, publish or distribute any matter; or
- (b) cause, permit or authorize any matter to be printed, published or distributed,

for or on behalf of the government or a government authority.

Penalty: A fine not exceeding \$1 000 or imprisonment for a period not exceeding 6 months, or both.

(2) Subsection (1) does not apply in relation to exempt matter.

(3) In this section —

“exempt matter” means —

- (a) a written law or proposed written law;

- (b) matter directly relating to warnings of impending natural disasters or military or civil disorders;
- (c) matter relating to measures (including relief measures) take to deal with —
 - (i) natural disasters or military or civil disorders;
 - and
 - (ii) the consequences of the disasters or disorders;
- (d) matter provided by the authorities responsible for the conduct of an election including material relating to the procedures and polling places for the election and the promotion of participation in the election;
- (e) an advertisement of goods and services offered for sale by or on behalf of the government or a government authority other than an advertisement containing a political reference;
- (f) an advertisement —
 - (i) relating to a vacant position; or
 - (ii) calling for expressions of interest in appointment to a public office;
- (g) an advertisement calling for tenders;

- (h) an announcement relating to any public inquiry or public hearing conducted under a law of the State, the Commonwealth, another State or a Territory; or
- (i) a notice or announcement required to be printed, published or distributed by or under a law of the State, the Commonwealth, another State or a Territory other than a prescribed notice or announcement;

“government authority” means —

- (a) a department of the Public Service or an organization specified in column 2 of the Schedule to the *Public Service Act 1978*; or
- (b) another authority or body (whether incorporated or not) that is established for a public purpose by the State, regardless of the way it is established;

“officer” of a public agency includes —

- (a) a member of the public agency;
- (b) the principal officer of the public agency; and
- (c) any person employed in, by, or for the purposes of, the public agency;

“public agency” has the same meaning as it has in Part VI;

“political reference” means material comprising an express or implied reference to, or comment on —

- (a) an election or an election that might be held in the future;
- (b) the government or the opposition or a previous government or opposition;
- (c) a member of the Council or the Assembly;
- (d) a political party;
- (e) a candidate or group in an election; or
- (f) an issue that is recognized, or is likely to become recognized, as an issue to be considered by electors in an election;

“relevant period” means —

- (a) a period that commences 3 years 6 months from the date of a general election and which expires at 6pm on the day of polling for the next succeeding general election; or
- (b) where the Legislative Assembly is dissolved before it has existed 3 years 6 months, a period that commences at the expiry of the day on which writs are issued for the general election immediately following the dissolution and expires at 6pm on the day of polling for the general election; and

- (c) in the case of a by-election means a period that commences at the expiry of the day upon which the vacancy leading to the by-election occurs and expires at 6pm on the day of polling for that by-election. ”.

Section 191C inserted

6. After section 191B of the principal Act (as inserted by this Act) the following section is inserted —

Travel entitlements during election period

“ **191C.** (1) A member of Parliament shall not undertake any prescribed air travel at the expense of the State during the relevant period in relation to an election.

(2) Notwithstanding subsection (1) and the *Salaries and Allowances Act 1975* —

- (a) the Premier and the Leader of the Opposition in the Legislative Assembly may undertake travel by air on official business at the expense of the State during the relevant period;
- (b) the entitlements of the Premier under paragraph (a) may also be exercised by one member of Parliament nominated by the Premier;
- (c) the entitlements of the Leader of the Opposition in the Legislative Assembly under paragraph (a) may also be exercised by one member of Parliament nominated by the Leader of the Opposition.

(3) Travel under subsection (2) shall be by scheduled airline services unless there is no scheduled service operating at a reasonably convenient time in which case a charter service may be used.

(4) If a day is fixed as the polling day for 2 or more elections, only one nomination may be made under each of paragraphs (b) and (c) of subsection (2) and a nomination so made has effect for each of the elections.

(5) Notice of a nomination under subsection (2) (b) or (c) shall be given to the Electoral Commissioner.

(6) A member of the Assembly who ceases to be a member of the Assembly by reason of its dissolution or its expiry by effluxion of time is to be regarded for the purposes of this section as continuing to be a member of the Assembly until the end of the relevant period.

(7) This section does not apply to travel at the expense of the State under arrangements made under section 11A (1) of the *Salaries and Allowances Act 1975* but this subsection does not affect the power of the Treasurer to make a determination under section 11A (5) of that Act.

(8) In this section —

“electorate”, in relation to a member of Parliament, means the region or district which that member represents;

“prescribed air travel” means travel by air to, from or within the region or district in which the election is to be held but does not include —

- (a) travel by a Minister of the Crown to respond to an emergency or disaster where the presence of the Minister is necessary or desirable;

- (b) travel by any member of Parliament in the course of a journey to or from a destination outside the State on official Government or parliamentary business;
- (c) travel by any member of Parliament between the member's principal residence, or the member's electorate, and the metropolitan area of Perth for the purpose of attending —
 - (i) a meeting of the member's parliamentary political party; or
 - (ii) an official Government, parliamentary or vice regal function; or
- (d) travel by any member of Parliament to, from and within the member's electorate on parliamentary or electorate business;

“relevant period” has the same meaning as it has in section 191A. ”.

Section 199A inserted

7. After section 199 of the principal Act the following section is inserted —

Interference with political liberty

“ **199A.** (1) A person shall not hinder or interfere with the free exercise or performance, by any other person, of any political right or duty that is relevant to an election or of the right to make a political gift.

Penalty —

- (a) if the offender is a natural person — a fine not exceeding \$1 000 or imprisonment for a period not exceeding 6 months, or both;
- (b) if the offender is a body corporate — a fine not exceeding \$5 000.

(2) In subsection (1) —

“political gift” means a gift to —

- (a) a political party;
- (b) a candidate or group in an election; or
- (c) a person to whom section 175Q applies. ”.

Transitional

8. (1) Where polling day in an election under the principal Act occurred before the commencement of this Act, no return is required to be lodged under the amended provisions in relation to the election.

(2) Where polling day in an election under the principal Act occurred after the coming into operation of this Act, the disclosure period for that election for the purposes of section 175O, 175P or 175Q of the amended provisions shall be taken to have commenced —

- (a) on the day prescribed for its commencement under section 175O (2), 175P (2) or 175Q (4) of the amended provisions; or
- (b) on the day of the coming into operation of this Act,

whichever is the later day.

(3) The period commencing when this Act commences and ending on the next succeeding 30 June shall be deemed to be a financial year for the purposes of section 175N of the amended provisions.

(4) In this section “**amended provisions**” means Part VI of the principal Act as inserted by section 4.