Local Electoral Amendment Bill (No 2) 2012 (2013 No 76-2)

<table>
<thead>
<tr>
<th>Date of Introduction:</th>
<th>15 October 2012</th>
</tr>
</thead>
<tbody>
<tr>
<td>Portfolio:</td>
<td>Local Government</td>
</tr>
<tr>
<td>Select Committee:</td>
<td>Justice and Electoral</td>
</tr>
<tr>
<td>Date report presented:</td>
<td>8 March 2013</td>
</tr>
</tbody>
</table>

Published: 15 March 2013
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Caution: This Digest was prepared to assist consideration of the Bill by members of Parliament. It has no official status. Although every effort has been made to ensure accuracy, it should not be taken as a complete or authoritative guide to the Bill. Other sources should be consulted to determine the subsequent official status of the Bill.

Purpose

The main aim of this Bill is to amend the Local Electoral Act 2001 to “address public concern that the Local Electoral Act 2001 does not require candidates for local authority elections to provide the same degree of transparency and accountability in regard to donations as that expected of parliamentary candidates”. In particular, the Bill amends the definitions of anonymous and donation, increases disclosure, reporting, and recording obligations and introduces penalties for non-compliance with new obligations.

The Bill also incorporates amendments from the Local Electoral Amendment Bill 2011 which never received its first reading. That Bill is described in Bills Digest No 1936.

The following description of the Bill does not traverse the provisions already described in Bills Digest No 1936 and transferred into this Bill, except where substantive changes or additions are made to those provisions.

The Local Electoral Act 2001 provides the framework for the conduct of triennial local authority elections and by-elections. Local authority elections comprise the election of members to regional councils, territorial authorities, local and community boards, district health boards, and licensing trusts.


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1 Local Electoral Amendment Bill (No 2), 2012 No 76-1, Explanatory note, General policy statement, p. 1.
Main provisions and recommended changes

Electoral donations

The Bill provides for a detailed regime relating to electoral donations (Part 1, Clause 26, inserting new Part 5 ("Electoral donations and expenses" – in New Sections 103A-103J) into the Act).

Terms

The bar-2 Bill provides important definitions including:

- **“anonymous”** “in relation to an electoral donation, means a donation that is made in such a way that the candidate who receives the donation …
  - does not know the identity of the donor … and …
  - could not, in the circumstances, reasonably be expected to know the identity of the donor”.

- **“electoral donation”** or **“donation”** “means a donation (whether of money or the equivalent of money or of goods or services or of a combination of those things) that is made to a candidate, or to any person on the candidate’s behalf, for use in the candidate’s campaign for election and
  - includes
    - where goods or services are provided to a candidate, or to any person on the candidate’s behalf, under a contract or an arrangement at a value that is less than their reasonable market value, the latter being a value that exceeds $300, the amount of the difference between the former value and the reasonable market value of those goods or services and
    - where goods are provided by a candidate under a contract or an arrangement at a value that is more than their reasonable market value, the amount of the difference between that value and the reasonable market value of those goods or services and
  - excludes
    - the labour of any person that is provided to a candidate free of charge by that person and
    - goods or services provided free of charge to a candidate, or to any person on the candidate’s behalf, that have a reasonable market value of $300 or less (New Section 103A).

**Comment**

The definition of “anonymous” is in the Bill as introduced. The definition of “electoral donation” or “donation” is as redrafted by the select Committee which has stated as follows:

“We recommend amending the definition of donation … exclude goods and services worth less than $300 from the definition of “electoral donation or donation”, to align it with the Electoral Act. … We also recommend including the difference between the market value (being a value over $300) and the discounted price of any goods or services provided to a candidate. However, this amendment would not address concerns raised by submitters about discounted advertising rates being afforded to candidates regularly below the reasonable market value threshold [such as when] a business provided a commercial discount to one candidate and charged other candidates standard rates. We believe the current wording in the bill should stop this from happening, but we encourage the Government to consider whether this can be addressed by further amendment to the definition of electoral donation in the committee of the whole House. The Select Committee has dealt with “the difference between the market value and the over-valued price of goods or services that a candidate has provided. For example, if a candidate sells tickets to a fundraising dinner for $200 per guest and the cost of the actual meal is $50, $150 is considered a donation”2.

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2 Local Electoral Amendment Bill (No 2), 2013 No 76-2, As reported from the Justice and Electoral Committee, Commentary, p. pp. 3 and 4.
Other matters relating to donations

The Bill provides that all its references to an amount or value of a donation are inclusive of goods and services tax. All electoral donations given or sent to any person must, within 10 working days of receipt, be transmitted to the candidate. A person who, on behalf of a donor, transmits a donation to a candidate must disclose that fact and the name and address of the donor. If that person does not, or is unable to, disclose this information, the donation must be treated as an anonymous donation. Failure to treat such a donation as an anonymous donation exposes a transmitter (i.e. “a person to whom a donor gives or sends a donation for transmittal to a candidate” - New Section 103A), on conviction, to a maximum fine of $5,000. Where a person who is involved in the administration of the affairs of a candidate knows the identity of the donor of an anonymous donation exceeding $1,500, that person must disclose the donor’s identity to the candidate. Failure to do so also carries a maximum penalty on conviction of $5,000. An obligation is imposed on candidates to keep proper records of donations (failure to do so also carries the same maximum penalty on conviction) (New Sections 103B-103G and 103J).

Anonymous donations

The Bill requires a candidate who receives an anonymous donation exceeding $1,500 for use in his or her campaign for election to pay the excess, within 20 working days, to the electoral officer responsible for the conduct of the election. In any case where a candidate receives an anonymous donation exceeding $1,500 for use in any of his or her campaigns for 2 or more elections, the candidate must designate which 1 campaign for election the donation will be used for and pay the excess to the electoral officer responsible for the conduct of that election. On receiving a payment from a candidate, the electoral officer must issue a receipt to the candidate and forward that payment to the local authority. Breach of this obligation is also an offence which carries, on conviction, a maximum penalty of a fine of $5,000 (New Sections 103H and 103I).

Electoral expenses

The Bill imposes an obligation on a candidate to file a return of electoral donations and expenses requiring greater disclosure of donations with the existing disclosure threshold of $1,000 being increased to $1,500. Existing offence provisions of failing to file a return of electoral donations and expenses are carried over. The Bill makes a new requirement on candidates to retain proper records to enable verification of the details disclosed in returns about donations. It is an offence to contravene this requirement without reasonable excuse) (Part 1, Subpart 2, Clauses 28-31, relating to Sections 104, 105, 109 and 110 of the Act and inserting New Sections 112AA-112F into the Act).