



Queensland

Electoral Reform and Accountability Amendment Act 2011

Act No. 14 of 2011



Queensland

Electoral Reform and Accountability Amendment Act 2011

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Queensland

Electoral Reform and Accountability Amendment Act 2011

Act No. 14 of 2011

an Act to amend the Electoral Act 1992 for particular purposes

[Assented to 19 May 2011]

The Parliament of Queensland enacts—

1 Short title

This Act may be cited as the *Electoral Reform and Accountability Amendment Act 2011*.

3 Act amended

This Act amends the *Electoral Act 1992*.

4 Amendment of s 3 (Definitions)

(1) Section 3, definition *candidate*—

omit.

(2) Section 3—

insert—

‘agent, for part 9A, see section 177A.

applicable expenditure cap, for part 9A, see section 177A.

approved form means a form approved under section 179A.

associated entity, for part 9A, see section 177A.

auditor, for part 9A, see section 177A.

authorised officer, for part 9A, means a person who holds office under part 9A, division 14 as an authorised officer.

by-election, for part 9A, see section 177A.

candidate, in relation to an election—

(a) means a person who has become a candidate under section 88(3); and

(b) for part 9A, divisions 2, 3, 4, 6 and 9, includes an elected member or other person who has announced or otherwise indicated an intention to be a candidate in the election.

capped expenditure period, for part 9A, see section 177A.

court, for part 9A, means a Magistrates Court.

disclosure period, for part 9A, see section 177A.

disposition of property, for part 9A, see section 177A.

document certification requirement see section 177RB(6).

document production requirement see section 177RB(2).

elected member, for part 9A, see section 177A.

electoral expenditure, for part 9A, see section 177AB.

electronic document, for part 9A, means a document of a type under the *Acts Interpretation Act 1954*, section 36, definition *document*, paragraph (c).

financial controller, for part 9A, see section 177A.

former owner, for part 9A, see section 177QJ(1).

fundraising contribution, for part 9A, see section 177A.

general power, for part 9A, see section 177PA(1).

gift, for part 9A, see section 177A.

help requirement see section 177PB(1).

identity card, for a provision about authorised officers, means an identity card issued under section 177NE(1).

independent candidate, for part 9A, see section 177A.

independent member, for part 9A, see section 177A.

information notice, about a decision, for part 9A, see section 177A.

journal, for part 9A, see section 177A.

loan, for part 9A, see section 177A.

notice, for part 9A, means a written notice.

occupier, of a place, for part 9A, includes the following—

- (a) if there is more than 1 person who apparently occupies the place—any 1 of the persons;

- (b) any person at the place who is apparently acting with the authority of a person who apparently occupies the place;
- (c) if no-one apparently occupies the place—any person who is an owner of the place.

of, a place, for part 9A, includes at or on the place.

offence warning, for a direction or requirement by an authorised officer, for part 9A, means a warning that, without a reasonable excuse, it is an offence for the person to whom the direction or requirement is made not to comply with it.

owner, of a thing that has been seized under part 9A, includes a person who would be entitled to possession of the thing had it not been seized.

payment direction, for part 9A, see section 177DE.

personal details requirement, for part 9A, see section 177R(5).

person in control, for part 9A—

- (a) of a vehicle, includes—
 - (i) the vehicle’s driver or rider; and
 - (ii) anyone who reasonably appears to be, claims to be, or acts as if he or she is, the vehicle’s driver or rider or the person in control of the vehicle; or
- (b) of another thing, includes anyone who reasonably appears to be, claims to be, or acts as if he or she is, the person in possession or control of the thing.

place, for part 9A, includes the following—

- (a) premises;
- (b) vacant land;
- (c) a place in Queensland waters;
- (d) a place held under more than 1 title or by more than 1 owner;
- (e) the land or water where a building or structure, or a group of buildings or structures, is situated.

political donation, for part 9A, see section 177A.

premises, for part 9A, includes—

- (a) a building or other structure; and
- (b) a part of a building or other structure; and
- (c) a caravan or vehicle; and
- (d) a cave or tent; and
- (e) premises held under more than 1 title or by more than 1 owner.

pre-poll ordinary vote see section 104A(2).

pre-poll voting office, for an electoral district, see section 104B(1)(a).

public place, for part 9A, means—

- (a) a place, or part of the place—
 - (i) the public is entitled to use, is open to members of the public or is used by the public, whether or not on payment of money; or

Examples of a place that may be a public place under subparagraph (i)—

a beach, a park, a road

- (ii) the occupier of which allows, whether or not on payment of money, members of the public to enter; or

Examples of a place that may be a public place under subparagraph (ii)—

a saleyard, a showground

- (b) a place that is a public place under another Act.

reasonably believes, for part 9A, means believes on grounds that are reasonable in the circumstances.

reasonably suspects, for part 9A, means suspects on grounds that are reasonable in the circumstances.

register of agents, for part 9A, see section 177A.

registered, for part 9A, see section 177A.

[s 5]

registered industrial organisation, for part 9A, see section 177A.

registered third party, for part 9A, see section 177A.

reporting period, for part 9A, see section 177A.

third party, for part 9A, see section 177A.

vehicle, for part 9A—

- (a) means a vehicle under the *Transport Operations (Road Use Management) Act 1995*; and
 - (b) includes a vessel under that Act.’.
- (3) Section 3, definition *how-to-vote card*, paragraph (c), ‘casting’—
omit, insert—
‘making’.

5 Amendment of s 18 (Delegation by commission)

- (1) Section 18—

insert—

‘(2A) The commission must not delegate its power under section 177DM(1) or 177EJ(1).’.

- (2) Section 18(3), after ‘part 3’—

insert—

‘or section 177DM(1) or 177EJ(1)’.

6 Amendment of s 66 (Provisional enrolment)

- (1) Section 66(1)(a)—

omit, insert—

‘(a) is 16 or 17; and’.

- (2) Section 66(1)(c), ‘the person’—

omit.

7 Amendment of s 99 (Scrutineers)

Section 99(2), ‘and each office’—

omit, insert—

‘each pre-poll voting office and each other office’.

8 Amendment of s 101 (Who may vote)

Section 101(1)—

insert—

‘(d) persons who—

(i) are not enrolled, but are entitled to be enrolled, on the electoral roll for the district; and

(ii) after the cut-off day for electoral rolls and no later than 5p.m. on the day before the polling day, have given a notice to an electoral registrar for the district under section 65.’.

9 Amendment of s 102 (Procedure for voting)

(1) Section 102(1), after ‘who’—

insert—

‘makes a pre-poll ordinary vote under section 104C or who’.

(2) Section 102(4), after ‘If’—

insert—

‘the elector’.

(3) Section 102(4)(a), ‘the elector’—

omit.

10 Insertion of new pt 6, div 5, sdiv 1A

After section 104—

insert—

‘Subdivision 1A Pre-poll ordinary voting

‘104A Pre-poll ordinary voting

- ‘(1) This section applies to an elector, other than one who must make a declaration vote under subdivision 2, who—
 - (a) wishes to vote before the polling day for an election; and
 - (b) wishes to do so other than by making a declaration vote under subdivision 2.
- ‘(2) If there is a pre-poll voting office for the electoral district for which the elector is enrolled, the elector may make a vote under section 104C (a *pre-poll ordinary vote*).

‘104B Pre-poll voting offices

- ‘(1) The commission may declare, by gazette notice, for an election—
 - (a) a stated place to be a place where an elector enrolled in a stated electoral district may make a pre-poll ordinary vote (a *pre-poll voting office* for the electoral district); and
 - (b) the times during which electors are allowed to make a pre-poll ordinary vote at the pre-poll voting office.
- ‘(2) The commission may, in a declaration under subsection (1) or by gazette notice under this subsection, declare that a particular pre-poll voting office located in an electoral district is also a pre-poll voting office for 1 or more other electoral districts.
- ‘(3) If the commission makes a declaration under subsection (1) or (2), the commission may also publish the declaration in any other ways the commission considers appropriate including, for example, on the commission’s website.

‘104C Procedure for pre-poll ordinary voting

- ‘(1) An elector who wishes to vote during the period beginning 3 days after the cut-off day for nominations and ending at 6p.m.

on the day before polling day may make a pre-poll ordinary vote by following the procedures set out in this section.

- ‘(2) The elector is to go to a pre-poll voting office for the electoral district for which the elector is enrolled.
- ‘(3) At the pre-poll voting office, the elector is to request a ballot paper from an issuing officer.
- ‘(4) If the elector—
 - (a) has a ballot paper and declaration envelope for the election; and
 - (b) does not intend to make a declaration vote under subdivision 2;the elector must give the papers to the issuing officer.
- ‘(5) The issuing officer must issue a ballot paper to a person requesting one only if the issuing officer is satisfied that the person is entitled to vote at the election for the electoral district.
- ‘(6) The issuing officer may ask of a person requesting a ballot paper questions for the purpose of deciding whether the person is entitled to vote at the election for the electoral district.
- ‘(7) If, after the issuing officer has asked questions under subsection (6), the issuing officer suspects that a person claiming to be a particular elector is not the elector, the issuing officer must comply with section 112.
- ‘(8) The issuing officer must keep a record of all persons to whom the officer issues ballot papers under this section.
- ‘(9) The issuing officer must, if a scrutineer requests it, keep a record of any objection by the scrutineer to the entitlement of a person to vote.
- ‘(10) On being given the ballot paper, the elector must, without delay—
 - (a) go alone to an unoccupied voting compartment in the pre-poll voting office; and

[s 10]

- (b) there, in private, mark a vote on the ballot paper in accordance with section 113; and
- (c) fold the ballot paper to conceal the vote and put it in a ballot box in the pre-poll voting office; and
- (d) leave the pre-poll voting office.

‘104D Help to enable electors to vote at pre-poll voting offices

- ‘(1) Subject to subsection (2), if an elector satisfies an issuing officer that the elector is unable to vote without help, the elector may be accompanied in the pre-poll voting office by another person chosen by the elector.
- ‘(2) The other person may help the elector in any of the following ways—
 - (a) acting as an interpreter;
 - (b) explaining the ballot paper and the requirements of section 113 relating to its marking;
 - (c) marking, or helping the elector to mark, the ballot paper in the way the elector wishes;
 - (d) folding the ballot paper and putting it in the ballot box.
- ‘(3) If an elector is unable to enter a pre-poll voting office because of illness, disability or advanced pregnancy, but is able to come to a place (the *voting place*) close to the pre-poll voting office, then, subject to subsection (4)—
 - (a) the issuing officer may perform the issuing officer’s functions; and
 - (b) the voter may vote;at the voting place as if it were the pre-poll voting office.
- ‘(4) The issuing officer must—
 - (a) before taking any action under subsection (3), inform any scrutineers present of the proposed action; and
 - (b) allow only 1 scrutineer for each candidate to be present at the voting place; and

-
- (c) ensure that, after the ballot paper is marked, it is—
 - (i) folded to conceal the vote; and
 - (ii) put into an envelope and sealed; and
 - (d) open the envelope inside the pre-poll voting office in the presence of any scrutineers and put the folded ballot paper in a ballot box.’.

11 Amendment of s 106 (Who must make a declaration vote)

Section 106(d), after ‘101(1)(b)’—

insert—

‘or (d)’.

12 Amendment of s 110 (Making a declaration vote using posted voting papers)

Section 110(1), ‘by writing’—

omit, insert—

‘in an approved form’.

13 Amendment of s 112 (Making a declaration vote in cases of uncertain identity)

Section 112(1), after ‘102(7)’

insert—

‘or 104C(7)’.

14 Amendment of s 118 (Preliminary counting of ordinary votes)

Section 118—

insert—

- ‘(3A) This section also applies to pre-poll ordinary votes received by the commission for an electoral district in the same way as it would apply if a pre-poll voting office were a polling booth

[s 14A]

for the electoral district, to the extent to which it is reasonably practicable for pre-poll ordinary votes to be counted on polling day and subject to any prescribed changes and any other necessary changes.’.

14A Omission of pt 7

Part 7—

omit.

15 Insertion of new pt 9A

After section 177—

insert—

‘Part 9A Election funding and financial disclosure

‘Division 1 Interpretation

‘177A Definitions

‘In this part—

agent means an agent of a registered political party, candidate or third party appointed under division 2.

applicable expenditure cap means the amount calculated under section 177IA.

associated entity means an entity that—

- (a) is controlled by 1 or more registered political parties; or
- (b) operates wholly or to a significant extent for the benefit of 1 or more registered political parties.

auditor means an individual who—

- (a) has the qualifications or experience prescribed for this definition; and

-
- (b) is not, and has not ever been, a member of a political party.

by-election means an election of a member of the Legislative Assembly between general elections.

capped expenditure period—

- (a) for the first general election held after the date of assent of the *Electoral Reform and Accountability Amendment Act 2011*, means the period—
- (i) starting on the day after the date of assent; and
 - (ii) ending at 6p.m. on the polling day for the election; and
- (b) for another general election, means the period—
- (i) starting on the earlier of the following days—
 - (A) the day that is 2 years after the polling day for the last election;
 - (B) the day of the issue of the writ for the election; and
 - (ii) ending at 6p.m. on the polling day for the election; and
- (c) for a by-election, means the period starting on the day the writ for the by-election is issued and ending at 6p.m. on the polling day for the by-election.

disclosure period see section 177AA.

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

- (a) the allotment of shares in a company; and
- (b) the creation of a trust in property; and
- (c) the grant or creation of a lease, mortgage, charge, servitude, licence, power, partnership or interest in property; and

[s 15]

- (d) the release, discharge, surrender, forfeiture or abandonment, at law or in equity, of a debt, contract or chose in action, or of an interest in property; and
- (e) the exercise by a person of a general power of appointment of property in favour of another person; and
- (f) any transaction entered into by a person with intent to diminish, directly or indirectly, the value of the person's own property and to increase the value of the property of another person.

elected member means a member of the Legislative Assembly.

electoral expenditure see section 177AB.

financial controller, of an associated entity, means—

- (a) if the entity is a corporation—the secretary of the corporation; or
- (b) if the entity is the trustee of a trust—the trustee; or
- (c) if the entity is a corporation that is the trustee of a trust—the secretary of the corporation; or
- (d) otherwise—the person responsible for keeping the financial records of the entity.

fundraising contribution see section 177AC.

gift see section 177AD.

independent candidate means a candidate who is not endorsed by a registered political party.

independent member see section 177EC.

information notice, about a decision, means a notice stating the following—

- (a) the decision;
- (b) the reasons for it;
- (c) that the person to whom the notice is given may apply to the commissioner for a review of the decision within 20 business days after the person receives the notice;

(d) how to apply for a review.

journal means a newspaper, magazine or other periodical, whether published for sale or for distribution without charge.

loan means any of the following made other than by use of a credit card—

- (a) an advance of money;
- (b) a provision of credit or another form of financial accommodation;
- (c) a payment of an amount for, on account of, on behalf of or at the request of, an entity, if there is an express or implied obligation to repay the amount;
- (d) a transaction (whatever its terms or form) that in substance effects a loan of money.

payment direction see section 177DE.

political donation see section 177F.

register of agents means the register kept under section 177BD.

registered, for an election, means registered under part 5.

registered industrial organisation means—

- (a) a body registered as an industrial organisation, or a body whose registration was continued or preserved, under the *Industrial Relations Act 1999*; or
- (b) an organisation registered under the *Fair Work (Registered Organisations) Act 2009* (Cwlth) or the law of another State or territory about the registration of industrial organisations or unions.

registered third party means an entity registered under division 12.

reporting period means—

- (a) the first 6 months of a financial year; or
- (b) a full financial year.

third party means an entity other than a registered political party, an associated entity or a candidate.

‘177AA Meaning of *disclosure period*

- ‘(1) The *disclosure period*, for an election (the *relevant election*), is the period that starts—
- (a) for a candidate in the relevant election who had been a candidate in a general election or by-election the polling day for which was within the prescribed time before the polling day for the relevant election—at the end of the prescribed time after polling day for the last general election or by-election in which the person was a candidate; or
 - (b) for a candidate in the relevant election who had not been a candidate in a general election or by-election the polling day for which was within the prescribed time before the polling day for the relevant election, on the earlier of the following days—
 - (i) the day on which the person announced that the person would be a candidate in the relevant election;
 - (ii) on the day on which the person nominated as a candidate; or
 - (c) for a person or organisation to which section 177GC(1) or 177GD(1) applies, at the end of the prescribed time after the polling day for the last general election.
- ‘(2) A *disclosure period* for an election ends at the prescribed time after the polling day for the election.

‘177AB Meaning of *electoral expenditure*

‘In this part, *electoral expenditure* means expenditure incurred (whether or not incurred during the capped expenditure period for an election) on, or a gift in kind given that consists of—

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- (a) the broadcasting, during the capped expenditure period for the election, of an advertisement that advocates a vote for or against a candidate or for or against a registered political party; or
 - (b) the publishing in a journal, during the capped expenditure period for the election, of an advertisement that advocates a vote for or against a candidate or for or against a registered political party; or
 - (c) the publishing on the internet, during the capped expenditure period for the election, of an advertisement that advocates a vote for or against a candidate or for or against a registered political party, even if the internet site on which the publication is made is located outside Queensland; or
 - (d) the display, during the capped expenditure period for the election, at a theatre or other place of entertainment, of an advertisement that advocates a vote for or against a candidate or for or against a registered political party; or
 - (e) the production of an advertisement that advocates a vote for or against a candidate or for or against a registered political party, being an advertisement that is broadcast, published or displayed as mentioned in paragraph (a), (b), (c) or (d); or
 - (f) the production of any material (other than material mentioned in paragraph (a), (b), (c) or (d)) that—
 - (i) advocates a vote for or against a candidate or for or against a registered political party; and
 - (ii) is required under section 161 to include the name and address of the author of the material or of the person authorising the material; and
 - (iii) is used during the capped expenditure period for the election; or
 - (g) the production and distribution of material that—
 - (i) advocates a vote for or against a candidate or for or against a registered political party; and
 - (ii) is addressed to particular entities; and

- (iii) is distributed during the capped expenditure period for the election; or
- (h) the carrying out, during the capped expenditure period for the election, of an opinion poll, or other research, relating to the election.

‘177AC Meaning of *fundraising contribution*

- ‘(1) A *fundraising contribution* means an amount paid by a person as a contribution, entry fee or other payment to entitle that person or another person to participate in or otherwise obtain a benefit from a fundraising venture or function.
- ‘(2) Without limiting subsection (1), a fundraising contribution includes—
 - (a) an amount paid for a ticket in a raffle; and
 - (b) an amount paid for an item at a fundraising auction.

‘177AD Meaning of *gift*

- ‘(1) A *gift* means a disposition of property made by a person to someone else, otherwise than by will, being a disposition made without consideration in money or money’s worth or with inadequate consideration.
- ‘(2) Without limiting subsection (1), a gift includes—
 - (a) the provision of a service (other than volunteer labour) for no consideration or for inadequate consideration; and
 - (b) uncharged interest on a loan made by a person to someone else.
- ‘(3) For subsection (2)(b), uncharged interest is the additional amount that would have been payable by a person if—
 - (a) the loan had been made on terms requiring the payment of interest at the generally prevailing interest rate for a loan of that kind; and
 - (b) any interest payable had not been waived; and

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- (c) any interest payments were not capitalised.
- ‘(4) A gift does not include—
- (a) a fundraising contribution of \$200 or less; or
 - (b) if a fundraising contribution is an amount of more than \$200, the first \$200 of the fundraising contribution; or
 - (c) a payment under division 4 or 5; or
 - (d) an annual subscription paid to a political party by a person for the person’s membership of the party; or
 - (e) the provision of volunteer labour; or
 - (f) the incidental or ancillary use of—
 - (i) a volunteer’s vehicle or equipment; or
 - (ii) a vehicle or equipment that is ordinarily available for the personal use of a volunteer.
- ‘(5) For this part, the amount or value of a gift consisting of or including a disposition of property other than money must, if the regulation provides, be decided under principles stated or mentioned in the regulation.

‘177AE References to registered political party

- ‘(1) A reference in this part to things done by or for a registered political party must, if the party is not a corporation, be read as a reference to things done by or with the authority of a member or officer of the party for the party.
- ‘(2) A reference in this part to a registered political party, other than a reference to the endorsement of a candidate in an election, does not include a reference to a part of the political party.

‘177AF Electoral committee to be treated as part of candidate

- ‘(1) Divisions 3, 4, 6 and 9 apply as if an electoral committee for a registered political party for an electorate were the candidate endorsed by the party for the electorate.

‘(2) In this section—

electoral committee, for a registered political party for an electorate, means a committee established by the party to help elect a candidate in the electorate.

‘177AG Associated entity to be treated as part of party for particular purposes

‘If a political party has an associated entity, divisions 3, 4, 6 and 9 apply as if—

- (a) the political party and the associated entity together constituted the political party (the *recipient party*); and
- (b) a donation made by a person to the political party or the associated entity were a gift made by the person to the recipient party.

‘177AH Related corporations

‘For this part—

- (a) a corporation and another corporation that is related to the first-mentioned corporation must be taken to be the same person; and
- (b) the question whether a corporation is related to another corporation must be decided in the same way as the question whether a corporation is related to another corporation is decided under the Corporations Act.

‘Division 2 Agents

‘177B Agents of registered political parties

‘A registered political party must have an agent for this part.

‘177BA Appointment of agents by candidates

‘(1) A candidate in an election may appoint a person to be the agent of the candidate, for this part, for the election.

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- ‘(2) During any period for which there is no appointment in force under subsection (1) of an agent of a candidate, the candidate is taken to be his or her own agent for this part.

‘177BB Appointment of agents by registered third party

- ‘(1) A registered third party that is not an individual must have an agent for this part.
- ‘(2) A registered third party who is an individual may appoint a person to be the agent of the third party, for this part, for the election.
- ‘(3) During any period for which there is no appointment in force of an agent of a registered third party who is an individual, the third party is taken to be the third party’s own agent for this part.

‘177BBA Appointment of agents by unregistered third parties

- ‘(1) An unregistered third party may appoint a person to be the agent of the third party for this part.
- ‘(2) During any period for which there is no appointment in force under subsection (1) for a third party—
- (a) if the third party is a person, the third party is taken to be the third party’s own agent for this part; or
 - (b) if the third party is not a person, each member of the executive committee of the third party is taken to be the agent of the third party.

‘177BC Requisites for appointment

- ‘(1) An appointment of an agent has no effect unless—
- (a) the person appointed is an adult; and
 - (b) written notice of the appointment is given to the commission—
 - (i) by the party if the appointment is made by a registered political party; and

- (ii) by the candidate if the appointment is made by a candidate; and
 - (iii) by the third party if the appointment is made by a registered third party; and
 - (c) the name and address of the person appointed are stated in the notice; and
 - (d) the person appointed has signed—
 - (i) a form of consent to the appointment; and
 - (ii) a declaration that the person is eligible for appointment.
- ‘(2) A consent or declaration under subsection (1) must be—
 - (a) incorporated in, or written on the same paper as, the notice under subsection (1)(b); or
 - (b) attached to that notice.
- ‘(3) If a person who is the agent is convicted of an offence against this part for a particular election, the person is not eligible to be appointed or to hold office as an agent for this part for any subsequent election.
- ‘(4) An appointment (other than an appointment by a registered political party or registered third party) is not effective for anything required by this part to be done—
 - (a) for a claim or return under this part for an election; or
 - (b) during a specified period after polling day for an election;if notice of the appointment was given to the commission after the close of nominations for the election.

‘177BD Register of agents

- ‘(1) The commission must keep a register called the register of agents.
- ‘(2) There must be entered in the register the name and address of every person appointed to be an agent of a registered political party or third party for this part.

‘177BE Effect of registration

- ‘(1) The appointment of an agent—
- (a) takes effect on the entry of the name and address of the agent in the register of agents; and
 - (b) ceases to have effect if the name and address of the agent are removed from the register.
- ‘(2) The name and address of a person must not be removed from the register unless—
- (a) the person gives to the commission written notice that the person has resigned the appointment as agent; or
 - (b) the entity that appointed the person gives to the commission—
 - (i) written notice that states the person has ceased to be an agent of the entity; and
 - (ii) if the entity is required under this division to have an agent, written notice under section 177BC of a person as agent in place of the agent who resigned; or
 - (c) the person is convicted of an offence against this part; or
 - (d) the party’s registration is cancelled.
- ‘(3) If a person who is an agent dies, the entity by which the person was appointed must, within 28 days after the death of the person, give to the commission—
- (a) written notice of the death; and
 - (b) if the entity is required under this division to have an agent, written notice under section 177BC of the appointment of a person as agent in place of the deceased person.
- ‘(4) If a person who is an agent is convicted of an offence against this part and the entity that appointed the agent is required under this division to have an agent—
- (a) the person ceases to be the agent of the entity on—
 - (i) the day the person is convicted of the offence; or

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- (ii) if an appeal against the conviction is instituted and the conviction is affirmed, the day the appeal is decided; and
- (b) the entity must, within 28 days after the person ceases to be the entity's agent—
 - (i) give to the commission written notice that the person has ceased to be the entity's agent; and
 - (ii) if the entity is required under this division to have an agent, written notice under section 177BC of the appointment of a person as agent in place of the person who ceased to be the agent.

'177BF Evidence of appointment

'An entry in the register of agents is, for all purposes, evidence that the person described in the entry is the agent, for this part, of the entity named in the entry.

'177BG Responsibility for action when agent of party dead or appointment vacant

- '(1) This section applies if—
 - (a) division 3, 4, 6, 7, 8, 9, 10 or 11 imposes an obligation on the agent of a registered political party; and
 - (b) there is no agent of the party.
- '(2) The obligation rests on each member of the executive committee of the party, and this part applies to each member of the committee as if the obligation rested on that member alone.

'177BH Responsibility for action when agent of registered third party dead or appointment vacant

- '(1) This section applies if—
 - (a) division 3, 4, 6, 7, 8, 9, 10 or 11 imposes an obligation on the agent of a registered third party; and
 - (b) there is no agent of the third party.

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- ‘(2) The obligation rests on the third party if the third party is a person.
 - ‘(3) However, if the third party is not a person, the obligation rests on each member of the executive committee of the third party, and this part applies to each member of the committee as if the obligation rested on that member alone.

‘177BI Revocation of appointment of agent

- ‘(1) A candidate, or a registered third party who is an individual, may, by written notice given to the commission, revoke the appointment of a person as the agent of the candidate or registered third party.
- ‘(2) A notice under subsection (1) has no effect unless it is signed by the candidate or registered third party.

‘177BJ Notice of death or resignation of agent of candidate or registered third party

‘If the agent of a candidate, or the agent of an individual who is a registered third party, dies or resigns, the candidate or registered third party must, without delay, give to the commission a written notice of the death or resignation.

‘Division 3 State campaign accounts

‘177C Requirement to keep State campaign account

‘Each of the following entities must keep a separate account (a *State campaign account*) with a financial institution for State campaign elections—

- (a) the agent of a registered political party, candidate or registered third party;
- (b) the agent of an unregistered third party that receives a political donation.

Maximum penalty—200 penalty units.

‘177CA Political donations to be paid into State campaign account

‘An agent must ensure each political donation that is an amount of money received by or on behalf of the registered political party, candidate or third party is paid into the State campaign account kept by the agent of the party, candidate or third party, unless the donation is made or received in contravention of division 6.

Maximum penalty—200 penalty units.

‘177CB Payments into State campaign account

‘(1) The agent of a registered political party or candidate must ensure that only the following amounts of money are paid into the State campaign account kept by the agent—

- (a) a political donation, if the donation is not made or received in contravention of division 6;
- (b) an amount of election funding paid to the registered political party or candidate for election funding by the commission under division 4, including a payment made to a registered political party at the direction of a candidate;
- (c) an amount contributed by the candidate from the candidate’s own personal funds;
- (d) an amount left to the registered political party or candidate in a person’s will;
- (e) an amount borrowed by the registered political party or candidate;

Note—

See division 6, which provides that unpaid debts may constitute political donations in particular circumstances, and section 177HE, which provides for restrictions on the loans that may be received by registered political parties, candidates and others.

- (f) an amount that is a return on an investment made by the registered political party or candidate if the amount invested was paid from the State campaign account;

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- (g) a fundraising contribution of \$200 or less or, if the fundraising contribution is more than \$200, the first \$200 of the fundraising contribution;
 - (h) an amount, not more than \$500, that is an individual's annual subscription paid to the registered political party for the person's membership of the party;
 - (i) an amount that is a compulsory levy imposed by the registered political party under its constitution on elected members.

Maximum penalty—100 penalty units.

- '(1A) The agent of a third party must ensure the following donations are not paid into the third party's campaign account—
 - (a) a donation that is not a political donation;
 - (b) a political donation that is made or received in contravention of division 6.

Maximum penalty—200 penalty units.

- '(2) A person does not commit an offence against subsection (1) or (1A) if the person, on becoming aware that an amount of money was paid into the State campaign account in contravention of that subsection, takes all reasonable steps to immediately withdraw the amount from the account.

'177CC Obligation to repay amount borrowed

'If an agent of a registered political party or candidate pays an amount of money that is borrowed by the party, member or candidate into the State campaign account kept by the agent, the agent must ensure the amount borrowed is repaid from the State campaign account.

Maximum penalty—200 penalty units.

‘Division 4 Election funding

‘Subdivision 1 Preliminary

‘177D Interpretation

‘For this division, if a registered political party and a candidate endorsed by the registered political party both claim to have incurred the same item of electoral expenditure, the electoral expenditure is taken to be electoral expenditure incurred by the party.

‘Subdivision 2 Entitlement to election funding

‘177DA Entitlement to election funding—registered political parties

- ‘(1) A registered political party is entitled to election funding under this section for all elections held on the same day if, in relation to a candidate whom the party endorses in an election, the total number of formal first preference votes given for the candidate is at least 4% of the total number of formal first preference votes made in the election.
- ‘(2) The amount of election funding to which the registered political party is entitled is—
 - (a) if the registered political party incurs electoral expenditure for the election of not more than 10% of the applicable expenditure cap, 100% of the expenditure; and
 - (b) if the registered political party incurs electoral expenditure for the election of more than 10% but not more than 90% of the applicable expenditure cap—
 - (i) 100% of the first 10% of the electoral expenditure; and
 - (ii) 75% of the remaining electoral expenditure; and

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- (c) if the registered political party incurs electoral expenditure for the election of more than 90% of the applicable expenditure cap—
 - (i) 100% of the first 10% of the electoral expenditure; and
 - (ii) 75% of the electoral expenditure that is more than 10% but not more than 90% of the applicable expenditure cap; and
 - (iii) 50% of the next 10% of the electoral expenditure.

‘177DB Entitlement to election funding—candidates

- ‘(1) A candidate in an election is entitled to election funding under this section if the total number of formal first preference votes given for the candidate in the election is at least 4% of the total number of formal first preference votes made in the election.
- ‘(2) The amount of election funding to which the candidate is entitled is—
 - (a) if the candidate incurs electoral expenditure for the election of not more than 10% of the applicable expenditure cap, 100% of the expenditure; and
 - (b) if the candidate incurs electoral expenditure for the election of more than 10% but not more than 90% of the applicable expenditure cap—
 - (i) 100% of the first 10% of the electoral expenditure; and
 - (ii) 50% of the remaining electoral expenditure; and
 - (c) if the candidate incurs electoral expenditure for the election of more than 90% of the applicable expenditure cap—
 - (i) 100% of the first 10% of the electoral expenditure; and

- (ii) 50% of the electoral expenditure that is more than 10% but not more than 90% of the applicable expenditure cap; and
- (iii) 25% of the next 10% of the electoral expenditure.

‘177DC Advance payment of election funding

- ‘(1) A registered political party or a candidate in an election is entitled to be paid an amount of the election funding in advance of the election (an *advance payment*) if the party or candidate was entitled to election funding at the previous election.
- ‘(2) The advance payment to which the registered political party or candidate is entitled is 50% of the amount of election funding the party or candidate was paid for the previous election.
- ‘(3) However, for the first general election held after the commencement of this section a registered political party or candidate is entitled to 50% of the amount of election funding the party would have been paid for the last general election if—
 - (a) the funding had been calculated using the formula mentioned in section 177DA or 177DB; and
 - (b) for applying the formula, the applicable expenditure cap were the applicable expenditure cap for the first financial year after the commencement.
- ‘(4) The advance payment may be paid, as a lump sum or in instalments, at any time after the commencement of the capped expenditure period for the election to which the advance payment relates.
- ‘(5) The amount of the advance payment is to be deducted from the amount of election funding payable under section 177DA or 177DB to the registered political party or candidate.
- ‘(6) If the amount of the advance payment is more than the amount of election funding to which the registered political party or candidate is entitled under section 177DA or 177DB for the election, the agent of the party or candidate must repay the

excess amount to the commission within 60 days after the day for the return of the writs for the election.

‘Subdivision 3 Claims for election funding

‘177DD Need for a claim

- ‘(1) To be paid an amount of election funding, the agent of a registered political party or candidate must make a claim.
- ‘(2) A claim, other than a claim for an advance payment, must state all electoral expenditure for which election funding is sought.

‘177DE Candidate may give direction about payment of election funding

- ‘(1) An agent of a candidate may, at any time, give the commission a direction (a *payment direction*) that election funding to which the candidate is, or may be, entitled for an election should be paid to a registered party that endorsed the candidate in the election.
- ‘(2) A payment direction —
 - (a) must be in writing; and
 - (b) may be revoked by the candidate’s agent, by written notice given to the commission, with the consent of the agent of the registered political party.

‘177DF Electoral expenditure incurred

- ‘(1) A claim for election funding, other than an advance payment, made by the agent of a registered political party must state electoral expenditure—
 - (a) incurred by the party for all elections held on the same day; and
 - (b) for which election funding is sought.

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- ‘(2) A claim for election funding, other than an advance payment, made by the agent of a candidate in an election must state electoral expenditure—
 - (a) incurred by the candidate for the election; and
 - (b) for which election funding is sought.
- ‘(3) A claim for an advance payment must state the amount of election funding paid to the registered political party or candidate at the last election.

‘177DG Form of claim

- ‘(1) A claim must be in the approved form.
- ‘(2) The approved form must, if the form requires, be verified by statutory declaration.

‘177DH Lodging of claim

- ‘(1) A claim for election funding, other than an advance payment, for an election or elections must be lodged with the commission—
 - (a) during the period of 20 weeks after the polling day for the election or elections to which the claim relates; or
 - (b) within a longer period the commission, before the end of the period specified in paragraph (a), fixes.
- ‘(2) A claim for an advance payment for an election must be lodged with the commission before the later of the following—
 - (a) 6 weeks before the capped expenditure period for the election starts;
 - (b) the day the writs for the election are issued.
- ‘(3) The commission must not fix a longer period under subsection (1)(b) unless it is satisfied it is justified in the circumstances.

‘177DI Deciding claim

- ‘(1) The commission must, after receiving a claim—
 - (a) decide whether to accept or refuse the claim, in whole or in part; and
 - (b) to the extent the commission accepts the claim, pay the amount required by section 177DJ.
- ‘(2) In deciding whether to accept or refuse a claim for election funding for an election, other than an advance payment, in whole or in part, the commission must only consider—
 - (a) whether expenditure claimed is electoral expenditure; and
 - (b) if expenditure claimed is electoral expenditure—
 - (i) whether the electoral expenditure was incurred for the election; and
 - (ii) whether the registered political party or candidate is entitled under section 177DA or 177DB to the amount claimed.
- ‘(3) In deciding whether to accept or refuse a claim for advance payment, in whole or in part, the commission must only consider the amount of election funding paid to the registered political party or candidate at the last election.
- ‘(4) The commission may, by written notice, require the agent of the registered political party or candidate to provide further information the commission reasonably requires to decide whether to accept or refuse the claim.

‘177DJ Accepting a claim

- ‘(1) This section applies if—
 - (a) a claim is made by the agent of a registered political party or candidate in relation to an election or elections; and
 - (b) the commission accepts the claim, in whole or in part.
- ‘(2) The commission must pay the amount under section 177DA(2), 177DB(2) or 177DC, as applicable.

‘177DK Refusing a claim

‘If a claim is refused, in whole or in part, the commission must give the agent of the registered political party or candidate to which the claim relates, a notice that states—

- (a) that the claim has been refused, in whole or in part; and
- (b) the reasons for the refusal.

‘177DL Application for reconsideration of decision refusing a claim

‘(1) If a claim is refused, in whole or in part, the agent of the registered political party or candidate to which the claim relates may apply to the commission for the commission to reconsider the decision.

‘(2) The application must—

- (a) be in writing; and
- (b) set out the reasons for the application.

‘(3) The application must be made within—

- (a) 28 days after the day on which the relevant agent is notified of the refusal; or
- (b) if, either before or after the end of that period of 28 days, the commission extends the period within which the application may be made—the extended period for making the application.

‘177DM Reconsideration by commission

‘(1) On receiving an application under section 177DL, the commission must—

- (a) reconsider the decision; and
- (b) decide to—
 - (i) affirm the decision; or
 - (ii) vary the decision; or
 - (iii) set aside the decision and make another decision.

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- ‘(2) The commission must give to the relevant agent a notice stating the decision on the reconsideration together with a statement of the reasons for the decision.
 - ‘(3) If the commission’s decision on the reconsideration would require an amount, or an additional amount, of election funding to be paid, the commission must pay the amount within 20 days after the day of its decision.

‘Subdivision 4 Payments of election funding

‘177DN Making of payments

- ‘(1) If the commission is satisfied an amount of election funding claimed by the agent of a registered political party is payable to the party, the commission must pay the amount into the party’s State campaign account.
- ‘(2) If the commission is satisfied an amount of election funding claimed by the agent of a candidate is payable to the candidate, the commission must pay the amount—
 - (a) into the candidate’s State campaign account; or
 - (b) if the candidate has given the commission a payment direction, into the registered political party’s State campaign account.
- ‘(3) If a payment is made under this division and the recipient is not entitled to receive the whole or a part of the amount paid, whether because of a false statement in a claim or otherwise, the amount or the part of the amount may be recovered by the State as a debt due to the State.

‘Subdivision 5 Miscellaneous

‘177DO Death of candidates

‘If a candidate who dies would, but for his or her death, have been entitled to election funding under this division, the commission may pay the election funding to—

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- (a) if a payment direction was in force in relation to the election funding, the registered political party mentioned in the payment direction; or
- (b) otherwise, the candidate's legal personal representative.

'177DP Varying decisions accepting claims

- '(1) The commission may vary a decision (the *claim decision*) made under section 177DI to accept an amount of electoral expenditure stated in a claim if the commission is satisfied—
 - (a) the amount of electoral expenditure should not have been accepted; or
 - (b) only a lesser amount of electoral expenditure should have been accepted.
- '(2) If the commission makes a decision (the *variation decision*) to vary the claim decision, sections 177DK, 177DL and 177DM apply in relation to the variation decision as if it were, to the extent of the variation, a decision of the commission to refuse the claim.
- '(3) If the commission makes a variation decision, and the total amount of election funding that has been paid to a person under the claim decision exceeds the amount that, under the variation decision, should have been paid to the person—
 - (a) the amount of the excess is an overpayment; and
 - (b) the overpayment may be recovered by the State as a debt due to the State.

‘Division 5 Administrative expenditure funding**‘Subdivision 1 Preliminary****‘177E Meaning of *administrative expenditure***

- ‘(1) *Administrative expenditure*, for an independent member, means expenditure for the administrative and operating expenses of the member in his or her capacity as a member.
- ‘(2) Without limiting subsection (1), administrative expenditure for an independent member includes the following—
- (a) expenditure for the administration or management of the activities of the member in his or her capacity as a member;
 - (b) expenditure for conferences, seminars, meetings or other functions at which the policies of the member are discussed or formulated;
 - (c) expenditure on giving information to the public, or a section of the public, about the member but only if the expenditure is not electoral expenditure;
 - (d) expenditure on giving information to supporters of the member but only if the expenditure is not electoral expenditure;
 - (e) expenditure in relation to the audit of any of the following—
 - (i) the financial accounts of the member;
 - (ii) claims for payment by the member, or an agent of the member, under this Act;
 - (iii) disclosures by the member, or an agent of the member, under this Act;
 - (f) expenditure on the remuneration of staff engaged in an activity mentioned in paragraph (a), (b), (c), (d) or (e) on behalf of the member to the extent the remuneration relates to the time spent by the staff on the activity;

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- (g) expenditure on the acquisition and operation of equipment or vehicles used for an activity mentioned in paragraph (a), (b), (c), (d) or (e) to the extent the acquisition and operation relates to the use of the equipment or vehicle for the activity;
 - (h) expenditure on office accommodation for staff mentioned in paragraph (f) and equipment mentioned in paragraph (g).
- ‘(3) However, administrative expenditure for an independent member does not include the following—
- (a) electoral expenditure;
 - (b) expenditure for which the member may claim a parliamentary allowance as a member.

‘Subdivision 2 Administrative funding for registered political parties

‘177EA Eligibility of political party for administrative funding

- ‘(1) A registered political party is eligible for administrative funding if—
- (a) the political party was a registered political party on the polling day for the last general election and continues to be a registered political party on the day the entitlement for the payment is decided; and
 - (b) candidates endorsed by the political party were elected at the last general election and the commission is satisfied the members claimed, during the election period for the election, to be endorsed by the political party; and
 - (c) the commission is satisfied the members continue to be members of the political party on the day the entitlement for the payment is decided.
- ‘(2) However, a registered political party is not eligible for administrative funding under this division if the agent of the party has, by written notice given to the commission,

indicated that it does not wish to receive administrative funding under this Act.

‘177EB Amount of administrative funding for which eligible registered political parties are eligible

- ‘(1) A registered political party is entitled to be paid administrative funding for the following periods—
- (a) the period (the *initial period*) starting on 1 January 2011 and ending on 30 June 2011;
 - (b) the period (the *first funding period*) starting on 1 July in each subsequent financial year and ending on 31 December in that year;
 - (c) the period (the *second funding period*) starting on 1 January in each subsequent financial year and ending on 30 June in that year.
- ‘(2) The commission must pay each registered political party the administrative funding to which it is entitled by the following days—
- (a) the amount for the initial funding period, by 1 July 2011;
 - (b) the amount for the first funding period during a financial year, by 31 July in that year;
 - (c) the amount for the second funding period during a financial year, by 31 January in that year.
- ‘(3) The administrative funding to which a registered political party is entitled is the lesser of the following amounts—
- (a) the total of the electoral district amounts for each elected member who—
 - (i) on the day the entitlement for the payment is decided, is a member of the party; and
 - (ii) received at least 4% of the formal first preference votes at the last general election;
 - (b) the State-wide amount.
- ‘(4) For subsection (3)—

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- (a) the electoral district amount for an elected member is—
 - (i) \$40000 for the initial period; and
 - (ii) the amount calculated under subsections (5) to (7) for each funding period during subsequent financial years; and
- (b) the State-wide amount is—
 - (i) \$1m for the initial period; and
 - (ii) the amount calculated under subsections (5) to (7) for each funding period during subsequent financial years.

‘(5) The electoral district amount or State-wide amount is adjusted for each financial year on 1 July using the formula—

$$\frac{A \times B}{C}$$

‘(6) However, if, for a particular financial year, adjustment of the electoral district amount or State-wide amount would reduce the amount, the amount is not to be adjusted for the year.

‘(7) If an amount is not a whole number multiple of \$100, the amount is to be rounded up to the nearest whole number multiple of \$100.

‘(8) In this section—

A is the electoral district amount or State-wide amount immediately before 1 July in a year.

B is the CPI number published for the March quarter in the year.

C is the CPI number published for the March quarter in the previous year.

CPI means the all groups consumer price index for Brisbane published by the Australian Statistician.

‘Subdivision 3 Administrative funding for independent members

‘177EC Eligibility of independent members for funding for administrative expenditure

‘A member (an *independent member*) is eligible for administrative funding if—

- (a) the member was not an endorsed candidate of any political party at the last general election; and
- (b) the commission is satisfied the member is not, on the day the entitlement for the funding is decided, a member of a political party that is entitled to administrative funding.

‘177ED Amount of administrative funding for which independent members are eligible

- ‘(1) An independent member is entitled to be paid administrative funding for the following periods (*funding periods*)—
 - (a) the period (the *initial funding period*) starting on 1 January 2011 and ending on 30 June 2011;
 - (b) the period starting on 1 July in each subsequent financial year and ending on 31 December in that year;
 - (c) the period starting on 1 January in each subsequent financial year and ending on 30 June in that year.
- ‘(2) Subject to subsection (3), the amount of administrative funding payable to an independent member for a funding period is the amount of administrative expenditure incurred by or on behalf of the member during that period.
- ‘(3) The maximum payment that may be made to an independent member for administrative funding for a funding period is—
 - (a) \$20000 for the initial funding period; and
 - (b) the amount calculated under subsections (4) to (6) for each funding period during subsequent financial years.

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‘(4) The amount of the maximum payment is adjusted for each financial year on 1 July using the formula—

$$\frac{\mathbf{A} \times \mathbf{B}}{\mathbf{C}}$$

‘(5) However, if, for a particular financial year, adjustment of the amount would reduce the amount, the amount is not to be adjusted for the year.

‘(6) If an amount is not a whole number multiple of \$100, the amount is to be rounded up to the nearest whole number multiple of \$100.

‘(7) In this section—

A is the amount of the maximum payment of administrative funding immediately before 1 July in a year.

B is the CPI number published for the March quarter in the year.

C is the CPI number published for the March quarter in the previous year.

CPI means the all groups consumer price index for Brisbane published by the Australian Statistician.

‘177EE Application for claim

‘(1) For an independent member to be paid an amount of administrative funding, the member’s agent must make a claim.

‘(2) The claim must—

- (a) be in the approved form; and
- (b) provide all the information, and be accompanied by any documents, required by the form.

‘(3) The claim must be made within 3 months after the end of the funding period to which the claim relates.

‘177EF Deciding claim

- ‘(1) The commission must, after receiving a claim—
- (a) decide whether to accept or refuse the claim, in whole or in part; and
 - (b) to the extent the commission accepts the claim, pay the amount required under this subdivision.
- ‘(2) In deciding whether to accept or refuse a claim, in whole or in part, the commission must only consider—
- (a) whether the expenditure claimed is administrative expenditure; and
 - (b) if expenditure claimed is administrative expenditure—
 - (i) whether the administrative expenditure was incurred; and
 - (ii) whether the independent member is entitled under this subdivision to the amount claimed.
- ‘(3) The commission may, by written notice, require the agent of the independent member to provide further information the commission reasonably requires to decide whether to accept or refuse the claim.

‘177EG Accepting a claim

‘If the commission accepts a claim, in whole or in part, the commission must pay the amount to the agent of the independent member.

‘177EH Refusing a claim

‘If a claim is refused, in whole or in part, the commission must give the agent of the independent member a written notice that states—

- (a) that the claim has been refused, in whole or in part; and
- (b) the reasons for the refusal.

‘177EI Application for reconsideration of decision refusing a claim

- ‘(1) If a claim is refused, in whole or in part, the agent of the independent member to whom the claim relates may apply to the commission for the commission to reconsider the decision.
- ‘(2) The application must—
 - (a) be in writing; and
 - (b) set out the reasons for the application.
- ‘(3) The application must be made within—
 - (a) 28 days after the day on which the agent is notified of the refusal; or
 - (b) if, either before or after the end of that period of 28 days, the commission extends the period within which the application may be made—the extended period for making the application.

‘177EJ Reconsideration by commission

- ‘(1) On receiving an application under section 177EI, the commission must—
 - (a) reconsider the decision; and
 - (b) decide to—
 - (i) affirm the decision; or
 - (ii) vary the decision; or
 - (iii) set aside the decision and make another decision.
- ‘(2) The commission must give the agent a notice stating the decision on the reconsideration together with a statement of the reasons for the decision.
- ‘(3) If the commission’s decision on the reconsideration would require an amount, or an additional amount, of administrative funding to be paid, the commission must pay the amount within 20 days after the day of its decision.

‘Division 6 Political donations

‘177F Meaning of *political donation*

- ‘(1) A *political donation* is—
- (a) a gift made to a registered political party, candidate or third party that is accompanied by a statement from the person making the gift (the *donor*) that the gift is intended for use for campaign purposes during the capped expenditure period for an election; or
 - (b) a disposition of property to a registered political party from another branch or division of the party or a related political party (the *transferring branch or party*) that is stated by the transferring branch or party to be a disposition intended for use by the registered political party for campaign purposes during the capped expenditure period for an election; or
 - (c) a disposition of property to a candidate in an election from a federal or interstate branch or division of a political party that is stated by the branch or division to be a disposition intended for use by the candidate for campaign purposes during the capped expenditure period for an election; or
 - (d) a gift made to an entity (the *recipient*) that was used or intended to be used by the recipient to enable the recipient to make a gift mentioned in paragraph (a).
- ‘(1A) Also, a gift in kind made to a registered political party, candidate or third party is a political donation if it is made during, or for use during, the capped expenditure period for an election for campaign purposes, whether or not it is accompanied by a statement from the person making the gift that the gift is intended for that use.
- ‘(2) A statement made under subsection (1) by a donor or transferring branch or party must be—
- (a) in writing; and

- (b) given to the registered political party, candidate or third party at the same time, or within 14 days after, the gift or disposition is made.
- ‘(3) However, the statement—
- (a) need not be signed by the donor or transferring branch or party; and
 - (b) need not use a particular form of words to express the intention of the donor or transferring branch or party.
- ‘(4) A gift made by a donor to a registered political party, candidate or third party is not a political donation if—
- (a) the name and address of the donor are not known to the person receiving the gift; or
 - (b) at the time the gift is made, the donor gives to the person receiving the gift the donor’s name and address and the person receiving the gift has grounds to believe the name and address given are not the true name and address of the person making the gift.
- ‘(5) In this section—
- campaign purposes*** means—
- (a) in connection with promoting or opposing, directly or indirectly, a registered political party or the election of a candidate; or
 - (b) for the purpose of influencing, directly or indirectly, voting at an election.

‘177FA Meaning of *unpaid debt*

- ‘(1) An ***unpaid debt***—
- (a) is a debt incurred by a registered political party, candidate or third party for electoral expenditure that has remained unpaid for at least 18 months after the return of the writ for the election in relation to which the debt was incurred; and
 - (b) includes any interest payable by a registered political party, candidate or third party, on a debt incurred for

electoral expenditure, that is foregone or written off by the creditor.

- ‘(2) Subsection (1) does not apply to a debt incurred by a registered political party, candidate or third party if—
- (a) the party, candidate or third party is making regular reasonable repayments towards the debt; or
 - (b) there is in force a binding agreement to repay the debt; or
 - (c) the debt is the subject of legal proceedings; or
 - (d) the debt is the subject of a dispute about the amount repayable; or
 - (e) the debt has been written off by the creditor as an uncollectible debt in accordance with the creditor’s normal accounting practices.

‘177FB Calculating amount of applicable donation cap

- ‘(1) For this division, the *applicable donation cap*, for a financial year, is—
- (a) for a registered political party—
 - (i) \$5000 for the part of the financial year that is the period starting on 1 January 2011 and ending on 30 June 2011; and
 - (ii) the amount calculated under subsections (2) to (4) for subsequent financial years; and
 - (b) for a candidate or third party—
 - (i) \$2000 for the period starting on 1 January 2011 and ending on 30 June 2011; and
 - (ii) the amount calculated under subsections (2) to (4) for subsequent financial years.

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‘(2) The amount of the maximum payment is adjusted for each financial year on 1 July using the formula—

$$\frac{A \times B}{C}$$

‘(3) However, if, for a particular financial year, adjustment of the amount would reduce the amount, the amount is not to be adjusted for the year.

‘(4) If an amount is not a whole number multiple of \$100, the amount is to be rounded up to the nearest whole number multiple of \$100.

‘(5) In this section—

A is the amount of the applicable donation cap for registered political parties, candidates or third parties immediately before 1 July in a year.

B is the CPI number published for the March quarter in the year.

C is the CPI number published for the March quarter in the previous year.

CPI means the all groups consumer price index for Brisbane published by the Australian Statistician.

‘177FC Cap on political donations person may make to registered political parties

‘(1) A person must not, in a financial year—

(a) make a political donation of more than the applicable donation cap for the financial year to a registered political party; or

(b) make 2 or more political donations to the same registered political party that in total are more than the applicable donation cap for the financial year.

Maximum penalty—100 penalty units.

‘(2) If a registered political party has more than 1 interstate branch or division, subsection (1) applies as if—

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- (a) the interstate branches or divisions together constituted a single person; and
 - (b) a political donation made to the person mentioned in paragraph (a) were a donation made by a single person.
- ‘(3) Subsection (1) applies to a person even if at the time the person made a political donation the person was outside Queensland.
- ‘(4) In this section—
- applicable donation cap*, for a financial year, means the amount calculated under section 177FB.
- political donation*, in relation to a registered political party, includes the following—
- (a) the full or part payment by a person other than the registered political party of electoral expenditure incurred or to be incurred by the party or agreement by the person to make the payment;
 - (b) the waiving of all or part of payment to a person by the registered political party of electoral expenditure incurred or to be incurred by the party;
 - (c) allowing an unpaid debt to be incurred.

‘177FD Cap on political donations registered political party may accept

- ‘(1) A registered political party or a person acting on behalf of a registered political party must not, in a financial year—
- (a) accept a political donation of more than the applicable donation cap for the financial year from a person; or
 - (b) accept a political donation from a person if the total of the donation and any other political donations previously made by the person to the registered political party in the financial year will be more than the applicable donation cap for the financial year.
- ‘(2) A person does not commit an offence by accepting a political donation mentioned in subsection (1) if the person did not

know that the acceptance of the donation would mean the applicable donation cap is exceeded.

‘(3) In this section—

applicable donation cap, for a financial year, means the amount calculated under section 177FB.

political donation, in relation to a political party, includes the following—

- (a) the full or part payment by a person other than the registered political party of electoral expenditure incurred or to be incurred by the party or agreement by the person to make the payment;
- (b) the waiving of all or part of payment to a person by the registered political party of electoral expenditure incurred or to be incurred by the party;
- (c) allowing an unpaid debt to be incurred.

‘177FE Cap on political donations person may make to candidates in elections

‘(1) A person must not, in a financial year—

- (a) make a political donation of more than the applicable donation cap for the financial year to a candidate; or
- (b) make 2 or more political donations to the same candidate that in total are more than the applicable donation cap for the financial year; or
- (c) make political donations to 2 or more candidates endorsed by the same registered political party that in total are more than the applicable donation cap; or
- (d) make political donations to 2 or more independent candidates that in total are more than the applicable donation cap.

Maximum penalty—100 penalty units.

‘(2) Subsection (1) applies to a person even if at the time the person made a political donation the person was outside Queensland.

‘(3) In this section—

applicable donation cap, for a financial year, means the amount calculated under section 177FB.

political donation, in relation to a candidate, includes the following—

- (a) the full or part payment by a person other than the candidate of electoral expenditure incurred or to be incurred by the candidate or agreement by the person to make the payment;
- (b) the waiving of all or part of payment to a person by the candidate of electoral expenditure incurred or to be incurred by the candidate;
- (c) allowing an unpaid debt to be incurred.

‘177FF Cap on political donations candidates may accept

‘(1) A candidate or a person acting on behalf of a candidate must not, in a financial year—

- (a) accept a political donation of more than the applicable donation cap for the financial year from a person; or
- (b) accept a political donation from a person if the total of the donation and any other political donations previously made by the person to the candidate in the financial year will be more than the applicable donation cap for the financial year.

‘(2) A person does not commit an offence by accepting a political donation mentioned in subsection (1) if the person did not know that the acceptance of the donation would mean the applicable donation cap is exceeded.

‘(3) In this section—

applicable donation cap, for a financial year, means the amount calculated under section 177FB.

political donation, in relation to a candidate, includes the following—

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- (a) the full or part payment by a person other than the candidate of electoral expenditure incurred or to be incurred by the candidate or agreement by the person to make the payment;
- (b) the waiving of all or part of payment to a person by the candidate of electoral expenditure incurred or to be incurred by the candidate;
- (c) allowing an unpaid debt to be incurred.

‘177FG Cap on political donations person may make to third parties

- ‘(1) A person must not, in a financial year—
- (a) make a political donation of more than the applicable donation cap for the financial year to a third party; or
 - (b) make 2 or more political donations to the same third party that in total are more than the applicable donation cap for the financial year.

Maximum penalty—100 penalty units.

- ‘(2) Subsection (1) applies to a person even if at the time the person made a political donation the person was outside Queensland.

- ‘(3) In this section—

applicable donation cap, for a financial year, means the amount calculated under section 177FB.

political donation, in relation to a third party, includes the following—

- (a) the full or part payment by a person other than the third party of electoral expenditure incurred or to be incurred by the third party or agreement by the person to make the payment;
- (b) the waiving of all or part of payment to a person by the third party of electoral expenditure incurred or to be incurred by the third party;
- (c) allowing an unpaid debt to be incurred.

‘177FH Cap on political donations third parties may accept

- ‘(1) A third party or a person acting on behalf of a third party must not, in a financial year—
- (a) accept a political donation of more than the applicable donation cap for the financial year from a person; or
 - (b) accept a political donation from a person if the total of the donation and any other political donations previously made by the person to the third party in the financial year will be more than the applicable donation cap for the financial year.
- ‘(2) A person does not commit an offence by accepting a political donation mentioned in subsection (1) if the person did not know that the acceptance of the donation would mean the applicable donation cap is exceeded.
- ‘(3) In this section—

applicable donation cap, for a financial year, means the amount calculated under section 177FB.

political donation, in relation to a third party, includes the following—

- (a) the full or part payment by a person other than the third party of electoral expenditure incurred or to be incurred by the third party or agreement by the person to make the payment;
- (b) the waiving of all or part of payment to a person by the third party of electoral expenditure incurred or to be incurred by the third party;
- (c) allowing an unpaid debt to be incurred.

‘177FI Obligation of agent to notify donor of requirements about political donations

- ‘(1) If any of the following persons receive a political donation, the person must, within 14 days after receiving the donation, give the person who made the donation a receipt for the donation that includes a prescribed statement—

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- (a) the agent of a registered political party, candidate or registered third party;
 - (b) a third party.
- ‘(2) In this section—
- prescribed statement* means a statement in the prescribed words that it is an offence for a person to make a political donation that exceeds the applicable donation cap.

‘Division 7 Disclosure of donations

‘177G How division applies to gifts that are returned etc. within 6 weeks

- ‘(1) Subject to subsections (2) and (3), this division does not apply to a gift that is returned within 6 weeks after its receipt.
- ‘(2) This division applies to a gift of foreign property within the meaning of division 8, subdivision 1 whether or not the gift is returned within 6 weeks as mentioned in section 177HA.
- ‘(3) If the gift is returned within 6 weeks after its receipt, any return under this division that includes the amount or value of the gift must also include a statement to the effect that the gift was returned.

‘177GA Disclosure by candidates of political donations and gifts

- ‘(1) The agent of each person who was a candidate in an election must, within the prescribed time after the polling day for the election, give to the commission a return, in an approved form, stating—
 - (a) the total amount of all political donations, the number of persons who made the donations and the relevant details of each donation received by the person during the disclosure period for the election; and
 - (b) the total amount or value of any other gifts, the number of persons who made the gifts and the relevant details of

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

- ‘(2) For this section, a reference to the relevant details, of a political donation or other gift, is a reference to the amount or value of the donation or other gift, the date on which the donation or other gift was made and—
- (a) for a donation or other gift made for the members of an unincorporated association, other than a registered industrial organisation—
 - (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) for a donation or other 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
 - (ii) the title or other description of the trust fund or the name of the foundation; and
 - (c) for a donation or other gift made out of a trust account of a lawyer or accountant under the instructions of a person who is in substance the giver of the donation or other gift—the name and residential or business address of the person; and
 - (d) otherwise—the name and address of the person who made the donation or other gift.
- ‘(3) Despite subsection (1), the agent of a candidate is not required, in a return under subsection (1), to state the relevant details of a gift other than a political donation if—
- (a) the gift was made in a private capacity to the candidate for his or her personal use and the candidate has not used, and will not use, the gift solely or substantially for a purpose related to an election or a by-election; or
 - (b) the amount or value of the gift is less than \$1000.

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- ‘(4) Subsection (3)(b) does not apply to a return under subsection (1) for a gift other than a political donation made by a person if the sum of the amount or value of the gift and of all other gifts (other than gifts of the kind mentioned in subsection (3)(a)) made by the person to the candidate during the period to which the return relates is equal to or is more than \$1000.
- ‘(5) Despite subsection (1), the agent of a person is not required, in a return under subsection (1), to state the total amount or value of, or the number of persons who made, gifts of the kind mentioned in subsection (3)(a).
- ‘(6) If no details are required to be included in a return under this section in relation to a candidate, the return must still be lodged and must include a statement to the effect that no political donations or other gifts of a kind required to be disclosed were received.

‘177GB Loans to candidates

- ‘(1) The agent of each person who was a candidate in an election must, within 15 weeks after the polling day for the election, give the commission a return, in an approved form, covering all loans received by the person from a person other than a financial institution during the disclosure period for the election.
- ‘(2) The return must state—
 - (a) the total value of the loans; and
 - (b) the number of persons who made loans.
- ‘(3) The return must also state the following for each loan with a value of \$1000 or more—
 - (a) the date on which each loan was made;
 - (b) for a loan made for 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;

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- (c) for a loan 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
 - (ii) the title or other description of the trust fund or the name of the foundation;
 - (d) if neither paragraph (b) nor (c) applies to a loan, the name and address of the person who made the loan;
 - (e) the terms and conditions of each loan.

‘177GC Disclosure of gifts by third parties that receive political donations or incur expenditure for political purposes

- ‘(1) This section applies if a third party—
 - (a) receives a political donation during the disclosure period for an election; or
 - (b) incurs expenditure for a political purpose.
- ‘(2) The third party must, not later than 15 weeks after the polling day for the election, give to the commission a return, in an approved form, stating the relevant details of all gifts received by the third party during the disclosure period, being gifts—
 - (a) the whole or a part of each of which was used by the third party to enable the third party to incur expenditure for a political purpose or to reimburse the third party for incurring expenditure for a political purpose; and
 - (b) the amount or value of each of which is at least \$1000.
- ‘(3) Subsection (1) does not apply to a third party for the disclosure period for an election if the total amount of expenditure incurred by the third party for political purposes during the disclosure period is less than \$1000.
- ‘(4) For this section, a third party is taken to have incurred expenditure for a political purpose if, during the disclosure period for an election, the third party incurs the expenditure for the election or any other election.

‘(5) For this section—

- (a) a third party incurs expenditure for a political purpose if the third party incurs expenditure for or by the way of—
 - (i) publication in any way (including radio or television) of electoral matter; or
 - (ii) any other ways publicly expressing views on an issue in an election; or
 - (iii) the making of a gift to a political party; or
 - (iv) the making of a gift to a candidate in an election; or
 - (v) the making of a gift to a person on the understanding that the person or someone else will apply, either directly or indirectly, the whole or a part of the gift as mentioned in subparagraph (i), (ii), (iii) or (iv); and
- (b) the relevant details of a gift are the amount or value of the gift, the date on which the gift was made and—
 - (i) for a gift made for the members of an unincorporated association, other than a registered industrial organisation—
 - (A) the name of the association; and
 - (B) the names and addresses of the members of the executive committee (however described) of the association; and
 - (ii) for a gift purportedly made out of a trust fund or out of the funds of a foundation—
 - (A) the names and addresses of the trustees of the fund or of the funds of the foundation; and
 - (B) the title or other description of the trust fund or the name of the foundation; and
 - (iii) otherwise, the name and address of the person who made the gift.

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- ‘(6) For subsection (2), 2 or more gifts made, during the disclosure period for an election, by the same person to another person are taken to be 1 gift.

‘177GD Donations to candidates etc.

- ‘(1) If a third party makes a political donation or other gift, during the disclosure period in relation to an election, to any candidate in the election the third party must, within 15 weeks after the polling day for the election, give the commission a return, in an approved form, stating the required details of the donation or other gift.
- ‘(2) Subsection (1) applies to a third party even if at the time the third party made the political donation or other gift the third party was outside Queensland.
- ‘(3) If a third party makes a political donation or other gift to any person with the intention of benefiting a particular candidate, the third party is taken for subsection (1) to have made the gift directly to the candidate.
- ‘(4) A third party need not make a return under subsection (1) if the total amount or value of political donations or other gifts referred to in subsection (1) was less than \$1000.
- ‘(5) For this section, the required details of a political donation or other gift are whether or not the gift was a political donation, its amount or value, the date on which it was made and—
- (a) if the political donation or other gift was made to an unincorporated association, other than a registered industrial organisation—
 - (i) the name of the association; and
 - (ii) the names and addresses of the members of the executive committee (however described) of the association; or
 - (b) if the political donation or other gift was purportedly made to a trust fund or paid into the funds of a foundation—

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- (i) the names and addresses of the trustees of the fund or the foundation; and
 - (ii) the title or other description of the trust fund, or the name of the foundation; or
 - (c) otherwise, the name and address of the person or organisation.
- ‘(6) On receiving a political donation or other gift to which this section applies, a candidate must inform the third party who gave the donation or other gift of the third party’s requirement to lodge a return under this section.

Maximum penalty for subsection (6)—20 penalty units.

‘177GE Donations to political parties

- ‘(1) Subject to subsections (5) and (6), if, in a reporting period, a person makes political donations or other gifts totalling \$1000 or more to the same registered political party, the person must give a return to the commission within 8 weeks after the end of the reporting period, disclosing all political donations or other gifts the person made to the registered political party during the reporting period.
- ‘(2) Subsection (1) applies to a person even if at the time the person made the gift the person was outside Queensland.
- ‘(3) If—
- (a) 2 or more political parties are related to each other; and
 - (b) at least 1 of those parties is a registered political party;
- subsection (1) applies as if—
- (c) those parties together constituted a single registered political party (rather than being separate political parties); and
 - (d) a political donation or other gift made by a person to any of those parties were a donation or other gift made by that person to the single registered political party referred to in paragraph (c).

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- ‘(4) If a person makes a political donation or other gift to any person or body with the intention of benefiting a particular political party, the person is taken for this section (including subsection (3)(d)) to have made that donation or other gift directly to that political party.
- ‘(5) If a person—
- (a) has given a return to the commission disclosing a political donation or other gift the person made to a registered political party during a reporting period that is the first 6 months of a financial year; and
 - (b) has not made any further political donations or gifts to the registered political party during the remainder of the financial year;
- the person is not required to give a return to the commission under subsection (1) in relation to the reporting period that is the full financial year.
- ‘(6) A return given by a person under subsection (1) in relation to a reporting period that is a full financial year does not have to disclose any political donation or other gift made by the person that has already been disclosed in a return under subsection (1) in relation to the reporting period that is the first 6 months of that financial year.
- ‘(7) For each political donation or other gift, the return must state the following—
- (a) the amount of the political donation or other gift;
 - (b) the date on which it was made;
 - (c) the name and address of the political party that received the political donation or other gift.
- ‘(8) If—
- (a) a person is required to disclose a political donation or other gift (the *ultimate gift*) in a return under subsection (1); and
 - (b) the person received a political donation or other gift of \$1000 or more (the *enabling gift*) which the person used to make all or a substantial part of the ultimate gift;

the person must also disclose the relevant details of the enabling gift in the return under subsection (1).

- ‘(9) Relevant details for subsection (8), in relation to a political donation or other gift, are—
- (a) the amount or value of the donation or other gift; and
 - (b) the date on which the donation or other gift was received; and
 - (c) for a donation or other gift made on behalf of the members of an unincorporated association, other than a registered industrial organisation—
 - (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
 - (d) for a donation or other 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
 - (ii) the title or other description of the trust fund or the name of the foundation; and
 - (e) if paragraph (c) or (d) does not apply—the name and address of the person who made the gift.
- ‘(10) The return must be in the approved form.
- ‘(11) This section does not apply to political donations or other gifts made by any of the following—
- (a) a registered political party;
 - (b) an associated entity;
 - (c) a candidate in an election.
- ‘(12) On receiving a political donation or other gift requiring a return to be given under this section, a registered political party must inform the person who gave the political donation

or other gift of the person's requirement to lodge a return under this section.

Maximum penalty for subsection (12)—20 penalty units.

'177GF Special reporting of large gifts

- '(1) This section applies if, in a special reporting period, gifts made by a particular person to a registered political party reach the prescribed amount.
- '(2) For each special reporting event within a special reporting period each of the following persons must give a separate return to the commission within 14 days after the special reporting event disclosing the gifts—
 - (a) the person;
 - (b) the registered political party to which the person made the gifts;
 - (c) if the person made any part of the gifts to an associated entity of the registered political party, the associated entity.
- '(3) For subsection (2), there is a *special reporting event* on each occasion the amount of the gifts made by the person reaches the prescribed amount either since the start of the special reporting period or since the last occasion during the special reporting period that the prescribed amount was reached.

Example—

In a special reporting period starting on 1 January a person makes gifts reaching the prescribed amount up to and including 10 January. The first special reporting event happens on 10 January. Assume the person then makes further gifts reaching the prescribed amount after 10 January and up to and including 4 June. The second special reporting event happens on 4 June.

- '(4) Subsection (2) does not require a person, party or entity mentioned in the subsection to disclose gifts made within a particular special reporting period that have previously been disclosed in another return given under the subsection.

Example—

Assume in the example for subsection (3) the person gives a return for the first special reporting event disclosing the gifts made up to and including 10 January. When the person gives a return for the second special reporting event, the return need not refer to the gifts made up to and including 10 January.

- ‘(5) The requirement to give a return under subsection (2) is in addition to a requirement to give a return under section 177GE, 177KB or 177KF.
- ‘(6) This section applies to the person even if at the time the person makes a gift the person was outside Queensland or Australia.
- ‘(7) If—
 - (a) 2 or more political parties are related to each other; and
 - (b) at least 1 of those parties is a registered political party;subsection (2) applies as if—
 - (c) those parties together constituted a single registered political party (rather than being separate political parties); and
 - (d) a gift made by the person to any of those parties were a gift made by the person to the single registered political party referred to in paragraph (c).
- ‘(8) If a political party has an associated entity, subsections (2) and (7) apply as if—
 - (a) the political party and the associated entity together constituted the political party (the *recipient party*); and
 - (b) a gift made by the person to the political party or the associated entity were a gift made by the person to the recipient party.
- ‘(9) If the person makes a gift to an entity, including an associated entity of a political party, with the intention of benefiting a particular political party, the person is taken for this section (including subsection (7)(d)) to have made that gift directly to that political party.

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- ‘(10) For subsection (8) or (9), the definition *associated entity* in section 177A applies as if a reference to registered political parties included a reference to any political parties whether or not registered.
- ‘(11) For each gift, the return required under subsection (2) must state the following—
- (a) the amount of the gift;
 - (b) the date on which it was made;
 - (c) the name and address of the political party that received the gift.
- ‘(12) The return must be in the approved form.
- ‘(13) This section does not apply to gifts made by any of the following—
- (a) a registered political party;
 - (b) an associated entity;
 - (c) a candidate in an election.
- ‘(14) On receiving a gift requiring a return to be given under this section, a registered political party must inform the person who gave the gift of the person’s requirement to give a return under this section.
- Maximum penalty—20 penalty units.
- ‘(15) In this section—
- prescribed amount*** means \$100000.
- special reporting period*** means each of the following periods in any year—
- (a) the period starting 1 January and ending 30 June;
 - (b) the period starting 1 July and ending 31 December.

‘Division 8 Rules about particular gifts and loans

‘Subdivision 1 Gifts of foreign property

‘177H Interpretation

‘(1) In this subdivision—

Australian property means—

- (a) money standing to the credit of an account kept in Australia; or
- (b) other money (for example, cash) that is located in Australia; or
- (c) property, other than money, that is located in Australia.

Note—

For how this subdivision applies to gifts or transfers made using a credit card, see section 177HB(4).

candidacy period, in relation to a candidate, means the period—

- (a) starting on the earlier of the day on which the person announces that the person will be a candidate in an election, or the day on which the nomination of the person as a candidate in the election is made; and
- (b) ending 30 days after the polling day for the election.

credit card means—

- (a) any article of a kind commonly known as a credit card; or
- (b) any similar article intended for use in obtaining cash, goods or services on credit;

and includes any article of a kind that persons carrying on business commonly issue to their customers or prospective customers for use in obtaining goods or services from those persons on credit.

foreign property means property other than Australian property.

Note—

For how this subdivision applies to gifts or transfers made using a credit card, see subsection 177HB(4).

gift, in relation to a candidate, has a meaning affected by subsection (2).

- ‘(2) A reference in this subdivision to a gift, in relation to a candidate (or a person acting on behalf of a candidate), does not include a gift made in a private capacity to (or for the benefit of) the candidate if the candidate has not used, and will not use, the gift solely or substantially for a purpose related to an election.
- ‘(3) For this subdivision, a gift or other transfer enables an entity to do a particular thing if all or a substantial part of the gift or transfer enables the entity—
 - (a) to do all or a substantial part of that thing; or
 - (b) to be wholly or substantially reimbursed for having done that thing.
- ‘(4) A reference in this subdivision to a thing done by a person includes a reference to a thing done by a person on behalf of the members of an unincorporated association.

‘177HA Subdivision does not apply to gifts that are returned within 6 weeks

‘This subdivision does not apply to a gift that is returned within 6 weeks after its receipt.

‘177HB Deciding whether a gift or transfer is of Australian or foreign property

- ‘(1) For this subdivision (but without limiting the effect of subsections (2) and (3))—
 - (a) a gift or transfer of property is a gift or transfer of Australian property if the property was Australian

property immediately before the gift or transfer was made; and

- (b) a gift or transfer of property is a gift or transfer of foreign property if the property was foreign property immediately before the gift or transfer was made.

‘(2) For this subdivision, if—

- (a) a person (the *donor*) transfers foreign property (the *primary transfer*) to another person (the *first recipient*); and
- (b) the donor’s main purpose in making the primary transfer is to enable (directly or indirectly) the first recipient, or another person, to make a gift to another entity (the *ultimate recipient*); and
- (c) the first recipient, or another person, makes a gift (the *ultimate gift*) to the ultimate recipient; and
- (d) the primary transfer enabled (directly or indirectly) the first recipient, or the other person, to make the ultimate gift;

the ultimate gift is taken to be a gift of foreign property.

‘(3) For this subdivision, a gift or transfer is taken to be a gift or transfer of foreign property if—

- (a) a person—
 - (i) changes the location of property so that it becomes Australian property; or
 - (ii) uses foreign property to acquire Australian property; and
- (b) the person’s main purpose in changing the location of the property, or in acquiring the Australian property, was to enable the person to make a gift or transfer of property that would be Australian property rather than foreign property; and
- (c) the person makes a gift or transfer of Australian property in accordance with that purpose.

- ‘(4) This subdivision applies to a gift or transfer of money made by use of a credit card as if the gift or transfer were of money standing to the credit of an account kept in the country in which the credit card is based.

‘177HC Gifts of foreign property—when unlawful for political party, candidate etc. to receive gift

- ‘(1) It is unlawful for an entity to receive a gift of foreign property in any of the following circumstances—
- (a) the gift is received by a registered political party (or by a person acting on behalf of a registered political party);
 - (b) the gift is received by a candidate (or by a person acting on behalf of a candidate) during the candidacy period.
- ‘(2) If an entity specified in column 2 of an item in the following table receives a gift that, under subsection (1), it is unlawful for the entity to receive, an amount equal to the amount or value of the gift is payable to the State by the person or persons specified in column 3 of that item.

Liability for unlawful receipt of gift

Column 1	Column 2	Column 3
Item	If the recipient is ...	the amount is payable by ...
1	a registered political party that is a corporation (or a person acting on behalf of a registered political party that is a corporation)	the registered political party
2	a registered political party that is not a corporation (or a person acting on behalf of a registered political party that is not a corporation)	the agent of the registered political party
3	a candidate (or a person acting on behalf of a candidate)	the candidate and the agent of the candidate

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- ‘(3) If, under subsection (2), an amount is payable to the State by 2 or more persons, those persons are jointly and severally liable for the payment of the amount.
- ‘(4) An amount that, under subsection (2), is payable by a person or persons to the State may be recovered by the State as a debt due to the State.

‘Subdivision 2 Anonymous gifts

‘177HD Particular gifts not to be received

- ‘(1) It is unlawful for a political party or a person acting for 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 at least \$200, unless—
 - (a) the name and address of the person making the gift are known to the person receiving the gift; or
 - (b) at the time the gift is made, the person making the gift gives to the person receiving the gift his or her name and address and the person receiving the gift has no grounds to believe that the name and address given are not the true name and address of the person making the gift.
- ‘(2) It is unlawful for a candidate or a person acting for a candidate to receive a gift made to or for the benefit of the candidate being a gift the amount or value of which is equal to or exceeds \$200, unless—
 - (a) the name and address of the person making the gift are known to the person receiving the gift; or
 - (b) at the time the gift is made, the person making the gift gives to the person receiving the gift his or her name and address and the person receiving the gift has no grounds to believe the name and address given are not the true name and address of the person making the gift.
- ‘(3) The references in subsections (1) and (2) to a gift made by a person includes a reference to a gift made for the members of an unincorporated association.

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- ‘(4) A reference in subsection (1) or (2) to the name and address of a person making a gift is—
- (a) for a gift made for the members of an unincorporated association, other than a registered industrial organisation, 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) for 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
 - (ii) the title or other description of the trust fund or the name of the foundation.
- ‘(5) For subsection (2), a person who is a candidate in an election must be taken to remain a candidate for the time prescribed.
- ‘(6) For this section, 2 or more gifts made by the same person to or for the benefit of a political party, or a candidate, must be taken to be 1 gift.
- ‘(7) If a person receives a gift that, because of this section, it is unlawful for the person to receive, an amount equal to the amount or value of the gift is payable by the person to the State and may be recovered by the State as a debt due to the State from—
- (a) for a gift to or for a political party—
 - (i) if the party is a corporation, the party; or
 - (ii) otherwise, the agent of the party; or
 - (b) otherwise, the candidate or the agent of the candidate.

‘Subdivision 3 Other gifts and loans

‘177HE Particular loans not to be received

- ‘(1) It is unlawful for a political party or a person acting for a political party to receive a loan of \$1000 or more from an entity other than a financial institution unless the loan is made in accordance with subsection (3).
- ‘(2) It is unlawful for a candidate or a person acting for a candidate to receive a loan of \$1000 or more from an entity other than a financial institution, during the disclosure period in relation to an election, unless the loan is made in accordance with subsection (3).
- ‘(3) The receiver of the loan must keep a record of the following—
 - (a) the terms and conditions of the loan;
 - (b) if the loan was received from a registered industrial organisation other than a financial institution—
 - (i) the name of the organisation; and
 - (ii) the names and addresses of the members of the executive committee (however described) of the organisation;
 - (c) if the loan was received from 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;
 - (d) if the loan was paid 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 foundation; and
 - (ii) the title or other description of the trust fund, or the name of the foundation;

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- (e) if paragraph (b), (c) or (d) does not apply, the name and address of the entity.
- ‘(4) If a person receives a loan that, because of this section, it is unlawful for the person to receive, an amount equal to the amount or value of the loan is payable by that person to the State and may be recovered by the State as a debt due to the State from—
- (a) for a loan to or for the benefit of a political party—
- (i) if the party is a corporation, the party; or
- (ii) otherwise, the agent of the party; or
- (b) otherwise, the candidate or the agent of the candidate.

‘Division 9 Electoral expenditure

‘177I Definition for div 9

‘In this division—

associated parties means registered political parties that—

- (a) endorse the same candidate for an election; or
- (b) form a coalition and endorse different candidates for a State election.

‘177IA Calculating applicable expenditure cap

- ‘(1) For this division, the *applicable expenditure cap* for electoral expenditure is—
- (a) for a registered political party—
- (i) \$80000 for the first financial year starting after this section commences; and
- (ii) the amount calculated under subsections (2) to (6) for subsequent financial years; and
- (b) for a candidate endorsed by a registered political party for a general election if the candidate is the only

- candidate endorsed by the party or an associated party for election for the electoral district—
- (i) \$50000 for the first financial year starting after this section commences; and
 - (ii) the amount calculated under subsections (2) to (6) for subsequent financial years; and
- (c) for a candidate endorsed by a registered political party for a general election if 1 or more other candidates have been endorsed by the party or an associated party for election for the electoral district—
- (i) the amount that is equal to \$50000, divided by the number of candidates endorsed by the party or associated party for the electoral district, for the first financial year starting after this section commences; and
 - (ii) the amount calculated under subsections (2) to (6), divided by the number of candidates endorsed by the party or associated party for the electoral district, for subsequent financial years; and
- (d) for a candidate endorsed by a registered political party for a by-election if the candidate is the only candidate endorsed by the registered political party or an associated party for election for the electoral district—
- (i) \$75000 for the first financial year starting after this section commences; and
 - (ii) the amount calculated under subsections (2) to (6) for subsequent financial years; and
- (e) for a candidate endorsed by a registered political party for a by-election if 1 or more other candidates have been endorsed by the party or an associated party for the election for the electoral district—
- (i) the amount that is equal to \$75000, divided by the number of candidates endorsed by the party or an associated party for election for the electoral district, for the first financial year starting after this section commences; and

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- (ii) the amount calculated under subsections (2) to (6), divided by the number of candidates endorsed by the party or an associated party for election for the electoral district, for subsequent financial years; and
 - (f) for an independent candidate—
 - (i) \$75000 for the first financial year starting after this section commences; and
 - (ii) the amount calculated under subsections (2) to (6) for subsequent financial years; and
 - (g) for a registered third party—
 - (i) \$500000, but no more than \$75000 in relation to a particular electoral district, for the first financial year starting after this section commences; and
 - (ii) the amount calculated under subsections (2) to (6) for subsequent financial years; and
 - (h) for an unregistered third party—
 - (i) \$10000, but no more than \$2000 in relation to a particular electoral district, in the first financial year starting after this section commences; and
 - (ii) the amount calculated under subsections (2) to (6) for subsequent financial years.
- ‘(2) For subsection (1), electoral expenditure relates to an electoral district if the expenditure is for advertising or other material that—
- (a) explicitly mentions the name of a candidate in the election in the electoral district or the name of the electoral district; and
 - (b) is communicated to electors in the electoral district; and
 - (c) is not mainly communicated to electors outside the electoral district.
- ‘(3) If a capped expenditure period starts in one financial year and finishes in another financial year, the applicable expenditure

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cap is taken to be the cap that applied for the financial year in which the capped expenditure period started.

- ‘(4) The amount of an applicable expenditure cap under subsection (1) is adjusted for each financial year on 1 July using the formula—

$$\frac{A \times B}{C}$$

- ‘(5) However, if, for a particular financial year, adjustment of the amount would reduce the amount, the amount is not to be adjusted for the year.
- ‘(6) If an amount is not a whole number multiple of \$100, the amount is to be rounded up to the nearest whole number multiple of \$100.
- ‘(7) In this section—

A is the amount of the applicable expenditure cap immediately before 1 July in a year.

B is the CPI number published for the March quarter in the year.

C is the CPI number published for the March quarter in the previous year.

CPI means the all groups consumer price index for Brisbane published by the Australian Statistician.

‘1771B Agent to ensure electoral expenditure paid from State campaign account

‘An agent of a registered political party, candidate or registered third party must ensure the party, candidate or third party does not pay an amount of money for electoral expenditure unless the amount is paid from the party’s, candidate’s or third party’s State campaign account.

Maximum penalty—200 penalty units.

‘177IC Cap on electoral expenditure by registered political parties for general elections

- ‘(1) An agent of a registered political party must ensure the party does not, for the capped expenditure period for an election, incur electoral expenditure that is more than the amount that is equal to the applicable expenditure cap multiplied by the number of electoral districts for which the party has endorsed candidates for the election.

Note—

See section 177IH, which provides for the penalty for a contravention of this section.

- ‘(2) For subsection (1), if 2 or more registered political parties are associated parties the amount of the applicable expenditure cap for each electoral district for which the parties have endorsed candidates is, for calculating the amount of electoral expenditure that may be incurred, to be shared equally by the parties and is not a separate amount for each of the parties.

‘177ID Cap on electoral expenditure by registered political parties for by-elections

- ‘(1) This section applies if a candidate has been endorsed by a registered political party for a by-election for an electoral district.
- ‘(2) The agent of the registered political party must ensure the political party does not, for the capped expenditure period for the election, incur electoral expenditure for the by-election if the total of the expenditure and any electoral expenditure by the candidate, the registered political party or an associated party for the by-election will be more than the applicable electoral expenditure for the candidate.

Note—

See section 177IH, which provides for the penalty for a contravention of this section.

‘177IE Cap on electoral expenditure by candidates

- ‘(1) The agent of a candidate for an election must ensure the candidate does not, for the capped expenditure period for the election, incur electoral expenditure of more than the applicable expenditure cap.

Note—

See section 177IH, which provides for the penalty for a contravention of this subsection.

- ‘(2) The agent of a candidate for an election must ensure, for the capped expenditure period for the election, the candidate’s electoral expenditure relates to the election of the candidate to the electoral district in which the candidate is nominated.

Maximum penalty—200 penalty units.

- ‘(3) For subsection (2), a candidate’s electoral expenditure relates to the election of the candidate to an electoral district if the expenditure is for other advertising or other material that—
- (a) explicitly mentions the name of the candidate or the name of the electoral district; and
 - (b) is communicated to electors in the electoral district; and
 - (c) is not mainly communicated to electors outside the electoral district.

‘177IF Cap on electoral expenditure by registered third parties

‘The agent of a registered third party must ensure the party does not, for the capped expenditure period for an election, incur electoral expenditure of more than the applicable expenditure cap.

Note—

See section 177IH, which provides for the penalty for a contravention of this section.

‘177IG Cap on electoral expenditure by third parties

‘The agent of a third party must ensure the third party does not, for the capped expenditure period for an election, incur electoral expenditure of more than the applicable expenditure cap.

Note—

See section 177IH, which provides for the penalty for a contravention of this section.

‘177IH Penalty for contravening this division

‘If a person contravenes a provision of this division by incurring electoral expenditure, for the capped expenditure period for an election, that is more than the applicable expenditure cap, the maximum penalty for the offence is the greater of the following amounts—

- (a) the amount that is equal to twice the amount by which the electoral expenditure incurred exceeded the cap;
- (b) 200 penalty units.

‘Division 10 Disclosure of electoral expenditure**‘177J Interpretation**

‘A reference in this division to a participant in an election is a reference to—

- (a) a registered political party or a candidate; or
- (b) any other person by whom or with the authority of whom electoral expenditure for an election was incurred.

‘177JA Returns of electoral expenditure

- ‘(1) The agent of a registered political party must, before the expiration of the prescribed time, give to the commission a return, in an approved form, stating details of all electoral

expenditure for the capped expenditure period for an election incurred by or with the authority of the registered political party.

- ‘(2) The agent of each person who was a candidate in an election must, before the expiration of the prescribed time, give to the commission a return, in an approved form, stating details of all electoral expenditure for the capped expenditure period for the election incurred by or with the authority of the candidate.
- ‘(3) The agent of a registered third party must, before the expiration of the prescribed time, give to the commission a return, in an approved form, stating details of all electoral expenditure for the capped expenditure period for an election incurred by or with the authority of the registered third party.
- ‘(4) Subsection (3) does not apply if the electoral expenditure for the capped expenditure period for the election incurred by or with the authority of the registered third party is \$200 or less.

‘177JB Returns by broadcasters

- ‘(1) If an election has taken place, each broadcaster who, during the capped expenditure period for the election, broadcast an advertisement relating to the election with the authority of a participant in the election must, before the end of 8 weeks after the polling day for the election, give the commission a return, in an approved form, stating particulars of the advertisement, being particulars—
 - (a) identifying the broadcasting service as part of which the advertisement was broadcast; and
 - (b) identifying the person at whose request the advertisement was broadcast; and
 - (c) identifying the participant in the election with whose authority the advertisement was broadcast; and
 - (d) stating the date on which, and the times between which, the advertisement was broadcast; and
 - (e) showing whether or not, on each occasion when the advertisement was broadcast, a charge was made by the broadcaster for the broadcasting of the advertisement

and, if a charge was made, stating the amount of the charge.

- ‘(2) Subsection (1) applies to a broadcaster even if at the time the broadcaster broadcast the advertisement the broadcaster was outside Queensland.
- ‘(3) If, in a return under subsection (1), the amount of a charge is specified by a broadcaster in relation to an advertisement, the broadcaster must, in the return, state whether or not the charge is a charge at less than normal commercial rates having regard to the length of the advertisement and the day on which, and the times between which, the advertisement was broadcast.
- ‘(4) A broadcaster who is required to make a return under this section for an advertisement must keep the record made for the relevant provision until the end of the period of 1 month starting on the day on which the return is given to the commission.
- ‘(5) The requirement of subsection (4) is in addition to the requirements of the relevant provision for the retention of the record.
- ‘(6) In subsections (4) and (5)—
relevant provision means—
 - (a) in relation to the Australian Broadcasting Corporation, the *Australian Broadcasting Corporation Act 1983* (Cwlth), section 79B; or
 - (b) in relation to the Special Broadcasting Service, the *Special Broadcasting Service Act 1991* (Cwlth), section 70B; or
 - (c) otherwise, the *Broadcasting Services Act 1992* (Cwlth), section 5.

‘177JC Returns by publishers

- ‘(1) If an election has taken place, each publisher of a journal who, during the capped expenditure period for the election, published in the journal an advertisement relating to the election with the authority of a participant in the election

must, before the end of 8 weeks after the polling day for the election, give the commission a return, in an approved form, stating particulars of the advertisement, being particulars—

- (a) identifying the journal in which the advertisement was published; and
 - (b) identifying the person at whose request the advertisement was published; and
 - (c) identifying the participant in the election with whose authority the advertisement was published; and
 - (d) stating the date on which the advertisement was published; and
 - (e) identifying the page in the journal on which the advertisement was published and the space in the journal occupied by the advertisement; and
 - (f) showing whether or not a charge was made by the publisher for the publication of the advertisement and, if a charge was made, stating the amount of the charge.
- ‘(2) Subsection (1) applies to a publisher even if at the time the publisher published the advertisement the publisher was outside Queensland.
- ‘(3) If, in a return under subsection (1), the amount of a charge is specified by a publisher in relation to an advertisement, the publisher must, in the return, state whether or not the charge was a charge at less than normal commercial rates having regard to the space in the journal occupied by the advertisement and the nature of the journal.
- ‘(4) A publisher is not required to give a return under subsection (1) in relation to an election if the total amount of the charge made by the publisher for the publication of the advertisement referred to in the subsection and any other advertisement relating to an election that took place on the same day as the first-mentioned election does not exceed \$1000.

‘177JD Nil returns

‘If no electoral expenditure for an election was incurred by or with the authority of a particular candidate, a return under this division for the candidate must nevertheless be lodged and must include a statement to the effect that no expenditure of the kind was incurred by or with the authority of the candidate.

‘177JE Two or more elections on the same day

‘(1) If—

- (a) the polling at 2 or more elections took place on the same day; and
- (b) a person would, but for this subsection, be required to give 2 or more returns under this division relating to the elections;

the person may, instead of giving the returns, give 1 return, in an approved form, stating the particulars that the person would have been required to state in the returns.

‘(2) If—

- (a) a return is given by a person under subsection (1); and
- (b) particular electoral expenditure, details of which are required to be stated in the return, relates to more than 1 election;

it is sufficient compliance with this division if the return states details of the expenditure without showing the extent to which it relates to any particular election.

‘Division 11 Returns by registered political parties and associated entities**‘177K Interpretation**

‘In this division—

amount includes the value of a gift, loan or bequest.

‘177KA How division applies to gifts that are returned etc. within 6 weeks

- ‘(1) Subject to subsections (2) and (3), this division does not apply to a gift that is returned within 6 weeks after its receipt.
- ‘(2) This division applies to a gift of foreign property within the meaning of division 8, subdivision 1 whether or not the gift is returned within 6 weeks as mentioned in section 177HA.
- ‘(3) If the gift is so returned, any return under this division that includes the amount or value of the gift must also include a statement to the effect that the gift was so returned.

‘177KB Returns for reporting periods by registered political parties

‘Subject to this division, the agent of each registered political party must, within the prescribed time, give to the commission a return, in an approved form, stating—

- (a) the total amount received by, or for, the party during the reporting period, together with the details required by section 177KC; and
- (b) the total amount of political donations received by the party during the reporting period, together with the details required by section 177KC for each donation; and
- (c) the total amount paid by, or for, the party during the reporting period, together with the details required by section 177KD; and
- (d) the total outstanding amount, as at the end of the reporting period, of all debts incurred by, or for, the party, together with the details required by section 177KE.

‘177KC Amounts received

- ‘(1) If the sum of all political donations or other amounts received by, or for, the party from an entity during a reporting period is

\$1000 or more, the return must include the particulars of the sum.

- ‘(2) In calculating the sum, an amount of less than \$1000 need not be counted.
- ‘(3) The particulars of the sum required to be given under subsection (1) are the amount of the sum and—
- (a) if the sum was received from an unincorporated association, other than a registered industrial organisation—
 - (i) the name of the association; and
 - (ii) the names and addresses of the members of the executive committee (however described) of the association; or
 - (b) if the sum was purportedly paid 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 foundation; and
 - (ii) the title or other description of the trust fund, or the name of the foundation; or
 - (c) otherwise, the name and address of the entity.

‘177KD Amounts paid

- ‘(1) If the sum of all amounts paid by, or for, the party to an entity during a reporting period is \$1000 or more, the return must include the particulars of the sum.
- ‘(2) In calculating the sum, the following amounts need not be counted—
- (a) an amount of less than \$1000;
 - (b) an amount paid under a contract of employment or an award stating terms and conditions of employment.
- ‘(3) The particulars of a sum required to be given under subsection (1) are the amount of the sum and—

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- (a) if the sum was paid to an unincorporated association, other than a registered industrial organisation—
 - (i) the name of the association; and
 - (ii) the names and addresses of the members of the executive committee (however described) of the association; or
- (b) if the sum was purportedly paid into a trust fund or into the funds of a foundation—
 - (i) the names and addresses of the trustees of the fund or of the foundation; and
 - (ii) the title or other description of the trust fund, or the name of the foundation; or
- (c) otherwise, the name and address of the entity.

‘177KE Outstanding amounts

- ‘(1) If the sum of all outstanding debts incurred by, or for, the party to a person or an organisation during a reporting period is \$1000 or more, the return must include the particulars of the sum.
- ‘(2) The particulars of a sum required to be given under subsection (1) are the amount of the sum and—
 - (a) if the sum was owed to an unincorporated association, other than a registered industrial organisation—
 - (i) the name of the association; and
 - (ii) the names and addresses of the members of the executive committee (however described) of the association; or
 - (b) if the sum was purportedly incurred as a debt to a trust fund or to a foundation—
 - (i) the names and addresses of the trustees of the fund or of the foundation; and
 - (ii) the title or other description of the trust fund, or the name of the foundation; or

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- (c) otherwise, the name and address of the person or organisation.

‘177KF Returns for reporting periods by associated entities

- ‘(1) If an entity is an associated entity at any time during a reporting period, the entity’s financial controller must give a return to the commission, in the approved form, within the prescribed time, setting out—
 - (a) the total amount received by, or for, the entity during the reporting period, together with the details required by section 177KC; and
 - (b) the total amount paid by, or for, the entity during the reporting period, together with the details required by section 177KD; and
 - (c) if the entity is an associated entity at the end of the reporting period, the total outstanding amount, as at the end of the reporting period, of all debts incurred by or for the entity, together with the details required by section 177KE.
- ‘(2) Amounts received or paid at a time when the entity was not an associated entity are not to be counted for subsection (1)(a) and (b).
- ‘(3) If any amount required to be set out under subsection (1)(b)—
 - (a) was paid to or for 1 or more registered political parties; and
 - (b) was paid out of funds generated from capital of the associated entity;the return must also set out the following details about each person who contributed to the capital at any time—
 - (c) the name and address of the person;
 - (d) the total amount of the person’s contributions to the capital, up to the end of the reporting period.
- ‘(4) Subsection (3) does not apply to contributions that have been set out in a previous return under this section.

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- ‘(5) Sections 177KC, 177KD and 177KE apply for subsection (1)(a), (b) and (c) to a return for an associated entity in the same way as they apply for section 177KB(a), (b) and (c) to a return for a registered political party.

‘177KG Returns not to include lists of party membership

‘Returns given under this division are not to include lists of party membership.

‘177KH Regulation

- ‘(1) The regulation may require greater detail to be provided in returns than is otherwise required under this division.
- ‘(2) Without limiting subsection (1), the regulation may require that the total amounts mentioned in section 177KB be broken down in the way specified in the regulation.
- ‘(3) The regulation may reduce the amount of information to be provided in returns under section 177KF.

‘Division 12 Registration of third parties

‘177L Application for registration

- ‘(1) A third party that intends to incur electoral expenditure for a capped expenditure period for an election may apply to the commission for registration as a third party for the election.

Note—

See section 177IA(1)(g) and (h), which provides for different caps for the amount of electoral expenditure that may be incurred by registered third parties and third parties that are not registered under this division.

- ‘(2) The application must be—
- (a) in the approved form; and
 - (b) made to the commission during the period—
 - (i) starting on the day after the polling day for the previous election; and

- (ii) ending on the day that is the day before the polling day for the election for which the third party is seeking registration.
- ‘(3) The application must be accompanied by an appointment of an individual as the agent of the third party under section 177BB.

‘177LA Decision about application

- ‘(1) As soon as practicable after receiving the application, the commission must decide to register or to refuse to register the applicant as a third party for the election.
- ‘(2) The commission must decide to refuse to register the applicant if the application is received other than during the period mentioned in section 177L(2)(b).
- ‘(3) The commission may refuse to register the applicant only if the application is incomplete or incorrect.

‘177LB Approval of application

- ‘(1) If the commission decides to register the applicant, the commission must, as soon as practicable after making the decision—
 - (a) enter the third party’s name and other relevant particulars in the register; and
 - (b) give the third party written notice that the third party has been registered.
- ‘(2) The registration takes effect when the third party’s name and other particulars are entered in the register.

‘177LC Refusal of application

- ‘(1) If the commission decides to refuse to register the applicant, the commission must as soon as practicable after making the decision give the applicant a written notice that states—
 - (a) that the commission has decided to refuse to register the applicant; and

- (b) the reason for the refusal; and
 - (c) that the applicant may, within 30 days after receiving the notice—
 - (i) amend the application for registration in the way stated in the notice; and
 - (ii) resubmit the application to the commission; and
 - (d) that if the applicant amends and resubmits the application as mentioned in paragraph (c), the amended application is taken to have been made on the day the original application was made.
- ‘(2) Subsection (1)(c) and (d) does not apply to a written notice given for a decision under section 177LA(2) to refuse to register an applicant.

‘177LD Resubmission of application

‘If the application is refused and the applicant resubmits the application as mentioned in the notice given to the applicant under section 177LC—

- (a) the commission must approve the application; and
- (b) the registration is taken to have had effect from the day the original application was made.

‘177LE Obligation to notify commission of change of details

- ‘(1) If the relevant details for a registered third party change after the third party is registered, the third party’s agent must give the commission a written notice about the change as required by subsection (2).

Maximum penalty—100 penalty units.

- ‘(2) The notice must be—
- (a) in the approved form; and
 - (b) given to the commission within 30 days after the change happens.

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- ‘(3) The commission must vary the entry for the registered third party in the register as stated in the notice, unless the commission reasonably believes the variation is incorrect.
- ‘(4) In this section—
relevant details, for a registered third party, means any details included in the third party’s application for registration.

‘177LF Commission’s power to confirm details

- ‘(1) This section applies if—
- (a) the commission believes, on reasonable grounds, that a registered third party’s relevant details have changed; and
 - (b) the third party’s agent has not given the commission a notice required under section 177LE.
- ‘(2) The commission may, by written notice given to the agent, require the agent to do the following within the time stated in the notice—
- (a) give the commission a written declaration that states the relevant details have not changed if the details have not changed;
 - (b) give the notice required under section 177LE if the details have changed.
- ‘(3) If the agent fails to comply with the notice under subsection (2), the commission may—
- (a) cancel the third party’s registration; and
 - (b) remove the third party’s name and other details from the register.
- ‘(4) The cancellation of the third party’s registration takes effect on—
- (a) the day the third party receives the notice; or
 - (b) the later day stated in the notice.

‘177LG Cancellation of registration at request of third party

‘The commission must cancel the registration of a third party if asked to do so, in writing, by the third party’s agent.

‘177LH Variation of entry in register on initiative of commission

- ‘(1) If the commission believes, on reasonable grounds, that an entry in the register contains incorrect details, the commission may change the entry to the extent necessary to ensure the details are correct.
- ‘(2) If the commission changes an entry under subsection (1), the commission must, as soon as practicable after making the change, give the agent of the registered third party to whom the entry relates written notice of the change.

‘Division 13 Miscellaneous

‘177M Interpretation

‘Except in section 177MF, a reference in this division to a return under division 7, 8, 10 or 11 or to a return under this part includes a reference to particulars under section 177MF(2).

‘177MA Offences

- ‘(1) A person who fails to give a return that the person is required to give under division 7, 8, 10 or 11 within the time required by this part commits an offence.

Maximum penalty—

- (a) for a return required to be given by the agent of a registered political party—100 penalty units; or
 - (b) otherwise—20 penalty units.
- ‘(2) A person who—

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- (a) gives a return that is incomplete, being a return that the person is required to give under division 7, 10 or 11; or
 - (b) fails to keep records in accordance with section 177MC; is guilty of an offence.

Maximum penalty—20 penalty units.

- ‘(3) A person who is the agent of a political party and who lodges a claim under division 4, or gives a return that the agent is required to give under division 7, 10 or 11, that contains particulars that are, to the knowledge of the agent, false or misleading in a material particular is guilty of an offence.

Maximum penalty—200 penalty units.

- ‘(4) A person who is the agent of a candidate and who lodges a claim under division 4, or gives a return that the agent is required to give under division 7, 10 or 11, that contains particulars that are, to the knowledge of the agent, false or misleading in a material particular is guilty of an offence.

Maximum penalty—100 penalty units.

- ‘(5) A person (other than an agent) who lodges a claim under division 4, or gives a return that the person is required to give under division 7 or 10, that contains particulars that are, to the knowledge of the person, false or misleading in a material particular is guilty of an offence.

Maximum penalty—50 penalty units.

- ‘(6) If a person is convicted of an offence against subsection (1), the court may, as well as imposing a penalty under the subsection, order the person to give the relevant return within a time stated by the court in its order.

- ‘(7) If a person is convicted of an offence against subsection (3), (4) or (5), the court may, as well as imposing a penalty under the subsection, order the person to refund to the State the amount of any payment wrongfully obtained by the person under division 4.

- ‘(8) If a court has made an order under subsection (7), a certificate signed by the appropriate officer of the court stating the amount ordered to be refunded and the person by whom the

amount is payable may be filed in a court having civil jurisdiction to the extent of that amount and is enforceable as a final judgment of the court having civil jurisdiction.

- ‘(9) A person must not give to another person, for the making by the other person of a claim under division 4, information that is, to the knowledge of the first-mentioned person, false or misleading in a material particular.

Maximum penalty—20 penalty units.

- ‘(10) A person must not give to another person who is required to give a return under division 7, 10 or 11 information that relates to the return and that is, to the knowledge of the first-mentioned person, false or misleading in a material particular.

Maximum penalty—20 penalty units.

- ‘(11) A person is guilty of an offence if—
- (a) the person (or a person acting on behalf of the person) receives a gift and the receipt of the gift is unlawful under section 177HC(1); and
 - (b) the person is—
 - (i) a registered political party that is a corporation; or
 - (ii) a candidate; or
 - (iii) an associated entity that is a corporation.

Maximum penalty—1 year’s imprisonment or 240 penalty units.

- ‘(12) A person is guilty of an offence if—
- (a) a gift is received by (or by a person acting on behalf of) either of the following (the *recipient*)—
 - (i) a registered political party that is not a corporation;
 - (ii) an associated entity that is not a corporation; and
 - (b) the receipt of the gift is unlawful under section 177HC(1); and

- (c) the recipient is specified in column 2 of an item in the following table, and the person is specified in column 3 of that item.

Liability for unlawful receipt of gift

Column 1	Column 2	Column 3
Item	If the recipient is ...	the person is liable for the offence if the person is ...
1	a registered political party	the registered officer of the party, the secretary of the party (as defined in section 3), or the agent of the party
2	an associated entity	the financial controller of the associated entity
	Maximum penalty—1 year's imprisonment or 240 penalty units.	
	‘(13) A person does not commit an offence against subsection (12) if—	
	(a) the person does not know of the circumstances because of which the receipt of the gift is unlawful; or	
	(b) the person takes all reasonable steps to avoid those circumstances occurring.	
	‘(14) A prosecution for an offence against a provision of this section may be started at any time within 3 years after the offence was committed.	

‘177MB Recovery of payments

- ‘(1) An action in a court to recover an amount due to the State under section 177DN(3) or 177HD(7) may be brought in the name of the commission.
- ‘(2) Any process in the action required to be served on the State may be served on the commission.

‘177MC Records to be kept

- ‘(1) This section applies if a person makes or obtains a document or other thing that is or includes a record about a matter particulars of which are, or could be, required to be stated in a claim or return under this part, other than a record that, in the normal course of business or administration, would be transferred to another person.
- ‘(2) The first-mentioned person must keep the record for a period of at least 3 years commencing on the day on which the claim or return was made.

‘177MD Audit certificates

- ‘(1) This section applies if a person is required under this part to give a return to the commission other than one of the following returns—
 - (a) a return under section 177GF;
 - (b) a return under section 177JB;
 - (c) a return under section 177JC;
 - (d) a return given under section 177GD or 177GE.
- ‘(2) The return must be accompanied by a certificate from an auditor stating—
 - (a) that the auditor was given full and free access at all reasonable times to the accounts and documents of the agent responsible for giving the return and of the party, elected member, candidate or registered third party relating directly or indirectly to a matter required to be disclosed in the return; and
 - (b) the auditor examined the accounts and documents mentioned in paragraph (a) that the auditor considered material for giving the certificate; and
 - (c) the auditor received all the information and explanations the auditor asked for in relation to any matter required to be stated in the certificate, subject to the qualifications, if any, stated in the certificate; and

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- (d) the auditor has no reason to think any statement in the declaration is not correct.
- ‘(3) The commission may waive compliance with the requirement to give an audit certificate if—
- (a) the return contains a statement to the effect that no political donation was received, and no electoral expenditure was incurred, by the candidate or registered third party; or
 - (b) the commission considers the cost of compliance with the requirement would be unreasonable.
- ‘(4) A return required to be accompanied by a certificate from an auditor is taken not to have been given as required under this part if it is not accompanied by the certificate.

‘177ME Auditor to give notice of contravention

- ‘(1) This section applies if, in carrying out an audit to prepare an audit certificate for this part, an auditor becomes aware of a matter that is reasonably likely to constitute a contravention of this part by a registered political party, candidate or registered third party.
- ‘(2) The auditor must, within 7 days after becoming aware of the matter, give the commission written notice of the matter.

Maximum penalty—100 penalty units.

‘177MF Inability to complete returns

- ‘(1) If a person who is required to give a return under division 7, 10 or 11 considers that it is impossible to complete the return because the person 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 the particulars; and
 - (b) give the return so prepared; and
 - (c) give to the commission a written notice—
 - (i) identifying the return; and

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- (ii) stating that the return is incomplete because the person is unable to obtain certain particulars; and
- (iii) identifying the particulars; and
- (iv) stating the reasons the person is unable to obtain the 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;

and a person who complies with this subsection must not, merely because of the omission of the particulars, be taken, for section 177MA(2), to have given a return that is incomplete.

- ‘(2) If the commission has been informed under subsection (1)(c)(v) or (3)(e) that a person can supply particulars that have not been included in a return, the commission may, by written notice given to the person, require the person to give to the commission, within the period stated in the notice and in writing, those particulars and, subject to subsection (3), the person must comply with the requirement.
- ‘(3) If a person who is required to give particulars under subsection (2) considers that the person is unable to obtain some or all of the particulars, the person must give to the commission a written notice—
 - (a) stating the particulars (if any) that the person is able to give; and
 - (b) stating that the person is unable to obtain some or all of the particulars; and
 - (c) identifying the particulars the person is unable to obtain; and
 - (d) stating the reasons the person considers the person is unable to obtain the particulars; and
 - (e) if the person believes, on reasonable grounds, that another person whose name and address the person knows can give the particulars—stating the name and

address of the other person and the reasons the person believes that the other person is able to give the particulars.

- ‘(4) A person who complies with subsection (3) must not, because of the omission of particulars required under subsection (2), be taken, for section 177MA(2), to have given a return that is incomplete.

‘177MG Extension for giving return

- ‘(1) A person who is required to give a return under this part may, before the day by which the return must be given, apply to the commission for an extension of the day by which the return must be lodged.
- ‘(2) The commission may grant the application if the commission is satisfied it is appropriate to do so in the circumstances.
- ‘(3) However, an extension under this section may not extend the day by which the return is required to be given to a day that is more than 8 weeks after the day the return would, but for this section, be required to be lodged.
- ‘(4) The commission may, as a condition of extending the day by which the return must be given, require the person to give a return containing the particulars the person has available at the time.

‘177MH Noncompliance with part does not affect election

- ‘(1) A failure of a person to comply with a provision of this part for an election does not invalidate the election.
- ‘(2) Without limiting subsection (1), if—
- (a) a registered political party endorsed a candidate in an election; and
 - (b) the candidate was elected at the election;
- any failure by the agent of the political party to comply with a provision of this part for the election does not invalidate the election of the candidate.

- ‘(3) Without limiting subsection (1), if the agent of a candidate who is elected at an election fails to comply with a provision of this part for the election, that failure does not invalidate the election of the candidate.

‘177MI Amendment of claims and returns

- ‘(1) If the commissioner is satisfied that a claim or return under this part contains a formal error or is subject to a formal defect, the commissioner may amend the claim or return to the extent necessary to correct the error or remove the defect.
- ‘(2) A person who has lodged a claim or given a return under this part may ask the permission of the commission to make a specified amendment of the claim or return for correcting an error or omission.
- ‘(3) If the claim was lodged, or the return was given, by a person as the agent of a registered political party, the request under subsection (2) may be made either by—
- (a) the person who lodged the claim or return; or
 - (b) the person who is currently registered as the agent of the political party.
- ‘(4) A request under subsection (2) must—
- (a) be by written notice signed by the person making the request; and
 - (b) be given to the commission.
- ‘(5) If—
- (a) a request has been made under subsection (2); and
 - (b) the commission is satisfied that there is an error in, or omission from, the claim or return to which the request relates;
- the commission must permit the person making the request to amend the claim or return in accordance with the request.
- ‘(6) If the commission decides to refuse a request under subsection (2), the commission must give to the person making the request written notice of the reasons for the decision.

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- ‘(7) An officer authorised for the purpose by the commission may exercise the power of the commission under subsection (5).
 - ‘(8) If an officer acting under subsection (7) decides to refuse a request under subsection (2)—
 - (a) subsection (6) applies as if the officer were the commission; and
 - (b) the person who made the request may, by written notice lodged with the commission within 28 days after notice of the refusal was given, ask the commission to review the decision.
 - ‘(9) If a request is made under subsection (8), the commission must review the decision to which the request relates and make a fresh decision.
 - ‘(10) The amendment of a claim or return under this section does not affect the liability of a person to be convicted of an offence against section 177MA(2), (3) or (5) arising out of the lodging of the claim or the giving of the return.

‘177MJ Publishing of returns

- ‘(1) The commission must publish on its website the following returns given to the commission—
 - (a) a return under section 177GE;
 - (b) a return under section 177GF;
 - (c) a return under section 177KB;
 - (d) a return under section 177KF.
- ‘(2) A return mentioned in subsection (1)(a), (c) or (d) must be published within 6 weeks after the return is given to the commission.
- ‘(3) A return mentioned in subsection (1)(b) must be published within 10 business days after the return is given to the commission.

‘177MK Inspection and supply of copies of claims and returns

- ‘(1) The commission must keep, at its office, a copy of—
- (a) each claim under division 4; and
 - (b) each return under division 7, 8 or 10; and
 - (c) each return under division 11.
- ‘(2) Any person may peruse, at the office of the commission, a copy of a claim or return mentioned in subsection (1).
- ‘(3) A person may, on payment of a fee decided by the commission to cover the cost of copying, obtain a copy of a claim or return mentioned in subsection (1).
- ‘(4) A person is not entitled under this section to peruse, or obtain a copy of—
- (a) a claim under division 4; or
 - (b) a return under division 7 (other than section 177GE or 177GF) or 10;
- until after the end of 24 weeks after the polling day for the election to which the claim or return relates.
- ‘(5) In this section—
- claim* includes the following—
- (a) any documents accompanying the claim;
 - (b) any documents relating to the assessment of the claim by the commission.

‘177ML Recovery of unlawful donations

- ‘(1) This section applies if a person contravenes a provision involving the unlawful acceptance of a political donation under this part.
- ‘(2) The maximum penalty for the offence is the greater of the following amounts—
- (a) the amount that is equal to twice the amount of the political donation;

- (b) 200 penalty units.
- ‘(3) The amount payable under subsection (2) may be recovered from—
 - (a) if the donation was accepted by the person on behalf of a registered political party that is a corporation, the party; or
 - (b) if the donation was accepted by the person on behalf of a registered political party that is not a corporation, the party’s agent; or
 - (c) otherwise, the person who accepted the donation or, if the person has an agent, the agent.

‘177MM Compliance agreements

- ‘(1) The commission may enter into a written agreement (a *compliance agreement*) with a person on whom an obligation is placed by this part to ensure the person complies with this part or remedies an apparent contravention of this part.
- ‘(2) A compliance agreement may state the measures to be taken by the person to whom it applies to ensure the person complies with this part or remedies an apparent contravention of this part.
- ‘(3) A court may, on application by the commission, make a declaration that a person has contravened a compliance agreement and make ancillary orders to enforce the compliance agreement.
- ‘(4) This section does not affect proceedings for an offence for a contravention of this Act.

‘Division 14 General provisions about authorised officers

‘Subdivision 1 Appointment

‘177N Authorised officer under pt 9A

- ‘(1) This part includes provision for the appointment of authorised officers, and gives authorised officers particular powers.
- ‘(2) The purpose of these provisions is to ensure the commission has available to it suitably qualified persons who can help the commission properly deal with issues about compliance with the part.

‘177NA Appointment and qualifications

- ‘(1) The commission may, by instrument in writing, appoint any of the following persons as authorised officers—
 - (a) officers of the commission;
 - (b) public service employees;
 - (c) other persons prescribed under a regulation.
- ‘(2) However, the commissioner may appoint a person as an authorised officer only if—
 - (a) the commissioner is satisfied the person is qualified for appointment because the person has the necessary expertise or experience; or
 - (b) the person has satisfactorily finished training approved by the commissioner.

‘177NB Appointment conditions and limit on powers

- ‘(1) An authorised officer holds office on any conditions stated in—
 - (a) the authorised officer’s instrument of appointment; or
 - (b) a signed notice given to the authorised officer; or

- (c) a regulation.
- ‘(2) The instrument of appointment, a signed notice given to the authorised officer or a regulation may limit the authorised officer’s powers.
- ‘(3) In this section—
signed notice means a notice signed by the commissioner.

‘177NC When office ends

- ‘(1) The office of a person as an authorised officer ends if any of the following happens—
 - (a) the term of office stated in a condition of office ends;
 - (b) under another condition of office, the office ends;
 - (c) the authorised officer’s resignation under section 177ND takes effect.
- ‘(2) Subsection (1) does not limit the ways the office of a person as an authorised officer ends.
- ‘(3) In this section—
condition of office means a condition under which the authorised officer holds office.

‘177ND Resignation

- ‘(1) An authorised officer may resign by signed notice given to the commissioner.
- ‘(2) However, if holding office as an authorised officer is a condition of the authorised officer holding another office, the authorised officer may not resign as an authorised officer without resigning from the other office.

‘Subdivision 2 Identity cards

‘177NE Issue of identity card

- ‘(1) The commissioner must issue an identity card to each authorised officer.
- ‘(2) The identity card must—
 - (a) contain a recent photo of the authorised officer; and
 - (b) contain a copy of the authorised officer’s signature; and
 - (c) identify the person as an authorised officer under this Act; and
 - (d) state an expiry date for the card.
- ‘(3) This section does not prevent the issue of a single identity card to a person for this Act and other purposes.

‘177NF Production or display of identity card

- ‘(1) In exercising a power in relation to a person in the person’s presence, an authorised officer must—
 - (a) produce the authorised officer’s identity card for the person’s inspection before exercising the power; or
 - (b) have the identity card displayed so it is clearly visible to the person when exercising the power.
- ‘(2) However, if it is not practicable to comply with subsection (1), the authorised officer must produce the identity card for the person’s inspection at the first reasonable opportunity.
- ‘(3) For subsection (1), an authorised officer does not exercise a power in relation to a person only because the authorised officer has entered a place as mentioned in section 177O(1)(b).

‘177NG Return of identity card

‘If the office of a person as an authorised officer ends, the person must return the person’s identity card to the

commissioner within 21 days after the office ends unless the person has a reasonable excuse.

Maximum penalty—20 penalty units.

‘Subdivision 3 Miscellaneous provisions

‘177NH References to exercise of powers

‘If—

- (a) a provision of this part refers to the exercise of a power by an authorised officer; and
- (b) there is no reference to a specific power;

the reference is to the exercise of all or any authorised officer’s powers under this part or a warrant, to the extent the powers are relevant.

‘177NI Reference to document includes reference to reproductions from electronic document

‘A reference in this part to a document includes a reference to an image or writing—

- (a) produced from an electronic document; or
- (b) not yet produced, but reasonably capable of being produced, from an electronic document, with or without the aid of another article or device.

‘Division 15 Entry of places by authorised officers

‘Subdivision 1 Power to enter

‘177O General power to enter places

‘(1) An authorised officer may enter a place if—

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- (a) an occupier at the place consents under subdivision 2 to the entry and section 177OC has been complied with for the occupier; or
 - (b) it is a public place and the entry is made when the place is open to the public; or
 - (c) the entry is authorised under a warrant and, if there is an occupier of the place, section 177OJ has been complied with for the occupier; or
 - (d) it is a place of business at which the authorised officer reasonably suspects any of the following documents are kept and the place is open for carrying on the business or otherwise open for entry—
 - (i) a document issued to a person under this part;
 - (ii) a document required to be kept by a person under this part.
- ‘(1A) For subsection (1)(d), a *place of business* includes an office or other place at which a political party, elected member, candidate or third party carries out political or administrative activities but does not include a part of a place where a person resides.
- ‘(2) If the power to enter arose only because an occupier of the place consented to the entry, the power is subject to any conditions of the consent and ceases if the consent is withdrawn.
- ‘(3) If the power to enter is under a warrant, the power is subject to the terms of the warrant.
- ‘(4) The consent may provide consent for re-entry and is subject to the conditions of consent.
- ‘(5) If the power to re-enter is under a warrant, the re-entry is subject to the terms of the warrant.

‘Subdivision 2 Entry by consent

‘1770A Application of sdiv 2

‘This subdivision applies if an authorised officer intends to ask an occupier of a place to consent to the authorised officer or another authorised officer entering the place under section 1770(1)(a).

‘1770B Incidental entry to ask for access

‘For the purpose of asking the occupier for the consent, an authorised officer may, without the occupier’s consent or a warrant—

- (a) enter land around premises at the place to an extent that is reasonable to contact the occupier; or
- (b) enter part of the place the authorised officer reasonably considers members of the public ordinarily are allowed to enter when they wish to contact an occupier of the place.

‘1770C Matters authorised officer must tell occupier

‘Before asking for the consent, the authorised officer must give a reasonable explanation to the occupier—

- (a) about the purpose of the entry, including the powers intended to be exercised; and
- (b) that the occupier is not required to consent; and
- (c) that the consent may be given subject to conditions and may be withdrawn at any time.

‘1770D Consent acknowledgement

- ‘(1) If the consent is given, the authorised officer may ask the occupier to sign an acknowledgement of the consent.
- ‘(2) The acknowledgement must state—

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- (a) the purpose of the entry, including the powers to be exercised; and
 - (b) the following has been explained to the occupier—
 - (i) the purpose of the entry, including the powers intended to be exercised;
 - (ii) that the occupier is not required to consent;
 - (iii) that the consent may be given subject to conditions and may be withdrawn at any time; and
 - (c) the occupier gives the authorised officer or another authorised officer consent to enter the place and exercise the powers; and
 - (d) the time and day the consent was given; and
 - (e) any conditions of the consent.
- ‘(3) If the occupier signs the acknowledgement, the authorised officer must immediately give a copy to the occupier.
- ‘(4) If—
- (a) an issue arises in a proceeding about whether the occupier consented to the entry; and
 - (b) an acknowledgement complying with subsection (2) for the entry is not produced in evidence;
- the onus of proof is on the person relying on the lawfulness of the entry to prove the occupier consented.

‘Subdivision 3 Entry under warrant

‘1770E Application for warrant

- ‘(1) An authorised officer may apply to a magistrate for a warrant for a place.
- ‘(2) The authorised officer must prepare a written application that states the grounds on which the warrant is sought.
- ‘(3) The written application must be sworn.

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- ‘(4) The magistrate may refuse to consider the application until the authorised officer gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

Example—

The magistrate may require additional information supporting the written application to be given by statutory declaration.

‘177OF Issue of warrant

- ‘(1) The magistrate may issue the warrant for the place only if the magistrate is satisfied there are reasonable grounds for suspecting that there is at the place, or will be at the place within the next 7 days, a particular thing or activity that may provide evidence of an offence against this part.
- ‘(2) The warrant must state—
- (a) the place to which the warrant applies; and
 - (b) that a stated authorised officer or any authorised officer may with necessary and reasonable help and force—
 - (i) enter the place and any other place necessary for entry to the place; and
 - (ii) exercise the authorised officer’s powers; and
 - (c) particulars of the offence that the magistrate considers appropriate; and
 - (d) the name of the person suspected of having committed the offence unless the name is unknown or the magistrate considers it inappropriate to state the name; and
 - (e) the evidence that may be seized under the warrant; and
 - (f) the hours of the day or night when the place may be entered; and
 - (g) the magistrate’s name; and
 - (h) the day and time of the warrant’s issue; and

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- (i) the day, within 14 days after the warrant's issue, the warrant ends.

'177OG Electronic application

- '(1) An application under section 177OE may be made by phone, fax, email, radio, videoconferencing or another form of electronic communication if the authorised officer reasonably considers it necessary because of—
 - (a) urgent circumstances; or
 - (b) other special circumstances, including, for example, the authorised officer's remote location.
- '(2) The application—
 - (a) may not be made before the authorised officer prepares the written application under section 177OE(2); but
 - (b) may be made before the written application is sworn.

'177OH Additional procedure if electronic application

- '(1) For an application made under section 177OG, the magistrate may issue the warrant (the *original warrant*) only if the magistrate is satisfied—
 - (a) it was necessary to make the application under section 177OG; and
 - (b) the way the application was made under section 177OG was appropriate.
- '(2) After the magistrate issues the original warrant—
 - (a) if there is a reasonably practicable way of immediately giving a copy of the warrant to the authorised officer, including, for example, by sending a copy by fax or email, the magistrate must immediately give a copy of the warrant to the authorised officer; or
 - (b) otherwise—
 - (i) the magistrate must tell the authorised officer the information mentioned in section 177OF(2); and

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- (ii) the authorised officer must complete a form of warrant, including by writing on it the information mentioned in section 177OF(2) provided by the magistrate.
- ‘(3) The copy of the warrant mentioned in subsection (2)(a), or the form of warrant completed under subsection (2)(b) (in either case the ***duplicate warrant***), is a duplicate of, and as effectual as, the original warrant.
- ‘(4) The authorised officer must, at the first reasonable opportunity, send to the magistrate—
- (a) the written application complying with section 177OE(2) and (3); and
 - (b) if the authorised officer completed a form of warrant under subsection (2)(b)—the completed form of warrant.
- ‘(5) The magistrate must keep the original warrant and, on receiving the documents under subsection (4)—
- (a) attach the documents to the original warrant; and
 - (b) give the original warrant and documents to the clerk of the court of the relevant magistrates court.
- ‘(6) Despite subsection (3), if—
- (a) an issue arises in a proceeding about whether an exercise of a power was authorised by a warrant issued under this section; and
 - (b) the original warrant is not produced in evidence;
- the onus of proof is on the person relying on the lawfulness of the exercise of the power to prove a warrant authorised the exercise of the power.
- ‘(7) This section does not limit section 177OE.
- ‘(8) In this section—
- relevant magistrates court***, in relation to a magistrate, means the Magistrates Court that the magistrate constitutes under the *Magistrates Act 1991*.

‘177OI Defect in relation to a warrant

- ‘(1) A warrant is not invalidated by a defect in—
- (a) the warrant; or
 - (b) compliance with this subdivision;
- unless the defect affects the substance of the warrant in a material particular.
- ‘(2) In this section—
- warrant* includes a duplicate warrant mentioned in section 177OH(3).

‘177OJ Entry procedure

- ‘(1) This section applies if an authorised officer is intending to enter a place under a warrant issued under this subdivision.
- ‘(2) Before entering the place, the authorised officer must do or make a reasonable attempt to do the following things—
- (a) identify himself or herself to a person who is an occupier of the place and is present by producing the authorised officer’s identity card or another document evidencing the authorised officer’s appointment;
 - (b) give the person a copy of the warrant;
 - (c) tell the person the authorised officer is permitted by the warrant to enter the place;
 - (d) give the person an opportunity to allow the authorised officer immediate entry to the place without using force.
- ‘(3) However, the authorised officer need not comply with subsection (2) if the authorised officer believes on reasonable grounds that entry to the place without compliance is required to ensure the execution of the warrant is not frustrated.
- ‘(4) In this section—
- warrant* includes a duplicate warrant mentioned in section 177OH(3).

‘Division 16 General powers of authorised officers after entering places**‘177P Application of div 16**

- ‘(1) The power under this division may be exercised if an authorised officer enters a place under section 177O(1)(a), (c) or (d).
- ‘(2) However, if the authorised officer enters under section 177O(1)(a) or (c), the powers under this division are subject to any conditions of the consent or terms of the warrant.

‘177PA General powers

- ‘(1) The authorised officer may do any of the following (each a *general power*)—
- (a) search any part of the place;
 - (b) inspect, examine or film any part of the place or anything at the place;
 - (c) place an identifying mark in or on anything at the place;
 - (d) take an extract from, or copy, a document at the place, or take the document to another place to copy;
 - (e) produce an image or writing at the place from an electronic document or, to the extent it is not practicable, take a thing containing an electronic document to another place to produce an image or writing;
 - (f) take to, into or onto the place and use any person, equipment and materials the authorised officer reasonably requires for exercising the authorised officer’s powers under this division;
 - (g) remain at the place for the time necessary to achieve the purpose of the entry.
- ‘(2) The authorised officer may take a necessary step to allow the exercise of a general power.

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- ‘(3) If the authorised officer takes a document from the place to copy it, the authorised officer must copy and return the document to the place as soon as practicable.
- ‘(4) If the authorised officer takes from the place an article or device reasonably capable of producing a document from an electronic document to produce the document, the authorised officer must produce the document and return the article or device to the place as soon as practicable.
- ‘(5) In this section—
 - examine* includes analyse, test, account, measure, weigh, grade, gauge and identify.
 - film* includes photograph, videotape and record an image in another way.
 - inspect*, a thing, includes open the thing and examine its contents.

‘177PB Power to require reasonable help

- ‘(1) The authorised officer may make a requirement (a *help requirement*) of an occupier of the place or a person at the place to give the authorised officer reasonable help to exercise a general power, including, for example, to produce a document or to give information.
- ‘(2) When making the help requirement, the authorised officer must give the person an offence warning for the requirement.

‘177PC Offence to contravene help requirement

- ‘(1) A person of whom a help requirement has been made must comply with the requirement unless the person has a reasonable excuse.
Maximum penalty—50 penalty units.
- ‘(2) It is a reasonable excuse for an individual not to comply with a help requirement if complying might tend to incriminate the individual or expose the individual to a penalty.

- ‘(3) However, subsection (2) does not apply if a document or information the subject of the help requirement is required to be held or kept by the defendant under this part.

Note—

See, however, section 177SF.

‘Division 17 Seizure by authorised officers and forfeiture

‘Subdivision 1 Power to seize

‘177Q Seizing evidence at a place that may be entered without consent or warrant

‘An authorised officer who enters a place the authorised officer may enter under this Act without the consent of an occupier of the place and without a warrant may seize a thing at the place if the authorised officer reasonably believes the thing is evidence of an offence against this part.

‘177QA Seizing evidence at a place that may be entered only with consent or warrant

- ‘(1) This section applies if—
- (a) an authorised officer is authorised to enter a place only with the consent of an occupier of the place or a warrant; and
 - (b) the authorised officer enters the place after obtaining the consent or under a warrant.
- ‘(2) If the authorised officer enters the place with the occupier’s consent, the authorised officer may seize a thing at the place only if—
- (a) the authorised officer reasonably believes the thing is evidence of an offence against this part; and

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- (b) seizure of the thing is consistent with the purpose of entry as explained to the occupier when asking for the occupier's consent.
- '(3) If the authorised officer enters the place under a warrant, the authorised officer may seize the evidence for which the warrant was issued.
- '(4) The authorised officer may also seize anything else at the place if the authorised officer reasonably believes—
 - (a) the thing is evidence of an offence against this part; and
 - (b) the seizure is necessary to prevent the thing being hidden, lost or destroyed.
- '(5) The authorised officer may also seize a thing at the place if the authorised officer reasonably believes it has just been used in committing an offence against this part.

'177QB Seizure of property subject to security

- '(1) An authorised officer may seize a thing, and exercise powers relating to the thing, despite a lien or other security over the thing claimed by another person.
- '(2) However, the seizure does not affect the other person's claim to the lien or other security against a person other than the authorised officer or a person acting for the authorised officer.

'Subdivision 2 Powers to support seizure

'177QC Power to secure seized thing

- '(1) Having seized a thing under this division, an authorised officer may—
 - (a) leave it at the place where it was seized (the *place of seizure*) and take reasonable action to restrict access to it; or
 - (b) move it from the place of seizure.

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- ‘(2) For subsection (1)(a), the authorised officer may, for example—
- (a) seal the thing, or the entrance to the place of seizure, and mark the thing or place to show access to the thing or place is restricted; or
 - (b) require a person the authorised officer reasonably believes is in control of the place or thing to do an act mentioned in paragraph (a) or anything else an authorised officer could do under subsection (1)(a).

‘177QD Offence to contravene other seizure requirement

‘A person must comply with a requirement made of the person under section 177QC(2)(b) unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

‘177QE Offence to interfere

- ‘(1) If access to a seized thing is restricted under section 177QC, a person must not tamper with the thing or with anything used to restrict access to the thing without—
- (a) an authorised officer’s approval; or
 - (b) a reasonable excuse.
- Maximum penalty—50 penalty units.
- ‘(2) If access to a place is restricted under section 177QC, a person must not enter the place in contravention of the restriction or tamper with anything used to restrict access to the place without—
- (a) an authorised officer’s approval; or
 - (b) a reasonable excuse.

Maximum penalty—50 penalty units.

‘Subdivision 3 Safeguards for seized things

‘177QF Receipt and information notice for seized thing

- ‘(1) This section applies if an authorised officer seizes anything under this division unless—
 - (a) the authorised officer reasonably believes there is no-one apparently in possession of the thing or it has been abandoned; or
 - (b) because of the condition, nature and value of the thing it would be unreasonable to require the authorised officer to comply with this section.
- ‘(2) The authorised officer must, as soon as practicable after seizing the thing, give an owner or person in control of the thing before it was seized—
 - (a) a receipt for the thing that generally describes the thing and its condition; and
 - (b) an information notice about the decision to seize it.
- ‘(3) However, if an owner or person from whom the thing is seized is not present when it is seized, the receipt and information notice may be given by leaving them in a conspicuous position and in a reasonably secure way at the place at which the thing is seized.
- ‘(4) The receipt and information notice may—
 - (a) be given in the same document; and
 - (b) relate to more than 1 seized thing.
- ‘(5) The authorised officer may delay giving the receipt and information notice if the authorised officer reasonably suspects giving them may frustrate or otherwise hinder an investigation by the authorised officer under this part.
- ‘(6) However, the delay may be only for so long as the authorised officer continues to have the reasonable suspicion and remains in the vicinity of the place at which the thing was seized to keep it under observation.

‘177QG Access to seized thing

- ‘(1) Until a seized thing is forfeited or returned, the authorised officer who seized the thing must allow an owner of the thing—
 - (a) to inspect it at any reasonable time and from time to time; and
 - (b) if it is a document—to copy it.
- ‘(2) Subsection (1) does not apply if it is impracticable or would be unreasonable to allow the inspection or copying.
- ‘(3) The inspection or copying must be allowed free of charge.

‘177QH Return of seized thing

- ‘(1) This section applies if a seized thing has some intrinsic value and is not forfeited or transferred under subdivision 4 or 5.
- ‘(2) The authorised officer must return the seized thing to an owner—
 - (a) generally—at the end of 6 months after the seizure; or
 - (b) if a proceeding for an offence involving the thing is started within the 6 months—at the end of the proceeding and any appeal from the proceeding.
- ‘(3) Despite subsection (2), if the thing was seized as evidence, the authorised officer must return the thing seized to an owner as soon as practicable after the authorised officer is satisfied—
 - (a) its continued retention as evidence is no longer necessary; and
 - (b) it is lawful for the owner to possess it.
- ‘(4) Nothing in this section affects a lien or other security over the seized thing.

‘Subdivision 4 Forfeiture

‘177QI Forfeiture by commissioner decision

- ‘(1) The commissioner may decide a seized thing is forfeited to the State if an authorised officer—
- (a) after making reasonable inquiries, can not find an owner; or
 - (b) after making reasonable efforts, can not return it to an owner.
- ‘(2) However, the authorised officer is not required to—
- (a) make inquiries if it would be unreasonable to make inquiries to find an owner; or
 - (b) make efforts if it would be unreasonable to make efforts to return the thing to an owner.

Example for paragraph (b)—

The owner of the thing has migrated to another country.

- ‘(3) Regard must be had to the thing’s condition, nature and value in deciding—
- (a) whether it is reasonable to make inquiries or efforts; and
 - (b) if inquiries or efforts are made—what inquiries or efforts, including the period over which they are made, are reasonable.

‘177QJ Information notice about forfeiture decision

- ‘(1) If the commissioner decides under section 177QI(1) to forfeit a thing, the commissioner must as soon as practicable give a person who owned the thing immediately before the forfeiture (the *former owner*) an information notice about the decision.
- ‘(2) The information notice may be given by leaving it at the place where the thing was seized, in a conspicuous position and in a reasonably secure way.

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- ‘(3) The information notice must state that the former owner may apply for a stay of the decision if the person appeals against the decision.
 - ‘(4) However, subsections (1) to (3) do not apply if the place where the thing was seized is—
 - (a) a public place; or
 - (b) a place where the notice is unlikely to be read by the former owner.

‘Subdivision 5 Dealing with property forfeited or transferred to State

‘177QK When thing becomes property of the State

‘A thing becomes the property of the State if—

- (a) the thing is forfeited to the State under section 177QI(1); or
- (b) the owner of the thing and the State agree, in writing, to the transfer of the ownership of the thing to the State.

‘177QL How property may be dealt with

- ‘(1) This section applies if, under section 177QK, a thing becomes the property of the State.
- ‘(2) The commissioner may deal with the thing as the commissioner considers appropriate, including, for example, by destroying it or giving it away.
- ‘(3) The commissioner must not deal with the thing in a way that could prejudice the outcome of an appeal against the forfeiture under this part.
- ‘(4) If the commissioner sells the thing, the commissioner may, after deducting the costs of the sale, return the proceeds of the sale to the former owner of the thing.

‘Division 18 Other information-obtaining powers of authorised officers

‘177R Power to require name and address

- ‘(1) This section applies if an authorised officer—
- (a) finds a person committing an offence against this part;
or
 - (b) finds a person in circumstances that lead the authorised officer to reasonably suspect the person has just committed an offence against this part; or
 - (c) has information that leads the authorised officer to reasonably suspect a person has just committed an offence against this part.
- ‘(2) The authorised officer may require the person to state the person’s name and residential address.
- ‘(3) The authorised officer may also require the person to give evidence of the correctness of the stated name or address if, in the circumstances, it would be reasonable to expect the person to—
- (a) be in possession of evidence of the correctness of the stated name or address; or
 - (b) otherwise be able to give the evidence.
- ‘(4) When making a personal details requirement, the authorised officer must give the person an offence warning for the requirement.
- ‘(5) A requirement under this section is a *personal details requirement*.

‘177RA Offence to contravene personal details requirement

- ‘(1) A person of whom a personal details requirement has been made must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

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- ‘(2) A person may not be convicted of an offence under subsection (1) unless the person is found guilty of the offence in relation to which the personal details requirement was made.

‘177RB Power to require production of documents

- ‘(1) An authorised officer may require a person to make available for inspection by an authorised officer, or to produce to the authorised officer for inspection, at a reasonable time and place nominated by the authorised officer—
- (a) a document issued to the person under this part; or
 - (b) a document required to be kept by the person under this part; or
 - (c) if a document or information required to be kept by the person under this part is stored or recorded by means of a device—a document that is a clear written reproduction of the stored or recorded document or information.
- ‘(2) A requirement under subsection (1) is a *document production requirement*.
- ‘(3) For an electronic document, compliance with the document production requirement requires the making available or production of a clear written reproduction of the electronic document.
- ‘(4) The authorised officer may keep the document to copy it.
- ‘(5) If the authorised officer copies the document, or an entry in the document, the authorised officer may require the person responsible for keeping the document to certify the copy as a true copy of the document or entry.
- ‘(6) A requirement under subsection (5) is a *document certification requirement*.
- ‘(7) The authorised officer must return the document to the person as soon as practicable after copying it.
- ‘(8) However, if a document certification requirement is made of a person, the authorised officer may keep the document until the person complies with the requirement.

‘177RC Offence to contravene document production requirement

‘(1) A person of whom a document production requirement has been made must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty—200 penalty units.

‘(2) It is not a reasonable excuse for a person to fail to comply with a document production requirement on the basis that complying with the requirement might tend to incriminate the person or expose the person to a penalty.

Note—

See, however, section 177SF.

‘(3) The authorised officer must inform the person, in a way that is reasonable in the circumstances—

(a) that the person must comply with the document production requirement even though complying might tend to incriminate the person or expose the person to a penalty; and

(b) that, under section 177SF, there is a limited immunity against the future use of the information or document given in compliance with the requirement.

‘(4) If the person fails to comply with the document production requirement when the authorised officer has failed to comply with subsection (3), the person can not be convicted of the offence against subsection (1).

‘(5) If a court convicts a person of an offence against subsection (1), the court may, as well as imposing a penalty for the offence, order the person to comply with the document production requirement.

‘177RD Offence to contravene document certification requirement

‘(1) A person of whom a document certification requirement has been made must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty—200 penalty units.

- ‘(2) It is not a reasonable excuse for a person to fail to comply with a document certification requirement on the basis that complying with the requirement might tend to incriminate the person or expose the person to a penalty.

Note—

See, however, section 177SF.

- ‘(3) The authorised officer must inform the person, in a way that is reasonable in the circumstances—
- (a) that the person must comply with the document certification requirement even though complying might tend to incriminate the person or expose the person to a penalty; and
 - (b) that, under section 177SF, there is a limited immunity against the future use of the information or document given in compliance with the requirement.
- ‘(4) If the person fails to comply with the document certification requirement when the authorised officer has failed to comply with subsection (3), the person can not be convicted of the offence against subsection (1).

‘177RE Power to require information

- ‘(1) This section applies if an authorised officer reasonably believes—
- (a) an offence against this part has been committed; and
 - (b) a person may be able to give information about the offence.
- ‘(2) The authorised officer may, by notice given to the person, require the person to give the authorised officer information related to the offence at a stated reasonable time and place.
- ‘(3) A requirement under subsection (2) is an *information requirement*.

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- ‘(4) For information that is an electronic document, compliance with the information requirement requires the giving of a clear image or written version of the electronic document.
- ‘(5) In this section—
information includes a document.

‘177RF Offence to contravene information requirement

- ‘(1) A person of whom an information requirement is made must comply with the requirement unless the person has a reasonable excuse.
Maximum penalty—200 penalty units or 1 year’s imprisonment.
- ‘(2) It is a reasonable excuse for an individual not to give the information if giving the information might tend to incriminate the individual or expose the individual to a penalty.

‘Division 19 Miscellaneous provisions relating to authorised officers

‘Subdivision 1 Damage

‘177S Duty to avoid inconvenience and minimise damage

‘In exercising a power, an authorised officer must take all reasonable steps to cause as little inconvenience, and do as little damage, as possible.

Note—

See also section 177SB.

‘177SA Notice of damage

- ‘(1) This section applies if—

-
- (a) an authorised officer damages something when exercising, or purporting to exercise, a power; or
 - (b) a person (the *assistant*) acting under the direction or authority of an authorised officer damages something.
- ‘(2) However, this section does not apply to damage the authorised officer reasonably considers is trivial or if the authorised officer reasonably believes—
- (a) there is no-one apparently in possession of the thing; or
 - (b) the thing has been abandoned.
- ‘(3) The authorised officer must give notice of the damage to the person who appears to the authorised officer to be an owner, or person in control, of the thing.
- ‘(4) However, if for any reason it is not practicable to comply with subsection (3), the authorised officer must—
- (a) leave the notice at the place where the damage happened; and
 - (b) ensure it is left in a conspicuous position and in a reasonably secure way.
- ‘(5) The authorised officer may delay complying with subsection (3) or (4) if the authorised officer reasonably suspects complying with the subsection may frustrate or otherwise hinder an investigation by the authorised officer.
- ‘(6) The delay may be only for so long as the authorised officer continues to have the reasonable suspicion and remains in the vicinity of the place.
- ‘(7) If the authorised officer believes the damage was caused by a latent defect in the thing or other circumstances beyond the control of the authorised officer or the assistant, the authorised officer may state the belief in the notice.
- ‘(8) The notice must state—
- (a) particulars of the damage; and
 - (b) that the person who suffered the damage may claim compensation under section 177SB.

‘Subdivision 2 Compensation

‘177SB Compensation

- ‘(1) A person may claim compensation from the State if the person incurs loss because of the exercise, or purported exercise, of a power by or for an authorised officer including a loss arising from compliance with a requirement made of the person under division 17 or 18.
- ‘(2) However, subsection (1) does not include loss arising from a lawful seizure or a lawful forfeiture.
- ‘(3) The compensation may be claimed and ordered in a proceeding—
 - (a) brought in a court with jurisdiction for the recovery of the amount of compensation claimed; or
 - (b) for an alleged offence against this part the investigation of which gave rise to the claim for compensation.
- ‘(4) A court may order the payment of compensation only if it is satisfied it is just to make the order in the circumstances of the particular case.
- ‘(5) In considering whether it is just to order compensation, the court must have regard to any relevant offence committed by the claimant.
- ‘(6) A regulation may prescribe other matters that may, or must, be taken into account by the court when considering whether it is just to order compensation.
- ‘(7) Section 177S does not provide for a statutory right of compensation other than is provided by this section.
- ‘(8) In this section—
loss includes costs and damage.

‘Subdivision 3 Other offences relating to authorised officers

‘177SC Giving authorised officer false or misleading information

- ‘(1) A person must not, in relation to the administration of this part, give an authorised officer information, or a document containing information, that the person knows is false or misleading in a material particular.

Maximum penalty—200 penalty units or 2 years imprisonment.

- ‘(2) Subsection (1) applies to information or a document given in relation to the administration of this part whether or not the information or document was given in response to a specific power under this part.

‘177SD Obstructing authorised officer

- ‘(1) A person must not obstruct an authorised officer, or someone helping an authorised officer, exercising a power unless the person has a reasonable excuse.

Maximum penalty—200 penalty units or 1 year’s imprisonment.

- ‘(2) If a person has obstructed an authorised officer, or someone helping an authorised officer, and the authorised officer decides to proceed with the exercise of the power, the authorised officer must warn the person that—
- (a) it is an offence to cause an obstruction unless the person has a reasonable excuse; and
 - (b) the authorised officer considers the person’s conduct an obstruction.

- ‘(3) In this section—

obstruct includes assault, hinder, resist, attempt to obstruct and threaten to obstruct.

‘177SE Impersonating authorised officer

‘A person must not impersonate an authorised officer.

Maximum penalty—80 penalty units.

‘Subdivision 4 Other provisions

‘177SF Evidential immunity for individuals complying with particular requirements

- ‘(1) Subsection (2) applies if an individual gives or produces information or a document to an authorised officer under section 177PB.
- ‘(2) Evidence of the information or document, and other evidence directly or indirectly derived from the information or document, is not admissible against the individual in any proceeding to the extent it tends to incriminate the individual, or expose the individual to a penalty, in the proceeding.
- ‘(3) Subsection (2) does not apply to a proceeding about the false or misleading nature of the information or anything in the document or in which the false or misleading nature of the information or document is relevant evidence.

‘177SG Protection from liability for particular persons

- ‘(1) A designated person does not incur civil liability for an act done, or omission made, honestly and without negligence under this part.
- ‘(2) If subsection (1) prevents a civil liability attaching to a designated person, the liability attaches instead to the State.
- ‘(3) In this section—
civil liability includes liability for the payment of costs ordered to be paid in a proceeding for an offence against this part.
designated person means—
 - (a) the commissioner; or

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- (b) an authorised officer; or
 - (c) a person acting under the authority or direction of an authorised officer.

‘177SH Confidentiality of information

‘(1) An authorised officer must not, whether directly or indirectly, disclose confidential information.

Maximum penalty—100 penalty units.

‘(2) However, subsection (1) does not apply if—

- (a) the confidential information is disclosed—
 - (i) in the performance of functions under this part; or
 - (ii) with the written consent of the person to whom the information relates; or
 - (iii) to the person to whom the information relates; or
 - (iv) in a form that could not identify any person; or
- (b) the disclosure of the confidential information is authorised under an Act or another law.

‘(3) In this section—

confidential information means information that has become known to an authorised officer in the course of performing the authorised officer’s functions for this part.

‘Division 20 Appeals, evidence and legal proceedings

‘Subdivision 1 Reviews and appeals

‘177T Right of appeal

‘A person who has a right to be given an information notice about a decision made under this part has a right to appeal against the decision.

Note—

Information notices are given under sections 177QF and 177QJ.

‘177TA Appeal process starts with internal review

- ‘(1) Every appeal against a decision must be, in the first instance, by way of an application for an internal review.
- ‘(2) A person who has a right to appeal against a decision may apply to the commissioner for a review of the decision.

‘177TB How to apply for review

- ‘(1) An application for review of a decision must be—
 - (a) in the approved form; and
 - (b) supported by enough information to enable the commissioner to decide the application.
- ‘(2) The application must be made within 20 business days after—
 - (a) the day the person is given the information notice about the decision; or
 - (b) if the person is not given an information notice about the decision—the day the person otherwise becomes aware of the decision.
- ‘(3) The commissioner may extend the period for applying for the review.
- ‘(4) The application must not be dealt with by—
 - (a) the person who made the decision; or
 - (b) a person in a less senior office than the person who made the decision.
- ‘(5) Subsection (4)—
 - (a) applies despite the *Acts Interpretation Act 1954*, section 27A; and
 - (b) does not apply to a decision made by the commissioner.

‘177TC Stay of operation of decision

- ‘(1) An application for review of a decision does not stay the decision.
- ‘(2) However, the applicant may immediately apply for a stay of the decision to the court.
- ‘(3) The court may stay the decision to secure the effectiveness of the review and a later appeal to the court.
- ‘(4) The stay—
 - (a) may be given on conditions the court considers appropriate; and
 - (b) operates for the period fixed by the court; and
 - (c) may be amended or revoked by the court.
- ‘(5) The period of the stay must not extend past the time when the commissioner makes a review decision about the decision and any later period the court allows the applicant to enable the applicant to appeal against the review decision.
- ‘(6) An application for review of a decision affects the decision, or carrying out of the decision, only if the decision is stayed.

‘177TD Review decision

- ‘(1) The commissioner must, within 30 business days after receiving the application—
 - (a) review the decision (the *original decision*); and
 - (b) make a decision (the *review decision*) to—
 - (i) confirm the original decision; or
 - (ii) amend the original decision; or
 - (iii) substitute another decision for the original decision; and
 - (c) give the applicant notice (the *review notice*) of the review decision.
- ‘(2) If the review decision is not the decision sought by the applicant, the review notice must state the following—

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- (a) the day the notice is given to the applicant (the *review notice day*);
 - (b) the reasons for the decision;
 - (c) that the applicant may appeal against the decision to the court within 28 days after the review notice day;
 - (d) how to appeal;
 - (e) that the applicant may apply to the court for a stay of the decision.
- ‘(3) If the commissioner does not give the review notice within the 30 days, the commissioner is taken to have made a review decision confirming the original decision.

‘177TE Who may appeal

‘A person who has applied for review of an original decision and is dissatisfied with the review decision may appeal to the court against the decision.

‘177TF Procedure for an appeal to the court

- ‘(1) An appeal to the court is started by filing a notice of appeal with the clerk of the court.
- ‘(2) A copy of the notice must be served on the commissioner.
- ‘(3) The notice of appeal must be filed within 28 days after the review notice day.
- ‘(4) The court may, whether before or after the time for filing the notice of appeal ends, extend the period for filing the notice of appeal.
- ‘(5) The notice of appeal must state fully the grounds of the appeal.

‘177TG Stay of operation of review decision

- ‘(1) The court may grant a stay of the operation of a review decision appealed against to secure the effectiveness of the appeal.

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- ‘(2) A stay—
- (a) may be granted on conditions the court considers appropriate; and
 - (b) operates for the period fixed by the court; and
 - (c) may be amended or revoked by the court.
- ‘(3) The period of a stay stated by the court must not extend past the time when the court decides the appeal.
- ‘(4) An appeal against a decision affects the decision, or the carrying out of the decision, only if the decision is stayed.

‘177TH Powers of court on appeal

- ‘(1) In deciding an appeal, the court—
- (a) has the same powers as the commissioner in making the review decision appealed against; and
 - (b) is not bound by the rules of evidence; and
 - (c) must comply with natural justice.
- ‘(2) An appeal is by way of rehearing.
- ‘(3) The court may—
- (a) confirm the review decision; or
 - (b) set aside the review decision and substitute another decision; or
 - (c) set aside the review decision and return the matter to the commissioner with directions the court considers appropriate.

‘177TI Effect of decision of court on appeal

- ‘(1) If the court acts to set aside the review decision and return the matter to the commissioner with directions the court considers appropriate, and the commissioner makes a new decision, the new decision is not subject to review or appeal under this subdivision.

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- ‘(2) If the court substitutes another decision, the substituted decision is taken to be the decision of the commissioner, and the commissioner may give effect to the decision as if the decision was the original decision of the commissioner and no application for review or appeal had been made.

‘Subdivision 2 Evidence and legal proceedings

‘177TJ Evidentiary provisions

- ‘(1) This section applies to a proceeding under this part.
- ‘(2) The appointment or power of the commissioner or an authorised officer must be presumed unless a party, by reasonable notice, requires proof of—
- (a) the appointment; or
 - (b) the power to do anything under this part.
- ‘(3) A signature purporting to be the signature of the commissioner or an authorised officer is evidence of the signature it purports to be.
- ‘(4) A certificate purporting to be signed by a person mentioned in subsection (3) and stating any of the following matters is evidence of the matter—
- (a) that a stated document of any of the following types is a document given, issued, kept or made under this part—
 - (i) an appointment, approval or decision;
 - (ii) a direction or requirement;
 - (iii) a notice or other document given under this part;
 - (b) that a stated document is another document kept under this part;
 - (c) that a stated document is a copy of, or an extract from or part of, a thing mentioned in paragraph (a) or (b);
 - (d) that on a stated day—

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- (i) a stated person was given a stated decision, direction or notice under this part; or
 - (ii) a stated requirement under this part was made of a stated person;
 - (e) that a stated amount is payable under this part by a stated person and has not been paid;
 - (f) anything else prescribed under the regulation.

‘177TK Offences under this part are summary

- ‘(1) An offence against this part is a summary offence.
- ‘(2) Subject to section 177MA(14), a proceeding for an offence against this part must start within the later of the following periods to end—
 - (a) 1 year after the commission of the offence;
 - (b) 6 months after the offence comes to the complainant’s knowledge but within 2 years after the commission of the offence.

‘177TL Statement of complainant’s knowledge

‘In a complaint starting a proceeding for an offence against this part, a statement that the matter of the complaint came to the complainant’s knowledge on a stated day is evidence the matter came to the complainant’s knowledge on that day.’.

16 Insertion of new s 179A

After section 179—

insert—

‘179A Approval of forms

‘The commissioner may approve forms for use under this Act.’.

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17 Insertion of new pt 11, div 5

Part 11—

insert—

‘Division 5 Transitional provisions for Electoral Reform and Accountability Amendment Act 2011

‘Subdivision 1 Purposes, definitions and general approach

‘191 Main purpose of div 5

‘The main purpose of this division is to provide for provisions of part 9A that are substantially the same as repealed provisions of the previous schedule to be dealt with as replacements of the repealed provisions.

‘192 Definitions for div 5

‘In this division—

commencement means the commencement of the provision in which the term is used.

corresponding provision, for a previous provision, means a provision of part 9A that is substantially the same as the previous provision.

made includes given and issued.

obligation includes duty.

previous provision means a provision of the previous schedule, as in force immediately before the commencement.

previous schedule means the schedule as in force immediately before the commencement.

repealed, in relation to a provision, means as in force before the repeal of the provision by the *Electoral Reform and Accountability Amendment Act 2011*.

‘193 Document, action, obligation or protection under previous provision of primary Act

- ‘(1) This section applies to any of the following—
- (a) a document made or kept under a previous provision (the *relevant previous provision* for the document) if the document continued to have effect or was in force immediately before the commencement;
 - (b) an action done under a previous provision (the *relevant previous provision* for the action) if the action continued to have effect immediately before the commencement;
 - (c) an entity’s obligation under a previous provision (the *relevant previous provision* for the obligation) if the obligation applied to the entity immediately before the commencement;
 - (d) an entity’s protection under a previous provision (the *relevant previous provision* for the protection) that applied to the entity immediately before the commencement.
- ‘(2) Subject to a specific provision of this Act in relation to the document, action, obligation or protection, if there is a corresponding provision for the relevant previous provision for the document, action, obligation or protection, the document, action, obligation or protection—
- (a) continues in force or to have effect according to its terms; and
 - (b) may be taken to have been made, kept or done under the corresponding provision.
- ‘(3) Subsection (2)(b) applies whether or not the relevant previous provision refers to the document, action, obligation or protection by reference to a previous provision.
- ‘(4) Other provisions of this division include examples of the operation of this section.

‘194 Terminology in things mentioned in s 193(1)

- ‘(1) This section applies to a document (the *relevant document*) that is—
- (a) a document as mentioned in section 193(1); or
 - (b) evidence of a document, action, obligation or protection as mentioned in section 193(1).
- ‘(2) A reference in the relevant document to a document, action, obligation or protection as mentioned in section 193(1) is to be read, if the context permits and with the necessary changes to terminology, as if the document, action, obligation or protection were made, kept or done under part 9A.

Example for subsection (2)—

An instrument of appointment given under the previous schedule by the electoral commission to an authorised officer limiting the powers of the authorised officer is to be read as if the instrument limited the powers of the authorised officer under part 9A.

‘195 Period stated in previous provision

- ‘(1) This section applies if, in a previous provision, there is a period for doing something, and the period for doing the thing started but did not finish before the commencement.
- ‘(2) If there is a corresponding provision to the previous provision and both the corresponding provision and the previous provision provide for the same period, the period for doing the thing continues to have started from when the period started under the previous provision but ends under the corresponding provision.

‘196 Period or date stated in document given under previous provision

- ‘(1) This section applies if—
- (a) there was a previous provision that provided for a document to be made under it; and
 - (b) there is a corresponding provision to the previous provision; and

- (c) under the previous provision and before the commencement, a document was given to a person, whether or not the person had received the document before the commencement.

Example for paragraph (c)—

a notice under section 335 of the previous schedule, that states a period within which a person who is in control of a thing to be seized must take the thing to a place stated in the notice

- ‘(2) If the document stated a period for doing something—
- (a) the stated period continues to apply for doing the thing; and
- (b) the period continues to have started from when the period started under the previous provision.
- ‘(3) If the document stated a day before which, or by which, a thing is to be done (however expressed), the thing must be done by the stated day.

‘197 Action happening before commencement may be relevant to proceeding for particular acts or omissions

- ‘(1) An action as mentioned in section 193(1) happening before the commencement may be relevant to a proceeding relating to a contravention of a provision of part 9A involving an act or omission that happened after the commencement.
- ‘(2) This section does not limit the *Acts Interpretation Act 1954*, section 20C.
- ‘(3) In this section—
contravention includes an alleged contravention.

‘198 Acts Interpretation Act 1954, s 20 not limited

‘This part does not limit the *Acts Interpretation Act 1954*, section 20.

‘Subdivision 2 Transitional provisions relating to particular matters

‘199 Amounts held before the commencement

- ‘(1) This section applies to an amount of money held by a registered political party, an associated entity, a candidate or a third party before the commencement.
- ‘(2) Subject to subsection (4), from the commencement the amount or a part of the amount may be deposited—
- (a) for an amount held by a registered political party, candidate or third party, in the State campaign account kept by the registered political party, candidate or third party; or
 - (b) for an amount held by an associated entity, in the State campaign account kept by a registered political party by which the associated entity is controlled or for which the associated entity operates beneficially.
- ‘(3) If an amount received as a gift by the registered political party, candidate or third party after 1 January 2011 is deposited in the State campaign account kept by the agent of the party or candidate or the third party, the amount is taken to be a political donation despite section 177F.
- ‘(4) An amount of money may not be deposited in a State campaign account under this section if the deposit of the amount would constitute a contravention of an applicable donation cap under part 9A, division 6.
- ‘(5) In this section—
- candidate* includes an elected member or other person who has announced or otherwise indicated an intention to be a candidate in an election.

‘199A Applicable expenditure cap

‘A reference in section 177IA(1) to the first financial year starting after that section commences is taken to be a reference to—

-
- (a) if section 177IA commences before 1 July 2011, the financial year that commenced on 1 July 2010; or
 - (b) if section 177IA commences on or after 1 July 2011, the financial year in which the section commences.

‘200 Existing agents

- ‘(1) This section applies to a person who, immediately before the commencement, was an agent of a registered political party or candidate under the previous schedule.
- ‘(2) From the commencement, the person continues to be an agent of the registered political party or candidate under part 9A.

‘201 Convictions against previous provision

‘Section 177BC(3) applies to a person convicted of an offence against a previous provision as if the person had been convicted of an offence against part 9A.

‘202 Register of agents

‘The Register of Party Agents kept by the commission under the previous schedule immediately before the commencement is taken, from the commencement, to be the register of agents kept by the commission under part 9A.

‘203 Existing authorised officers

- ‘(1) This section applies to a person who—
 - (a) before the commencement, was appointed under the previous schedule as an authorised officer; and
 - (b) still held the appointment immediately before the commencement.
- ‘(2) On the commencement—
 - (a) the person is taken to hold office under part 9A as an authorised officer on the same conditions as the person

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held office as an authorised officer before the commencement; and

- (b) the person's identity card issued under the previous schedule is taken to be an identity card under part 9A.

'204 Amendment to renumber

- '(1) On the commencement of this section, the provisions of this Act are amended by numbering and renumbering them in the same way as a reprint may be numbered and renumbered under the *Reprints Act 1992*, section 43.
- '(2) Subsection (1) applies to a provision of this Act enacted or otherwise affected (a ***relevant provision***) by a provision of an amending Act enacted but uncommenced when subsection (1) is commenced (the ***uncommenced provision***), with the following intent for the relevant provision—
 - (a) if the number of the relevant provision would have changed under subsection (1) had the uncommenced provision commenced—
 - (i) a number is allocated to the relevant provision as if the uncommenced provision had commenced; and
 - (ii) when the uncommenced provision commences, the number of the relevant provision is amended by omitting it and inserting the number allocated to it under subparagraph (i);
 - (b) if the relevant provision would have been omitted or relocated had the uncommenced provision commenced, its number remains the same as it was before the commencement of subsection (1) until the omission or relocation takes effect.
- '(3) Without limiting the *Reprints Act 1992*, section 43(4), each reference in this Act to a provision of the Act renumbered under subsection (1), is amended, when the renumbering happens, by omitting the reference to the previous number and inserting the new number.
- '(4) This section expires on the later of the following—

- (a) the day after the commencement of the last numbering or renumbering of a provision done under the section;
- (b) 30 December 2011.

‘(5) In this section—

amending Act means an Act that amends this Act.’.

18 Omission of schedule (Election Funding and financial disclosure based on part XX of the Commonwealth Electoral Act)

Schedule—

omit.