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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**ELECTORAL AND REFERENDUM AMENDMENT (ELECTORAL
INTEGRITY AND OTHER MEASURES) BILL 2005**

EXPLANATORY MEMORANDUM

**(Circulated with the authority of the Special Minister of State,
Senator the Honourable Eric Abetz)**

ELECTORAL AND REFERENDUM AMENDMENT (ELECTORAL INTEGRITY AND OTHER MEASURES) BILL 2005

OUTLINE

The Bill contains reform measures, amending the *Commonwealth Electoral Act 1918* (the Electoral Act), the *Referendum (Machinery Provisions) Act 1984* (RMPA) and the *Income Tax Assessment Act 1997* (ITAA) arising from some of the government-supported recommendations of the Joint Standing Committee on Electoral Matters' (JSCEM) report on the 2004 Federal Election, which was tabled in the Parliament on 10 October 2005, and additional reform measures considered a priority by the government.

SUMMARY OF AMENDMENTS

The bill contains provisions that will:

- increase a number of the disclosure thresholds to above \$10,000 (with legislated Consumer Price Index increases) with effect from date of introduction of this bill;
- reduce the close of rolls period to provide that, in general, the roll will close at 8.00pm on the third working day after the issue of the writ. However, persons who are not on the roll (with two exceptions, set out below) will not be added to the roll in the period between 8.00pm on the day of the issue of the writ and polling day. The exceptions are for persons who are not on the roll who are either: 17 year olds who will turn 18 between the day the writ is issued and polling day; or who will be granted citizenship between the issue of the writ and polling day. Persons in these categories can apply for enrolment up until the close of rolls at 8.00pm three working days after the day on which the writ is issued;
- introduce a proof of identity requirement for people enrolling or updating their enrolment by requiring that they provide their driver's licence number on their enrolment application. If they do not have a driver's licence, the elector can show a prescribed identity document to a person who is in a prescribed class of electors and who can attest to the identity of the applicant. If an elector does not have a driver's licence or a prescribed identity document, then they must have their enrolment application signed by two referees who are not related to the applicant, who have known the applicant for at least one month and who must provide their driver's licence number;
- establish a proof of identity requirement for provisional voting. An elector (other than a silent elector) who wants to cast a provisional vote on polling day will need to show either their driver's licence or a prescribed identity document (of the same type required for enrolment proof of identity) to an officer either at the time of casting the provisional vote or by close of business on the Friday following polling day. If the elector cannot show the document in person, they may post, fax or email an attested copy to the AEC. Ballot

papers will only be admitted to the count if the provisional voter has provided suitable identification and, if they were not enrolled, if their omission from the roll was the result of an AEC error;

- abolish the requirement for broadcasters and publishers returns;
- require that paid electoral advertising on the internet be authorised in the same manner as printed electoral advertisements;
- require that third parties (people other than registered political parties, candidates and associated entities) must complete annual disclosure returns if they incurred expenditure for a political purpose or received gifts over the disclosure threshold which enabled them to incur expenditure for a political purpose during a financial year;
- increase nomination deposits for election candidates to \$500 for candidates for the House of Representatives and \$1,000 for Senate candidates with the threshold for returning the nomination deposit remaining at four percent;
- provide for access to the roll by persons and organisations that verify, or contribute to the verification of the identity of persons for the purposes the *Financial Transaction Reports Act 1988* (the FTR Act) and provide that such use is not subject to the commercial use prohibition;
- require that, in the future, Divisional Offices must be located within divisional boundaries unless otherwise authorised by the Minister;
- provide for the automatic de-registration of all currently registered political parties six months after Royal Assent, with exceptions for parliamentary parties and parties with past representation in the Federal Parliament. Any political party that is de-registered will be required to re-apply for registration, and must comply with the current requirements in the Electoral Act, including the existing naming provisions. Political parties that re-apply for registration within 12 months of de-registration under this scheme will not be required to pay the \$500 application fee;
- extend the definition of “associated entity” to include entities with financial membership of a registered political party and entities on whose behalf a person exercises voting rights in a registered political party;
- amend the voting entitlement provisions so that all prisoners serving a sentence of full-time detention will not be entitled to vote, but may remain on the roll, or if not enrolled, apply for enrolment. Those serving alternative sentences such as periodic or home detention, as well as those serving a non-custodial sentence or released on parole, will still be eligible to enrol and vote;
- expand the AEC’s demand power in section 92(1) of the Electoral Act to enable access to information held by State and Territory Government agencies for the purpose of preparing, maintaining and revising the rolls; and

- amend the *Income Tax Assessment Act 1997* to increase the level of tax-deductible contributions, whether from an individual or corporation, to political parties and independent candidates from \$100 to \$1,500 in any income year.

FINANCIAL IMPACT STATEMENT

The Government will provide additional funding for the AEC with a fiscal balance impact of \$9.5 million in 2006-07 (including \$1.6 million in capital) and \$8.2 million in 2007-08 together with on-going funding with an estimated fiscal balance impact of \$2.9 million in 2008-09 and \$5.5 million in 2009-10. The level of funding beyond 2007-08 will be subject to review.

The purposes of this funding include advertising and public awareness activities and systems development.

The revenue cost of the proposed amendments in Schedule 4 is estimated to be \$4.9 million in 2007-08, \$6.5 million in 2008-09, \$5.4 million in 2009-10 and \$5.7 million per annum in 2010-11.

ELECTORAL AND REFERENDUM AMENDMENT BILL 2005**NOTES ON CLAUSES****Clause 1 – Short title**

1. This clause provides for the short title of the Act.

Clause 2 – Commencement

2. This clause provides that, except for the items listed below, all items commence on Royal Assent.
 - Schedule 1, items 17-19, 21–23, 25–27 and 29-35 commence on a single day to be fixed by Proclamation or, if not proclaimed earlier, 8 months following the date of Royal Assent;
 - Schedule 1 items 37 and 38 commence on the later of
 - (a) immediately after the commencement of item 36 of Schedule 1 (which commences on Royal Assent); and
 - (b) the commencement of section 3 of the *Australian Citizenship Act 2005* (however the provisions do not commence if section 3 of the *Australian Citizenship Act 2005* does not commence);
 - Schedule 1 item 92 commences on the later of
 - (a) immediately after the commencement of item 91 of Schedule 1 (which commences on Royal Assent); and
 - (b) the commencement of section 3 of the *Australian Citizenship Act 2005* (however the provision does not commence if section 3 of the *Australian Citizenship Act 2005* does not commence);
 - Schedule 1 items 115 and 116 commence on the later of
 - (a) immediately after the commencement of item 114 of Schedule 1 (which commences on Royal Assent); and
 - (b) the commencement of section 3 of the *Australian Citizenship Act 2005* (however the provisions do not commence if section 3 of the *Australian Citizenship Act 2005* does not commence);
 - Schedule 1 item 133 commences on the later of
 - (a) immediately after the commencement of item 132 of Schedule 1 (which commences on Royal Assent); and
 - (b) the commencement of section 3 of the *Australian Citizenship Act 2005* (however the provision does not commence if section 3 of the *Australian Citizenship Act 2005* does not commence); and
 - Schedule 2, items 1-27 and 29 commence on the day on which the Bill for this Act is introduced into the Parliament.

Clause 3 – Schedule(s)

3. This clause provides that each Act specified in the Schedule is amended or repealed as set out in the Schedule, and any other item in a Schedule has effect according to its terms.

Schedule 1 – General Amendments

Schedule 1 items 1, 2, 36 to 38, 55 to 60, 63 to 65, 67 to 71, 73, 92, 102, 103, 109-112, 114 to 127, 132 and 133 – Provision for a scheme for provisional (new citizen) enrolment during the three-day close of rolls period

4. These items establish a scheme of provisional enrolment for persons who will become Australian citizens between the issue of the writ and polling day for an election or referendum. These amendments are distinct from the current provisions for prospective citizenship enrolment in section 99A of the Electoral Act.

5. Item 1 inserts a definition of Immigration Department into section 4(1) of the Electoral Act as the Department administered by the Minister that administers the *Migration Act 1958*.

6. Item 36 inserts a new section 99B in the Electoral Act which provides that if a person has been notified by the Immigration Department that they are eligible for Australian citizenship, and will become Australian citizens between the issue of the writ and polling day, they are entitled to apply to the AEC for provisional enrolment before 8.00 pm on the day of the close of the Rolls (that is, the third working day after the issue of writ).

7. Item 114 is the corresponding amendment to the Referendum Act.

8. A provisional new citizen's name will not appear on the certified list so the person will not be able to cast an ordinary vote, however they may cast any type of declaration vote. A declaration vote cast by a provisional new citizen, regardless of the type of declaration vote, is to be treated as a provisional vote due to the requirement to provide proof of citizenship as well as proof of identity (note that the proof of citizenship will suffice as proof of identity). The person will be required to provide proof of citizenship either at the time of voting or no later than close of business on the Friday after polling day for their provisional vote to be admitted to the scrutiny. This documentation may be provided in person or by fax or mail. If the information is not provided in person, it must be attested to by an elector in a prescribed class (the prescribed class will be the same as the prescribed class that applies for electoral enrolment purposes).

9. If a provisional new citizen either fails to vote, or, if they do vote, fails to provide proof of citizenship by close of business on the Friday after polling day, their provisional enrolment will lapse and the AEC must notify them accordingly. Such persons, if they have become citizens, will then need to apply for enrolment in the normal way.

10. Items 37 and 38 are consequential amendments that will not take effect until the commencement of section 3 of the *Australian Citizenship Act 2005* (the Citizenship Act). These items amend the type of evidence an elector must provide in providing evidence of becoming an Australian citizen to allow for the changes in the Citizenship Act. Item 133 is the corresponding amendment to the Referendum Act.

11. Items 56, 60, 63 and 71 amend sections 182, 200A, 222(1) and 235(1) to provide conditions under which a provisional new citizen may cast a postal, pre-poll, absent or provisional vote, respectively.

12. These amendments commence on Royal Assent and give effect to recommendation 6 of the JSCEM's inquiry into the 2004 federal election.

Schedule 1 items 3, 4, 13 to 16, 50, 61 and 66 – Removal of the right to vote by prisoners serving a sentence of full-time detention

13. Currently prisoners serving a sentence of three years or longer are not entitled to enrol and vote. These persons are removed from the roll by objection following receipt of information from the prison authorities. Prisoners serving a sentence of less than three years are entitled to remain enrolled or if unenrolled, apply for enrolment.

14. The proposed amendments will apply such that all prisoners serving a sentence of full-time detention will not be entitled to vote, but may remain on the roll, or if unenrolled apply for enrolment. However, they will not appear on a certified list or be identifiable as prisoners on the public roll. Those serving alternative sentences such as periodic or home detention, as well as those serving a non-custodial sentence or released on parole, will still be eligible to enrol and vote.

15. Item 4 inserts a new subsection 4 (1A) and (1B) of the Electoral Act to provide that "sentence of imprisonment" means serving a sentence of full-time detention. Items 13 to 15 repeal paragraph 93(8)(b) and existing subsection 93(8AA) and substitute a new subsection 93(8AA) which provides that prisoners serving a sentence of full-time detention are not entitled to vote. Item 16 is an application provision which provides that the amendment made by item 15 apply to all prisoners serving a sentence of full-time detention on or after the commencement of the item.

16. Item 50 repeals and replaces section 109 of the Electoral Act to require the Controller-General of Prisons to forward to the AEC, at the beginning of each month, a list of:

- a. persons who were convicted and began serving a sentence of full time imprisonment for any offence; and
- b. persons who were released from full time custody.

4. Item 50 also specifies that within four days of the issue of the writ for an election, the Controller-General of Prisons must forward to the AEC a list of persons in the categories a. and b. above which covers the period from the last supply of such information to the date of the writ.

5. Item 61 amends subsection 208(2) to ensure that enrolled prisoners will be excluded from the certified list.

6. Item 66 is a consequential amendment which adds a reference in a side note to subsection 93(8AA).

7. These items commence on Royal Assent and are Government-initiated amendments.

Schedule 1 items 5, 76, 78, 79, 81, and 83 to 86 - Amend 'third party' disclosure provisions to require 'third parties' to lodge annual returns

8. These items amend the Electoral Act to require 'third parties' (people other than registered political parties, candidates and associated entities) to complete *annual* disclosure returns if they incurred expenditure for a political purpose or received gifts which enabled them to incur expenditure for a political purpose during a financial year. Previously, third parties were only required to lodge disclosure returns for election periods.

9. These amendments commence on Royal Assent and give effect to the Government response to recommendation 53 of the JSCEM's inquiry into the 2004 federal election.

Schedule 1 items 6 and 7 - Establish location of divisional offices within divisional boundaries

10. Item 6 amends section 38 of the Electoral Act to provide that *in the future*, Divisional Offices must be located within the physical boundary of the relevant division unless the Minister gives written authority for the office not to be so located. The Minister may, at the Minister's discretion, give authorisation for a particular divisional office to be located (either as a separate, co-located or amalgamated office) outside the relevant division.

11. Item 7 specifies that this amendment applies to offices established after the commencement of this item.

12. Currently, there are some divisional offices that are co-located with other divisional offices. These co-located divisional offices can only be physically located in one of the divisions and, consequently, there are divisions for which the divisional office is located outside of the divisional boundaries. The intention is to maintain divisional offices that are currently located outside of the relevant division, however any divisional offices being established or re-located after the commencement of the new scheme must be located within the divisional boundaries unless otherwise authorised by the Minister.

13. These items commence on Royal Assent and are Government-initiated amendments.

Schedule 1 items 8 to 11 - Access to the roll for the purpose of providing an identity verification service for the purpose of the *Financial Transactions Reports Act 1988* (the FTR Act)

14. Items 8 to 11 amend the Electoral Act to allow for provision of electoral roll information (name and address details only) to persons or organisations (which have been prescribed by regulation) who are verifying the identity of persons as required by the *Financial Transaction Reports Act 1988* (FRT Act) by providing that such use is a permitted purpose for use of electoral roll information.

15. The FTR Act requires cash dealers, including financial institutions, to verify the identity of signatories to accounts and thereby minimise the risk of accounts being used for criminal purposes. The standard verification procedure, known as the '100 point test', provides that signatories to accounts may have their identity verified using a range of identifying documentation such as an Australian passport or a driver's licence, each of which is assigned a value. One of the sources for identity verification is the electoral roll (worth 25 points). Recent amendments to the Electoral Act, which removed the electoral roll from sale, have created difficulties for financial institutions attempting to satisfy their obligations under the FTR Act.

16. Use of electoral roll information by prescribed persons or organisations for the purpose of verifying the identity of persons as required by the FTR Act will be exempted from the prohibition on commercial use of electoral roll information, but existing end-use restrictions and penalties will still apply.

17. These items commence on Royal Assent and are Government-initiated amendments.

Schedule 1 item 12 – Expansion of AEC demand power in section 92(1)

18. Subsection 92(1) of the Electoral Act currently contains a demand power which enables the AEC to obtain information from all Australian Government and limited State and Territory Government agencies for the purpose of preparing, maintaining or revising the rolls.

19. Item 12 amends subsection 92(1) to include officers of State and Territory Governments among those who must provide information to the AEC for the purpose of preparing, maintaining or revising the rolls. The amendment is linked to the proposed amendments that establish a proof of identity requirement for electoral enrolment and will enable the AEC to verify driver's licence numbers provided on enrolment applications. It will also allow the AEC direct access to a range of relevant data to assist with roll maintenance activities.

20. These amendments commence on Royal Assent and give effect to the Government response to recommendation 6 of the JSCEM's inquiry into the 2004 federal election.

Schedule 1 items 17 to 19, 21 to 23, 25 to 27, 29 to 35, 100 and 101 - Establishment of a proof of identity scheme for enrolment

21. These amendments introduce a requirement for electors to provide proof of identity at enrolment.

22. Currently, a claim for enrolment on the electoral roll or transfer of enrolment or for 17 year old enrolment must fulfil the following requirements:

The claim shall:

- a. be in the approved form;
- b. be signed by the claimant (with one exception in subsection 98(3)); and
- c. be attested by an elector or a person entitled to enrolment, who shall sign the claim as a witness in his or her own handwriting. Under section 342, the attester is attesting that he/she has satisfied himself or herself, by inquiry from the claimant or otherwise, that the statements contained in the claim are true.

4. The proposed new scheme will provide a proof of identification requirement for electoral enrolment. The identification requirement will be such that persons enrolling to vote or updating their enrolment must provide:

- i. their driver's licence number (in which case the application does not need to be attested in any way, but the AEC must verify driver's licence information); or
- ii. if they do not have a driver's licence, show a prescribed identification document (such as birth certificate or passport) which must be sighted by an attester who is an enrolled elector in a prescribed class; or
- iii. if they do not have a driver's licence or prescribed identification document, have their enrolment claim countersigned by two electors who have known the elector for more than one month and who must provide their own driver's licence numbers.

4. Item 29 provides that regulations in section 98AA will set out prescribed identification documents and the class of prescribed electors.

5. Persons who attest or provide references on enrolment forms cannot be related to the applicant by birth or marriage, be in a de facto (including same sex) relationship with the claimant or live at the same address.

6. Items 19, 23, 27, 32, and 35 insert new subsections in sections 94A(2), 95(2), 96(2), 98(2), and 99A(4) to provide that the current witnessing requirement for the variety of enrolment applications will not apply once the new proof of identity provisions commence, and that the requirement to provide proof of identity that is required by the regulations cannot apply unless the necessary regulations are in operation. Items 17, 18, 21, 22, 25, 26, 30, 31, 33 and 34 are consequential amendments inserting references to the new subsections as appropriate.

7. Items 100 and 101 make consequential amendments to the *Electoral and Referendum (Enrolment Integrity and Other Measures) Act 2004* (Enrolment Integrity Act). The Enrolment Integrity Act also contained provisions to establish a proof of identity requirement for electoral enrolment which were to come into effect from

Proclamation. The relevant provisions of the Enrolment Integrity Act will be superseded by the provisions establishing a proof of identity requirement proposed in this bill and will thus be repealed.

8. The amendments commence on Proclamation or at the end of 8 months if not proclaimed earlier. This will ensure that the AEC has sufficient time to develop the necessary Information Technology systems and capacity to implement the new scheme.

9. These amendments give effect to the Government response to recommendation 3 of the JSCEM's inquiry into the 2004 federal election.

Schedule 1 items 20, 24, 28, 39 to 45, 51, 52, 104 to 108, – Provide for a three-day close of rolls period

10. These items reduce the existing close of roll period. Currently section 155 of the Electoral Act provides for the rolls to close seven days after the writs for an election have been issued.

11. The proposed amendments provide that the date for the close of rolls shall be 8.00 pm three working days after the issue of the writ. However, for new enrolments and re-enrolments, the roll will close at 8.00 pm on the day on which the writs are issued (note that there are two exceptions to this as outlined in paragraphs 45 (b) and (c) below).

12. The roll will close at 8.00pm on the third working day after the issue of the writ for people:

- a) currently enrolled but who need to update their details;
- b) who are not enrolled but would attain 18 years of age between the day on which the writs are issued and polling day; and
- c) who are not enrolled but may be eligible to be granted a certificate of Australian citizenship between the day on which the writs are issued and the polling day.

4. Note that three working days after the issue of the writ referred to in paragraph 45 above means that, for example, if the writ were issued on a Monday, the rolls would close at 8.00 pm on the Thursday. It should also be noted that the working days do not include weekends or a day on which there is a public holiday in any State or Territory.

5. Items 20, 24 and 28 amend sections 94A, 95 and 96 of the Electoral Act, respectively to provide that, because they fall within the category of new enrolments, the close of rolls for applications for enrolment from:

- a. outside Australia;
- b. as a spouse or a child of an eligible overseas elector; or
- c. as an itinerant elector

is 8.00 pm on day on which the writs are issued.

4. Item 41 repeals and substitutes a new subsection 102(4), and inserts new subsections 102(4AA) and 102(4AB) of the Electoral Act to provide that a claim for

new enrolment received in the period after 8.00 pm on the date of the writ and on or before polling day cannot be considered by a Divisional Returning Officer until after polling day (with the necessary exceptions for claims made by persons who will turn 18, or be granted citizenship, between the issue of the writ and polling day); and that a claim for transfer of enrolment received in the period after 8.00 pm on the date of the close of rolls and on or before polling day cannot be considered by a Divisional Returning Officer until after polling day. Items 39, 40, 42 to 45 are consequential amendments which refer to the new subsections where appropriate.

5. Item 52 repeals and substitutes a new section 155 to fix the date for the close of the rolls on the third working day after the date of the writ.

6. Items 104 to 108 make corresponding amendments to section 4 of the Referendum Act.

7. These amendments commence on Royal Assent and give effect to the Government response to recommendation 4 of the JSCEM's inquiry into the 2004 federal election.

Schedule 1 items 47 to 49, 71, 72, 90, 91, 112, 113, 131 and 132 - Establishment of proof of identity requirements for provisional voting

8. These amendments will require that persons casting a provisional vote must provide documentary proof of identity.

9. Items 71 and 72 amend sections 235 and 235(1) to provide that a provisional vote will not be admitted to the scrutiny unless the elector:

- i. shows proof of identification in the form of a driver's licence or a prescribed identification document, at the time of casting the provisional vote; or
- ii. shows the original or an attested copy of the elector's driver's licence or a prescribed identification document, to an officer before the close of business on the Friday following polling day.

4. If such evidence is not provided by this time, their provisional vote will not be admitted to the scrutiny. Items 90 and 91 are corresponding amendments in Schedule 3 of the Electoral Act.

5. Item 72 relates to proposed Regulations to be made under section 235 that will prescribe the acceptable documentary evidence of proof of name that will need to be shown by provisional voters in order for a provisional vote to be admitted to the scrutiny. Items 112 113 make corresponding amendments to the Referendum Act.

6. These amendments commence on Royal Assent and give effect to the Government response to recommendation 25 of the JSCEM's inquiry into the 2004 federal election.

Schedule 1 items 46, 93 to 99, and 134 to 139 – Amendments to Schedule 3 to the Electoral Act (rules for the conduct of the Preliminary Scrutiny)

7. These items clarify the rules for the preliminary scrutiny of declaration votes under Schedule 3 to the Electoral Act.

8. The amendments ensure that declaration votes cast by electors who have been legitimately removed from the roll by objection (in accordance with Part IX of the Electoral Act) for the address for which they claim a provisional vote will be excluded from the scrutiny. These electors will not be automatically reinstated to the roll for that address.

9. Electors who have cast a provisional vote claiming entitlement for a particular address, and who were removed from the roll from that address by AEC error, will have their ballot papers admitted to the scrutiny and will be reinstated to that address. The requirement that the AEC conduct a review of the person's enrolment prior to reinstatement (inserted into section 105(4) by the *Electoral and Referendum (Enrolment Integrity and Other Measures) Act 2004*) will be repealed as the reinstatement will only take place where the AEC is satisfied that the removal occurred as a result of genuine AEC error.

10. Declaration votes cast by electors who are on the Roll for the Division in which they have declared they are entitled to vote will be admitted to the scrutiny, irrespective of whether the address is different from their enrolled address.

Schedule 1 items 53 and 54: Increase the amount of nomination deposits for election candidates

11. Items 53 and 54 amend paragraphs 170(3)(a) and 170(3)(b) of the Electoral Act to increase the nomination deposit for candidates in the House of Representatives to \$500, and for candidates in the Senate to \$1,000, with the threshold for returning the nomination deposit remaining at four percent (a candidate's nomination deposit is returned if the candidate obtained at least four per cent of the formal first preference votes cast at the election).

12. These amendments commence on Royal Assent and are Government-initiated amendments.

Schedule 1 items 74 and 77 - Amendment of definition of "associated entity"

13. Items 74 and 77 amend section 287(1) of the Electoral Act to:

- a. Extend the definition of "associated entity" to include:
 - i. entities that have financial membership in a registered political party;
 - ii. entities on whose behalf another person has financial membership in a registered political party;
 - iii. entities that have voting rights in a registered political party;
 - or
 - iv. entities on whose behalf another person has voting rights in a registered political party.

4. As an aid to conceptual clarity, the item also inserts a definition of “financial member” to mean an entity or organisation which holds membership of a registered political party in the form of an annual subscription or whose officials hold membership as a consequence.

These amendments commence on Royal Assent and are Government-initiated.

Schedule 1 items 75, 82, 128 and 130 – Removal of requirement for publisher and broadcaster returns

5. Sections 310 and 311 of the Electoral Act require publishers and broadcasters to provide returns to the AEC with details about electoral advertisements broadcast or published during an election period. Item 82 repeals sections 310 and 311 to remove this requirement for broadcasters and publishers and item 75 repeals the definition of *broadcaster* in subsection 287(1) of the Electoral Act.

6. Part IX of the Referendum Act has similar provisions in relation to referendums. For consistency, item 128 repeals Part IX of the Referendum Act. Item 130 repeals the fines associated with Part IX.

7. These amendments commence on Royal Assent and are Government-initiated.

Schedule 1 items 80, 87 to 89 and 129 - Bring Internet sites under the authorisation requirements of the Electoral Act and Referendum Act

8. This amendment ensures that the general authorisation requirements applying to electoral advertising also apply to electoral advertisements placed on the Internet.

9. The amendments in items 87 and 129 insert new provisions into the Electoral and Referendum Acts (sections 328A and 121A respectively).

10. The provisions distinguish between promotional electoral material on the Internet, and general political commentary, in line with recommendation 44 of the JSCEM’s Report into the 2004 federal election. This is achieved by:

- a. removing the term ‘electoral matter’ as defined in sections 4(1) and 4(9) of the Electoral Act from section 328A;
- b. requiring an *intent* (on the part of the person causing an advertisement to be published or the publisher of the advertisement) to affect voting in an election. This prevents Internet Service Providers unaware of the content of web pages hosted on their mainframes from being captured by this provision;
- c. requiring the advertisement to have been paid for as an additional element of the offence; and
- d. specifying that general commentary on a website is a defence to a breach of the provision.

4. The defence to the new provisions places the evidential burden of establishing that the material published was ‘general commentary’ on the defendant. Despite the fact that the defendant bears the evidential burden, the prosecution would have had to

have established that the material published was an electoral advertisement, pursuant to section 328A(1)(a) (and 121A9a)(a) of the Referendum Act). Moreover, the offence carries a relatively low penalty (10 penalty units).

5. The new provisions in the Electoral and Referendum Acts have extra-territorial operation pursuant to Division 15.2 of the Commonwealth Criminal Code. The extra-territorial operation of this provision is important to counter the ease with which electoral advertising can be 'hosted' on overseas websites.

6. Despite the extra-territorial operation of the provision, only persons situated in Australia will be eligible to authorise an electoral advertisement placed on the Internet.

7. These amendments commence on Royal Assent and give effect to the Government response to recommendation 44 of the JSCEM's Report into the 2004 federal election.

Schedule 2 items 1 to 29 - Increase the declarable limit for disclosure of political donations from \$1,500 to amounts above \$10,000 (with legislated Consumer Price Index (CPI) increases)

8. These amendments increase all disclosure thresholds to amounts above \$10,000, indexed to the CPI.

9. The indexation amendment provides that the threshold will not be reduced in years where the indexation figure is negative.

10. Where the threshold amount is amended due to CPI increases, the threshold amount will be rounded to the nearest \$100, where amounts below \$50 will be rounded down to the nearest \$100 (eg \$11,048 will be rounded to \$11,000), and amounts of \$50 and above will be rounded up (eg \$11,667 will be rounded to \$11,700).

11. These amendments commence from the date of introduction with the effect that two thresholds will apply for different parts of the year. These amendments give effect to the Government response to recommendation 49 of the JSCEM's inquiry into the 2004 federal election.

Schedule 3 items 1 to 5 - Requirement for all currently registered political parties to re-register within 12 months

12. Item 5 freezes the register of political parties from the date of Royal Assent of this Bill for a period of six months. No changes may be made to the register (with the exception of changes with respect to registered officers and secretaries) in that six-month period. Consequently, all political parties on the register at the commencement of this item remain registered for six months from the date of commencement.

13. At the end of the six-month period, any party which, according to its circumstances (as set out below):

- a. does not satisfy the Electoral Commission of their status following a section 138A review; or

- b. fails to claim an exemption within 3 months; or
 - c. has not had a member elected to the Federal Parliament
- will be de-registered under item 2.

4. Item 3 provides that registered political parties with current parliamentary representation are exempt from de-registration if, at the time of the commencement of this item, they have satisfied the Electoral Commission of their party status in accordance with a section 138A review during the 41st Parliament.

5. Section 1 of item 3 provides that parties with current parliamentary representation, which have **not** satisfied the Electoral Commission of their status in accordance with a section 138A review prior to the commencement of this item, will be subjected to a section 138A review. The Electoral Commission will, within 6 months from the commencement of this item, complete a section 138A review of all current parliamentary parties not reviewed prior to the commencement of this item and advise them of the result of that review.

Claiming an exemption from de-registration on the basis of previous parliamentary representation

6. Section 3 of item 3 provides that registered political parties which have previously had a member elected to the Federal Parliament have 3 months to claim an exemption from de-registration. Parties with previous parliamentary representation claiming the exemption must specify the name of the member of the party (or related party) for which they are claiming the exemption and state the period for which the member was a Member of Parliament. The Electoral Commission must determine an application for exemption under this section within 6 months of commencement of the item.

7. Section 4 of item 3 provides that a political party claiming an exemption from de-registration under section 3 must provide sufficient evidence necessary for the Electoral Commission to determine the application. The types of information that may be provided include (but are not limited to): party membership records, Hansard records, official information held in the Parliamentary Library, any publication of either House of Parliament, and correspondence between the Member and the political party.

8. Sections 5 and 6 in item 3 provide that a Member or Senator can provide an exemption for only one party (or related party) unless a Member or Senator was **elected** to Parliament as a member and candidate for different parties at different elections. Therefore, a Member or Senator who was a member and candidate for two different political parties may provide the exemption for those parties. Each of the parties will need to specify the election at which the Member or Senator stood as a candidate and provide evidence sufficient to satisfy the Electoral Commission of that person's membership in the party and candidature at the time the person was elected.

9. If two related parties claim the same Member or Senator, who has only been elected once to the Parliament, the party that lodged the first valid claim (for an exemption from de-registration) with the Electoral Commission will be exempt. The other party will be de-registered.

10. Section 7 in item 3 provides the Electoral Commission with the authority to seek any additional information it considers necessary to make the decisions required by the item.

11. All registered political parties de-registered under this scheme will be able to apply for re-registration. All applications for re-registration made within 12 months of the commencement of this item will be required to comply with the provisions of party registration in Part XI of the Electoral Act in force at the commencement of this item, but will not be required to lodge the \$500 application fee.

12. In the case where a by-election is held during the 12-month re-registration process, the party register will be based on the register that existed at the start of the 12-month period.

13. These amendments commence on Royal Assent and give effect to the Government response to recommendation 20 of the JSCEM's inquiry into the 2004 federal election.

Schedule 4 Items 1 to 12 - extend and expand threshold for tax deductibility of contributions made to independents and political parties at a State or Federal level from \$100 to \$1,500 in any income year

14. These amendments expand and extend the existing arrangements for tax deductibility of political contributions by:

- a) raising the tax deductible threshold from \$100 to \$1500 for an income year;
- b) allowing deductibility for contributions made to political parties registered under State and Territory electoral legislation;
- c) allowing deductibility for gifts to independent candidates and members; and
- d) extending deductibility for donations from companies.

4. Currently, the tax law allows a non-corporate taxpayer to deduct a contribution (which includes a membership subscription as well as a gift) of \$2 or more to political parties registered under Part XI of the *Commonwealth Electoral Act 1918*, with the total deductions allowable to the taxpayer subject to a maximum level of \$100 in an income year.

5. The proposed amendments will enable corporate and non-corporate taxpayers to receive deductions for contributions made to independent candidates and members and political parties registered under State and Territory electoral legislation in the same way that they can currently receive a deduction for contributions to political parties at a Federal level.

Extension of existing arrangements to Political Parties registered under State and Territory electoral legislation

6. Under the existing arrangements for tax deductibility of contributions to political parties, a deduction is allowed only for contributions to political parties registered under the *Commonwealth Electoral Act 1918*. However, not all parties whose members contest elections in the States, and Territories are registered under that Act. Unlike other States and Territories, Western Australia and the Northern Territory do not require political parties to be registered.

7. The new provisions will allow a tax deduction for contributions made to political parties only if they are registered under the relevant State or Territory electoral legislation. This is because the registration requirements enable some scrutiny of the commitment of political parties to the electoral process. As a result, a tax deduction will not be available for a contribution made to a political party in Western Australia or the Northern Territory if that party is not registered under the *Commonwealth Electoral Act 1918* or under the electoral legislation of a State or Territory.

8. However, for the purposes of the tax deductibility rules, a person who contests an election for members of the Western Australian Parliament or the Legislative Assembly of the Northern Territory, as an endorsed candidate of an unregistered party will be regarded as an independent candidate.

9. A member of such a party who is elected to the Western Australian Parliament or the Legislative Assembly of the Northern Territory will be regarded as an independent member of that Parliament or Legislative Assembly for the purposes of the tax deductibility rules.

10. The conditions that currently apply to the existing arrangements for tax deductibility of contributions to political parties contributions and gifts are that the contribution or gift must either be money or property purchased during the 12 months before the contribution or gift was made; must be \$2 or more in value; and must not be a testamentary gift. These conditions are replicated in the amendments in item 1, section 30-242(2)-(5).

11. The new conditions apply to gifts to an independent member of a Commonwealth or State Parliament or the Legislative Assemblies of the Northern Territory or the Australian Capital Territory. They provide that a contribution or gift is only deductible if it is made when the person is an independent member; that is, until the person ceases to be a member of the relevant Parliament or Legislative Assembly. However, where a member ceases to be an independent member because:

- a) a Parliament, a House of Parliament or a Legislative Assembly is dissolved or has reached its maximum duration; or
- b) the member comes up for election

gifts to that member will continue to be tax deductible if made before the candidates for the resulting election are declared or otherwise publicly announced by a person authorised under the relevant electoral legislation (See item 1, section 30-242(5)(b)(ii)).

12. Under the Commonwealth Constitution and the *Australian Capital Territory (Self-Government) Act 1988*, the Commonwealth Parliament (or a House of that Parliament) and the Legislative Assembly for the Australian Capital Territory can be dissolved by the Governor-General. Similar powers may be found in some of the State Constitutions, although in these circumstances the powers are exercised by the relevant Governor. Further, the terms of the members of some Houses of Parliament and Territory Legislative Assemblies are determined by the maximum duration of that House or Legislative Assembly, subject to earlier dissolution where applicable.

13. However, some Houses of Parliament are continuing institutions (subject to earlier dissolution where applicable) with members of those Houses retiring at fixed or identifiable intervals. The amendments cover the situation where such a member's term has ended because the period for which they were elected has expired or because of a requirement in the relevant State or Commonwealth Constitution that a member's seat be contested periodically. See item 1, subparagraph 30-242(5)(b)(ii).

14. The period of grace gives the 'former' member the opportunity to consider whether to stand for re-election as well as providing a publicly known end point for tax deductibility in relation to gifts to that particular person. See paragraph item 1, section 30-242(5)(b).

How much is deductible?

15. The tax law currently provides the tax deductibility of political contributions of money and purchased property. Where the contribution or gift is property, then the amount of the deduction is the lesser of the market value of the property on the day that the contribution or gift was made and the amount that was paid by the taxpayer for the property. These conditions are replicated in the amendments in item 1, subsection 30-243(1)-(2).

16. The new conditions set the dollar limit for tax deductibility in respect of contributions or gifts. The criteria are:

- a) a taxpayer (whether an individual or corporation) cannot deduct a total of more than \$1,500 in contributions to political parties for an income year; and
- b) a taxpayer (whether an individual or corporation) cannot deduct a total of more than \$1500 in gifts to independent candidates or members for an income year (See item 1, subsections 30-243(3) and (4)).

Example:

A taxpayer (corporate or non-corporate) contributes \$500 and \$1500 respectively to two separate political parties during an income year. In the same income year the taxpayer gifts \$200, \$600 and \$1100 respectively to two independent candidates and one independent member. Under item 1, subsection 30-243(3), the taxpayer would be able to claim a tax deduction of \$1500 in respect of the \$2000 contributed to political parties. In addition, item 1, subsection 30-243(4) will enable the taxpayer to claim a deduction of \$1500 in respect of the \$1900 gifted to the independent candidates and the independent member.

Meaning of independent candidates

17. An individual is an **independent candidate** for deductions under the tax law for political contributions and gifts if the individual is a candidate in an election for members of the Commonwealth Parliament, a State Parliament, or a Territory Legislative Assembly, but not an endorsed candidate of a registered political party. The political party must be registered either under the *Commonwealth Electoral Act 1918* or under corresponding State or Territory electoral legislation. See item 1, subsection 30-244(1).

18. Item 1, subsections 30-44(2) and (3), provides that an individual is considered to be an independent candidate:

- a) *from* the time that the candidates for an election have been declared or otherwise publicly announced by a person authorised under the relevant Commonwealth, State or Territory electoral legislation;
- b) *until* the result of the election is declared or otherwise publicly announced by such an individual

See item 1, subsections 30-244(2) and (3).

What if an election found to be void or to have wholly failed?

19. The amendments also ensure that a gift made to an independent candidate remains tax deductible even if the election is subsequently found to be void. An election is void where, due to some defect, the election is found to be of no effect, for example, where a successful candidate was later found to have been disqualified pursuant to section 44 of the Constitution. Tax deductibility for gifts made to independent candidates for the replacement election will be covered under the general rules described above.

20. The amendment also covers the situation where an election is found to have wholly failed before the result of the election has been announced. For example, in the Commonwealth, if a candidate who has been declared as such for an election to the House of Representatives dies before polling day, then the election is deemed to have wholly failed and a new election must be held immediately. There are similar provisions in the electoral legislation of most of the other States and Territories. As there is no election result, no end point for the tax deductibility of gifts to an independent candidate at that election can be ascertained.

21. The amendments in item 1, subsection 30-244(4) will extend the period for tax deductibility in relation to gifts to independent candidates affected by a wholly failed election to the time that the candidates for the new election are publicly announced by a person authorised under the relevant electoral legislation. If these affected candidates are also announced as candidates for the replacement election then tax deductibility for gifts made to them will continue under the general rules for tax deductibility described above.

When is an individual an “independent member”?

22. An individual is an independent member of the Commonwealth Parliament, a State Parliament or the Legislative Assemblies of the Northern Territory or Australian Capital Territory, if the individual is a member of that Parliament or Assembly and not a member of a political party registered under Part XI of the *Commonwealth Electoral Act 1918* or under corresponding State or Territory electoral legislation. See item 1, subsection 30-245(1).

23. An individual starts being an independent member when the result of the relevant election is declared or otherwise publicly announced by a person authorised under the relevant Commonwealth, State or Territory electoral legislation (See item 1, subsection 30-245(2)). If a person becomes a member of Parliament or Legislative Assembly other than as a result of an election (eg. if they are chosen to fill a casual vacancy in the Senate), they must actually become a member of the Parliament or Legislative Assembly, before they start being an independent member.

24. The amendments in item 1 subsection 30-242(5) allow a taxpayer to make a tax-deductible gift to an independent member until that individual ceases to be a member (subject to the special rule applying to gifts made to an independent member after dissolution/expiration of the relevant Parliament or Legislative Assembly or after the expiry of the person's term as a member). Some of the circumstances where a person may cease to be an independent member are when that person retires, resigns, dies or is disqualified by a Court of Disputed Returns from sitting in the Parliament or Legislative Assembly. Tax deductibility for taxpayers making gifts to such an independent member will cease at the time such circumstances occur.

Consequential amendments

25. Minor consequential amendments are required to the *Income Tax Assessment Act 1936* and the *Income Tax Assessment Act 1997* (ITAA 1997) following the introduction of the amendments.

26. The first group of consequential amendments is necessary to amend the references, notes and index in the ITAA 1997 to reflect the changes made by repealing the existing provisions and replacing them with the provisions inserted by the main amendments. This item is being repealed by Subdivision 30-DA which will cover both contributions to political parties and gifts to independent members and candidates. Signposts to the new definitions of “independent candidate” and “independent member” are inserted into the Dictionary in subsection 995-1(1) to support the new provisions (items 2-10). The second group of amendments is to section 78A of the ITAA 1936.

27. Section 78A was initially inserted into the *Income Tax Assessment Act 1936* to strengthen the conditions under which deductions for gifts are available and to render ineffective schemes developed to exploit the availability of those deductions. Section 78A currently applies to gifts to political parties. The amendments in item 11 made extend its application to cover gifts to independent candidates and members.

28. The proposed amendments are based on recommendations 51 and 52 put forward in the JSCEM inquiry into the 2004 federal election and will apply to gifts or contributions made after Royal Assent (item 12).

