



Queensland

Electoral Legislation (Political Donations) Amendment Bill 2018



Queensland

Electoral Legislation (Political Donations) Amendment Bill 2018

Contents

		Page
Part 1	Preliminary	
1	Short title	4
Part 2	Amendment of Electoral Act 1992	
2	Act amended	4
3	Amendment of s 2 (Definitions)	4
4	Amendment of s 197 (Definitions)	4
5	Insertion of new s 201B	5
	201B Meaning of political donation	5
6	Insertion of new pt 11, div 8, sdiv 5	6
	Subdivision 5 Political donations from particular corporations	
	280 Definition for subdivision	6
	281 Political donations by prohibited corporate donors	7
	281A Recovery of prohibited donations	8
7	Insertion of new ss 307A and 307B	9
	307A Offence about particular prohibited donations	9
	307B Schemes to circumvent prohibition on particular political donations	9
8	Amendment of s 308 (Recovery of payments)	10
9	Amendment of s 385 (Offences under this part are summary)	10
10	Insertion of new s 385A	11
	385A Proceedings for indictable offences	11
Part 3	Amendment of Local Government Electoral Act 2011	
11	Act amended	12
12	Amendment of s 106 (Definitions for part)	12
13	Insertion of new s 113	12
	113 Meaning of political donation	13

Contents

14	Insertion of new pt 6, div 1A	15
	Division 1A Political donations from prohibited corporate donors	
	113A Meaning of prohibited corporate donor	15
	113B Political donations by prohibited corporate donors . .	16
	113C Recovery of prohibited corporate donations	16
15	Insertion of new ss 194D and 194E	18
	194D Offence about prohibited corporate donations	18
	194E Schemes to circumvent prohibition on particular political corporate donations	18
16	Insertion of new s 201A	19
	201A Proceedings for indictable offences	19
17	Amendment of schedule (Dictionary)	20

2018

A Bill

for

An Act to amend the *Electoral Act 1992* and the *Local Government Electoral Act 2011* for particular purposes

[s 1]

The Parliament of Queensland enacts— 1

Part 1 Preliminary 2

Clause 1 Short title 3

This Act may be cited as the *Electoral Legislation (Political Donations) Amendment Act 2018*. 4
5

Part 2 Amendment of Electoral Act 1992 6
7

Clause 2 Act amended 8

This part amends the *Electoral Act 1992*. 9

Clause 3 Amendment of s 2 (Definitions) 10

Section 2— 11

insert— 12

political donation, for part 11, see section 201B. 13

prohibited corporate donor, for part 11, division 8, subdivision 5, see section 280. 14
15

Clause 4 Amendment of s 197 (Definitions) 16

Section 197— 17

insert— 18

political donation see section 201B. 19

prohibited corporate donor, for division 8, subdivision 5, see section 280. 20
21

Clause 5	Insertion of new s 201B	1
	After section 201A—	2
	<i>insert—</i>	3
	201B Meaning of <i>political donation</i>	4
	(1) For this part, each of the following is a <i>political donation</i> —	5
	(a) a gift made to or for the benefit of—	6
	(i) a political party; or	7
	(ii) an elected member; or	8
	(iii) a candidate in an election;	9
	(b) a gift made to or for the benefit of another entity—	10
	(i) to enable the entity (directly or indirectly) to make a gift mentioned in paragraph (a) or to incur electoral expenditure; or	11
	(ii) to reimburse the entity (directly or indirectly) for making a gift mentioned in paragraph (a) or incurring electoral expenditure;	12
	(c) a loan from an entity other than a financial institution that, if the loan were a gift, would be a gift mentioned in paragraph (a) or (b).	13
	(2) If a gift is made by a person in a private capacity to an individual (the <i>recipient</i>) for the recipient's personal use and the recipient does not intend to use the gift for an electoral purpose—	14
	(a) the gift is not a political donation when it is made; but	15
	(b) if any part of the gift is used for an electoral purpose—	16
	(i) that part of the gift is a political donation; and	17
		18
		19
		20
		21
		22
		23
		24
		25
		26
		27
		28
		29
		30
		31
		32
		33

[s 6]

	(ii) the recipient is taken to accept that part of the gift at the time it is used for an electoral purpose.	1 2 3
(3)	A reference in subsection (2) to using a gift for an <i>electoral purpose</i> is a reference to using the gift to incur electoral expenditure or for the recipient's duties as an elected member.	4 5 6 7
(4)	Despite section 201(4)(a) and (b), a reference in this section to a gift includes a fundraising contribution, to the extent the amount of the contribution forms part of the proceeds of the fundraising venture or function to which the contribution relates.	8 9 10 11 12 13
(5)	Despite section 201(4)(d), a reference in this section to a gift includes any of the following amounts paid by a person to a political party, to the extent the total amount of the person's payments in a calendar year exceeds \$1,000—	14 15 16 17 18
	(a) an amount paid as a subscription for a person's membership of the party;	19 20
	(b) an amount paid for a person's affiliation with the party.	21 22
Clause 6	Insertion of new pt 11, div 8, sdiv 5	23
	Part 11, division 8—	24
	<i>insert—</i>	25
	Subdivision 5 Political donations from particular corporations	26 27
	280 Definition for subdivision	28
	For this subdivision—	29
	<i>prohibited corporate donor—</i>	30
	(a) means—	31

-
- (i) a company registered under the Corporations Act; or
- (ii) an industry representative organisation, a majority of whose members are companies registered under the Corporations Act; but
- (b) does not include a company that is—
- (i) recorded in the register kept under the *Collections Act 1966*, part 6; or
- Note—*
- The register of charities kept under the *Collections Act 1966* can be inspected on the website of the Office of Fair Trading.
- (ii) recorded in a register kept under a law of another State substantially corresponding to the register kept under the *Collections Act 1966*, part 6; or
- (iii) a registered entity within the meaning of the *Australian Charities and Not-for-profits Commission Act 2012* (Cwlth); or
- (iv) registered as an organisation under the *Industrial Relations Act 2016*, chapter 12, part 2; or
- (v) registered as an association under the *Fair Work (Registered Organisations) Act 2009* (Cwlth), chapter 2, part 2.

281 Political donations by prohibited corporate donors

- (1) It is unlawful for a prohibited corporate donor to make a political donation.
- (2) It is unlawful for a person to make a political donation on behalf of a prohibited corporate

[s 6]

donor.	1
(3) It is unlawful for a person to accept a political donation that was made (wholly or in part) by or on behalf of a prohibited corporate donor.	2 3 4
(4) It is unlawful for a prohibited corporate donor to solicit a person to make a political donation.	5 6
(5) It is unlawful for a person to solicit, on behalf of a prohibited corporate donor, another person to make a political donation.	7 8 9
281A Recovery of prohibited donations	10
(1) If a person accepts a prohibited donation, the following amount is payable by the person to the State—	11 12 13
(a) if the person knew it was unlawful to accept the prohibited donation—an amount equal to twice the amount or value of the prohibited donation;	14 15 16 17
(b) otherwise—an amount equal to the amount or value of the prohibited donation.	18 19
(2) The amount may be recovered by the State as a debt due to the State from—	20 21
(a) if the recipient is a registered political party that is not a corporation—the party’s agent; or	22 23 24
(b) if the recipient is a group of candidates—the members of the group or the group’s agent; or	25 26 27
(c) if the recipient is a candidate—the candidate or the candidate’s agent; or	28 29
(d) otherwise—the recipient.	30
(3) The imposition of liability to pay an amount to the State under this section—	31 32

(a)	is not a punishment or sentence for an offence against section 307A or any other offence; and	1 2 3
(b)	is not a matter to which a court may have regard in sentencing an offender for an offence against section 307A or any other offence.	4 5 6 7
(4)	In this section—	8
	<i>prohibited donation</i> means a political donation that was unlawfully made or accepted under section 281.	9 10 11
	<i>recipient</i> means the entity to whom, or for the benefit of whom, the prohibited donation was made.	12 13 14
Clause 7	Insertion of new ss 307A and 307B	15
	After section 307—	16
	<i>insert—</i>	17
	307A Offence about particular prohibited donations	18 19
(1)	A person must not do an act or make an omission that is unlawful under section 281 if the person knows or ought reasonably to know of the facts that result in the act or omission being unlawful under that section.	20 21 22 23 24
	Maximum penalty—400 penalty units or 2 years imprisonment.	25 26
(2)	An offence against subsection (1) is a misdemeanour.	27 28
	307B Schemes to circumvent prohibition on particular political donations	29 30
(1)	A person must not knowingly participate, directly or indirectly, in a scheme to circumvent a	31 32

[s 8]

	prohibition under division 8, subdivision 5 about political donations.	1 2
	Maximum penalty—1,500 penalty units or 10 years imprisonment.	3 4
(2)	For subsection (1), it does not matter whether the person also participates in the scheme for other purposes.	5 6 7
(3)	An offence against subsection (1) is a crime.	8
(4)	In this section—	9
	<i>participate in</i> , a scheme, includes—	10
(a)	enable, aid or facilitate entry into, or the carrying out of, a scheme; and	11 12
(b)	organise or control a scheme.	13
	<i>scheme</i> includes arrangement, agreement, understanding, course of conduct, promise or undertaking, whether express or implied.	14 15 16
Clause 8	Amendment of s 308 (Recovery of payments)	17
	Section 308(1), ‘section 236(3) or 271(7)’—	18
	<i>omit, insert</i> —	19
	section 236(3), 271(6) or 281A	20
Clause 9	Amendment of s 385 (Offences under this part are summary)	21 22
(1)	Section 385, heading, ‘Offences’—	23
	<i>omit, insert</i> —	24
	Particular offences	25
(2)	Section 385(1), after ‘part’—	26
	<i>insert</i> —	27
	, other than sections 307A and 307B,	28

-
- (3) Section 385(2), ‘an offence’— 1
omit, insert— 2
a summary offence 3

Clause 10 Insertion of new s 385A 4

After section 385— 5

insert— 6

385A Proceedings for indictable offences 7

- (1) A proceeding for an indictable offence against 8
this Act may be taken, at the election of the 9
prosecution— 10
- (a) by way of summary proceeding under the 11
Justices Act 1886; or 12
- (b) on indictment. 13
- (2) However, a magistrate must not hear an indictable 14
offence against section 307B summarily if— 15
- (a) the magistrate is satisfied, at any stage of the 16
hearing and after hearing any submissions 17
by the prosecution and defence, that because 18
of the nature or seriousness of the offence or 19
any other relevant consideration the 20
defendant, if convicted, may not be 21
adequately punished on summary 22
conviction; or 23
- (b) the magistrate is satisfied, on an application 24
made by the defence, that because of 25
exceptional circumstances the offence 26
should not be heard and decided summarily. 27
- (3) If subsection (2) applies— 28
- (a) the magistrate must proceed by way of an 29
examination of witnesses for an indictable 30
offence; and 31

113 Meaning of *political donation*

- | | |
|---|----|
| | 1 |
| (1) For this part, each of the following is a <i>political donation</i> — | 2 |
| | 3 |
| (a) a gift made to or for the benefit of— | 4 |
| (i) a political party; or | 5 |
| (ii) a councillor of a local government; or | 6 |
| (iii) a candidate or a group of candidates in an election; | 7 |
| | 8 |
| (b) a gift made to or for the benefit of another entity— | 9 |
| | 10 |
| (i) to enable the entity (directly or indirectly) to make a gift mentioned in paragraph (a) or to incur electoral expenditure; or | 11 |
| | 12 |
| | 13 |
| | 14 |
| (ii) to reimburse the entity (directly or indirectly) for making a gift mentioned in paragraph (a) or incurring electoral expenditure; | 15 |
| | 16 |
| | 17 |
| | 18 |
| (c) a loan from an entity other than a financial institution that, if the loan were a gift, would be a gift mentioned in paragraph (a) or (b). | 19 |
| | 20 |
| | 21 |
| (2) If a gift is made by a person in a private capacity to an individual (the <i>recipient</i>) for the recipient's personal use and the recipient does not intend to use the gift for an electoral purpose— | 22 |
| | 23 |
| | 24 |
| | 25 |
| (a) the gift is not a political donation when it is made; but | 26 |
| | 27 |
| (b) if any part of the gift is used for an electoral purpose— | 28 |
| | 29 |
| (i) that part of the gift is a political donation; and | 30 |
| | 31 |

[s 13]

- (ii) the recipient is taken to accept that part of the gift at the time it is used for an electoral purpose. 1
2
3
- (3) A reference in subsection (2) to using a gift for an *electoral purpose* is a reference to using the gift to incur electoral expenditure or for the recipient's duties as a councillor of a local government. 4
5
6
7
- (4) In this section— 8
disposition of property see section 107(3). 9
gift means— 10
- (a) the disposition of property or the provision of a service, without consideration or for a consideration that is less than the market value, but does not include— 11
12
13
14
- (i) transmission of property under a will; 15
or 16
- (ii) provision of a service by volunteer labour; or 17
18
- (b) an amount of interest that would have been payable on a loan if— 19
20
- (i) 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 21
22
23
24
- (ii) any interest payable had not been waived; and 25
26
- (iii) any interest payments were not capitalised; or 27
28
- (c) an amount paid for attendance at or participation in a fundraising activity, to the extent the amount forms part of the proceeds of the fundraising activity to which it relates; or 29
30
31
32
33

	(d) any of the following amounts paid by a person to a political party, to the extent the total amount of the person's payments in a calendar year exceeds \$1,000—	1 2 3 4
	(i) an amount paid as a subscription for a person's membership of the party;	5 6
	(ii) an amount paid for a person's affiliation with the party.	7 8
Clause 14	Insertion of new pt 6, div 1A	9
	Part 6—	10
	<i>insert—</i>	11
	Division 1A Political donations from prohibited corporate donors	12 13 14
	113A Meaning of <i>prohibited corporate donor</i>	15
	For this division, <i>prohibited corporate donor</i> —	16
	(a) means—	17
	(i) a company registered under the Corporations Act; or	18 19
	(ii) an industry representative organisation, a majority of whose members are companies registered under the Corporations Act; but	20 21 22 23
	(b) does not include a company that is—	24
	(i) recorded in the register kept under the <i>Collections Act 1966</i> , part 6; or	25 26
	<i>Note—</i>	27
	The register of charities kept under the <i>Collections Act 1966</i> can be inspected on the website of the Office of Fair Trading.	28 29 30

[s 14]

- (ii) recorded in a register kept under a law of another State substantially corresponding to the register kept under the *Collections Act 1966*, part 6; or
- (iii) a registered entity within the meaning of the *Australian Charities and Not-for-profits Commission Act 2012* (Cwlth); or
- (iv) registered as an organisation under the *Industrial Relations Act 2016*, chapter 12, part 2; or
- (v) registered as an association under the *Fair Work (Registered Organisations) Act 2009* (Cwlth), chapter 2, part 2.

113B Political donations by prohibited corporate donors

- (1) It is unlawful for a prohibited corporate donor to make a political donation.
- (2) It is unlawful for a person to make a political donation on behalf of a prohibited corporate donor.
- (3) It is unlawful for a person to accept a political donation that was made (wholly or in part) by or on behalf of a prohibited corporate donor.
- (4) It is unlawful for a prohibited corporate donor to solicit a person to make a political donation.
- (5) It is unlawful for a person to solicit, on behalf of a prohibited corporate donor, another person to make a political donation.

113C Recovery of prohibited corporate donations

- (1) If a person accepts a prohibited corporate

-
- donation, the following amount is payable by the person to the State—
- (a) if the person knew it was unlawful to accept the prohibited corporate donation—an amount equal to twice the amount or value of the prohibited corporate donation;
 - (b) otherwise—an amount equal to the amount or value of the prohibited corporate donation.
- (2) The amount may be recovered by the State as a debt due to the State from—
- (a) if the recipient is a registered political party that is not a corporation—the party’s agent; or
 - (b) if the recipient is a group of candidates—the members of the group or the group’s agent; or
 - (c) if the recipient is a candidate—the candidate or the candidate’s agent; or
 - (d) otherwise—the recipient.
- (3) The imposition of liability to pay an amount to the State under this section—
- (a) is not a punishment or sentence for an offence against section 194D or any other offence; and
 - (b) is not a matter to which a court may have regard in sentencing an offender for an offence against section 194D or any other offence.
- (4) An action in a court to recover an amount due to the State under this section may be brought in the name of the electoral commission.
- (5) Any process in the action required to be served on the State may be served on the electoral

[s 15]

	commission.	1
(6)	In this section—	2
	<i>prohibited corporate donation</i> means a political donation that was unlawfully made or accepted under section 113B.	3 4 5
	<i>recipient</i> means the entity to whom, or for the benefit of whom, the prohibited corporate donation was made.	6 7 8
Clause 15	Insertion of new ss 194D and 194E	9
	Part 9, division 5—	10
	<i>insert</i> —	11
	194D Offence about prohibited corporate donations	12 13
(1)	A person must not do an act or make an omission that is unlawful under section 113B if the person knows or ought reasonably to know of the facts that result in the act or omission being unlawful under that section.	14 15 16 17 18
	Maximum penalty—400 penalty units or 2 years imprisonment.	19 20
(2)	An offence against subsection (1) is a misdemeanour.	21 22
	194E Schemes to circumvent prohibition on particular political corporate donations	23 24
(1)	A person must not knowingly participate, directly or indirectly, in a scheme to circumvent a prohibition under part 6, division 1A about political donations.	25 26 27 28
	Maximum penalty—1,500 penalty units or 10 years imprisonment.	29 30
(2)	For subsection (1), it does not matter whether the	31

person also participates in the scheme for other purposes.	1 2
(3) An offence against subsection (1) is a crime.	3
(4) In this section—	4
<i>participate in</i> , a scheme, includes—	5
(a) enable, aid or facilitate entry into, or the carrying out of, a scheme; and	6 7
(b) organise or control a scheme.	8
<i>scheme</i> includes arrangement, agreement, understanding, course of conduct, promise or undertaking, whether express or implied.	9 10 11
Clause 16 Insertion of new s 201A	12
After section 201—	13
<i>insert</i> —	14
201A Proceedings for indictable offences	15
(1) A proceeding for an indictable offence against this Act, other than a designated election offence under section 201(1), may be taken, at the election of the prosecution—	16 17 18 19
(a) by way of summary proceeding under the <i>Justices Act 1886</i> ; or	20 21
(b) on indictment.	22
(2) However, a magistrate must not hear an indictable offence against section 194E summarily if—	23 24
(a) the magistrate is satisfied, at any stage of the hearing and after hearing any submissions by the prosecution and defence, that because of the nature or seriousness of the offence or any other relevant consideration the defendant, if convicted, may not be adequately punished on summary conviction; or	25 26 27 28 29 30 31 32

[s 17]

	(b) the magistrate is satisfied, on an application made by the defence, that because of exceptional circumstances the offence should not be heard and decided summarily.	1 2 3 4
	(3) If subsection (2) applies—	5
	(a) the magistrate must proceed by way of an examination of witnesses for an indictable offence; and	6 7 8
	(b) a plea of the person charged at the start of the proceeding must be disregarded; and	9 10
	(c) evidence brought in the proceeding before the magistrate decided to act under subsection (2) is taken to be evidence in the proceeding for the committal of the person for trial or sentence; and	11 12 13 14 15
	(d) before committing the person for trial or sentence, the magistrate must make a statement to the person as required by the <i>Justices Act 1886</i> , section 104(2)(b).	16 17 18 19
	(4) The maximum penalty that may be summarily imposed for an indictable offence is 100 penalty units or 3 years imprisonment.	20 21 22
Clause 17	Amendment of schedule (Dictionary)	23
	Schedule—	24
	<i>insert—</i>	25
	<i>political donation</i> , for part 6, see section 113.	26
	<i>prohibited corporate donor</i> , for part 6, division 1A, see section 113A.	27 28