AMENDING THE DONATION PROVISIONS IN THE LOCAL ELECTORAL ACT 2001

Proposal
1. This paper seeks agreement to amend provisions in the Local Electoral Act 2001 (the Local Electoral Act) for donations made to candidates, particularly anonymous donations.

Executive Summary
2. The Local Electoral Act provides the framework for local authority elections. There has been increasing public concern that the Local Electoral Act does not require candidates for local authority elections to provide the same degree of transparency and accountability in regard to donations that is expected of parliamentary candidates under the Electoral Act 1993 (the Electoral Act).
3. I propose a set of amendments to revise the Local Electoral Act to enhance its provisions relating to campaign donations. In summary the proposals are:
   - limiting the size of an anonymous donation a recipient can retain;
   - amending the definition of an anonymous donation;
   - increasing disclosure, reporting and recording obligations; and
   - introducing penalties for non-compliance with new obligations.
4. I propose that the amendments are combined with existing amendments contained in the current Local Electoral Amendment Bill (which awaits its first reading), to create a new bill with a category 4 priority. This will enable the revised legislation to be enacted by early May 2013 in time for scheduled training and publications for candidates and Electoral Officers. The existing Bill would be discharged.

Background

The Local Electoral Act
5. The Local Electoral Act 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.
6. The Local Electoral Act was originally enacted in 1993, at the same time as the Electoral Act, which is the framework legislation for the parliamentary electoral system. The two Acts are broadly consistent with each other.
7. The Electoral Act was revised in 2007, 2009 and 2010, to strengthen and clarify its provisions for campaign financing (including donations), by enabling more controls and checks and balances. For example, the Electoral Act requires
provisions for disclosure, recording and reporting of donations by candidates and their campaign staff. It also sets a limit on the level of anonymous donations, so that there is greater openness about who is financing whom.

8. In contrast, the Local Electoral Act has not had its provisions for donations revised. As a result, the Act does not require the same levels of transparency and accountability in receiving, reporting and recording donations expected of parliamentary candidates. This undermines two of the Local Electoral Act’s principles: to achieve public confidence in local electoral processes and to provide transparent electoral systems.

9. The Local Electoral Act only requires a candidate to report an anonymous donation of larger than $1,000. The Local Electoral Act does not place a limit on the size of an anonymous donation, nor does it require third parties to disclose the identity of a donor of an anonymous donation, as the Electoral Act does.

10. Public disquiet and concern about campaign financing in local authority elections has gained greater prominence recently. If the interest in mayoralty campaigns in Auckland is symptomatic of greater public interest in local authority campaigns, then electors across New Zealand will expect more openness and accountability from their local candidates in the October 2013 elections.

Problems to be addressed

11. I consider that the provisions in the Local Electoral Act for donations are not sufficiently robust to achieve electoral transparency. This undermines public confidence in the local electoral system. The Local Electoral Act needs to be amended to provide greater checks and balances concerning the receipt, disclosure, reporting and recording of donations.

12. With the next local authority elections to be held in October 2013, however, the time is short to enact amendments to the Local Electoral Act and implement changes prior to the elections. Any changes should be enacted before early May 2013. The timeframe therefore narrows the scope of what can be achieved.

Comment

Objectives for proposals

13. I propose to amend the Local Electoral Act provisions for donations. Table One below lists the proposed amendments, while Appendix One provides further detail on the practical effect of the proposals. The proposals were developed as a package to best achieve the following objectives:

- **transparency**: open processes ensure that the interest and roles of those involved in the electoral process are clear;
- **accountability**: participants are held responsible for their actions;
- **legitimacy**: the public have confidence in the local electoral system;
- **participation**: the option averts unreasonable barriers to participation in the electoral process;

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1 In May 2013 Electoral Officer training begins, candidate information workshops commence and publications such as handbooks and codes of best practice are finalised.
Better Regulation, Less Regulation: the proposed obligations are clear, easily understood and conform as far as possible to established legislative principles;

- compliance costs: the option limits or reduces compliance costs as much as possible, while still achieving the desired outcomes; and

- consistency: the option will achieve greater alignment with the Electoral Act provisions for anonymous donations and donations more generally. Aligning the Acts would also enhance clarity for candidates and donors.

14. A further criterion was that the proposed amendments must be able to be effectively implemented well in advance of the October 2013 elections. As a result, the scope of the proposed amendments was kept narrow.

Proposals

15. The proposals listed below in Table One are grouped according to their intended effect. The italicised text states whether the proposal would revise existing provisions in the Local Electoral Act, or introduce new provisions.

Table One: Proposed amendments to the Local Electoral Act

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<thead>
<tr>
<th>Limiting the size of an anonymous donation</th>
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<th>Redefining the term ‘anonymous’ and ‘donation’</th>
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<th>Adding or enhancing disclosure and reporting obligations</th>
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Adding or enhancing disclosure and reporting obligations (cont.)

| 8 | Require a candidate to report on the process followed when they received an anonymous donation |

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2 The Government’s statement on Better Regulation, Less Regulation makes a commitment that the Government will introduce new regulation only when it is satisfied that it is required, reasonable, and robust.

3 This limit is the same as in the Electoral Act (section 207I). Having the same limit will create simplicity for donors and for people who stand as candidates in both local authority and parliamentary elections.
16. The proposals are not scaled according to the population size or location of the local authority in which an election takes place, nor on the basis of what position the candidate is standing for (for example, having a different limit for anonymous donations for metropolitan cities or mayoralty campaigns, compared to provincial towns or licensing trust members). Such an approach was considered but discounted because it could create confusion and complexity, and could indicate that the same level of transparency does not apply uniformly across New Zealand or across different candidacies.

17. Most of the proposed amendments will align the Local Electoral Act more closely with the Electoral Act. The exceptions are the penalties (fines), which have been set at a maximum of $5,000 - rather than a maximum of $40,000 as provided in the Electoral Act. A maximum fine of $40,000 was considered to be inappropriately high in the local government context.\(^5\)

\(^4\) Section 134 of the Local Electoral Act provides two tiers of fines ($10,000 and $5,000), as do many of the offence provisions in the Electoral Act ($100,000 and $40,000). The fines in proposals 13-16 above apply to offences that in the Electoral Act would be set at $40,000 (that is, the lower tier). Therefore the proposed fines are set at the lower tier of fine provided in section 134 of the Local Electoral Act (that is, $5,000).

\(^5\) Many candidates, especially outside the major metropolitan areas, will not have a party or organisation behind them. The local government sector was concerned a very high penalty for the offences could deter candidates with limited administrative or legal support from standing, due to a fear of inadvertently committing an offence.
**Benefits of the proposals**

18. As a package, I consider the proposed amendments will increase the effectiveness of the Local Electoral Act in providing a robust legislative framework for campaign financing in the local electoral system. They will make the Local Electoral Act's provisions more consistent with those in the Electoral Act. The changes as a whole will be straightforward, will be publicised well before they are enacted, and can be implemented sufficiently in advance of the elections.

19. The proposed amendments would introduce or enhance disclosure, reporting and recording requirements, to enhance transparency and accountability in the local electoral system. Limiting the size of an anonymous donation a candidate may receive to $1,500,\(^6\) would better enable the public to see from whom candidates are receiving large amounts of funding (because their donors could no longer be anonymous). The proposed limit is also the same as that in the Electoral Act, creating simplicity for those who participate in both electoral systems.

20. Redefining 'anonymous' will limit the extent to which campaign financing can occur covertly. My proposals require third parties to disclose information about the identity of the donor of a donation, when the third party knows this information.

21. The proposals 8-12 and 17 are minor and technical in nature, and apply to donations in general. They will increase transparency and accountability.

22. The proposed amendments will provide greater certainty for those involved in the electoral process about their obligations. I consider the revised penalty regime will also deter non-compliance.

**Disadvantages of the proposals**

**A trade-off in transparency**

23. A trade-off in setting a cap on anonymous donations at $1,500, in order to gain better transparency, is that the level at which a donation is defined, and must be reported in a return, will also need to be revised upwards to $1,500.\(^7\) This adjustment will mean that donations in the range of $1,000 - $1,500 will no longer need to be reported, reducing some transparency. However, the adjustment is necessary for internal consistency within the Local Electoral Act, and consistency with the Electoral Act.

**Compliance costs**

24. The proposals will incur compliance costs on participants due to:

- increased or new obligations for disclosure, recording and reporting that require additional administration; or
- a limit being set on the amount that a candidate can raise anonymously, meaning that candidates may need to expend more effort on fundraising.

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\(^6\) This limit would apply regardless of whether they are standing for one or many candidacies.

\(^7\) The definition of donation, and the level at which a donation must be reported, is currently set at $1,000 (refer sections 104 and 109). In the Electoral Act, the limit for an anonymous donation, and the definition of a donation, are the same (a sum or value of over $1,500).
25. The impact of these costs is hard to quantify in the absence of evidence of the effect of similar legislation on people’s behaviour. But overall, I consider the costs to be reasonable and minor. Any additional administrative impact from increased or new obligations will likely be minimal, and only require people to perform actions reasonably expected of efficient financial and legal administration (for example, keeping receipts).

26. The impact of the limit on anonymous donations could have a greater effect for those running for office in major metropolitan areas, and particularly for mayoralty campaigns, where higher levels of campaign financing are allowed, and often required to campaign effectively. However, the limit only applies to anonymous donations, and the trade-off for a donor between anonymity, or helping their preferred candidate to gain election, would appear to me to legitimately weigh on the side of helping the candidate to get elected.

Costs to government

27. Few additional costs will fall to the local and central government sector. Existing processes should be able to absorb any costs to train, educate or support electoral officers, candidates, and the general public on the changes to the law. Additionally, media and public interest during the parliamentary stages of the Bill should informally assist in publicising the changes.

28. Due to increased public interest about donations, there may be more complaints made to Electoral Officers or the Police after the next elections. New Zealand Police advises that any complaints raised after the 2013 local body elections as a result of this legislation are unlikely to involve additional costs of any significance for Police or the courts.

Procedural risks

29. The tight timeframes for amending the Local Electoral Act introduces risk that the amendments will not be enacted sufficiently in time to be effectively implemented for the October 2013 elections. Potentially candidates and Electoral Officers could get confused by the changes. I consider that these risks can be mitigated to some degree by giving priority to ensure the amendments are enacted by early May 2013. The select committee process, however, could add complexity if further changes are made to the Bill that would be difficult to implement and publicise sufficiently in advance of the October 2013 elections.

Conclusion

30. On balance, I consider the benefits of the proposed amendments outweigh any costs that may be imposed, if amendments can be enacted sufficiently in advance of the October 2013 elections.

Other issues identified but outside the scope of the current project

31. I am aware of other issues and aspects of campaign financing in local authority elections that could be reviewed. For example, contributions, loans, trusts and overseas donations. The existing penalty for failing to furnish an electoral expense return could also be reviewed as the fine is lower than that proposed for the new offences.
for these aspects in the Electoral Act will not easily translate into the Local Electoral Act.

32. There is insufficient time, however, to undertake a comprehensive review of campaign financing in advance of the 2013 local authority elections. I consider a more comprehensive review of campaign financing, including identifying any further amendments needed for the Local Electoral Act, could be undertaken before the 2016 local authority elections.

Consultation

33. The Ministries of Health and Justice, and the Treasury were consulted on this paper. The Department of the Prime Minister and Cabinet, the Ministries of Business, Innovation and Employment, Environment and Primary Industries, the Office of the Privacy Commissioner, the Parliamentary Counsel Office and Te Puni Kōkiri were informed. (Most of these agencies had been previously consulted on the existing Local Electoral Amendment Bill).

34. The New Zealand Police were consulted. They wish to state a concern that, unlike parliamentary elections where complaints are initially investigated by the Electoral Commission, there is no similar filtering proposed in the Local Electoral Act. Given the time constraints for enacting the proposals, the New Zealand Police acknowledged that consideration of these concerns will need to be deferred until after the next local authority election.

35. Advice received by the Department from the local government sector is that Electoral Officers are not set up to investigate complaints in the same manner as the Electoral Commission can. In addition, Electoral Officers do not have a centralised unit to ensure there is a consistent approach to determining which complaints should be forwarded to the New Zealand Police.

36. The Electoral Commission, Local Government New Zealand, the New Zealand Society of Local Government Managers and the Local Government Commission were consulted on the recommendations in this paper. I propose that they are also consulted during the drafting of the Bill.

Financial and Human Rights Implications

37. No financial, fiscal or economic implications are raised by the recommendations in this paper. The recommendations in this paper are not inconsistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

Legislative Implications

38. This paper recommends amendments to the Local Electoral Act. An existing Local Electoral Amendment Bill was introduced on 11 October 2011 but has not yet received a first reading. The scope of its amendments concern technical matters governing electoral procedures. It has a category 7 priority (not to proceed) for 2012.
39. A constitutional convention exists that no significant changes are made to an electoral system in the year of an election. The changes proposed here are minor in nature, can be easily implemented and will be well publicised.

40. The amendments to the Local Electoral Act need to come into effect well in advance of October 2013 local authority elections, for the changes to be implemented fairly and correctly, and preferably by early May 2013. Enacting the changes sooner will also lessen the incentive for people to maximise the use of anonymous donations before the changes take effect.

41. I therefore propose that a new Local Electoral Amendment Bill be introduced into the House this year with a category 4 priority (referral to select committee in the year). I further propose that drafting instructions be issued to the Parliamentary Counsel Office. Once the new Bill is introduced, I propose that the existing Bill is discharged.

42. The proposed bill will follow the position of the principal Act it amends and will therefore also be binding on the Crown.

Regulatory Impact Analysis

Regulatory Impact Analysis requirements and Quality of Impact Analysis

43. Regulatory Impact Analysis requirements apply to the proposed amendments. A Regulatory Impact Statement (RIS) was prepared by the Department of Internal Affairs and is attached to this Cabinet paper.

44. The Department’s Regulatory Impact Analysis Panel has reviewed the RIS. The reviewer considers that the information meets the quality assurance criteria.

Consistency with Government Statement on Regulation

45. I have considered the analysis and advice of my officials as summarised in the RIS. I am satisfied that, aside from the caveats already noted in the Cabinet paper, the regulatory proposals in this paper:

- are required in the public interest;
- will deliver the highest net benefits of the practical options available; and
- are consistent with our commitments in the Government statement “Better Regulation, Less Regulation”.

Publicity

46. I seek Cabinet agreement to publicise the Bill when it is introduced. Advance warning will enable candidates, donors and electoral officers to make preparations well in advance. In addition, it will also signal to the public that the Government is ensuring the law is clear and robust before the October 2013 local authority elections.

Recommendations

47. I recommend that the Committee:

1. note the Local Electoral Act 2001 and the Electoral Act 1993 are broadly consistent, but 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 that is expected of parliamentary candidates under the Electoral Act 1993;

2. **note** public confidence in the local electoral system would increase if the Local Electoral Act 2001 required more transparency and accountability from participants in local authority elections in receiving, disclosing, recording and reporting donations;

3. **agree** to amend the Local Electoral Act 2001 to enhance its provisions relating to donations, such that the amendments will:

   **Limit the size of an anonymous donation**
   
   3.1. set a limit of $1,500 for an anonymous donation;
   
   3.2. require a candidate who receives an anonymous donation exceeding $1,500 to forward the amount or value of the donation, less $1,500 which they may retain, to the electoral officer of the local authority administering the election within 20 working days;
   
   3.3. require an Electoral Officer who receives the excess of the anonymous donation described in recommendation 3.2 above to deposit the money in the bank account of the local authority administering the election and provide a copy of the receipt they receive to the candidate;

   **Redefine the definition of ‘anonymous’ and ‘donation’**
   
   3.4. expand the existing definition of ‘anonymous’ to include situations where the person could not have been reasonably expected to have known the identity of a donor;
   
   3.5. raise the monetary value for the definition of a donation to a figure greater than $1,500;

   **Adding or enhancing disclosure and reporting obligations**
   
   3.6. require a third party (a ‘transmitter’) who passes on a donation to a candidate on behalf of a donor to disclose to the candidate that the donation is transmitted, and the name and address of the donor and provide that if the transmitter does not disclose, or is unable to disclose the name and address of the donor, then the donation must be treated as an anonymous donation;
   
   3.7. require that any person involved in administering the affairs of the candidate’s campaign, and who knows the identity of the donor of an anonymous donation of more than $1,500, must disclose the identity of the donor to the candidate;
   
   3.8. require a candidate to declare on their return, in regard to an anonymous donation received that exceeded $1,500, the value or amount of the excess that was paid to the electoral officer and the date that the payment was made;
   
   3.9. require a candidate to keep a record of any donation received;
   
   3.10. require a candidate to take all reasonable steps to ensure that all records, documents and accounts necessary to verify a return are retained until
the period has expired for which a prosecution could be commenced in relation to the return or any matter related to the return;

3.11. require a candidate to file a nil return of donations, where applicable;

3.12. require a candidate to declare on their return any donation received that exceeded $1,500;

**Adding or enhancing offence provisions**

3.13. make it an offence for a person to circumvent the obligation to forfeit the excess of an anonymous donation over $1,500, and that the person is liable on conviction to a fine not exceeding $5,000;

3.14. make it an offence for a transmitter to fail to disclose the identity of the donor where known, and that the transmitter is liable on conviction to a fine not exceeding $5,000;

3.15. make it an offence for a person described in recommendation 3.7 to intentionally conceal the identity of a donor from the candidate, and that a person could be liable on conviction to a fine not exceeding $5,000;

3.16. make it an offence for a person, without reasonable excuse, to fail to comply with the obligation under recommendation 3.10 and that a person could be liable on conviction to a fine not exceeding $5,000;

**Administrative change**

3.17. move the definition of ‘anonymous’ from the initial interpretation section, to the interpretation section for campaign financing;

**Financial implications**

4. **note** that there are no financial implications for government associated with the recommendations in this paper;

**Legislative implications, consultation and publicity**

5. **agree** that the amendments listed in recommendation 3 are combined with existing amendments contained in the Local Electoral Amendment Bill (that was introduced in 2011), to create new legislation to be known as the Local Electoral Amendment Bill;

6. **agree** that the new Local Electoral Amendment Bill (2012) has a category 4 priority;

7. **agree** that drafting instructions for the amendments to the Local Electoral Act 2001 are issued to the Parliamentary Counsel Office;

8. **agree** that Local Government New Zealand, the Society of Local Government Managers and the Local Government Commission will be consulted on the drafting of the Bill;

9. **note** the revised legislation needs to be enacted by early May 2013;

10. **agree** that the Local Electoral Amendment Bill (2011) be discharged once the Local Electoral Amendment Bill (2012) is introduced; and
11. **agree** that the proposed amendments be publicised at the time of the Bill’s introduction, to inform participants in the next local authority elections, and the public, well in advance of any changes.

Hon David Carter  
**Minister of Local Government**  
/ / 2012
## APPENDIX ONE: PROPOSED AMENDMENTS AND THEIR PRACTICAL EFFECT

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<thead>
<tr>
<th>Proposal</th>
<th>Practical effect</th>
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<tr>
<td><strong>Limiting the size of an anonymous donation</strong></td>
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<tr>
<td>1 Set a limit of $1,500 on the size of an anonymous donation to a candidate (not a candidacy) <em>(new provision)</em></td>
<td>A candidate could retain an anonymous donation up to $1,500 but must forfeit any amount over that limit. A candidate could not split an anonymous donation of more than $1,500 between different campaigns if they were standing for more than one candidacy, in order to retain more money.</td>
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<tr>
<td>2 Require a candidate receiving an anonymous donation of more than $1,500 to pay the excess amount (that is, the amount over $1,500) to the electoral officer of the local authority administering the election within 20 working days <em>(new provision)</em></td>
<td>A candidate acquires an administrative and financial obligation if they receive an anonymous donation of more than $1,500.</td>
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<tr>
<td>3 Require an Electoral Officer to pay an amount received from a candidate (that is, the excess of an anonymous donation over $1,500) to the local authority administering the election, and provide a copy of the receipt they receive to the candidate <em>(new provision)</em></td>
<td>An additional responsibility is added to the role of an Electoral Officer and the local authority.</td>
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<tr>
<td><strong>Redefining the terms ‘anonymous’ and ‘donation’</strong></td>
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<tr>
<td>4 Expand the existing definition of ‘anonymous’ to include situations where the candidate could not reasonably know the identity of the donor <em>(revision to existing provision)</em></td>
<td>The definition of anonymity is narrowed - currently the definition is restricted to situations only where the donor does not know the identity of the donor.</td>
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<tr>
<td>5 Raise the monetary value in the definition of a donation to a figure greater than $1,500 (currently set at $1,000) <em>(revision to existing provision)</em></td>
<td>A donation will be defined as any amount of a sum or value of more than $1,500.</td>
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<tr>
<td><strong>Adding or enhancing disclosure and reporting obligations</strong></td>
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<tr>
<td>6 Require a third party (‘a transmitter’) who receives a donation on behalf of a candidate, to disclose the identity of the donor (if known) to the candidate <em>(new provision)</em></td>
<td>A third party has a duty to disclose the donor’s identity to a candidate. If the donor’s identity is not known, then the donation must be treated as an anonymous donation.</td>
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<td>7 Require a person administering the affairs of a candidate who receives an ‘anonymous’ donation of more than $1,500 on behalf of the candidate to disclose the identity of the donor (if known) to the candidate <em>(new provision)</em></td>
<td>If the person knows who has made an ‘anonymous’ donation, they would have a duty to disclose the donor’s identity to the candidate. Having a monetary level ensures that the person, if running a fundraising activity (such as a cake stall), does not need to record each donor’s details.</td>
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<tr>
<td>Proposal</td>
<td>Practical effect</td>
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<tr>
<td><strong>Adding or enhancing disclosure and reporting obligations (cont.)</strong></td>
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<tr>
<td>8 Require a candidate to report, in their return, the process followed when they received an anonymous donation in excess of $1,500 (refer proposal 2 above) <em>(new provision)</em></td>
<td>Candidates would be required to declare, on their return, in regard to an anonymous donation in excess of $1,500, how much was paid to the Electoral Officer and when the payment was made</td>
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<td>9 Require candidates to record all donations received <em>(new provision)</em></td>
<td>Candidates would need to keep records of all donations received</td>
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<td>10 Require candidates to take all reasonable steps to retain records, documents and accounts that verify their return, for a prescribed period of time <em>(new provision)</em></td>
<td>Candidates would need to ensure they kept the documentation required for a period of six months after filing their return</td>
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<td>11 Require candidates who have no donations to report, to file a nil return <em>(new provision)</em></td>
<td>Candidates who do not currently have to file a return (as they did not receive donations) would be required to do so</td>
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<tr>
<td>12 Raise the level at which a candidate must declare any anonymous donation to a figure greater than $1,500 (currently set at $1,000) <em>(revision to existing provision)</em></td>
<td>Candidates would be required to declare, on their return, when they received an anonymous donation in excess of $1,500</td>
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<td><strong>Adding or enhancing offence and penalty provisions</strong></td>
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<td>13 Make it an offence to breach the requirement for a candidate to forfeit the excess amount of an anonymous donation over $1,500 <em>(new provision)</em></td>
<td>Any person who enters into an agreement, arrangement, or understanding with any other person that has the effect of circumventing the obligation commits an offence and could be liable for a fine on conviction not exceeding $5,000</td>
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<tr>
<td>14 Make it an offence for a transmitter to fail to disclose the identity of the donor, with the intention to conceal the identity of the donor <em>(new provision)</em></td>
<td>Any person who fails to comply with the obligation with the intention of concealing the identity of the donor commits an offence and could be liable for a fine on conviction not exceeding $5,000</td>
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<tr>
<td>15 Make it an offence for a person involved in the candidate’s campaign to fail to disclose the identity of an ‘anonymous’ donor <em>(new provision)</em></td>
<td>Any person who fails to comply with the obligation with the intention of concealing the identity of the donor commits an offence and could be liable for a fine on conviction not exceeding $5,000</td>
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<tr>
<td>16 Make it an offence for a candidate to fail to retain records to verify their return <em>(new provision)</em></td>
<td>Any person who fails, without reasonable excuse, to comply with the obligation commits an offence and could be liable for a fine on conviction not exceeding $5,000</td>
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<td><strong>Minor administrative change</strong></td>
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<tr>
<td>17 Move the definition of anonymous in the Local Electoral Act from the initial interpretation section, to the interpretation section for campaign financing <em>(revision to existing provision)</em></td>
<td>The definition would be grouped together with other related definitions for reasons of clarity</td>
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