



Note: this Digest updates an [earlier Digest](#) of 20 August 2008.

## Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2009

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## Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2009

**Date introduced:** 12 March 2009

**House:** House of Representatives (the Bill passed the House on 16 March 2009)

**Portfolio:** Special Minister of State

**Commencement:** Sections 1–3 commence on the day the Act receives Royal Assent. Schedule 1 commences on 1 July 2009.

**Links:** The [relevant links](#) to the Bill, Explanatory Memorandum and second reading speech can be accessed via BillsNet, which is at <http://www.aph.gov.au/bills/>. When Bills have been passed they can be found at ComLaw, which is at <http://www.comlaw.gov.au/>.

### Purpose

The main purpose of the Bill is to amend the *Commonwealth Electoral Act 1918* (the Act) so as to:

- reduce the donations disclosure threshold from \$10 900 (current rate, CPI-indexed) to \$1000 and remove CPI indexation
- prohibit foreign donations to registered political parties, candidates and members of Senate groups and also prevent the use of foreign donations for political expenditure
- prohibit anonymous donations above \$50 to registered political parties, candidates and members of Senate groups and also prevent the use of anonymous donations above \$50 for political expenditure
- permit anonymous donations of \$50 or less in certain circumstances
- limit the potential for ‘donation splitting’
- introduce a claims system for electoral funding and tie funding to electoral expenditure
- extend the range of electoral expenditure that can be claimed and prevent existing members of Parliament from claiming electoral expenditure that has been met from their parliamentary entitlements, allowances and benefits
- introduce a biannual disclosure framework in place of annual returns and reduce timeframes for election returns, and
- introduce new offences and increase penalties for a range of existing offences.

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The Bill is essentially a revised version of the Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2008.

The Bill also contains other provisions such as application and savings provisions.

## Background

### The original Bill—the Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2008

The Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2008 was introduced in the Senate on 15 May 2008. On 18 June 2008 the Senate referred the Bill to the Joint Standing Committee on Electoral Matters (JSCEM) for inquiry and report.<sup>1</sup> The JSCEM concluded its inquiry in October 2008, and a majority of the Committee recommended that the Senate support the proposals in the Bill relating to electoral funding, the donations disclosure threshold, reporting periods and the biannual framework, donation splitting, foreign and anonymous donations, and penalties, offences and compliance.<sup>2</sup> A majority of the JSCEM also recommended two changes to the Bill:

- a broadening of the current definition of ‘electoral expenditure’ in section 308 of the Act to ‘include reasonable costs incurred for the rental of dedicated campaign premises, the hiring and payment of dedicated campaign staff, and office administration’, and
- an amendment of the proposals in the Bill relating to anonymous donations so as to allow for anonymous donations of under \$50 to be received ‘without a disclosure obligation being incurred by the donor, and without the recipient being required to forfeit the donation or donations to the Commonwealth’.<sup>3</sup>

In December 2008 the Government introduced amendments to the 2008 Bill partly in response to the JSCEM’s recommended changes. Ultimately the Bill was defeated in the Senate on 11 March 2009 with the Government, the Australian Greens and independent

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1. Australia, Senate, *Journals*, no. 16, pp. 509–18, 2008.

2. Joint Standing Committee on Electoral Matters, *Advisory report on the Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2008*, Joint Standing Committee on Electoral Matters, Canberra, October 2008, pp. xiii–xvii, <http://www.aph.gov.au/house/committee/em/taxlawbill%202/report/fullreport.pdf>, accessed on 13 March 2008.

3. *ibid.*, pp. xiv, xvi.

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Senator Nick Xenophon voting in favour of the Bill and the Coalition and Family First parties voting against the Bill.<sup>4</sup>

## Opposition and minor party positions

Given its opposition to the 2008 Bill and its vote against the revised Bill in the House of Representatives on 16 March 2009,<sup>5</sup> it is clear that the Opposition will vote against the Bill in the Senate. On 11 March 2009 the Opposition stated that the 2008 Bill was ‘a highly selective and self-serving series of amendments’ and that both the 2008 Bill and the revised Bill ‘have worked to reinforce Labor’s strong political donation position’.<sup>6</sup> The Opposition also criticised the Government for progressing the Bill ahead of the conclusion of the Green Paper process.<sup>7</sup>

It is likely that the Australian Greens will vote in favour of the revised Bill in the Senate given their support for the 2008 Bill. On 11 March 2009 the Australian Greens criticised the Coalition and Family First parties for voting against the 2008 Bill.<sup>8</sup>

It is likely that independent Senator Nick Xenophon will vote in favour of the revised Bill in the Senate given his support for the 2008 Bill.

Assuming a consistent voting pattern for the Opposition, the Australian Greens, and Senator Xenophon, Family First’s vote will decide the fate of the revised Bill in the Senate. Family First opposed the 2008 Bill on the basis that it did not limit electoral funding for political parties to \$10 million per party,<sup>9</sup> and so will presumably oppose the revised Bill unless an agreement is reached in negotiations with the Government.

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4. Australia, Senate, *Journals*, no. 61, pp. 1666–67, 2009.

5. Australia, House of Representatives, *Votes and Proceedings*, vol. 84, pp. 936–37, 2008–09.

6. R. Ronaldson (Shadow Special Minister of State), *Labor only has itself to blame for defeat of electoral bill*, media release, 11 March 2009, <http://www.liberal.org.au/news.php?Id=2718>, accessed on 13 March 2009.

7. *ibid.*

8. B. Brown, *Coalition, Fielding stymie public accountability*, media release, 11 March 2009, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2F6VZS6%22>, accessed on 13 March 2009.

9. Senator S. Fielding, ‘Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2008 [2009]: Second Reading’, Senate, *Debates*, 11 March 2009, p. 21; M. Davis, ‘Donations and questions kept in the family’, *Sydney Morning Herald*, 14 March 2009. On 3 February 2009 Senator Fielding moved an equivalent amendment to the Tax Laws Amendment (Political Contributions and Gifts) Bill 2008, which was negatived: Australia, Senate, *Journals*, no. 53, p. 1520, 2008–09.

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See the [earlier Digest](#) on the 2008 Bill for a summary of the Opposition and minor party positions in relation to that Bill and for other background matters.<sup>10</sup>

## Media commentary

Media comment since the defeat of the 2008 Bill in the Senate has focused on the defeat of that Bill, its measures, the reintroduction of the legislation into the House of Representatives, and the positions of the parties.<sup>11</sup>

See the [earlier Digest](#) on the 2008 Bill for a summary of the media commentary in the lead up to that Bill's introduction.

## Summary of key new measures in the revised Bill

The revised Bill retains the measures in the 2008 Bill and adds some additional measures. In the Second Reading speech on the Bill it was stated that:

The measures contained in the bill incorporate not only the measures in the Bill that were rejected at second reading in the Senate but also the measures that were foreshadowed to be included as government amendments to the bill in the Senate in response to the October 2008 advisory report from the Joint Standing Committee on Electoral Matters (JSCEM). There is also a further minor amendment to the categories of 'electoral expenditure' against which public funding can be claimed following an election and after consultation in the Senate.<sup>12</sup>

The main new measures in the Bill relate to electoral funding and anonymous donations.

See the [earlier Digest](#) on the 2008 Bill for a summary of the key measures in that Bill as introduced.

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10. D. Spooner and N. Horne, 'Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2008', *Bills Digest*, no. 6, Parliamentary Library, Canberra, 2007–08, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fbillsdgs%2FOGBR6%22>, accessed on 13 March 2009.
  11. See for example M. Franklin, 'Vanguard of reform downed', *The Australian*, 12 March 2009; M. Grattan, 'Secret donations business intact', *Age*, 12 March 2009; P. Dorling, 'Coalition, Fielding block donations law', *Canberra Times*, 12 March 2009; M. Davis, *ibid.*
  12. Hon. L. Tanner, Minister for Finance and Deregulation, 'Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2009: Second Reading', House of Representatives, *Debates*, 12 March 2009, p. 39.

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## Electoral funding

The revised Bill proposes to insert a definition of ‘electoral expenditure’ into subsection 287(1) of the Act. The Explanatory Memorandum notes that the definition will constitute ‘an exhaustive list of the types of expenditure that can be claimed to obtain election funding’ under the provisions of the Bill.<sup>13</sup>

The new definition would retain the substance of the current definition of ‘electoral expenditure’ in section 308 while relocating it to subsection 287(1) and adding the following elements:

- the inclusion of 5 new categories of expenditure incurred during the election period in relation to election campaigns, and
- the exclusion from the definition of any expenditure incurred by existing members of Parliament under subsection 287(1) and met by their parliamentary entitlements, allowances (except remuneration), or benefits.

The proposed 5 new categories of electoral expenditure are:

- the rent of any house, building or premises used for the primary purpose of conducting an election campaign
- paying additional staff employed, or a person contracted, for the primary purpose of conducting an election campaign
- office equipment purchased, leased or hired for the primary purpose of conducting an election campaign
- the costs of running or maintaining that office equipment, and
- expenditure incurred on travel, or on travel and associated accommodation, to the extent that the expenditure could reasonably be expected to have been incurred for the primary purpose of conducting an election campaign.

The Explanatory Memorandum states that the proposed amendments ‘are partly in response to the second recommendation in JSCEM’s Advisory Report that the categories of electoral expenditure set out in the 2008 Bill be expanded’.<sup>14</sup> The Explanatory Memorandum further states that the exclusion of electoral expenditure met by members’ entitlements, allowances and benefits from the new definition of ‘electoral expenditure’ ‘is necessary due to the introduction of a public funding scheme’, and that:

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13. Explanatory Memorandum, p. 4.

14. *ibid.*

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As sitting members of Parliament may be able to meet some electoral expenditure by way of allowances, entitlements or benefits paid by the Commonwealth in some circumstances, it is not appropriate that this electoral expenditure is claimed for public funding purposes.<sup>15</sup>

The Bill also seeks to amend subsection 287(1) so as to insert a new definition of ‘office equipment’ for the purposes of the new definition of ‘electoral expenditure’ (telephones, faxes, computers, communication equipment, photocopiers etc.), and to repeal section 308 of the Act given the relocation of the definition of ‘electoral expenditure’ from section 308 to subsection 287(1).

The Bill further proposes to specify the funding entitlement for related registered political parties making a single claim for funding. Under the proposed rules, related registered political parties making a single claim for the expenditure of the federal branch of the party and one or more state branches would be entitled to either the funding rate per first preference vote received, or the amount of electoral expenditure claimed and accepted by the Australian Electoral Commission (AEC), whichever is the lesser.

Finally, the Bill would revise the base electoral funding rate per first preference vote received from \$2.1894 in the 2008 Bill to \$2.24851 (CPI-indexed). The indexation of the base rate would commence on 1 July 2009.

## Anonymous donations

The 2008 Bill sought to prohibit foreign and anonymous donations to registered political parties, candidates and members of Senate groups and also prevent the use of foreign and anonymous donations for political expenditure. The revised Bill contains the same regime, but further proposes to exempt the receipt of anonymous money donations of \$50 or less made in certain circumstances from being unlawful. In the Second Reading speech it was stated that:

The revised bill ... includes measures that respond to the recommendation of the Joint Standing Committee on Electoral Matters that there should be a \$50 exception to the prohibition on the acceptance of anonymous gifts. The basis for this recommendation was to remove an onerous recordkeeping burden in relation to fundraisers such as raffles, trivia nights and street stalls.<sup>16</sup>

Under the provisions in the Bill anonymous money donations of \$50 or less received by registered political parties, candidates and Senate groups would be permitted where the donation was received at either:

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15. *ibid.*, p. 5.

16. Hon. L. Tanner, Minister for Finance and Deregulation, ‘Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2009: Second Reading’, House of Representatives, *Debates*, 12 March 2009, p. 40.

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- a general public activity (an activity conducted in a public place or in a place to which members of the public have ready access)—for example street and fete stalls, or
- a private event (a function, meeting or other event that is not a general public activity).

The Explanatory Memorandum states that the purpose of restricting permitted anonymous donations to these circumstances is to ensure that permitting anonymous donations of \$50 or less ‘does not lead to a flood of donations which are not disclosed’.<sup>17</sup> Under the changes proposed by the Bill, it would be lawful to incur political expenditure that was enabled by permitted anonymous donations.

In each circumstance a person involved in the organisation of the activity/event would be required to make a record of the date, location and nature of the activity/event; the details of people involved in the collection or receipt of donations at the activity/event; and the total amount of anonymous donations received by/on behalf of the recipient at the activity/event. For private events a record would also need to be made of the number of people attending the event, and if the total amount of donations received at a private event exceeded the total of \$50 multiplied by the number of attendees, the donation would only remain a permitted anonymous donation if the excess was returned within 6 weeks or paid to the Commonwealth if a return was not possible or practicable.

Provisions in the Bill would also ensure that, where an individual made multiple donations at an activity/event totalling more than \$50, and a person involved in the collection or receipt of donations was aware that the donations totalled more than \$50 and were from the same individual, the excess would not be a permitted anonymous donation.

The Bill would also impose disclosure obligations on registered political parties, candidates, Senate groups, and those incurring political expenditure regarding permitted anonymous donations received during the disclosure/reporting period and the associated activities/events.

Finally, the Bill would create a new offence for making a record in relation to a general public activity or private event where it was known that the record was false or misleading in a material particular or omitted a matter or thing without which the record would be misleading in a material particular. The maximum penalty for this offence would be imprisonment for 12 months or 120 penalty units or both.<sup>18</sup>

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17. Explanatory Memorandum, p. 24.

18. Under section 4AA of the *Crimes Act 1914* (Cth) a ‘penalty unit’ is currently \$110, thus the maximum fine is \$13 200.

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## Financial implications

The Government has indicated that the amendments may result in increased costs for the AEC. Public funding may be reduced due to the electoral funding reforms and there may be additional revenue from the recovery of unlawful or undisclosed donations.<sup>19</sup>

In October 2008 a majority of the JSCEM recommended that the Government provide the AEC with appropriate resources with respect to administration of the proposed measures in the legislation and other matters.<sup>20</sup>

## Main new provisions

This section notes the main new provisions in the Bill.

### Electoral funding

**Item 5** relocates the existing definition of ‘electoral expenditure’ from section 308 to subsection 287(1) and inserts 5 new categories of electoral expenditure into the definition. These categories are electoral expenditure incurred during the election period on:

- the rent of any house, building or premises used for the primary purpose of conducting an election campaign
- paying additional staff employed, or a person contracted, for the primary purpose of conducting an election campaign
- office equipment purchased, leased or hired for the primary purpose of conducting an election campaign
- the costs of running or maintaining that office equipment

(See **proposed subparagraphs 287(1)(b)(i)-(iv)**).

- travel, or on travel and associated accommodation, to the extent that the expenditure could reasonably be expected to have been incurred for the primary purpose of conducting an election campaign

(See **proposed subparagraphs 287(1)(c)(i)-(ii)**).

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19. Explanatory Memorandum, p. 2.

20. Joint Standing Committee on Electoral Matters, Advisory report on the Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2008, *ibid.*, pp. xv–xvii.

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**Item 5** also excludes from the definition of ‘electoral expenditure’ any expenditure incurred by existing members of Parliament under subsection 287(1) and met by their parliamentary entitlements, allowances (except remuneration) or benefits (**proposed paragraphs 287(1)(d) and (e)**).

**Item 10** inserts a definition of ‘office equipment’ into subsection 287(1) further to item 5.

**Item 13** inserts a definition of ‘single claim’ into subsection 287(1) to mean a claim made by registered political parties that are related to each other and for electoral expenditure that covers both the federal and one or more State branches of the registered political parties.

**Item 21** adds **proposed subsection 293(3)** to the proposed Subdivision A, section 293 to provide that entitlement to election funding for related registered political parties making a single claim for the expenditure of the federal branch of the party and one or more state branches is: the funding rate per first preference vote received, or the amount of electoral expenditure claimed and accepted by the AEC, whichever is the lesser.

### **Anonymous donations**

**Item 8** inserts a reference to the proposed definition of ‘general public activity’ (see **proposed subsection 306AF(3)**) into subsection 287(1).

**Item 11** inserts a reference to the proposed category of ‘permitted anonymous gift’ (see **proposed section 306AF**) into subsection 287(1).

**Item 12** inserts a reference to the proposed definition of ‘private event’ (see **proposed subsection 306AF(6)**) into subsection 287(1).

**Item 49** inserts **proposed section 306AF** into the proposed Division 4A, Subdivision A to permit anonymous money donations of \$50 or less received by registered political parties, candidates and Senate groups in certain circumstances, and to impose record-making obligations on those involved in the organisation of general public activities and private events (**proposed subsections 306AF(1), (4), (7)**). Proposed section 306AF also defines ‘general public activity’ and ‘private event’ for the purposes of the section (**proposed subsections 306AF (3) and (6)**). Proposed subsection 306AF also provides for the treatment of multiple donations received at general public activities and private events totalling in excess of \$50 (**proposed subsections 306AF(2) and (5)**).

**Items 28, 30, 73 and 93** amend subsections 304(2) and (3), section 314(AC), and subsection 314AEC(2) to impose disclosure obligations on registered political parties, candidates, Senate groups, and those incurring political expenditure regarding permitted anonymous donations received during the disclosure/reporting period and the associated activities/events.

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**Item 96** inserts **proposed section 315(4C)** to provide for a new offence of making a record in relation to a general public activity or private event where it was known that the record was false or misleading in a material particular or omitted a matter or thing without which the record would be misleading in a material particular. As previously noted, the maximum penalty for this offence would be imprisonment for 12 months or 120 penalty units or both.

See the [earlier Digest](#) on the 2008 Bill for a listing of the main provisions in that Bill as introduced.

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