

BETWEEN:

Unions NSW
First Plaintiff

Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union
known as the Australian Manufacturing Workers' Union (AMWU)
Second Plaintiff

New South Wales Local Government, Clerical, Administrative, Energy, Airlines
& Utilities Union
Third Plaintiff

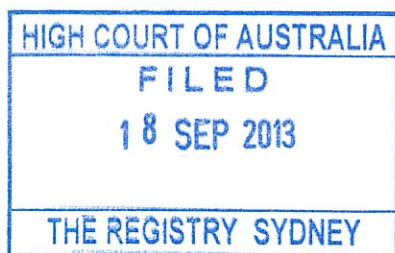
New South Wales Nurses and Midwives' Association
Fourth Plaintiff

New South Wales Teachers Federation
Fifth Plaintiff

Transport Workers' Union of New South Wales
Sixth Plaintiff

AND

State of New South Wales
Defendant



PLAINTIFFS' WRITTEN SUBMISSIONS

Part I Publication of Submissions

1. These submissions are in a form suitable for publication on the internet.

Part II Issues Arising in the Proceedings

2. The issues arising in the proceedings are those identified in the questions stated at paragraph [67] of the Special Case.

Part III Notices under Section 78B of the *Judiciary Act* 1903 (Cth)

3. The plaintiffs have served notices under s. 78B of the *Judiciary Act* 1903 (Cth).

Part IV Material Facts

4. The material facts are set out in paragraphs [1] to [66] of the Special Case.

Filed on behalf of the Plaintiffs:

Date of Document: 18 September 2013

Holding Redlich
Level 65, MLC Centre
19 Martin Place
SYDNEY NSW 2000
DX 529 SYDNEY

Tel: (02) 8083 0388
Fax: (02) 8083 0399
Ref: 12660004
Solicitor on record: Ian Robertson
Contact: Nicholas Riordan

Part V Plaintiffs' Argument

The Legislative Scheme

5. This challenge focuses on two aspects of the *Election Funding, Expenditure and Disclosures Act 1981* (NSW) (the “EFED Act”):
- a. the first is the prohibition on “political donations” from persons or entities other than individuals enrolled on the roll of electors for federal, State or local government elections (s. 96D); and
 - b. the second is the aggregation of “electoral communication expenditure” of political parties and organisations affiliated with them, thus limiting the amount of “electoral communication expenditure” able to be incurred by the party and/or the affiliated organisation (s. 95G(6)).

The Donation Restriction

6. Section 96D(1) of the EFED Act prohibits parties, elected members, groups and third-party campaigners (all as defined in the EFED Act¹) from accepting “political donations”, except where “the donor is an individual who is enrolled on the roll of electors for State elections, the roll of electors for federal elections or the roll of electors for local government”. Section 96D(2) prohibits individuals from making “political donations” on behalf of a corporation or other entity, and s. 96D(3) prohibits corporations and other entities from making gifts to an individual for the purpose of the individual making a political donation.
7. The definition of “political donation” in s. 85 involves various features, and exceptions, but the core concept is a “gift” made “to or for the benefit of” a party, elected member, candidate, or group. It also includes “gifts” made to or for the benefit of another entity or person “the whole or part of which was used or is intended to be used” by the recipient to make a political donation or to incur electoral expenditure.
8. The term “gift” is defined in s. 84(1), and elaborated upon in (inter alia) s. 85(3) (which provides that “an annual or other subscription paid to a party by ... a person or entity (including an industrial organisation) for affiliation with the party is taken to be a gift”).

The Expenditure Restriction

9. Section 95I of the EFED Act prohibits parties, groups, candidates or third-party campaigners from incurring “electoral communication expenditure” during the “capped expenditure period” (see s. 95H) in excess of the cap specified in s. 95F.
10. Section 95G(6) provides that “electoral communication expenditure incurred by a party that is of or less than the amount specified in section 95F for the party ... is to be treated as expenditure that exceeds the applicable cap if that expenditure and any other electoral communication expenditure by an affiliated organisation of that party exceed the applicable cap so specified by the party”.
11. Section 95G(7) defines an “affiliated organisation” to mean “a body or other organisation, whether incorporated or unincorporated, that is authorised under the rules of that party to appoint delegates to the governing body of that party or to participate in

¹ Each term is confined to political activities connected with State, rather than federal, Parliament.

pre-selection of candidates for that party (or both)”.

Section 96D is Invalid

12. Section 96D is invalid because it:

- a. impermissibly burdens the freedom of political communication inferred from the Commonwealth Constitution;
- b. impermissibly burdens the freedom of political communication inferred from the New South Wales Constitution;
- c. impermissibly burdens the freedom of political association inferred from the Commonwealth Constitution; and
- 10 d. is inconsistent with Divisions 4 and 5A of Part XX and/or section 327 of the *Commonwealth Electoral Act* 1918 (Cth).

Commonwealth Freedom of Political Communication

Preliminary Matters

- 13. The essential rationale of the freedom is that, without it, the choice given by ss 7 and 24 of the Constitution would not be a “true choice”, in that the people would not be able to “exercise a free and informed choice as electors”: *Lange v Australian Broadcasting Corporation* (1997) 189 CLR 520, 560. The Constitution thus provides for an area of immunity from laws that undermine the process for which ss 7 and 24 provide. It follows that the freedom of political communication is not “a freedom to communicate. It is a freedom from laws that effectively prevent” such communication: *Levy v State of Victoria* (1997) 189 CLR 579 at 622.
- 20 14. The nature of the freedom gives rise to three preliminary issues in the context of s. 96D:
 - a. *First*, whether the making or receipt of political donations is communication;
 - b. *Secondly*, if so, whether it is political communication protected by the freedom; and
 - c. *Thirdly*, whether the freedom applies so as to protect such communication by persons other than “the people” upon whom a choice is conferred by ss 7 and 24.

Donations as Communication

- 30 15. Both the making, and the acceptance, of a “political donation” constitutes communication. It does not matter that donations do not necessarily involve speech, because “actions as well as words can communicate ideas”: *Levy v State of Victoria* (1997) 189 CLR 579 at 594 (see also at 613, 622-3, 625, and 638).
- 16. It has long been recognised in the United States² that making a political donation

² There is, of course, a developed body of First Amendment jurisprudence concerning what might generally be described as campaign finance regulation. The decisions of the Supreme Court of particular significance in this context are usefully book-ended by *Buckley v Valeo* 424 US 1 (1976) and *Citizens United v Federal Election Commission* 558 US 310 (2010).

The Canadian Supreme Court has also considered the compatibility of campaign finance regulation with

“serves as a general expression of support for the candidate and his views”: *Buckley v Valeo* 424 US 1, 21 (1976). It does not matter that a donation, without more, does not go beyond a general expression of support. As Thomas J observed in *Colorado Republican Federal Campaign Committee v Federal Election Commission* 518 US 604, 640 (1996) “even a pure message of support, unadorned with reasons, is valuable to the democratic process”.

- 10
17. Looked at from the other perspective, the acceptance of a political donation expresses the willingness of a candidate to be associated with, and to accept the support of, the donor. That is because donations, “like joining a political party, serve to affiliate a person with a candidate”: *Buckley v Valeo* 424 US 1, 22 (1976).
 18. The communication described above is enhanced by reason of the public disclosure of political donations required by both the EFED Act (Part 6, Division 2) and the *Commonwealth Electoral Act* (Part XX, Divisions 4 and 5A).
 19. In addition to being communication itself, however, the acts of making and receiving a donation also interact with, or enable, other communication. This is relevant because

the freedom of expression guaranteed by the *Canadian Charter of Rights and Freedoms*, although the issues raised in those cases are not immediately relevant to the present proceedings. *Libman v Quebec* [1997] 3 SCR 569 was a challenge to a law restricting the right to spend in relation to a referendum to two committees (one supporting a “yes”, and the other a “no”, vote). The Court held that limiting the available points of view in that way infringed the freedom of speech. *Figuroa v Canada* [2003] SCR 1 912 was a challenge to a law that restricted “registered” party status to parties nominating candidates in at least 50 districts. The Court held that the requirement impermissibly discriminated against the views of minor parties. *Harper v Canada* [2004] 1 SCR 827 was a challenge to a law restricting third party spending in elections. The Court upheld those restrictions, broadly on the basis that preventing less-resourced voices from being drowned out by well-resourced voices was not inconsistent with the freedom of expression.

There has also been a decision of the European Court of Human Rights in the context of campaign finance regulation. For example, *Bowman v United Kingdom* 26 Eur. HR Rep 1 (1998) held that the £5 expenditure limitation in s. 75 of the *Representation of the People Act* was a violation of Ms Bowman’s freedom of expression under Art. 10 of the *Convention for the Protection of Human Rights and Fundamental Freedoms*. The Court held that the restriction operated as a “total barrier” to Ms Bowman’s freedom of expression, and was not proportional to the legitimate aim pursued by the restriction (see at 19). See also *VgT Verein gegen Tierfabriken v Switzerland* 34 Eur. HR Rep 159 (2001) (invalidating a ban on political broadcasts in Switzerland). Once more, these cases do not appear to be of direct relevance to the issues in these proceedings.

The not infrequent references in this Court to the general lack of utility in references to First Amendment, and other foreign free-speech, jurisprudence (see, most recently, *Monis v The Queen* (2013) 295 ALR 259 at [326]), are perhaps of less force when the nature of the communication in issue in the American cases is at the very centre of “political communication” (see *Theophanous v Herald & Weekly Times Ltd* (1994) 182 CLR 104 at 125). As the Supreme Court has observed in *Buckley v Valeo* 424 US 1, 14 (1976): “contribution and expenditure limitations operate in an area of the most fundamental First Amendment activities”. See, too, the observation in *Harper v Canada* [2004] 1 SCR 827 at [11] that “political speech ... is the single most important and protected type of expression. It lies at the core of the guarantee of free expression”. In the particular context of this case, therefore, it is submitted that reference to the United States cases provides “useful illumination” (see *APLA Ltd v Legal Services Commissioner (NSW)* (2005) 224 CLR 322 at [56]) by reference to a “valid analogy” (see *Australian Capital Television Pty Ltd v Commonwealth* (1992) 177 CLR 106 at 240-1).

the question whether a law is incompatible with the freedom is to be judged not only by reference to its terms, but also by reference to its “operation and effect”: see *Lange v Australian Broadcasting Corporation* (1997) 189 CLR 520 at 567.

20. It is thus relevant to observe that a non-monetary expression of support may be amplified or enhanced when accompanied by the making of a donation. That is to say, to put one’s money where one’s mouth is, is typically regarded as an indication of the sincerity of the speaker and the seriousness of his or her commitment. A prohibition on donations thus also has an effect on other forms of communication.
- 10 21. Equally, the making of a donation enables the recipient to engage in communication. The observation of the Supreme Court in *Buckley v Valeo* 424 US 1, 21 (1976), that “while contributions may result in political expression if spent by a candidate or an association to present views to the voters, the transformation of contributions into political debate involves speech by someone other than the contributor”, does not undermine, but rather reinforces, this observation. Similarly, the American debate about whether particular funded communications are “speech by proxy” (and thus whether contribution restrictions ought to be analysed as expenditure restrictions) is likewise beside the point: see, e.g., *California Medical Association v Federal Election Commission* 453 US 182, 196 (1981); *Federal Election Commission v National Conservative Political Action Committee* 470 US 480, 495 (1985); *Colorado Republican Federal Campaign Commission v Federal Election Commission* 518 US 604, 638-9 (1996).
- 20 22. The relevant, and undeniable, fact is that donations fund communications, or fund other expenses that would otherwise divert money from the funding of communications. It follows that, in a very real sense, the making of a donation constitutes participation by the donor in the enterprise of the recipient, and thus participation in the communications made by it: *Colorado Republican Federal Campaign Commission v Federal Election Commission* 518 US 604, 636-638 (1996). As Thomas J there observed (at 638): “Whether an individual donates money to a candidate or group who will use it to promote the candidate or whether the individual spends the money to promote the candidate himself, the individual seeks to engage in political expression and to associate with like-minded persons. A contribution is simply an indirect expenditure; though contributions and expenditures may thus differ in form, they do not differ in substance.”
- 30 23. A prohibition on donations thus also has an effect on other communications.

Donations as Political Communications

- 40 24. The communications that are constituted by, that interact with, or that are enabled by, political donations within the meaning of the Act are, or at least are potentially, communications about government or political matters the subject of the freedom. (It is only necessary for the plaintiffs to demonstrate that *potential*, because the constitutional validity of a law must be assessed by reference to the scope of its operation and possible points of intersection with constitutionally protected political discourse: see *Monis v. The Queen* (2013) 295 ALR 259 at [62]; *Wotton v Queensland* (2012) 246 CLR 1 at [80]; *APLA Ltd v Legal Services Commissioner (NSW)* (2005) 224 CLR 322 at [381]; *Sunol v Collier (No 2)* (2012) 260 FLR 414 at [24], [81]).
25. All of those communications are plainly “political”. The question is whether their political content may be relevant to Commonwealth issues (and thus the choice

conferred by ss 7 and 24). In that regard, however, it is important to note the frequent observations in this Court regarding the effect of the limitation of the scope of the freedom to matters relevant to Commonwealth: see generally *Hogan v Hinch* (2011) 243 CLR 506 at [48].

- 10 26. The expression of support for a political party or candidate constituted by a political donation is, at least potentially, relevant to federal issues. In Australia, the major political parties are “national political parties operating at federal, State, Territory and local government levels” (*Lange v. Australian Broadcasting Corporation* (1997) 189 CLR 520 at 571-2). They each seek to achieve their objectives through the election of members to both State and Federal legislatures.³ An expression of support for a party, or candidate of a party, at the State level is capable of constituting an expression of support for the policies of that party generally, and the party itself, including at the federal level.
- 20 27. Furthermore, section 15 of the Constitution provides a direct role for the Parliaments of the States, in certain circumstances, in relation to the composition of the Senate. Similarly, the Constitution contemplates, and it was the case for a time (and no doubt could be again), that the States may play a role in determination of questions concerning matters relevant to Commonwealth elections (see ss. 7, 9, 10, 29, 30, and 31). Similarly, s. 51(xxxvii) provides for a direct means by which the States may augment the legislative powers of the Commonwealth.
- 30 28. Moreover, the ability of a party elected to government at either the State or Commonwealth level to implement its policies or achieve its objectives is likely to be enhanced if that same party is able to form a government at the other level. That is so for a variety of reasons, including the “significant interaction between the different levels of government in Australia” including the “use of cooperative executive and legislative arrangements between Commonwealth and state and territory governments” (*Hogan v Hinch* (2011) 243 CLR 506 at [48]) and the funding provided by the Commonwealth to State governments, pursuant to s 96 of the Constitution and otherwise, upon which the States are dependent: see, e.g., *Australian Capital Television Pty Ltd v Commonwealth* (1992) 177 CLR 106, 142; *Lange v Australian Broadcasting Corporation* (1997) 189 CLR 520 at 572. It follows that an expression of support for a party or candidate at the State level is relevant to the choice to be made pursuant to ss 7 and 24.
29. Those considerations apply *a fortiori* when the relevant communication is that which is enabled by political donations. That communication will nearly always be relevant to the choice prescribed by ss 7 and 24.

Political Communication by Non-Voters

30. One consequence of the fact that the freedom exists to preserve the “true choice” required by ss 7 and 24 is that the status of the communicator is not relevant to the

³ ALP NSW Rules 2013, Rule A.2 (Special Case at 460); Charter and National Constitution of the Australian Greens, cl. 4.1 (Special Case at 1204); Constitution of the Greens NSW, cl. 1.3 (Special Case at 1233); Constitution of the National Party of Australia cll. 48-49 (Special Case at 1275); National Party of Australia – NSW Constitution and Rules, cl. 1.2.1(c) (Special Case at 1287); Constitution of the Liberal Party of Australia, cll. 13 and 103 (Special Case at 1337 and 1361); Constitution of the Liberal Party of Australia – NSW Division, cl. 21.1 (Special Case at 1489).

question whether their communication is protected. Fundamentally, that is because the fact that a person making a communication is not themselves required to exercise the choice prescribed by ss 7 and 24 does not mean that what they say is not relevant to the choice of a person who is. Ultimately, “individual judgment, whether that of the elector, the representative or the candidate, on many issues turns upon free public discussion in the media of the views of all interested persons, groups and bodies”: *Australian Capital Television Pty Ltd v Commonwealth* (1992) 177 CLR 106 at 139.

- 10 31. The fact that “corporations and other associations, like individuals, contribute to the ‘discussion, debate, and the dissemination of information and ideas’” (*Pacific Gas & Electric Co. v Public Utilities Commission of California* 475 US 1, 8 (1986), quoting *First National Bank of Boston v Bellotti* 435 US 765, 783 (1978)) has also led the United States Supreme Court to “reject[] the argument that political speech of corporations or other associations should be treated differently under the First Amendment simply because such associations are not ‘natural persons’” (*Citizens United v Federal Election Commission* 558 US 310, 343 (2010)).
- 20 32. Because “the inherent worth of the speech in terms of its capacity for informing the public does not depend upon the identity of its source, whether corporation, association, union, or individual” (*First National Bank of Boston v Bellotti* 435 US 765, 777 (1978)), the preferable analysis is that the freedom operates to protect communications, regardless of their source, that are relevant to the choice to be exercised by the people pursuant to ss 7 and 24.
- 30 33. In any event, the obvious point, that corporations and other associations are aggregations of individuals, must not be overlooked. That is why, when the United States Supreme Court, in *Buckley v Valeo* 424 US 1, 57 (1976), referred to “the people” it did so “individually as citizens and candidates and collectively as associations and political committees”. To hold an opinion is inherently and fundamentally a human characteristic. An expression of opinion by a corporation or association is thus, in a meaningful sense, an expression of the collective opinion of the constituent members. That is not to say, of course, that each member will necessarily agree with the collective opinion. But the existence of such disagreement does not deprive the collective opinion of its character as an expression of the opinion of individuals in a politically important capacity (i.e., as members of the association).
- 40 34. Even if the freedom were held to protect “communication and discussion *by the people of the Commonwealth*” (*Cunliffe v Commonwealth* (1994) 182 CLR 272 at 335, emphasis added), however, the result would not differ. That is because, “the implication’s confinement of the content of legislative power protects the freedom of communication and discussion of non-citizens, be they corporations or aliens, to the extent necessary to ensure that the freedom of citizens to engage in discussion and obtain information about political matters is preserved and protected”: *Cunliffe v Commonwealth* (1994) 182 CLR 272 at 336.
35. The opinions of corporations and other associations (as well as other persons not entitled to vote, such as aliens and minors) about political and governmental matters are plainly relevant to the choice conferred upon the people by ss 7 and 24. A corporation’s opinion concerning the impact of a particular policy on its business may be relevant to a voter’s choice in a variety of ways. But even where the corporation or association does not speak in terms of the direct impact upon it of some policy, this Court has recently recognised the important role of non-voting “agitators” in the system of representative

democracy prescribed by the Constitution: *Aid/Watch Incorporated v Federal Commissioner of Taxation* (2010) 241 CLR 539 at [44].

36. In any event, for the reasons given above, a political donation cannot be viewed simply as a communication by the donor. The recipient, a political party or candidate, also engages in communication by accepting the donation (cf. the articles at Annexure 58 of the Special Case). It must also be remembered that political donations enable political communication by political parties and candidates. All of those communications lie at the heart of any conception of the freedom.

The Test for Compatibility

- 10 37. A law (including a law of a State) will be incompatible with the freedom of political communication inferred from the Commonwealth Constitution, and hence invalid, where (see *Lange v Australian Broadcasting Corporation* (1997) 189 CLR 520 at 567; *Coleman v Power* (2004) 220 CLR 1 at [93], [196], [210]):
- a. the law effectively burdens freedom of communication about government or political matters either in its terms, operation or effect; and
 - b. the law is not reasonably appropriate and adapted to serve a legitimate end in a manner which is compatible with the maintenance of the constitutionally prescribed system of representative and responsible government.
38. It has been proposed that the second branch of that test involves two inquiries:
- 20 a. the first concerns the proportionality between the legislative object and the means adopted for its attainment. Thus, “if the means employed go further than is reasonably necessary to achieve the legislative object, and are disproportionate to it”, then the burden cannot be justified: see *Monis v The Queen* (2013) 295 ALR 197 at [280]; and
- b. the second concerns the proportionality between the law and the maintenance of the constitutionally prescribed system of representative and responsible government. Thus, it is necessary to assess “the extent of the restriction imposed upon political communication” to establish whether the law imposes an “undue burden” on the freedom: see *Monis v The Queen* (2013) 295 ALR 197
- 30 at [282].

The First Limb: Section 96D Burdens the Freedom of Political Communication

39. The prohibition on political donations by anyone other than an individual enrolled to vote burdens the freedom of political communication in two ways.
40. *First*, the communication constituted by the making and acceptance of political donations is expressly prohibited, and the freedom is thus burdened to that extent: see, e.g., *Monis v. The Queen* (2013) 295 ALR 259 at [343]; *Roberts v. Bass* (2002) 212 CLR 1 at [102]; *Levy v State of Victoria* (1997) 189 CLR 579, 614; *Theophanous v Herald & Weekly Times Ltd* (1994) 182 CLR 104, 130.
- 40 41. *Secondly*, the prohibition on donations reduces the funds available to political parties, candidates, and third party campaigners to engage in other political communications (thus burdening the freedom to that extent).

42. “Virtually every means of communicating ideas in today’s mass society requires the expenditure of money”: *Buckley v Valeo* 424 US 1, 19 (1976). It follows that “given the important role of contributions in financing political campaigns, contribution restrictions could have a severe impact on political dialogue if the limitations prevented candidates and political committees from amassing the resources necessary for effective advocacy”: *Buckley v Valeo* 424 US 1, 21 (1976).
43. That s. 96D would have a severe impact on the amount of funds available to all of the major political parties (except the Greens) is demonstrated by the facts of the Special Case. It is there revealed that, in the period 1 July 2008 to 30 June 2011, over 98% of donations to the ALP NSW, 75% of donations to the Liberal Party, and 90% of donations to the National Party were not from individuals.⁴ Even if some proportion of that (now) lost revenue could be obtained in the future from individuals, the impact would likely remain substantial.
44. The State contends in its defence (see at [77(d)] and [81(d)(ii)]) that the reduction in funds effected by s. 96D cannot be considered independently of the entitlement to payments from the Election Campaign Fund established by Division 2 of Part 5 of the EFED Act. In the plaintiffs’ submission, however, that is a red herring.
45. Division 2 of Part 5 of the EFED Act was inserted by the *Election Funding and Disclosures Amendment Act* 2010 (NSW), which commenced on 1 January 2011. The entitlement of parties and candidates to payments from the Election Campaign Fund thus existed prior to, and independently of, the prohibition in s. 96D. Those entitlements cannot be seen as “offsetting” the reduction in donations brought about by s. 96D in any way.
46. Indeed, the Election Campaign Fund was established in connection with the 2010 amending Act’s enactment of caps on donations (which caps continue to apply in the current version of the EFED Act). In the second reading speech, it was stated that “caps on donations require a significant increase in public funding to reduce the risk of such caps being invalid under the Commonwealth Constitution. ... The bill therefore ... increase[s] the amount of public funding available to political parties, groups and candidates in order to partly compensate for the loss in revenue arising from the proposed caps on political donations”.
47. In other words, the Election Campaign Fund was designed to provide “partial compensation” for the imposition of caps on then lawful donations. It was not intended to compensate for the total ban on the vast majority of political parties’ donations.
48. In any event, the significance of the availability of funding from the Election Campaign Fund can only be understood in light of the public funding available prior to the introduction of that Fund. There was, as it happens, a system of public funding in place before 1 January 2011 (established under the old Part 5 of the EFED Act). Substantial funding under that system was received by parties and candidates from the Central Fund or the Constituency Fund.⁵
49. For these reasons, it is submitted that the likely effect of s. 96D is to significantly diminish the funds available to be spent on political communication by political parties

⁴ Special Case at [47].

⁵ See Special Case at [36]-[45].

and candidates.

The Second Limb: No Proportionality Between Legislative Object and Legislative Means

50. The State identifies the object of s. 96D, and the legislative scheme of which it is a part, as “securing and promoting the actual and perceived integrity of the Parliament of New South Wales, the Government of New South Wales, and local government bodies within New South Wales” (see Defence at [78(a)(i)]).
51. The State says that s. 96D (and the broader scheme) seeks to achieve that object “through the implementation of a transparent regime for political donations which minimises the potential, and the perception for potential, for corporations and other organisations to exercise undue, corrupt or hidden influence over those institutions, their members, or their processes” (see Defence at [78(a)(i)]).
52. Corporations and other organisations are said to be singled out as the subjects of the law because they, “by reason of their character and their size (1) are more likely to represent a threat to integrity in the manner identified; and (2) may make political donations in a manner inconsistent with the views of significant portions of the membership of the entities in question, where those members may have little practical control over the decisions taken with respect to such donations” (see Defence at [78(a)(ii)]).
53. Before turning to consider the two justifications advanced for selecting “corporations and other associations” as the target of the law (it should not be forgotten, of course, that non-enrolled individuals are also subject to the prohibition), it is necessary to observe that the “transparent regime” of which the State speaks is nothing more than a complete prohibition on donations by corporations and other associations. Moreover, that prohibition exists against the backdrop of generally applicable caps on donations (either \$5,000 or \$2,000, depending on the recipient: see s 95A). It follows that the State’s justifications must be examined against both the severity of the scheme (complete prohibition) and the limited nature of the conduct that would otherwise be permissible (donations up to the cap).
54. In relation to the first justification:
- a. There is no fact in the Special Case, nor any basis upon which the Court could take judicial notice of facts (as to which, see, e.g., *Thomas v Mowbray* (2007) 233 CLR 307 at [613]ff.), demonstrating that corporations and other organisations have a “character and size” that makes them “more likely to represent a threat to integrity” of the Parliament or Government of, or local government bodies within, New South Wales than any other class of donor.
- b. Indeed, it is difficult to see why the fact that a donor is a corporation or other association has any bearing whatsoever on the potential for that donation to give rise to the risk or reality of undue, corrupt or hidden influence. Assuming the unexpressed premise (that political donations give rise to the risk or reality of undue, corrupt or hidden influence), then that potential presumably exists by reason of the fact of the donation, not the particular form of the donor.
- c. Any suggestion that greater wealth is concentrated in corporations or other associations, and that they may therefore be expected to donate larger amounts of money (which may give rise to a greater threat), is an irrelevant consideration when it is recalled that s. 95A of the EFED Act imposes relatively modest caps

on all donations (cf., e.g., *Federal Election Commission v Massachusetts Citizens for Life, Inc* 479 US 238, 257 (1986); *Austin v Michigan Chamber of Commerce* 494 US 652, 658-9 (1990); *Federal Election Commission v Beaumont* 539 US 146, 153-4 (2003)).

- 10
- d. The legislative means thus select an irrelevant criterion upon which to operate (i.e., the nature of the donor as an enrolled voter, or not). As a result, even if, contrary to these submissions, it is accepted that donations under the cap are capable of giving rise to the feared threat, s. 96D both prohibits donations with no real potential to do so (i.e., corporate or association donations lacking whatever quality is said to render a capped donation a threat to the integrity of the system), and permits donations that do (i.e., individual donations with such a quality). Corporate or associational status simply cannot be treated as a proxy for whatever the relevant quality is said to be. It is thus submitted that the selected legislative means are not proportionate to the stated end.

55. In relation to the second justification:

- 20
- a. The State does not suggest that there is in fact some identified problem of corporations and other associations making political donations in a manner inconsistent with the views of significant portions of their membership. The State merely says that corporations and other associations, “by reason of their character and size”, “may” do so (which is obviously true). Even then, however, it must be remembered that “the procedures of corporate democracy” (see *Citizens United v Federal Election Commission* 558 US 310, 362 (2010), quoting *First National Bank of Boston v Bellotti* 435 US 765, 794 (1978)), and the procedures of industrial organisation democracy, provide a means by which such behaviour may be controlled.

- 30
- b. Even if it were assumed that the potential to which the State refers was realised, there is no apparent connection between that fact and the risk that a donation made in such circumstances would give rise to the fact or perception of the exercise of undue, corrupt or hidden influence. The risk of undue, corrupt or hidden influence must appear to exist independently of whether the donation was supported by the donor’s members.

- 40
- c. Even if this factor were regarded as an independent legislative object (i.e., protecting the members of corporations and other associations from the risk that “their” funds might be spent in ways of which they did not approve: cf. *Federal Election Commission v National Right to Work Committee* 459 US 197, 208 (1982); *Federal Election Commission v Beaumont* 539 US 146, 154 (2003)), and it does not appear to be, then there is no reason why it ought to be restricted to one kind of spending only: viz., political donations. Corporations are not prohibited from making electoral communication expenditure (as third party campaigners). Media corporations may engage in a wide range of speech, including political speech, with which their shareholders disagree. Corporations constantly incur expenditure generally, and it may be assumed that their shareholders may or would disapprove of some of it. Moreover, the imposition of relatively modest caps on donations by s. 95A of the EFED Act means that the risk of substantial dissipation of members’ funds is low in relation to political communications, as opposed to the risk in other fields of corporate expenditure where there is no legislative restriction.

- d. The reasoning of the Supreme Court in *Citizens United v Federal Election Commission* 558 US 310, 361-2 (2010) is persuasive in rejecting the logic of this purported rationale.
- e. Once again, therefore, it is submitted that s. 96D selects an irrelevant criterion upon which to operate, and there is thus no proportionality between the means selected and the legislative object.
56. It is convenient, at this point, to address the United States Supreme Court's holding that while a prohibition on individual donations would be unconstitutional, a prohibition on donations by corporations and other associations is permissible: see *Federal Election Commission v Beaumont* 539 US 146 (2003). The status of that decision has been regarded as uncertain in light of *Citizens United v Federal Election Commission*: see, e.g., "Fourth Circuit Holds That Ban On Corporate Direct Contributions Does Not Violate First Amendment", (2013) 126 *Harv L Rev* 1707, commenting on *United States v Danielczyk* 683 F. 3d 611 (2012) (cert. denied on 25 February 2013).
57. The relevance of *Citizens United* to the decision in *Beaumont* is perhaps most succinctly demonstrated by the Court's statement in *Citizens United* that it was returning "to the principle established in *Buckley* and *Bellotti* that the Government may not suppress political speech on the basis of the speaker's corporate identity. No sufficient governmental interest justifies limits on the political speech of nonprofit or for-profit corporations": see *Citizens United v Federal Election Commission* 558 US 310, 365 (2010).
58. The Court in *Danielczyk* observed that "*Citizens United* preserved two of the four important government interests recognised in *Beaumont*: anti-corruption and anti-circumvention" (683 F. 3d 611, 618 (2012)). (The second of those interests is not relied upon by the State, in connection with s. 96D, in this case.) Insofar as the first interest is concerned (i.e., anti-corruption: see *Citizens United v Federal Election Commission* 558 US 310, 356-361 (2010)), the Court gave detailed consideration to the basis upon which the risk was said to exist (and found it lacking). (For the reasons given above, and particularly in circumstances where there is a generally applicable cap on the amount of donations, the plaintiffs urge this Court to reach a similar conclusion in the context of this case).
59. Of course, in *Beaumont*, the Court also relied on the government's interest in "protecting 'the individuals who have paid money into a corporation or union for purposes other than the support of candidates from having that money used to support political candidates to whom they may be opposed'": see *Federal Election Commission v Beaumont* 539 US 146, 154 (2003), quoting *Federal Election Commission v National Right to Work Committee* 459 US 197, 208 (1982). That interest has now been dismissed by *Citizens United*, and, for the reasons given above, it is submitted that this Court should reach a similar conclusion in this case.
60. It is also important to note, though, that the law upheld in *Beaumont* differed in material respects to the EFED Act. In that case, the Supreme Court regarded it as relevant to the validity of the ban on corporate donations that corporations were entitled to establish "PACs" (named after the political action committees that run them) which may be "wholly controlled by the sponsoring corporation, whose employees and stockholders or members generally may be solicited for contributions. ... While federal law requires PACs to register and disclose their activities ... the law leaves them free to make

contributions as well as other expenditures in connection with federal elections”: *Federal Election Commission v Beaumont* 539 US 146, 149 (2003) (see also at 162-3). In other words, the law provided an alternative means by which corporations (through PACs under their control) could make contributions. The absence of any similar alternative structure available to associations under the EFED Act is thus an important factor in assessing the proportionality of s. 96D.

61. For all these reasons, therefore, it is submitted that no principled support can be found for the validity of s. 96D in the reasoning of the Supreme Court in *Beaumont*.
- 10 62. Finally, it is also relevant to note that less drastic means by which the relevant legislative end may be achieved are available (as to the relevance of which, see *Monis v The Queen* (2013) 295 ALR 197 at [280], [347]; *Lange v Australian Broadcasting Corporation* (1997) 189 CLR 520 at 568; *Australian Capital Television Pty Ltd v Commonwealth* (1992) 177 CLR 106). For example:
- a. increased, and generally applicable, requirements concerning the disclosure of information concerning a donor, donee, donation and any other information considered relevant;
 - b. generally applicable requirements that subsequent dealings or interactions between donors, donees, and other relevant persons be publicly disclosed;
 - c. additional generally applicable restrictions on the amount of donations.
- 20 63. For all these reasons, it is submitted that the legislative means are not proportionate to the stated end, going “further than is reasonably necessary to achieve the legislative object” (*Monis v The Queen* (2013) 295 ALR 197 at [280]).

The Second Limb: Proportionality Between the Law and the Constitutional System

64. Section 96D imposes an undue burden on the freedom of political communication (see *Monis v The Queen* (2013) 295 ALR 197 at [282]). That is because:
- a. It imposes a blanket prohibition on a particular form of political communications by corporations, associations, unions, aliens, minors, and others not enrolled to vote. Although those persons are not themselves entitled to vote, they each play an important part in Australian society. The way in which legislative or government action may impact those persons, and the views of those persons as to the benefit of such action, is likely to be highly relevant to the choice of voters. Those persons play an important role generally in the discussion and debate relevant to political matters in Australia.
 - b. The risk identified by the State to the integrity of the system does not seem to be in any way connected with the non-voting character of donors. To the extent that a risk of the sort identified exists by reason of the making of donations, there is no reason to think that it varies with the voting or non-voting character of the donor. Section 96D thus simply selects one group of persons for discriminatory treatment without any rational justification for doing so.
 - c. The availability of public funding cannot be regarded as ameliorating the burdens created by s. 96D. For one thing, as discussed above, the public funding regime is directed at compensating parties for a different legislative measure: viz., the imposition of caps on donations (and not the prohibition of
- 30
- 40

donations from non-individual sources). Moreover, however, the amount of public funding available is not tied in any meaningful way to the level of support for parties or candidates (being a partial refund of electoral communication expenditure incurred by parties or candidates, provided they attract a minimum level of support in an election). Similarly, the eligibility criteria make it unlikely that a *new* political party would be entitled to public funding, and thus in a position to fund itself. Finally, the fact that the available public funding is a refund of expenditure means that parties, but new parties in particular, must be able to fund their outward cash-flows until such time as they may become entitled to public funding.

- d. Particularly in circumstances where s. 95A imposes modest caps on the amount of political donations, it is difficult to see how there is any real risk of the sort identified. Once again, therefore, non-voting persons are simply singled out for discriminatory treatment without any rational basis for doing so.

Conclusion

65. For the above reasons, it is submitted that s. 96D is invalid.

State Freedom of Political Communication

66. A freedom of political communication may be inferred, in appropriate cases, from the entrenched provisions of a State Constitution making provision for a system of representative government: see, e.g., *Stephens v West Australian Newspapers Ltd* (1994) 182 CLR 211 at 233-4, 236; *Muldowney v South Australia* (1996) 186 CLR 352 at 367, 373-4, 377-8, 387-8.

67. Section 7A(1)(c) refers to the members of both Houses of Parliament being “elected”, and ss. 7B(1)(b), 7B(2), and 11A refer to “general elections”. Section 17(2) provides that the Legislative Council shall consist of 42 members “elected at periodic Council elections”. Section 26 provides that each member of the Legislative Assembly shall be “elected to represent one electoral district only”. Sections 27 and 28 provide for the distribution of electoral districts, and apply the principle of “one vote, one value” (with a tolerance of 10%). The Sixth Schedule sets out a proportional voting system for the Legislative Council.

68. It has been observed that those provisions “provide for a system of government where the representatives of the people are elected to a bicameral parliament in periodic elections, according to the principle of “one vote, one value”, pursuant to a democratic voting system”: Twomey, “The Application of the Implied Freedom of Political Communication to State Electoral Funding Laws”, (2012) 35 *UNSW Law Journal* 625 at 640. The absence of an express statement that elected representatives are to be “chosen by the people” does not matter, when “elections necessarily require a choice to be made by voters”: *Muldowney v South Australia* (1996) 186 CLR 352 at 369. It is thus submitted that they give rise to an implication of a freedom of political communication of a like nature to that inferred from the Commonwealth Constitution.

69. All of those provisions are entrenched by s. 7A(1)(b) and s. 7B(1)(a). A law infringing the implied freedom would necessarily be a law “respecting the constitution ... of the Parliament of the state” within the meaning of s. 6 of the *Australia Acts 1986*. That is because the abrogation of the freedom impacts upon and alters the process by which the Parliament is elected (i.e., elections in which voters make a true choice). The election

of members of Parliament by voters making a true choice is fundamental to the representative character of the Parliament. And, as was observed in *Attorney-General (WA) v Marquet* (2003) 217 CLR 545 at [76], “at least to some extent the ‘constitution’ of the Parliament extends to features which go to give it, and its Houses, a representative character” (cf. *Clydesdale v Hughes* (1934) 51 CLR 518 at 528). The result is that such a law would be of “no force or effect unless ... made in such manner and form as may from time to time be required by a law made by that Parliament” (i.e., the requirements of ss. 7A and 7B). See generally *Attorney-General (WA) v Marquet* (2003) 217 CLR 545 at [80], [214]-[215].

- 10 70. There is no dispute that the Act inserting s. 96D was not enacted in accordance with the process prescribed in ss. 7A and 7B. To the extent that the implication is drawn from provisions entrenched by s. 7A, the only question is whether the Act was a law “for the purpose” of repealing or amending those provisions. In the plaintiffs’ submission, however, a Bill will have as a purpose the repeal or amendment of a provision if that is its ordinary, and presumably intended, operation.
71. The compatibility of a law with the implied freedom is tested in the same manner as described above in connection with the Commonwealth freedom, and the plaintiffs repeat their submissions above in this context.

Freedom of Association

- 20 72. Freedom of political communication “entails, at the very least, freedom on the part of citizens to associate with those who wish to communicate information and ideas with respect to political matters and those who wish to listen”: *Kruger v Commonwealth* (1997) 190 CLR 1 at 115-6. To that extent, freedom of association is an aspect of freedom of political communication, and thus implicit in the Constitution: *Australian Capital Television Pty Ltd v Commonwealth* (1992) 177 CLR 106 at 212, 231-232; *Kruger v Commonwealth* (1997) 190 CLR 1 at 91, 116, 142; *Mulholland v Australian Electoral Commission* (2004) 220 CLR 181 at [114], [148], [286]; *Wainohu v New South Wales* (2011) 243 CLR 181 at [112].
- 30 73. It has been recognised in the United States that “[e]ffective advocacy of both public and private points of view, particularly controversial ones, is undeniably enhanced by group association”: *NAACP v Alabama* 357 US 449, 460 (1958); *Buckley v Valeo* 424 US 1, 15 (1976). Associations “allow citizens to pool their resources and make their advocacy more effective”: *Colorado Republican Federal Campaign Committee v Federal Election Commission* 518 US 604, 637 (1996). See also *Federal Election Commission v National Conservative Political Action Committee* 470 US 480, 494 (1985).
- 40 74. Section 96D prohibits people from making a collective political donation (and thus from associating for the purposes of making that communication). It does this generally by prohibiting all donations made by associations of persons. It also does it specifically, by defining affiliation fees to be “gifts” (in s. 85(3)), and thus “political donations” (in s. 85(1)). The result is that the ALP NSW is prohibited by s. 96D from accepting affiliation fees from the 21 unions that are affiliated with it. Individual members of a union are thus no longer permitted, collectively, to make the payments that constitute a public declaration of affiliation with the ALP NSW.
75. It is no answer to say that each individual member of the union could join the ALP NSW. The Constitutional freedom protects their right, not only to say “I am affiliated

with the ALP NSW”, but also to say “we are affiliated with the ALP NSW”.

76. The State identifies the same legislative object in this context that it relies upon in support of s. 96D generally (see Defence at [104]). For the same reasons given above, in the context of the discussion of the freedom of political communication, the law is not consistent with the Constitutional freedom of association.

Inconsistency With Commonwealth Laws

Commonwealth Electoral Act 1918, Part XX, Divisions 4 and 5A

- 10 77. Divisions 4 and 5A of Part XX of the *Commonwealth Electoral Act 1918* make comprehensive provision for the disclosure of political donations to parties and candidates. In particular, ss. 304, 314AC, and 314AEC require disclosure of all gifts over \$10,000 made to a candidate or party, and s. 305A and s. 305B requires donors to disclose all gifts over \$10,000.
78. Section 306 then provides that gifts over \$10,000 may not be received (including by a State branch of a political party) unless the name and address of the person giving the gift are known or provided at the time. Section 306B provides that a gift made by a corporation that is wound up within one year, may be recovered by the liquidator.
- 20 79. In the plaintiffs’ submission, those provisions of the *Commonwealth Electoral Act* contemplate and permit persons other than individuals enrolled to vote to make donations to political parties and candidates, including the State branches of parties (see, e.g., s. 305B(1)(b), s. 306(1)(b), s. 306(5)(a)(i), s. 306B(c), s. 314AB(1))
80. The prohibition in s. 96D of the EFED Act is inconsistent with the permission created by, or underpinning, Divisions 4 and 5A of Part XX of the *Commonwealth Electoral Act*, and thus invalid by reason of s. 109 of the Constitution: see, e.g., *Colvin v Bradley Brothers Pty Ltd* (1943) 68 CLR 151.

Commonwealth Electoral Act, Section 327

- 30 81. Section 327(1) of the *Commonwealth Electoral Act 1918* provides that “a person shall not hinder or interfere with the free exercise or performance, by any other person, of any political right or duty that is relevant to an election under this Act”. Section 327(2) provides that “a person must not discriminate against another person on the ground of the making by the other person of a donation to ... a State branch of a political party ... (c) by subjecting him or her to any form of intimidation or coercion; or (d) by subjecting him or her to any other detriment”. The reference to a “person” includes a reference to a body politic, including the State (see *Acts Interpretation Act 1901* (Cth), s. 2C).
- 40 82. Section 96D of the EFED Act:
- a. interferes with the implied right to free political communication, contrary to s. 327(1) of the *Commonwealth Electoral Act 1918*;
 - b. is designed and intended to coerce the plaintiffs into refraining from making political donations, contrary to s. 327(2)(c) of the *Commonwealth Electoral Act 1918*; and
 - c. subjects the plaintiffs to detriment by declaring unlawful the making of political donations by the plaintiffs, contrary to s. 327(2)(d) of the *Commonwealth*

Electoral Act 1918.

83. In the circumstances, the prohibition in s. 96D is inconsistent with the prohibitions contained in s. 327 of the *Commonwealth Electoral Act 1918*, and is invalid by reason of s. 109 of the Constitution.

Section 95G(6) is Invalid

84. Section 95G(6) is invalid because it:

- a. impermissibly burdens the freedom of political communication inferred from the Commonwealth Constitution; and
- b. impermissibly burdens the freedom of political communication inferred from the New South Wales Constitution.

10

Commonwealth Freedom of Political Communication

The First Limb: s 95G(6) Burdens the Freedom of Political Communication

85. The aggregation of the electoral communication expenditure of political parties and affiliated organisations burdens the freedom of political communication in three ways. Each involves a limitation on the ability of a party or affiliated organisation to incur electoral communication expenditure.

86. Limiting a person's electoral communication expenditure plainly burdens political communication protected by the freedom. That is because to constitute "electoral communication expenditure", the spending must be "for or in connection with promoting or opposing, directly or indirectly, a party or the election of a candidate or candidates or for the purpose of influencing, directly or indirectly, the voting at an election" (see s. 87(1); see also the "dominant purpose" test, applicable in some circumstances, in s. 87(4)). Such communication would plainly be protected by the freedom. The fact that the law restricts the spending of money, rather than the communication per se, does not make a difference: "a restriction on the amount of money a person or group can spend on political communication during a campaign necessarily reduces the quantity of expression by restricting the number of issues discussed, the depth of their exploration, and the size of the audience reached": *Buckley v Valeo* 424 US 1, 19 (1976).

20

- 30 87. Turning then to the ways in which s. 95G(6) burdens the freedom of political communication, it *first* limits the amount that a political party and any affiliated organisations may spend on electoral communication expenditure, thus diminishing the type or amount of political communication in which those parties and/or affiliated organisations may engage.

88. The direct effect of s. 95G(6) is to reduce the amount that a party may spend on electoral communication expenditure by the *combined amount* of the actual expenditure of its affiliated organisations throughout the period. That is to say, whatever the total amount of expenditure by affiliated organisations *at the end of the capped expenditure period*, the cap of the party, *applicable from the beginning of the capped expenditure period*, will be reduced by that amount (including to zero).

40

89. So, to take the ALP NSW as an example, assuming that the party fields candidates for the Legislative Assembly in the same number of electoral districts as it did at the last

election, the party's expenditure cap (absent s. 95G(6)) would be \$8,800,000 (see s. 95F(2) and Special Case at [49]). The ALP NSW has 21 affiliated organisations (see Special Case at [18]). On the assumption that each affiliated organisation has an expenditure cap of \$1,050,000 (see s. 95F(10)(a)), those organisations have a combined expenditure cap of \$22,050,000. It follows that if those organisations incurred, on average, only 40% of their permitted expenditure, the ALP NSW would not be entitled to incur any electoral communication expenditure.

10 90. *Secondly*, the direct operation of s. 95G(6) also reveals its indirect operation on the ability of affiliated organisations to incur electoral communication expenditure. Their spending will also be affected by the spending of other affiliated organisations. For example, if one affiliated organisation wishes the party to be entitled to incur some electoral communication expenditure, then it will need to limit its own spending to ensure that that spending does not cause the total to exceed the party's cap. So, assuming an \$8,800,000 cap for the party, if eight affiliated organisations exhaust their \$1,050,000 cap, and the other affiliated organisations wish the party to be entitled to spend \$400,000, then the remaining 13 affiliated organisations may not incur any electoral communication expenditure.

20 91. *Thirdly*, the operation of s. 95G(6) described above reveals that, even in circumstances where spending is not prohibited by the law, it will often be seriously discouraged or inhibited. This chilling effect on the incurrence of electoral communication expenditure arises principally because the party's cap (and the spending limit of affiliated organisations that wish the party to be able to spend a particular amount) can only be known at the end of the capped expenditure period. It follows that:

a. a party, or affiliated organisation that wishes the party to be able to incur electoral communication expenditure, cannot know how much it will be entitled to spend with certainty until the occasion for the incurring of the expenditure has passed (unless a binding agreement with all relevant entities can be reached in advance); and

30 b. a party, or affiliated organisation that wishes the party to be able to incur electoral communication expenditure, will not have the means of knowing the extent to which its ability to spend has been reduced (unless all relevant entities agree to disclose details of their expenditure).

92. There is thus a significant practical burden placed upon a political party, and any affiliated organisation wishing the party to be able to incur electoral communication expenditure, from incurring *any* such expenditure.

93. For these reasons, it is submitted that s. 95G(6) burdens the freedom of political communication.

The Second Limb: No Proportionality Between Legislative Object and Legislative Means

40 94. The State identifies the object of s. 95G(6) as being to make efficacious the generally applicable restriction on electoral communication expenditure imposed by ss. 95F and 95I. That is to say, "in circumstances where there exists a generally applicable cap on the amount of electoral communication expenditure that parties, candidates and third party campaigners may incur, it is legitimate to ensure that the effectiveness and fairness of those generally applicable caps are not circumvented by reason of matters of form rather than of substance": see Defence at [82(a)] and [82(d)].

95. The question of substance with which s. 95G(6) is concerned is the identification of single sources of electoral communication expenditure, notwithstanding the existence of multiple legal entities. The criterion selected by the legislation to identify that single source is the fact of affiliation (i.e., authorisation of a person or entity “under the rules of [a] party to appoint delegates to the governing body of that party or to participate in pre-selection of candidates for that party (or both)”: s. 95G(7)).
96. The criterion selected is disproportionate to the legislative object for the following reasons:
- 10 a. The ability of an organisation to appoint delegates to the governing body of a political party, or to participate in the pre-selection of candidates, does not equate to control of the political party, nor even any necessary ability to influence the actions of the party in accordance with the opinions or objectives of the affiliated organisation. The criterion thus picks up a range of participations in a political party falling well short of anything necessary to constitute the two entities as, in substance, the one source of expenditure. Equally, it leaves out of account a range of participations in political parties that may constitute control or influence sufficient to characterise entities as a single source of electoral communication expenditure.
- 20 b. The ability of an organisation to appoint delegates to the governing body of a political party, or to participate in the pre-selection of candidates, does not mean that there is, or even may be, an identity of opinions or objectives between the two. In any event, identity of political opinion or objective cannot, of itself, be sufficient to identify two entities as one source of expenditure. If nothing else, the existence of agreement on particular issues, says nothing as to priorities, nor whether there are other issues upon which they may disagree. Furthermore, the fact that two people agree on something does not mean that they their individual existences should be ignored. The Special Case identifies numerous examples of unions affiliated with the ALP NSW publicly opposing, or articulating a different position, to that advanced by the ALP NSW (see Special Case at [66],
- 30 and Annexure 59).
97. It follows that the legislation selects a criterion that is both over and under-inclusive in attempting to identify single voices or sources of electoral communication expenditure. That criterion is thus not a criterion that distinguishes, as a matter of substance, between single sources of electoral communication expenditure.
98. The legislative means are also disproportionate to the object because they create the chilling effect described above. That is to say, to the extent the law prevents or discourages parties and affiliated organisations from incurring electoral communication expenditure up to the level of the aggregated cap, it goes well beyond the legislative object. The inability of a party (or an affiliated organisation wishing to permit the party to incur electoral communication expenditure) to know how much it is entitled to spend until the end of the expenditure period, is a burden out of all proportion to the need to ensure that single sources of electoral communication expenditure are subject to the one cap.
- 40

The Second Limb: Proportionality Between the Law and the Constitutional System

99. Section 95G(6) imposes an undue burden on the freedom of political communication

(see *Monis v The Queen* (2013) 295 ALR 197 at [282]). That is because:

- 10
- a. It limits the electoral communication expenditure of parties and/or affiliated organisations in circumstances where to do so is not reasonably capable of being regarded as incidental to an attempt to ensure the effectiveness of the generally applicable expenditure restrictions for which ss. 95F and 95I provide. It thus operates to restrict the electoral communication expenditure of parties and affiliated organisations simply because they have adopted a particular form of organisation.
 - b. It seeks to achieve its objectives by a means that does not enable the a priori determination of the amount of money able to be lawfully spent. The result is to create a chilling effect on political speech, even where that speech would (in hindsight) have been permitted.

State Freedom of Political Communication

100. The plaintiffs repeat their submissions above as to the existence of the freedom under the State Constitution. If that freedom is recognised, then s. 95G(6) is incompatible with that freedom, and invalid, for the reasons set out above in connection with the Commonwealth freedom.

Part VI Applicable Constitutional Provisions etc

101. See Annexure A.

20 **Part VII Orders**

102. The plaintiffs seek the following orders:

- a. A declaration that section 96D of the EFED Act is invalid.
- b. A declaration that section 95G(6) of the EFED Act is invalid.
- c. An order that the defendant pay the plaintiffs' costs.

Part VIII Estimate of Time

103. The plaintiffs estimate that they will require three and a half hours to present their argument in chief, and forty five minutes to present their argument in reply.

30 

Bret Walker
Tel: (02) 8257 2527
Fax: (02) 9221 7974
E-mail: maggie.dalton@stjames.net.au



Nicholas Owens
Tel: (02) 8257 2578
Fax: (02) 9221 7974
E-mail: nowens@stjames.net.au

ANNEXURE A

LEGISLATIVE INSTRUMENTS REFERENCED IN PLAINTIFFS' SUBMISSIONS

Statement of currency

The following constitutional provisions, statutes and regulations are still in force, in the same form, as at the date of these submissions.

Table of provisions

Legislative instrument	Annexed provisions	Page ref
<i>Election Funding, Expenditure and Disclosures Act 1981</i> (NSW)	Entire Act	1-129
<i>Commonwealth Electoral Act 1918</i> (Cth)	Part XX, Divisions 4 and 5A and section 327	130-154
<i>The Constitution 1900</i> (Cth)	Sections 7, 9, 10, 24, 29, 30, 31 and 51(xxxvii)	155-163
<i>Constitution Act 1902</i> (NSW)	Sections 7A, 7B, 11A, 17, 26, 27, 28, and Schedule 6	164-175
<i>Australia Act 1986</i> (Cth)	Section 6	176-177

Filed on behalf of the Plaintiffs:

Date of Document: 18 September 2013

Holding Redlich
Level 65, MLC Centre
19 Martin Place
SYDNEY NSW 2000
DX 529 SYDNEY

Tel: (02) 8083 0388
Fax: (02) 8083 0399
Ref: 12660004
Solicitor on record: Ian Robertson
Contact: Nicholas Riordan

ANNEXURE A

LEGISLATIVE INSTRUMENTS REFERENCED IN PLAINTIFFS' SUBMISSIONS

Statement of currency

The following constitutional provisions, statutes and regulations are still in force, in the same form, as at the date of these submissions.

Table of provisions

Legislative instrument	Annexed provisions	Page ref
<i>Election Funding, Expenditure and Disclosures Act 1981</i> (NSW)	Entire Act	1-129
<i>Commonwealth Electoral Act 1918</i> (Cth)	Part XX, Divisions 4 and 5A and section 327	130-154
<i>The Constitution 1900</i> (Cth)	Sections 7, 9, 10, 24, 29, 30, 31 and 51(xxxvii)	155-163
<i>Constitution Act 1902</i> (NSW)	Sections 7A, 7B, 11A, 17, 26, 27, 28, and Schedule 6	164-175
<i>Australia Act 1986</i> (Cth)	Section 6	176-177

Filed on behalf of the Plaintiffs:

Date of Document: 18 September 2013

Holding Redlich
Level 65, MLC Centre
19 Martin Place
SYDNEY NSW 2000
DX 529 SYDNEY

Tel: (02) 8083 0388
Fax: (02) 8083 0399
Ref: 12660004
Solicitor on record: Ian Robertson
Contact: Nicholas Riordan



New South Wales

Election Funding, Expenditure and Disclosures Act 1981 No 78

Status information

Currency of version

Current version for 3 April 2013 to date (generated 12 April 2013 at 09:47).
Legislation on the NSW legislation website is usually updated within 3 working days.

Provisions in force

All the provisions displayed in this version of the legislation have commenced. For commencement and other details see the Historical notes.

Formerly known as:

Election Funding and Disclosures Act 1981
Election Funding Act 1981



New South Wales

Election Funding, Expenditure and Disclosures Act 1981 No 78

Contents

	Page
Part 1 Preliminary	
1 Name of Act	2
2 Commencement	2
3 (Repealed)	2
4 Definitions	2
Part 2 The Election Funding Authority	
5 Constitution of the Authority	8
6 Members of the Authority	8
7 Chairperson	8
8 Alternates	8
9 Eligibility for appointment	8
10 Duty of Minister with respect to appointments	9
11 Provisions relating to nominations	10
12 Term of office of appointed members and alternates	10

Election Funding, Expenditure and Disclosures Act 1981 No 78

Contents

	Page
13 Vacation of office	10
14 Filling of casual vacancies	12
15 Meetings of the Authority	12
16 Acting Chairperson	13
17 Voting	13
18 Minutes	13
19 Fees and allowances	14
20 Public Service Act 1979 not to apply	14
21 Members not personally liable	14
Part 3 Responsibilities of the Authority	
22 General functions	15
23 Particular functions	15
24 Guidelines	15
25 Research	15
Part 4 Registration	
Division 1 Preliminary	
26 Application to registration for State and local government elections	17
27 Qualification of persons to be appointed as party or official agents	17
28–30 (Repealed)	17
Division 2 Register of Candidates	
31 Register of Candidates to be kept	17
32 Registration	18
32A Deemed registration of nominated candidates and groups	18
33 Applications for registration of candidates	18
34 Application for registration of groups	19
35 Lodging of applications	19
36 Refusal to register candidates	20
37 Refusal to register groups	20
38 Amendment of Register	21
Division 2A Register of Third-party Campaigners	
38A Register of Third-party Campaigners to be kept	22
38B Registration	22
38C Applications for registration	22
38D Lodging of applications	23
38E Refusal to register	23
38F Amendment of Register	24

Contents page 2

Current version for 3.4.2013 to date (generated on 12.04.2013 at 09:47)

Contents

		Page
Division 3 Register of Party Agents		
39	Register of Party Agents to be kept	25
40	Registration	25
41	Appointment etc of party agents	25
42	Entries in the Register	26
43	Amendment of Register	26
Division 4 Register of Official Agents		
44	Register of Official Agents to be kept	26
45	Registration	27
46	Official agents of candidates and groups	27
46A	Official agents of elected members	28
46B	Official agents of third-party campaigners	29
46C	Procedure for appointing or revoking appointment of official agents	29
47	Entries in the Register	29
48	Amendment of Register	30
49	(Repealed)	30
Division 5 Registers for by-elections		
50	Application of this Division	30
51	Registers for by-elections	30
Division 6 General		
52	Public access to registers	31
53	Statutory declarations	31
54	False statements	31
Part 5 Public funding of State election campaigns		
Division 1 Preliminary		
54A	Application to State elections only	32
54B	Part 6 definitions apply	32
55	Meaning of electoral communication expenditure for a State election	32
Division 2 Public funding for electoral communication expenditure of parties and candidates		
56	Establishment of Election Campaigns Fund	32
57	Registered parties eligible for public funding of election campaigns	32
58	Amount of public funding for eligible parties	33
59	Candidates eligible for public funding of election campaigns	34
60	Amount of public funding for eligible candidates	35

Election Funding, Expenditure and Disclosures Act 1981 No 78

Contents

	Page
61 Expenditure claimed by both party and candidate	36
62 Payments to parties endorsing the same candidate or group	36
63 Entitlements to advance payments	36
Division 3 General provisions relating to funding	
64 Claims for, and approvals of, payments	37
65 Review of claim	38
66 Expenditure to be vouched for	39
67 Making payments to party at direction of candidate	39
68 Making of payments	39
69 Prepayment on lodgment of claims	40
70 Payments conditional on disclosure of political donations etc	40
71 Death of a candidate	41
71A (Repealed)	41
72 Deductions from payment for debts owed	41
73 Special provisions relating to groups	41
73A (Repealed)	41
74 Public access to claims etc	41
75 False statements	42
76–82 (Repealed)	42
Part 6 Political donations and electoral expenditure	
Division 1 Preliminary	
83 Application	43
84 Definitions—general	43
85 Meaning of "political donation"	45
86 Meaning of "reportable political donation"	47
87 Meaning of "electoral expenditure" and "electoral communication expenditure"	47
Division 2 Disclosure of political donations and electoral expenditure	
88 Disclosures required to be made	49
89 Relevant disclosure period	50
90 Person responsible for making disclosures	50
91 When and how disclosures to be made	50
92 Political donations required to be disclosed	51
93 Electoral expenditure required to be disclosed	53
94 Separate disclosures not required of same item	53
95 Public access to disclosures, expenditure etc	53
Division 2A Caps on political donations for State elections	
95AA Application to State elections only	54

Contents

		Page
95A	Applicable cap on political donations	54
95B	Prohibition on political donations that exceed applicable cap	55
95C	Prohibition on donations to more than 3 third-party campaigners	56
95D	Exemption from donation cap for party subscriptions and party levies	57
Division 2B Caps on electoral communication expenditure for State election campaigns		
95E	Application to State elections only	57
95F	Applicable caps on electoral communication expenditure on State election campaigns	58
95G	Aggregation of applicable caps	59
95H	Capped expenditure period	61
95I	Prohibition on incurring electoral communication expenditure exceeding applicable cap during State campaigns	61
95J	When is electoral communication expenditure incurred	62
Division 3 Management of donations and expenditure		
96	Requirements for parties	62
96A	Requirements for political donations to, and electoral expenditure by, elected member, group or candidate	63
96AA	Requirements for third-party campaigners	65
96B	Campaign accounts of elected members, groups or candidates	66
96C	Person accepting reportable political donations to record details	67
Division 4 Prohibition of certain political donations etc		
96D	Prohibition on political donations other than by individuals on the electoral roll	67
96E	Prohibition on certain indirect campaign contributions	68
96EA	Prohibition on political donations by parties etc to independent candidates	69
96F	Prohibition on receiving gifts of unknown source	69
96G	Prohibition on receiving loans unless details recorded	69
Division 4A Prohibition of donations from property developers or tobacco, liquor or gambling industries		
96GAA	Meaning of "prohibited donor"	70
96GAB	Superseded provision of Division relating to corporate donations	70
96GA	Political donations by prohibited donors unlawful	70
96GB	Meaning of "property developer", "tobacco industry business entity" and "liquor or gambling industry business entity"	71
96GC	Loans included as political donations	72

Election Funding, Expenditure and Disclosures Act 1981 No 78

Contents

	Page
96GD Exception for membership contributions	73
96GE Determination by Authority that person not a prohibited donor	73
Division 5 Miscellaneous	
96H Offences relating to disclosures	74
96HA Offences relating to caps on donations and expenditure	74
96I Other offences	75
96J Recovery of unlawful donations etc	75
96K Audit certificate	75
96L Extension of due date for making disclosures	76
96M Amendment of disclosures	77
96N Annual financial statements of registered parties to accompany disclosures	77
97 (Repealed)	78
Part 6A Administrative and policy development funding	
Division 1 Preliminary	
97A Application to State members and parties only	79
97AB (Repealed)	79
97B Administrative expenditure—payments from Administration Fund	79
97C Policy development expenditure—payments from Policy Development Fund	80
Division 2 Administrative funding for parties and independent members	
97D Establishment of Administration Fund	81
97E Public funding of eligible parties for administrative expenditure	81
97F Public funding of Independent members for administrative expenditure	82
97G Parties with the same endorsed elected members	82
97GA Quarterly payments	83
Division 3 Policy development funding for parties not entitled to administrative funding	
97H Establishment of Policy Development Fund	84
97I Public funding of eligible parties for policy development expenditure	84
Division 4 General provisions relating to funding	
97J Claims for payment	85
97K Declarations etc by agents	86
97L Payments conditional on compliance with other obligations under this Act	86

Contents page 6

Current version for 3.4.2013 to date (generated on 12.04.2013 at 09:47)

Election Funding, Expenditure and Disclosures Act 1981 No 78

Contents

	Page
97M False statements	87
Part 7 Financial provisions	
98 Appropriation of Consolidated Fund for election funding	88
99 Funding of other expenses	88
100 Money received by Authority	88
101 Financial year of the Authority	88
102, 103 (Repealed)	88
Part 8 Miscellaneous	
104 Shortened references to Authority	89
105 Proof of certain matters not required	89
106 Extensions of time	89
107 Reports to Parliament	89
108 (Repealed)	90
109 Certain persons not to be auditors	90
110 Inspection	90
110A Power to require provision of documents and information	91
110B Compliance agreements	92
111 Proceedings for offences	93
111A Penalty notices	93
112 Prosecution of unincorporated bodies	94
113 Recovery of penalties etc from parties	94
114 Evidence	95
115 Delegation	95
116 Transitional provisions	96
117 Regulations	96
Schedule 1 Adjustment for inflation of monetary caps	98
Schedule 2 Savings, transitional and other provisions	101
Notes	
Table of amending instruments	109
Table of amendments	112



New South Wales

Election Funding, Expenditure and Disclosures Act 1981 No 78

An Act to constitute the Election Funding Authority of New South Wales, to make provision for the public funding of Parliamentary election campaigns and to require the disclosure of certain political donations and electoral expenditure for Parliamentary or local government election campaigns; and for other purposes.

Part 1 Preliminary

1 Name of Act

This Act may be cited as the *Election Funding, Expenditure and Disclosures Act 1981*.

2 Commencement

- (1) This Part shall commence on the date of assent to this Act.
- (2) Parts 2 and 8, sections 24 and 25 and Schedule 2 shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.
- (3) Except as provided in subsections (1) and (2), this Act shall commence on such day (being not earlier than the day appointed and notified under subsection (2)) as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.
- (4) For the purpose only of enabling the Election Funding Authority of New South Wales to be constituted in accordance with this Act on or after (but not before) the day appointed and notified under subsection (2), appointments may be made under Part 2, and any other act, matter or thing may be done, before that day as if the whole of this Act commenced on the date of assent to this Act.

3 (Repealed)

4 Definitions

- (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires:
 - Administration Fund* means the fund established under Division 2 of Part 6A.
 - agent* means a party agent or official agent.
 - alternate* means a person appointed as an alternate under Part 2.
 - appointed member* means a member of the Authority appointed by the Governor.
 - Assembly* means the Legislative Assembly of New South Wales.
 - Assembly general election* means an election held for the return of members of the Assembly pursuant to writs issued by the Governor upon the dissolution or expiry of the Assembly.
 - auditor* means a registered company auditor within the meaning of the *Corporations Act 2001* of the Commonwealth.
 - Authority* means the Election Funding Authority of New South Wales constituted by this Act.

by-election means:

- (a) in relation to State elections—a by-election for the Assembly, or
- (b) in relation to local government elections—a by-election for a councillor (including the mayor) of the council of a local government area.

candidate, in relation to an election, means a person nominated as a candidate at the election in accordance with the *Parliamentary Electorates and Elections Act 1912* or in accordance with the *Local Government Act 1993* (as the case requires) and includes a person applying for registration as, or registered as, a candidate in the Register of Candidates for the election.

Chairperson means the Chairperson of the Authority.

Commissioner means the Electoral Commissioner for New South Wales appointed under the *Parliamentary Electorates and Elections Act 1912* and includes a person duly acting as the Electoral Commissioner.

Council means the Legislative Council of New South Wales.

day of nomination, in relation to an election, means the day by which all nominations in the election must be made.

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

- (a) the allotment of shares in a company,
- (b) the creation of a trust in property,
- (c) the grant or creation of any lease, mortgage, charge, servitude, licence, power, partnership or interest in property,
- (d) the release, discharge, surrender, forfeiture or abandonment, at law or in equity, of any debt, contract or chose in action, or of any interest in property,
- (e) the exercise by a person of a general power of appointment of property in favour of any other person, and
- (f) any transaction entered into by any person with intent thereby to diminish, directly or indirectly, the value of the person's own property and to increase the value of the property of any other person.

donor—see section 84.

elected member means:

- (a) a member of Parliament, or
- (b) a councillor (including the mayor) of the council of a local government area,

and includes a person who, during any period after ceasing to be a member of Parliament or a councillor, is entitled to remuneration as such a member or councillor.

election means a State election or a local government election.

Election Campaigns Fund means the fund established under Part 5.

electoral communication expenditure—see section 87.

electoral district means a district for the election of a member to serve in the Assembly.

electoral expenditure—see section 87.

endorsed, in relation to a party, means endorsed, selected or otherwise accredited to stand as a representative of the party.

entity—see section 84.

ex officio official agent means an official agent other than an official agent under paragraph (f), (f1) or (f2) of the definition of *official agent*.

expenditure—see section 84.

functions includes powers, authorities and duties.

general election means:

- (a) in relation to State elections—an Assembly general election and a periodic Council election held or to be held concurrently, or
- (b) in relation to local government elections—a local government election other than a by-election.

gift—see section 84.

group means:

- (a) in relation to State elections—a group of candidates, or part of a group of candidates, for a periodic Council election, or
- (b) in relation to local government elections—a group of candidates, or part of a group of candidates, for a local government election.

interest in property means any estate, interest, right or power whatever, whether at law or in equity, in, under or over any property.

local government election means an election under the *Local Government Act 1993* for the office of councillor or mayor under that Act (other than an election of mayor by councillors).

member means a member of the Authority.

officer, in relation to a party, means a person who is occupying or acting in an office or position concerned with the management of the party.

official agent means:

- (a) in relation to an elected member of Parliament who is a member of a registered party—the party agent of the party (or a person

-
- appointed official agent in place of the party agent under section 46A), or
- (b) in relation to any other elected member who is a candidate or member of a group—the official agent of the candidate or group, or
 - (c) in relation to a State election candidate who is a member of a registered party—the party agent of the party (or a person appointed official agent in place of the party agent under section 46), or
 - (d) in relation to a State election group whose members are all members of a registered party—the party agent of the party (or a person appointed official agent in place of the party agent under section 46), or
 - (e) in relation to a candidate or group of a class specified in the regulations for the purposes of this paragraph—the Authority or a government agency so specified, or
 - (f) in relation to any other candidate or group—the official agent registered in the Register of Official Agents for that candidate or group (or the person taken to be the official agent under section 46), or
 - (f1) in relation to an elected member for whom an official agent, appointed by the member under section 46A, is registered in the Register of Official Agents—that official agent, or
 - (f2) in relation to a third-party campaigner for whom an official agent, appointed by the campaigner under section 46B, is registered in the Register of Official Agents—that official agent, or
 - (g) in any other case—a person (including the elected member, candidate or third-party campaigner concerned) designated by the Authority.

For the purposes of this definition, if some of the candidates in a State election group are members of one registered party and other candidates in the group are members of another registered party, the official agent of the group is the party agent of one of those parties as is designated by those candidates.

Parliament means the Parliament of New South Wales.

party means a body or organisation, incorporated or unincorporated, having as one of its objects or activities the promotion of the election to Parliament or a local council of a candidate or candidates endorsed by it or by a body or organisation of which it forms a part.

party agent means a party agent appointed under section 41.

payment includes a loan, advance or deposit.

periodic Council election has the same meaning as it has in section 3 of the *Constitution Act 1902*.

Policy Development Fund means the fund established under Division 3 of Part 6A.

political donation—see section 85.

polling day, in relation to a general election, means the day appointed for the taking of the polls at the election.

property includes money.

registered (except in the case of a party) means registered in accordance with this Act.

registered party means a party registered under Part 4A of the *Parliamentary Electorates and Elections Act 1912*, being a party which stated in its application for registration that it wished to be registered for the purposes of this Act.

regulations means regulations under this Act.

reportable political donation—see section 86.

returning officer means a returning officer appointed as such under the *Parliamentary Electorates and Elections Act 1912*.

State election means an Assembly general election, a periodic Council election or a by-election for the Assembly.

third-party campaigner means an entity or other person (not being a registered party, elected member, group or candidate) who incurs electoral communication expenditure during a capped expenditure period (as defined in Part 6) that exceeds \$2,000 in total.

- (2) A reference in this Act to the exercise of a function includes, where the function is a duty, a reference to the performance of that duty.
- (3) For the purposes of this Act, an Assembly general election and a periodic Council election are held or are to be held concurrently if the day for the taking of the polls for each of the elections named in the writs for the elections is the same day, whether or not the taking of any such poll is adjourned.
- (4) For the purposes of this Act, where the writs for a general election are issued on different days, the day of the issue of the writs for the general election shall be deemed to be the day on which the writ for the periodic Council election is issued.
- (5) For the purposes of this Act, where the days for the return of the writs for a general election are different, the day for the return of the writs shall be deemed to be the day for the return of the writ for the periodic Council election.

-
- (6) A reference in this Act to the day for the return of a writ is a reference to the day specified in the writ as the day for the return of the writ.
- (7) A reference in this Act, in relation to a general election, to the periodic Council election is, except in so far as the context or subject-matter otherwise indicates or requires, a reference to the periodic Council election which forms part of the general election.
- (8) For the purposes of this Act, where anything is done by, on behalf of or for the benefit of, or any property is held by, or in trust for or for the members of, a body or organisation, incorporated or unincorporated, being a body or organisation that:
- (a) forms part of a party,
 - (b) is established by or under the constitution of a party, or
 - (c) has functions conferred by or under the constitution of a party,
- the thing shall be deemed to be done by, on behalf of or for the benefit of that party or the property shall be deemed to be held by that party, as the case may be.
- (9), (10) (Repealed)
- (11) Notes included in this Act do not form part of this Act.

Part 2 The Election Funding Authority

5 Constitution of the Authority

There is hereby constituted a corporation under the corporate name of the "Election Funding Authority of New South Wales".

6 Members of the Authority

The Authority shall consist of 3 members, of whom:

- (a) one shall be the Commissioner,
- (b) one shall be appointed by the Governor on the nomination of the Premier, and
- (c) one shall be appointed by the Governor on the nomination of the Leader of the Opposition in the Assembly.

7 Chairperson

The Commissioner shall be the Chairperson of the Authority.

8 Alternates

- (1) There shall be an alternate for each appointed member.
- (2) The alternates shall be appointed by the Governor on the same nominations, respectively, as those required for the appointed members.
- (3) A member's alternate may act as the member if the member is absent or if there is a vacancy in the office of the member.
- (4) An alternate, while acting as a member, shall be deemed to be a member and shall have and may exercise the functions of the member for whom he or she is the alternate.
- (5) No person shall be concerned to inquire whether or not any occasion has arisen in which a member's alternate is authorised to act as the member, and all acts or things done or omitted by the alternate while so acting shall be as valid and effectual and shall have the same consequences as if they had been done or omitted by the member.
- (6) An alternate may be appointed notwithstanding any vacancy in the office of any member and, without affecting section 13, a vacancy in the office of any member does not affect the tenure of office of any alternate.

9 Eligibility for appointment

- (1) A person who:
 - (a) (Repealed)

-
- (b) is a member of the Council or Assembly or a candidate or an agent for a candidate,
 - (c) is a member of a legislature other than the Parliament or a candidate for election as such a member,
 - (d) is a councillor or mayor of a council, or chairperson or member of a county council, under the *Local Government Act 1993* or is a candidate for election to such an office,
 - (e) is a member of a public authority constituted by an Act,
 - (f) is an officer of a party,
 - (g) is a temporary patient, a continued treatment patient, a protected person or an incapable person within the meaning of the *Mental Health Act 1958* or a person under detention under Part 7 of that Act, or
 - (h) is a bankrupt, is applying to take the benefit of any law for the relief of bankrupt or insolvent debtors, whose debts are subject to a composition with the person's creditors, or whose fees and allowances would, upon the person's appointment, be subject to an assignment for their benefit,
- is not eligible for appointment as an appointed member or alternate.
- (2) A person is not eligible for appointment as an appointed member or alternate unless:
 - (a) the person consents to his or her nomination by instrument in writing furnished to the Minister, and
 - (b) the person furnishes to the Minister a written statement, verified by statutory declaration, in or to the effect of the prescribed form, that the person is not ineligible for appointment by reason of any of the matters set out in subsection (1).
 - (3) For the purposes of making an appointment referred to in subsection (1), and the recommendation to the Governor therefor, the Governor and the Minister are entitled to rely on the information contained in the written statement referred to in subsection (2) and furnished by the appointee.

10 Duty of Minister with respect to appointments

- (1) The Minister shall, as far as practicable, request the appropriate nominations and make the appropriate recommendations to the Governor in sufficient time so as to ensure that:
 - (a) the appointment of appointed members and alternates is, as far as practicable, made within the period of 6 months after the day for the return of the writs for each general election, and
 - (b) the appointment of a person to fill a vacancy under section 14 is made as soon as practicable after the vacancy occurs.

- (2) Where a person has been duly nominated for appointment pursuant to this Part, the Minister shall recommend the person's appointment to the Governor, unless the person nominated is not eligible for appointment.

11 Provisions relating to nominations

Where a nomination of a person for appointment pursuant to this Part is not submitted within 14 days of a request therefor made by the Minister, or in the manner specified by the Minister, by order in writing to the person entitled to make the nomination, the Governor may make the appointment in the absence of the nomination, and the person so appointed shall hold office as if the person had been duly nominated.

12 Term of office of appointed members and alternates

- (1) An appointed member or alternate shall, subject to this Act, hold office:
- (a) from the end of the period of 6 months commencing on and including the day for the return of the writs for the previous general election, and
 - (b) until the end of the period of 6 months commencing on and including the day for the return of the writs for the next general election.
- (2) Nothing in subsection (1) prevents an appointment being made under this Act after the period referred to in subsection (1) (a) has commenced, and an appointment, if so made, takes effect from the date it is made and not from the commencement of that period.
- (3) This section does not affect the appointment of persons to fill vacancies, as referred to in section 14.
- (4) An appointed member or alternate is, if otherwise qualified, eligible for re-appointment.

13 Vacation of office

- (1) An appointed member or alternate shall be deemed to have vacated office:
- (a) if the appointed member or alternate dies,
 - (b) if the appointed member or alternate is absent from 2 consecutive meetings of the Authority of which reasonable notice has been given to him or her personally or in the ordinary course of post, unless:
 - (i) in the case of an appointed member—his or her alternate was present at either or both of those meetings, or

-
- (ii) in the case of an alternate—the member for whom he or she is the alternate was present at either or both of those meetings,
 - (c) if the appointed member or alternate becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her estate, remuneration, fees or allowances for their benefit,
 - (d) if the appointed member or alternate becomes a temporary patient, a continued treatment patient, a protected person or an incapable person within the meaning of the *Mental Health Act 1958* or a person under detention under Part 7 of that Act,
 - (e) if the appointed member or alternate is convicted in New South Wales of a crime or offence which is punishable by imprisonment for a period of 12 months or more, or if the appointed member or alternate is convicted elsewhere than in New South Wales of a crime or offence which if committed in New South Wales would be a crime or offence so punishable,
 - (f) if the appointed member or alternate resigns his or her office by instrument in writing addressed to the Minister,
 - (g) if the appointed member or alternate becomes a member of the Council or Assembly or a candidate or an agent for a candidate,
 - (h) if the appointed member or alternate becomes a member of a legislature other than the Parliament or a candidate for election as such a member,
 - (i) if the member or alternate becomes a councillor or mayor of a council, or the chairperson or a member of a county council, under the *Local Government Act 1993* or is a candidate for election to such an office,
 - (j) if the appointed member or alternate becomes a member of a public authority constituted by an Act,
 - (k) if the appointed member or alternate becomes an officer of a party,
 - (l) if there is a vacancy in any other office (other than Chairperson) under this Part (whether of appointed member or alternate) and the vacancy exists at any time during the period commencing on and including the date for the return of the writs for the next general election held after the commencement of the term of office of the members determined in accordance with section 12 (1) and ending on the expiration of that term of office so determined, or
 - (m) if:

- (i) in the case of an appointed member—he or she is appointed as an alternate, or
- (ii) in the case of an alternate—he or she is appointed as an appointed member.
- (n) (Repealed)
- (2) Section 21AB (3) of the *Parliamentary Electorates and Elections Act 1912* applies to and in respect of each appointed member and alternate in the same way as it applies to and in respect of the Commissioner.
- (3) Section 47 (1) (b) of the *Interpretation Act 1987* does not apply to, or to the office of, an appointed member or alternate.

14 Filling of casual vacancies

- (1) On the occurrence of a vacancy in the office of an appointed member or alternate, otherwise than by the expiration of his or her term of office, a person shall be appointed by the Governor, on the same nomination as that required for the former appointee, to hold office for the balance of the former appointee's term of office.
- (2) A person may not be appointed to fill a vacancy under this section if the person was a candidate at any election held during the former appointee's term of office.

15 Meetings of the Authority

- (1) The procedure for the calling of meetings of the Authority and for the conduct of business at those meetings shall, subject to this Act, be as determined by the Authority.
- (2) The Chairperson shall preside at all meetings of the Authority, and a meeting of the Authority shall not be held or continued unless the Chairperson is present at the meeting.
- (3) The Chairperson and one other member shall form a quorum at any meeting of the Authority, and any duly convened meeting of the Authority at which such a quorum is present shall be competent to transact any business of the Authority and shall have and may exercise all the functions of the Authority.
- (4) Meetings of the Authority shall be convened by the Chairperson, who shall give each appointed member and alternate at least 48 hours' notice of each meeting.
- (5) Notwithstanding subsection (4), a meeting of the Authority may be held with less than 48 hours' notice if the Chairperson and each appointed member or his or her alternate agree to its being held.

-
- (6) For the purposes of this section, an appointed member or alternate shall be deemed to have been given notice of a meeting if the notice is sent to that member's or alternate's usual place of abode or business.
 - (7) The Authority shall hold at least 2 meetings in each year ending 31 December.

16 Acting Chairperson

- (1) The Governor may appoint an officer of the Public Service to act in the office of Chairperson while the Chairperson is absent from duty through illness or for any other cause or while there is a vacancy in the office of the Chairperson.
- (2) A person appointed under subsection (1) may not act as Chairperson if there is a person who is appointed to act as Commissioner and who is available to exercise his or her functions as Chairperson.
- (3) A person appointed under this section, while acting as Chairperson, shall be deemed to be the Chairperson and shall have and may exercise the functions of the Chairperson.
- (4) No person shall be concerned to inquire whether or not any occasion has arisen in which a person appointed under this section is authorised to act as Chairperson, and all acts or things done or omitted by the person while so acting shall be as valid and effectual and shall have the same consequences as if they had been done or omitted by the Chairperson.

17 Voting

- (1) A decision supported by a majority of the votes of the members present and voting at a meeting of the Authority shall be the decision of the Authority.
- (2) In the event of an equality of votes in relation to a matter at a meeting of the Authority, the matter shall be adjourned to another meeting of the Authority.
- (3) If at the meeting to which a matter was adjourned under subsection (2) there is still an equality of votes in relation to the adjourned matter, the Chairperson shall have in addition to a deliberative vote a second or casting vote in relation to that matter.

18 Minutes

The Authority shall cause full and accurate minutes to be kept of its proceedings at meetings.

19 Fees and allowances

- (1) An appointed member or alternate is entitled to be paid such fees and allowances as the Minister may from time to time determine.
- (2) The fees and allowances determined under this section shall be payable at the same rate for both appointed members and for both alternates.

20 Public Service Act 1979 not to apply

The *Public Service Act 1979* does not apply to or in respect of the appointment of any person as a member or alternate, and a person is not, in his or her capacity as a member or alternate, subject to that Act.

21 Members not personally liable

No matter or thing done by the Authority, and no matter or thing done by any member or by another person acting under the direction of or as delegate of the Authority, shall, if the matter or thing was done in good faith for the purpose of executing this or any other Act conferring or imposing functions on the Authority, subject the member or person personally to any action, liability, claim or demand.

Part 3 Responsibilities of the Authority

22 General functions

- (1) The Authority shall have and may exercise the functions conferred or imposed on it by or under this or any other Act.
- (2) It is the duty of the Authority to exercise its functions under this Act in a manner that is not unfairly biased against or in favour of any particular parties, groups, candidates or other persons, bodies or organisations.
- (3) The Authority cannot employ any staff.

Note. Staff may be employed under Chapter 1A of the *Public Sector Employment and Management Act 2002* in the Government Service to enable the Authority to exercise its functions.

23 Particular functions

- (1) Without affecting the generality of section 22, the Authority has the responsibility of dealing with:
 - (a) applications for registration under Part 4, and
 - (b) claims for payments under Part 5, and
 - (c) disclosures of, and caps on, political donations and electoral expenditure under Part 6, and
 - (d) claims for payments under Part 6A.
- (2) For the purpose of ensuring compliance with this Act, the Authority is authorised to make an application to the Supreme Court for an injunction, declaration or other order that is within the jurisdiction of the Court.

24 Guidelines

- (1) The Authority may, from time to time, determine and issue guidelines, not inconsistent with this Act or the regulations, for or with respect to any matters dealt with in this Act (except this Part and Part 2).
- (2) In the operation and application of this Act (except this Part and Part 2), regard shall be had not only to the provisions of this Act and the regulations but also to the guidelines determined under subsection (1), and in particular, the Authority shall have regard to those guidelines when dealing with applications, claims, caps and disclosures referred to in section 23.

25 Research

The Authority may carry out, or arrange for the carrying out of, such research into election funding, political donations, electoral expenditure

and other matters to which this Act relates as the Authority thinks appropriate and may publish the results of any such research.

Part 4 Registration

Division 1 Preliminary

26 Application to registration for State and local government elections

This Part applies to the registration of candidates, groups, third-party campaigners and agents for State elections and local government elections.

27 Qualification of persons to be appointed as party or official agents

- (1) The following persons are not qualified to be appointed as party agents or official agents:
 - (a) a corporation,
 - (b) a person who is not enrolled to vote at State elections,
 - (c) a person who has been convicted of an indictable offence, an offence against this Act, an offence involving dishonesty or an electoral offence,
 - (d) a person whom the Authority determines is not a fit and proper person to be such an agent,
 - (e) a person who has not completed the training prescribed by the regulations for appointment as such an agent (unless the person is of a class of persons recognised by the regulations as a person eligible for appointment without further training).
- (2) A person may be appointed as the official agent of more than one candidate or group.
- (3) The Authority may cancel the registration under this Part of a person as a party agent or an official agent if the person is no longer qualified to be appointed as such an agent.

28–30 (Repealed)

Division 2 Register of Candidates

31 Register of Candidates to be kept

- (1) The Authority shall keep a register, to be called the Register of Candidates, for each general election.
- (1A) The Authority is to keep separate Registers of Candidates for State and local government elections. The register for State elections may be called the State Register of Candidates and the register for local government elections may be called the Local Government Register of Candidates.

- (2) The Register of Candidates for a general election shall be kept as from the polling day for the previous general election.
- (3) Subject to this Act, the Register of Candidates shall be kept in such form and manner as the Authority thinks fit.

32 Registration

- (1) Registration of a candidate shall be effected by the insertion in the Register of Candidates of the name of the candidate.
- (2) Registration of a group of candidates shall be effected by the insertion in the Register of Candidates, in relation to candidates registered therein, of an indication that the candidates form a group.
- (3) There shall be included in the Register of Candidates:
 - (a) such particulars with respect to a candidate or group registered in the Register as are required to be included in the application for registration of the candidate or group,
 - (b) particulars of the platform or objectives of the candidate or group, if the candidate or group requests the Authority to include those particulars, and
 - (c) such other particulars as the Authority thinks fit.

32A Deemed registration of nominated candidates and groups

- (1) A person nominated as a candidate at an election in accordance with the *Parliamentary Electorates and Elections Act 1912* or in accordance with the *Local Government Act 1993* is deemed to be registered as a candidate for the election.
- (2) The candidates who comprise a group at an election are deemed to be registered as a group for the election.
- (3) The Authority is to make appropriate entries in the Register of Candidates for an election to effect the registration of a candidate or group deemed under this section to be registered for the election.

33 Applications for registration of candidates

- (1) Subject to this Act, the Authority shall register a person as a candidate in the Register of Candidates for a general election if:
 - (a) application for registration is made by the person or the person's official agent in the form and manner approved by the Authority, and
 - (b) the application is received by the Authority on or before the day of nomination for the general election and after the polling day for the previous general election.

-
- (2) An application for registration of a candidate shall set out the following particulars:
- (a) the full name and address of the candidate,
 - (b) the candidate's party or group affiliation (if any),
 - (c) in the case of a State election, the House of Parliament for which the candidate is a candidate,
 - (c1) in the case of a local government election, the council for which the candidate is a candidate,
 - (d) the address of the candidate's campaign headquarters in New South Wales, and
 - (e) such other particulars as may be prescribed.

34 Application for registration of groups

- (1) Subject to this Act, the Authority shall register a group of candidates in the Register of Candidates for a general election if:
- (a) application for registration is made by the candidates or their official agents, or by the official agent for the group, in the form and manner approved by the Authority, and
 - (b) the application is received by the Authority on or before the day of nomination for the general election and after the polling day for the previous general election.
- (2) An application for the registration of a group of candidates shall set out the following particulars:
- (a) the full name (if any) of or used or to be used by the group,
 - (b) the full names of the candidates, and
 - (c) such other particulars as may be prescribed.

35 Lodging of applications

- (1) An application for registration in the Register of Candidates may be lodged with an election official designated by the Authority or with the Authority.
- (2) An application lodged with an election official shall be deemed to have been received by the Authority.
- (3) An election official with whom an application for registration in the Register of Candidates is lodged shall forthwith forward the application to the Authority.

36 Refusal to register candidates

- (1) The Authority shall not register a candidate in the Register of Candidates for a general election if the application for registration of the candidate was received by the Authority after the day of nomination for the general election.
- (2) The Authority may refuse to register a candidate if the Authority believes on reasonable grounds that any particulars in the application for registration of the candidate are incomplete or not correct, but may, if it thinks fit, register the candidate notwithstanding any such defect.
- (3) Where, pursuant to subsection (2), the Authority refuses to register a candidate:
 - (a) the Authority shall forthwith notify the candidate's official agent of the refusal and of the reasons for the refusal,
 - (b) the official agent may, within 30 days after the date of the notification by the Authority, amend the application for registration by substituting the relevant particulars, and
 - (c) the amended application shall be deemed to have been received by the Authority when the original application was received by it.

37 Refusal to register groups

- (1) The Authority shall not register a group in the Register of Candidates for a general election if the application for registration of the group was received by the Authority after the day of nomination for the general election.
- (2) The Authority may refuse to register a group if the Authority believes on reasonable grounds that any particulars in the application for registration of the group are incomplete or not correct, but may, if it thinks fit, register the group notwithstanding any such defect.
- (3) Where, pursuant to subsection (2), the Authority refuses to register a group:
 - (a) the Authority shall forthwith notify the group's official agent of the refusal and of the reasons for the refusal,
 - (b) the official agent may, within 30 days after the date of the notification by the Authority, amend the application for registration by inserting or substituting the relevant particulars, and
 - (c) the amended application shall be deemed to have been received by the Authority when the original application was received by it.
- (4) The Authority may refuse to register a group if, in the opinion of the Authority, the name of the group is obscene or offensive.

-
- (5) Where, pursuant to subsection (4), the Authority refuses to register a group:
- (a) the Authority shall forthwith notify the group's official agent of the refusal and of the reasons for the refusal,
 - (b) the official agent may, within 30 days after the date of the notification by the Authority, amend the application for registration by substituting the name of the group, and
 - (c) the amended application shall be deemed to have been received by the Authority when the original application was received by it.

38 Amendment of Register

- (1) Where an alteration is made in any of the particulars as stated in the Register of Candidates in relation to a candidate or group, being particulars of the kind required to be stated in the application for registration of the candidate or group, the candidate's or group's official agent shall, within 30 days after the date of the alteration, furnish the Authority with a statement in writing setting out details of the alteration.
Maximum penalty: 2 penalty units.
- (2) Where the Authority believes on reasonable grounds that a candidate's or group's official agent has not furnished the Authority with a statement setting out details of any alteration, as referred to in subsection (1), the Authority may, by notice in writing served on the official agent, require the official agent to furnish such a statement before the date specified in the notice, or before the date of expiry of the period of 30 days after service of the notice, whichever is later.
- (3) If a candidate's or group's official agent fails to furnish a statement in accordance with subsection (2), the Authority may cancel the registration of the candidate or group.
- (4) The Authority shall vary the particulars set out in the Register of Candidates in relation to a candidate or group in accordance with a statement furnished in accordance with this section or in accordance with the written request of the candidate's or group's official agent, unless the Authority believes on reasonable grounds that the varied particulars are not correct.
- (5) The Authority may cancel the registration of a candidate or group at the written request of the candidate's or group's official agent.
- (6) The Authority may, of its own accord or on request, omit any particulars from the Register of Candidates if it is satisfied that the particulars are not correct.

- (7) The Authority may, of its own accord or on request, insert any particulars in the Register of Candidates if it is satisfied that the particulars are correct.
- (8) The Authority shall notify the relevant official agent of any alterations made to the Register of Candidates pursuant to this section.
- (9) The provisions of subsections (1)–(4) do not, if the regulations so provide, apply to particulars or alterations of a class or description specified in the regulations for the purposes of this subsection.

Division 2A Register of Third-party Campaigners

38A Register of Third-party Campaigners to be kept

- (1) The Authority is to keep a register, to be called the Register of Third-party Campaigners, for each general election.
- (2) The Authority is to keep separate Registers of Third-party Campaigners for State and local government elections. The register for State elections may be called the State Register of Third-party Campaigners and the register for local government elections may be called the Local Government Register of Third-party Campaigners.
- (3) The Register of Third-party Campaigners for a general election is to be kept as from the polling day for the previous general election.
- (4) Subject to this Act, the Register of Third-party Campaigners is to be kept in such form and manner as the Authority thinks fit.

38B Registration

- (1) Registration of a third-party campaigner is to be effected by the insertion in the Register of Third-party Campaigners of the name of the third-party campaigner.
- (2) There is to be included in the Register of Third-party Campaigners:
 - (a) such particulars as are required to be included in the application for registration of the third-party campaigner, and
 - (b) such other particulars as the Authority thinks fit.

38C Applications for registration

- (1) Subject to this Act, the Authority is to register a person as a third-party campaigner in the Register of Third-party Campaigners for a general election if:
 - (a) application for registration is made by the person or the person's official agent in the form and manner approved by the Authority, and

-
- (b) the application is received by the Authority before the 7th day before polling day for the general election and after the polling day for the previous general election.
 - (2) An application for registration of a person as a third-party campaigner must set out the following particulars:
 - (a) the full name and address of the person,
 - (b) such other particulars as may be prescribed.
 - (3) The application for registration is to be accompanied by an appointment of the official agent of the third-party campaigner.

38D Lodging of applications

- (1) An application for registration in the Register of Third-party Campaigners may be lodged with an election official designated by the Authority or with the Authority.
- (2) An application lodged with an election official is deemed to have been received by the Authority.
- (3) An election official with whom an application for registration is lodged must forthwith forward the application to the Authority.

38E Refusal to register

- (1) The Authority must not register a person in the Register of Third-party Campaigners for a general election if the application for registration was received by the Authority on or after the 7th day before polling day for the general election.
- (2) The Authority may refuse to register a person as a third-party campaigner if the Authority believes on reasonable grounds that any particulars in the person's application for registration are incomplete or not correct, but may, if it thinks fit, register the person notwithstanding any such defect.
- (3) Where, pursuant to subsection (2), the Authority refuses to register a person as a third-party campaigner:
 - (a) the Authority must forthwith notify the person's official agent of the refusal and of the reasons for the refusal, and
 - (b) the official agent may, within 30 days after the date of the notification by the Authority, amend the application for registration by substituting the relevant particulars, and
 - (c) the amended application is deemed to have been received by the Authority when the original application was received by it.

38F Amendment of Register

- (1) Where an alteration is made in any of the particulars as stated in the Register of Third-party Campaigners in relation to a person, being particulars of the kind required to be stated in the application for registration of the person, the person's official agent must, within 30 days after the date of the alteration, furnish the Authority with a statement in writing setting out details of the alteration.
Maximum penalty: 2 penalty units.
- (2) Where the Authority believes on reasonable grounds that a third-party campaigner's official agent has not furnished the Authority with a statement setting out details of any alteration, as referred to in subsection (1), the Authority may, by notice in writing served on the official agent, require the official agent to furnish such a statement before the date specified in the notice, or before the date of expiry of the period of 30 days after service of the notice, whichever is later.
- (3) If a third-party campaigner's official agent fails to furnish a statement in accordance with subsection (2), the Authority may cancel the registration of the third-party campaigner.
- (4) The Authority is to vary the particulars set out in the Register of Third-party Campaigners in relation to a person in accordance with a statement furnished in accordance with this section or in accordance with the written request of the person's official agent, unless the Authority believes on reasonable grounds that the varied particulars are not correct.
- (5) The Authority may cancel the registration of a third-party campaigner at the written request of the person's official agent.
- (6) The Authority may, of its own accord or on request, omit any particulars from the Register of Third-party Campaigners if it is satisfied that the particulars are not correct.
- (7) The Authority may, of its own accord or on request, insert any particulars in the Register of Third-party Campaigners if it is satisfied that the particulars are correct.
- (8) The Authority is to notify the relevant official agent of any alterations made to the Register of Third-party Campaigners pursuant to this section.
- (9) The provisions of subsections (1)–(4) do not, if the regulations so provide, apply to particulars or alterations of a class or description specified in the regulations for the purposes of this subsection.

Division 3 Register of Party Agents

39 Register of Party Agents to be kept

- (1) The Authority shall keep a register, to be called the Register of Party Agents.
- (1A) The Authority is to keep separate Registers of Party Agents for State and local government elections. The register for State elections may be called the State Register of Party Agents and the register for local government elections may be called the Local Government Register of Party Agents.
- (2) The Register of Party Agents shall be kept on a continuous basis.
- (3) Subject to this Act, the Register of Party Agents shall be kept in such form and manner as the Authority thinks fit.

40 Registration

- (1) Registration of a party agent shall be effected by the insertion in the Register of Party Agents of the name of the party agent and the name of the party by which the party agent was appointed.
- (2) There shall be included in the Register of Party Agents the address and occupation of each party agent, and such other particulars as the Authority thinks fit.

41 Appointment etc of party agents

- (1) A party shall appoint one party agent.
- (2) If at any time a party does not have a party agent appointed under this section, the party agent is the person who holds office at that time as the registered officer of the party under Part 4A of the *Parliamentary Electorates and Elections Act 1912* or under the *Local Government Act 1993*, as the case requires.
- (3) The appointment of a party agent may be revoked.
- (4) If a party agent dies or resigns, the party by which the party agent was appointed shall forthwith give notice of that fact in writing to the Authority.
- (5) If a party agent dies or resigns or his or her appointment is revoked, the party by which the party agent was appointed shall appoint another party agent in his or her place.
- (6) The appointment, or the revocation of the appointment, of a party agent shall be made by notice in writing furnished to the Authority, but does not take effect until the appropriate action has been taken under section 42.

- (7) A notice under this section shall be in the form approved by the Authority.
- (8) A notice of the appointment of a party agent shall be deemed not to have been properly given unless it is accompanied by the signed acceptance of appointment of the person appointed.
- (9) A person appointed to any office or position under the *Parliamentary Electorates and Elections Act 1912* is not eligible to be a party agent.
- (10) If a party fails to comply with a provision of this section:
 - (a) the party is guilty of an offence and liable to a penalty not exceeding 200 penalty units, and
 - (b) each person who, at the time the failure occurred, was an officer of the party is guilty of an offence and liable to a penalty not exceeding 100 penalty units.

42 Entries in the Register

- (1) On receipt of a notice of the appointment of a party agent furnished under section 41, the Authority shall register the party agent in the Register of Party Agents.
- (2) On receipt of a notice furnished under section 41 of the death or resignation, or the revocation of the appointment, of a party agent, the Authority shall remove the name of the party agent from the Register of Party Agents.
- (3) The Authority may reject a notice referred to in subsection (1) or (2) if, in its opinion, the notice is not in accordance with this Act.

43 Amendment of Register

The Authority may amend the Register of Party Agents by:

- (a) correcting a mistake or omission, or
- (b) recording a change in the name, address or occupation of a party agent or a change in the name of the party by which a party agent was appointed.

Division 4 Register of Official Agents

44 Register of Official Agents to be kept

- (1) The Authority shall keep a register, to be called the Register of Official Agents, for each general election.
- (2) The Register of Official Agents for a general election shall be kept as from the polling day for the previous general election.

-
- (3) Subject to this Act, the Register of Official Agents shall be kept in such form and manner as the Authority thinks fit.

45 Registration

- (1) Registration of an official agent shall be effected by the insertion in the Register of Official Agents of the name of the official agent and the name of the candidate, group, elected member or third-party campaigner by whom the official agent was appointed.
- (2) There shall be included in the Register of Official Agents the address and occupation of each official agent, and such other particulars as the Authority thinks fit.

46 Official agents of candidates and groups

- (1) A candidate or group must appoint one official agent (an *appointed official agent*) unless the candidate or group has an ex officio official agent.
- (2) If a party agent of a party is the ex officio official agent of a candidate or group under paragraph (c) or (d) of the definition of *official agent* in section 4 (1), the candidate or group may with the consent of the party agent appoint an official agent (an *appointed official agent*) to be the official agent of the candidate or group in place of the party agent.
- (3) The appointment of an official agent by a candidate or group may be revoked by the candidate or group and, in the case of the appointment of an official agent in place of a party agent, may also be revoked by the party agent.
- (4) If an appointed official agent of a candidate or group dies or resigns, the candidate or group by whom the official agent was appointed must forthwith give notice of that fact in writing to the Authority.
- (5) If an appointed official agent of a candidate or group dies or resigns or his or her appointment is revoked, the candidate or group by whom the official agent was appointed must appoint another official agent in his or her place unless the appointed official agent was appointed in place of a party agent (in which case the appointment of another official agent is optional and requires the consent of the party agent).
- (6) At any time when a candidate or group required to appoint an official agent under this section does not have an appointed official agent:
- (a) the candidate is deemed to be his or her own official agent, or
 - (b) the candidate whose name first appears on the list of members of the group is deemed to be the official agent of the group.

Note. This does not apply to the optional appointment of an official agent in place of a party agent.

- (7) For the purposes of the disclosure under Part 6 of political donations received and electoral expenditure incurred by or on behalf of a candidate or group:
- (a) a person remains the appointed official agent of a candidate or group despite the candidate or group ceasing to be a candidate or group, and
 - (b) the appointment under this section of an official agent of a candidate or group remains in force despite the candidate or group ceasing to be a candidate or group, and
 - (c) this Division continues to apply after the candidate or group ceases to be a candidate or group, as if the former candidate or group were still a candidate or group for the election concerned.
- Note.** For example, the former candidate or group will be required to appoint another official agent following the death or resignation of an official agent after the election and before the Part 6 disclosure requirements have been fully complied with.
- (8) If a candidate or group contravenes a provision of this section, the candidate or each member of the group is guilty of an offence.
Maximum penalty: 100 penalty units.

46A Official agents of elected members

- (1) An elected member may appoint one official agent (an *appointed official agent*) but only if the elected member does not have an ex officio official agent under paragraph (b) of the definition of *official agent* in section 4 (1).
- (2) If a party agent is the ex officio official agent of an elected member under paragraph (a) of the definition of *official agent* in section 4 (1), the elected member may with the consent of the party agent appoint one official agent (an *appointed official agent*) to be the official agent of the elected member in place of the party agent.
- Note.** If an elected member does not have an ex officio official agent and does not appoint an official agent, the Authority will designate a person as official agent for the elected member. See paragraph (g) of the definition of *official agent* in section 4 (1).
- (3) The appointment of an official agent by an elected member may be revoked by the elected member and, in the case of the appointment of an official agent in place of a party agent, may also be revoked by the party agent.
- (4) If the appointed official agent of an elected member dies or resigns, the elected member must forthwith give notice of that fact in writing to the Authority.

-
- (5) If an appointed official agent of an elected member dies or resigns or his or her appointment is revoked, the elected member may appoint another official agent in his or her place unless the appointed official agent was appointed in place of a party agent (in which case the appointment of another official agent is optional and requires the consent of the party agent).

46B Official agents of third-party campaigners

- (1) A third-party campaigner may appoint one official agent (an *appointed official agent*).
Note. If a third-party campaigner does not appoint an official agent, the Authority can designate a person as official agent. See paragraph (g) of the definition of official agent in section 4 (1).
- (2) The appointment of an official agent may be revoked.
- (3) If the appointed official agent of a third-party campaigner dies or resigns, the third-party campaigner must forthwith give notice of that fact in writing to the Authority.
- (4) If an appointed official agent of a third-party campaigner dies or resigns or his or her appointment is revoked, the third-party campaigner may appoint another official agent in his or her place.

46C Procedure for appointing or revoking appointment of official agents

- (1) The appointment, or the revocation of the appointment, of an official agent is to be made by notice in writing to the Authority.
- (2) A notice under this Division is to be in the form approved by the Authority.
- (3) A notice of the appointment of an official agent is not properly given unless it is accompanied by the signed acceptance of appointment of the person appointed.
- (4) A person appointed to any office or position under the *Parliamentary Electorates and Elections Act 1912* is not eligible to be an official agent.

47 Entries in the Register

- (1) On receipt of a notice of the appointment of an official agent furnished under this Division, the Authority shall register the official agent in the Register of Official Agents.
- (2) On receipt of a notice furnished under this Division of the death or resignation, or the revocation of the appointment, of an official agent, the Authority shall remove the name of the official agent from the Register of Official Agents.

-
- (3) The Authority may reject a notice referred to in subsection (1) or (2) if, in its opinion, the notice is not in accordance with this Act.
 - (4) The Authority may include in the Register of Official Agents particulars of the persons who are official agents because of the office they hold and not because of an appointment under this Division.

48 Amendment of Register

The Authority may amend the Register of Official Agents by:

- (a) correcting a mistake or omission, or
- (b) recording a change in the name, address or occupation of an official agent or, in the case of an official agent appointed by a group, a change in the composition or name of the group.

49 (Repealed)

Division 5 Registers for by-elections

50 Application of this Division

This Division applies to and in respect of each by-election (referred to in this Division as *the by-election*) at which there are 2 or more candidates for election.

51 Registers for by-elections

- (1) The Authority is to keep 3 registers, to be called the Register of Candidates, the Register of Third-party Campaigners and the Register of Official Agents respectively, for the by-election.
- (2) The registers are to be kept as from:
 - (a) in the case of a State election—the day of the issue of the writ for the by-election, or
 - (b) in the case of a local government election—the day for the close of the roll of electors for the by-election.
- (3) Subject to this Act, the registers shall be kept in such form and manner as the Authority thinks fit.
- (4) The provisions of Divisions 2, 2A and 4 apply to and in respect of the Register of Candidates, the Register of Third-party Campaigners and the Register of Official Agents for the by-election in the same way as they apply to and in respect of the Register of Candidates, the Register of Third-party Campaigners and the Register of Official Agents under those Divisions, and so apply as if:
 - (a) in the case of a State election, references to groups were omitted, and

-
- (b) references to a general election were references to the by-election, and
 - (c) any other necessary adaptations were made.

Division 6 General

52 Public access to registers

- (1) Copies of each register kept under this Part shall be retained by the Authority and be available for public inspection during ordinary office hours.
- (2) (Repealed)

53 Statutory declarations

The Authority may require any particulars in an application or notice under this Part to be verified by statutory declaration.

54 False statements

A person who, in any application or statement made or furnished under this Part, makes a statement that is false or misleading in a material particular, knowing it to be false or not reasonably believing it to be true, is guilty of an offence and liable to a penalty not exceeding 100 penalty units.

Part 5 Public funding of State election campaigns

Division 1 Preliminary

54A Application to State elections only

- (1) This Part does not apply in relation to local government elections.
- (2) Accordingly, a reference in this Part to an election is a reference that relates to a State election.

54B Part 6 definitions apply

Words and expressions used in this Part and in Part 6 have the same meaning in this Part as they have in that Part, except where the contrary intention appears.

55 Meaning of electoral communication expenditure for a State election

- (1) For the purposes of this Part, electoral communication expenditure for a State election is electoral communication expenditure incurred during the capped expenditure period for the election within the meaning of section 95H.
- (2) The decision of the Authority as to whether any expenditure is or is not electoral communication expenditure in accordance with this Act, the regulations and the guidelines determined under section 24 is final. The Auditor-General or an auditor is, for the purposes of this Act, entitled to rely on any such decision of the Authority.

Division 2 Public funding for electoral communication expenditure of parties and candidates

56 Establishment of Election Campaigns Fund

- (1) There is to be an Election Campaigns Fund to be kept by the Authority in respect of State elections.
- (2) Payments from the Election Campaigns Fund are to be distributed in accordance with this Part.

57 Registered parties eligible for public funding of election campaigns

- (1) Parties are, subject to and in accordance with this Act, eligible for payments from the Election Campaigns Fund in respect of a State election (other than a by-election for the Assembly).
- (2) A party is eligible for payments from the Election Campaigns Fund in respect of any such State election if:
 - (a) it is a registered party on polling day for the State election, and

-
- (b) it endorses candidates who are duly nominated for the State election and the Authority is satisfied that the candidates claim to be endorsed by the party, and
 - (c) it satisfies at least one of the party eligibility criteria.
- (3) The party eligibility criteria are as follows:
- (a) in the case of an Assembly general election—the total number of first preference votes received by all those candidates endorsed by a party is at least 4% of the total number of first preference votes in all electoral districts in which the candidates were duly nominated for election,
 - (b) in the case of a periodic Council election—the total number of first preference votes received by all those candidates endorsed by a party (and by all other candidates included in the same group) is at least 4% of the total number of first preference votes in that election,
 - (c) in the case of any election—at least one of those candidates endorsed by a party is elected at the State election.

58 Amount of public funding for eligible parties

- (1) In this section:
- actual expenditure* of a party means the total actual electoral communication expenditure incurred by a party, irrespective of whether it was incurred in connection with an Assembly general election or with a periodic Council election or with both of those elections.
- applicable expenditure cap* for a party means the applicable cap on electoral communication expenditure for the party determined under Division 2B of Part 6.
- eligible Assembly party* means a party that is eligible for payment from the Election Campaigns Fund in respect of a State election and that is not an eligible Council party in respect of that election.
- eligible Council party* means a party that is eligible for payment from the Election Campaigns Fund in respect of a periodic Council election because it satisfies the eligibility criteria under section 57 (3) (b) or (c) relating to the Council, but that:
- (a) did not endorse any candidate for election in the Assembly, or
 - (b) only endorsed candidates for election in the Assembly in not more than 10 electorates.
- (2) The amount to be distributed from the Election Campaigns Fund to a party eligible for payment from the Fund in respect of a State election is the amount set out in the Table to this section.

TABLE**Eligible Assembly party**

100% of so much of the actual expenditure of the party as is within 0–10% of the applicable expenditure cap, plus

75% of so much of the actual expenditure of the party as is within the next 10–90% of the applicable expenditure cap, plus

50% of so much of the actual expenditure of the party as is within the last 90–100% of the applicable expenditure cap.

Eligible Council party

100% of so much of the actual expenditure of the party as is within zero to one third of the applicable expenditure cap, plus

75% of so much of the actual expenditure of the party as is within the next one third to two thirds of the applicable expenditure cap, plus

50% of so much of the actual expenditure of the party as is within the last two thirds to 100% of the applicable expenditure cap.

59 Candidates eligible for public funding of election campaigns

- (1) Candidates are, subject to and in accordance with this Act, eligible for payments from the Election Campaigns Fund in respect of a State election.
- (2) A candidate who is duly nominated for a State election is eligible for payments from the Election Campaigns Fund in respect of the election if:
 - (a) the candidate is registered as such a candidate in the Register of Candidates for the election on polling day for the election, and
 - (b) in the case of a candidate for a periodic Council election, the candidate was not included in a group, or was included in a group none of whose members were endorsed by a party, and
 - (c) the candidate satisfies at least one of the candidate eligibility criteria.
- (3) The candidate eligibility criteria are as follows:
 - (a) in the case of an Assembly general election or by-election for the Assembly—the candidate is elected or the total number of first preference votes received by the candidate is at least 4% of the total number of first preference votes in the electoral district in which the candidate was duly nominated for election,
 - (b) in the case of a periodic Council election—the candidate is elected or the total number of first preference votes received by the candidate (and, if included in a group, by all other candidates

included in the same group) is at least 4% of the total number of first preference votes in the election.

60 Amount of public funding for eligible candidates

(1) In this section:

actual expenditure of a candidate means the total actual electoral communication expenditure incurred by the candidate in connection with a State election.

applicable expenditure cap for a candidate means the applicable cap on electoral communication expenditure for the candidate determined under Division 2B of Part 6.

eligible Assembly independent candidate means a candidate at an Assembly election who is eligible for payment from the Election Campaigns Fund and who was not endorsed by a party.

eligible Assembly party candidate means a candidate at an Assembly election who is eligible for payment from the Election Campaigns Fund and who was endorsed by a party.

eligible Council candidate means a candidate at a periodic Council election who is eligible for payment from the Election Campaigns Fund.

(2) The amount to be distributed from the Election Campaigns Fund to a candidate eligible for payment from the Fund in respect of a State election is the amount set out in the Table to this section.

TABLE

Eligible Assembly party candidate

100% of so much of the actual expenditure of the candidate as is within 0–10% of the applicable expenditure cap, plus

50% of so much of the actual expenditure of the candidate as is within the next 10–50% of the applicable expenditure cap.

Eligible Assembly independent candidate

100% of so much of the actual expenditure of the candidate as is within 0–10% of the applicable expenditure cap, plus

50% of so much of the actual expenditure of the candidate as is within the next 10–80% of the applicable expenditure cap.

Eligible Council candidate

100% of so much of the actual expenditure of the candidate as is within zero to one third of the applicable expenditure cap, plus

75% of so much of the actual expenditure of the candidate as is within the next one third to two thirds of the applicable expenditure cap, plus

50% of so much of the actual expenditure of the candidate as is within the last two thirds to 100% of the applicable expenditure cap.

61 Expenditure claimed by both party and candidate

- (1) The same item of electoral communication expenditure cannot, for the purposes of this Division, be included as expenditure of both a candidate and the party that endorses the candidate.
- (2) If any such item of expenditure is claimed by both the candidate and the party, the expenditure is taken to be that of the party and not the candidate.

62 Payments to parties endorsing the same candidate or group

- (1) If the Authority is satisfied that 2 or more registered parties endorse the same candidate or same group of candidates for a State election and that the candidate or candidates each claim to be endorsed by those parties:
 - (a) those parties are taken, for the purposes of this Part, to constitute one registered party instead of 2 or more registered parties in relation to the candidate or candidates at that election, and
 - (b) the amount that would otherwise be payable from the Election Campaigns Fund to that one registered party in respect of the election is payable instead to those 2 or more registered parties as shared funding.
- (2) An amount payable to 2 or more parties as shared funding is payable to them:
 - (a) in equal shares, or
 - (b) in such other shares as the party agents of those parties agree on and as are specified in a direction in writing (a *shared funding direction*) signed by them and served on the Authority.
- (3) If a registered party would, but for this subsection, be entitled to be paid 2 or more amounts by virtue of subsection (1), the party is entitled to be paid only one of those amounts, being the largest amount.
- (4) A shared funding direction remains effective until revoked by the party agents of the parties concerned and notice in writing of the revocation is served on the Authority.

63 Entitlements to advance payments

- (1) A registered party is, subject to and in accordance with this Act, eligible for an advance payment from the Election Campaigns Fund for electoral communication expenditure incurred in connection with a general election of an amount determined in accordance with subsection (2).

-
- (2) The amount payable, by way of advance payment, is an amount equal to 30% of the total amount to which the party was entitled under this Part (other than under section 67) in respect of the previous general election.
 - (3) The amount payable by way of an advance payment under this section may be paid, as a lump sum or by way of instalments, at any time after the commencement of the capped expenditure period for the election.
 - (4) Any amount paid to a party by way of advance payment under this section in respect of a general election is to be deducted from the amount payable under this Part to the party from the Election Campaigns Fund in respect of that general election.
 - (5) If a party receives amounts by way of advance payment under this section in respect of a general election in excess of the amount (if any) to which it becomes entitled under this Part from the Election Campaigns Fund in respect of that general election, the amount of the excess must be repaid to the Authority within 60 days after the day for the return of the writs for that general election.
 - (6) Any amount received by a party by way of advance payment under this section in respect of a general election must be repaid, on demand by the Authority, to the Authority if:
 - (a) the party does not contest the general election, or
 - (b) before the polling day for the general election, the party ceases to operate or be registered or it has been, or is being, dissolved or wound up.
 - (7) Any amount required to be repaid under this section may be recovered by the Authority as a debt in any court of competent jurisdiction.
 - (8) This section does not apply to the first general election to be held in 2011.

Division 3 General provisions relating to funding

64 Claims for, and approvals of, payments

- (1) A claim for payment under this Part (other than an advance payment) in respect of a State election must be lodged with the Authority before the expiration of 120 days after the day for the return of the writs for the election.

Note. Section 106 authorises the Authority to extend the time for lodging a claim for payment.
- (2) Subject to this Act, the Authority must:
 - (a) approve the making of the payment under this Part if:

- (i) a claim for the payment is made by the party or party agent for the party, or by the official agent of the candidate, in the form and manner approved by the Authority, and
 - (ii) the claim is reviewed by an auditor in accordance with section 65, and
 - (iii) the Authority is satisfied that the party or candidate is eligible for the payment, or
 - (b) refuse to approve the making of the payment under this Part to the extent that the payment would exceed the amount of electoral communication expenditure for which payment may be made under this Part.
- (3) In assessing a claim for payment under this Part, the Authority may require the applicant to provide the Authority with further or other information relative to the assessment.
- (4) If the Authority is satisfied that it is proper to do so, it may disallow, wholly or in part, any items of expenditure covered by a claim under this Part.

65 Review of claim

A claim under this Part is not validly lodged with the Authority unless it is accompanied by a certificate of an auditor stating:

- (a) that the auditor was given full and free access at all reasonable times to all accounts, records, documents and papers of the agent by whom the claim is to be lodged, and of the party or candidate, as the case may require, relating directly or indirectly to the expenditure referred to in the claim, and
- (b) that the auditor duly examined such of those accounts, records, documents and papers as the auditor considers material for the purpose of giving the certificate, and
- (c) that the auditor received all information and explanations that the auditor asked for with respect to the expenditure referred to in the claim, subject to the qualifications (if any) specified in the certificate, and
- (d) that the auditor is satisfied that, from the information available to the auditor, the expenditure specified in the claim was incurred and is, having regard to this Act, the regulations and the guidelines determined under section 24, expenditure which may properly be the subject of such a claim, and
- (e) that the auditor has no reason to think that any statement in the claim is not correct.

66 Expenditure to be vouched for

A claim under this Part is not validly lodged with the Authority unless all expenditure specified in the claim is vouched for in the manner prescribed by the regulations.

67 Making payments to party at direction of candidate

- (1) A candidate to whom a payment is to be made under this Part in respect of an election may direct the Authority to make the payment to a party that:
 - (a) endorsed the candidate in that election, and
 - (b) was a registered party on the polling day for that election.
- (2) In that case, the party becomes entitled to the payment and the payment is to be made to that party instead of to that candidate.
- (3) A direction under this section:
 - (a) may be made in anticipation of an entitlement to a payment under this Part, and
 - (b) is required to be made in writing, and
 - (c) may be revoked by the candidate by notice to the Authority given with the written consent of the party agent of the party.

68 Making of payments

- (1) Subject to this Act, a payment to be made to a party or candidate under this Part is to be made to the party or party agent of the party or to the official agent of the candidate (as the case requires).
- (2) The Authority may instead, if it thinks it proper to do so in the circumstances, direct that the whole or any part of a payment under this Part be made to a specified account with a financial institution established for or in trust for a party, for the members of a party or for a candidate.
- (3) Despite subsections (1) and (2), payments to be made to a candidate are required to be paid into the campaign account of the candidate if such an account is required to be kept under section 96A.
- (4) Subject to and in accordance with the regulations, the Authority may, if it thinks it proper to do so in the circumstances, direct that the whole or any part of a payment under this Part be made to a person, body or organisation other than the party, party agent or official agent referred to in subsection (1).
- (5) Except as prescribed by the regulations, details of any direction under subsection (4) are to be included in the report of the Authority under

section 107 (2) for the reporting period in which the direction was given.

- (6) Payments may be made under this Part to an agent subject to such reasonable conditions with respect to the disbursement of the amount paid as the Authority determines.
- (7) An agent must comply with any condition determined in accordance with subsection (6) and applicable to the agent or any of his or her predecessors.
Maximum penalty: 100 penalty units.
- (8) It is a defence to a prosecution for an offence arising under subsection (7) if the agent establishes that the agent did not know, and could not reasonably have known, that the condition was applicable as referred to in that subsection.
- (9) Where a payment is made under this Part and the recipient is not entitled to receive the whole or any part of the amount paid, whether because of a false statement in a claim or otherwise, the amount or that part of the amount may be recovered by the Authority as a debt in any court of competent jurisdiction.

69 Prepayment on lodgment of claims

- (1) If the Authority is unable to finalise a claim for payment lodged on behalf of a party within 14 days, the Authority is required to make a preliminary payment within that period of 14 days.
- (2) The preliminary payment is to be of an amount equal to 70 per cent of the total amount estimated by the Authority to be payable to the party (other than under section 67), reduced by the amount of any advance payments made for the election concerned.
- (3) In making an estimate under this section, the Authority may, but need not, rely on information contained in the claim lodged by the party.
- (4) If a party receives a preliminary payment in excess of the amount (if any) to which it becomes entitled under a claim for payment, the amount of the excess must be repaid to the Authority within 60 days after the Authority notifies the party.
- (5) The amount of any such excess may be recovered by the Authority as a debt in any court of competent jurisdiction.

70 Payments conditional on disclosure of political donations etc

- (1) A party or candidate is not eligible for any payment (other than advance payments) under this Part in respect of a general election while any failure to lodge a requisite declaration (or annual financial statement)

under Part 6 for a past period continues in respect of the party or candidate (or of any group of which the candidate is a member).

- (2) If the Authority is authorised under section 96J to recover from a party or candidate (or from the official agent of the party or candidate) an amount relating to the unlawful acceptance of a political donation or other amount, the Authority may deduct the amount from any payment (other than an advance payment) under this Part.

71 Death of a candidate

If a candidate dies and would, but for his or her death, have been entitled to a payment under this Part, the Authority may make the payment to the candidate's legal personal representative or otherwise in accordance with section 68.

71A (Repealed)

72 Deductions from payment for debts owed

The Authority may deduct from any payment due under this Part in respect of a party or candidate all or any overpayment or excess amount that the Authority is authorised by this Part to recover as a debt from the party or candidate.

73 Special provisions relating to groups

- (1) If there is an alteration in the composition of a group at a periodic Council election and the Authority is satisfied that the identity of the group is substantially unaltered, payments may be made under this Part as if its composition had not altered.
- (2) A reference in this Part to the official agent of a candidate or to the campaign account of a candidate is (if a candidate at a periodic Council election) a reference to the official agent or campaign account of the group.

73A (Repealed)

74 Public access to claims etc

- (1) A claim lodged with the Authority for a payment under this Part, together with any documents relating to the assessment of the claim by the Authority, or a copy thereof, must be retained by the Authority for at least 6 years after the polling day for the election to which it or they relate. Any such claim and documents, or a copy thereof, must be available for public inspection during ordinary office hours.
- (2) The Authority may, on application made to it and on payment of a reasonable fee to be determined from time to time by the Authority,

provide copies of or extracts from any claim or documents referred to in subsection (1).

75 False statements

- (1) A person who, in any claim lodged with the Authority for a payment under this Part, makes a statement that is false or misleading in a material particular, knowing it to be false or not reasonably believing it to be true, is guilty of an offence.
- (2) A candidate who, in relation to any matter to be included in a claim for a payment under this Part, gives or withholds giving information to the official agent of the candidate knowing that it will result in the making of a false or misleading claim by the agent is guilty of an offence.

Maximum penalty: 200 penalty units or imprisonment for 2 years, or both.

76–82 (Repealed)

Part 6 Political donations and electoral expenditure

Division 1 Preliminary

83 Application

This Part applies in relation to:

- (a) State elections and elected members of Parliament, and
- (b) local government elections and elected members of councils (other than Divisions 2A and 2B).

Note. Political donations and electoral expenditure are required to be disclosed in connection with both State and local government elections and members but the cap on political donations, the cap on electoral communication expenditure and public funding of election campaigns only apply to State elections and members.

84 Definitions—general

- (1) In this Act:

applicable cap on electoral expenditure—see Division 2B.

applicable cap on political donations—see Division 2A.

capped expenditure period—see section 95H.

disposition of property—see section 4.

Note. A disposition of property includes any transaction that diminishes the value of a person's own property and increases the value of the property of another person. Property includes money.

donor means a person who makes a gift.

entity means:

- (a) an incorporated or unincorporated body, or
- (b) the trustee of a trust.

expenditure includes any disposition of property.

financial year means a financial year ending 30 June.

gift means any disposition of property made by a person to another person, otherwise than by will, being a disposition made without consideration in money or money's worth or with inadequate consideration, and includes the provision of a service (other than volunteer labour) for no consideration or for inadequate consideration.

major political donor means an individual (not being an elected member or candidate) who makes a reportable political donation of or exceeding \$1,000.

relevant disclosure period—see section 89.

- (2) An individual who, or a group of individuals which, accepts a gift for use solely or substantially for a purpose related to the proposed

candidacy of the individual or individuals at a future election is, for the purposes of this Part, taken to be a candidate or group when accepting the gift.

Note. Section 96A (2) makes it unlawful for any such political donations to be accepted unless the individual or group is registered as a candidate or group under this Act.

- (2A) An individual who, or a group of individuals which, makes a payment for electoral expenditure for the election of the individual or individuals at a future election is, for the purposes of this Part, taken to be a candidate or group when making the payment. The guidelines of the Authority may exclude minor payments from the operation of this subsection.

Note. Section 96A (5A) makes it unlawful for any such electoral expenditure to be incurred unless the individual or group is registered as a candidate or group under this Act.

- (3) For the purposes of this Part:

- (a) a person who is a candidate in an election, or
- (b) a group of candidates in an election,

is taken to remain a candidate or group for 30 days after the polling day for the election.

Note. A disclosure is still required to be made by candidates and groups after they cease to be candidates or groups following the election if they were a candidate or group during any part of the relevant disclosure period for the disclosure—see section 88 (4).

- (3A) Subsection (3) does not apply to a candidate at a time when the candidate is an elected member.

- (4) For the purposes of this Act:

- (a) the amount of a donation or expenditure consisting of a disposition of property other than money is taken to be the amount equal to the value of the property disposed of, and
- (b) the value of property disposed of or the value of a gift may, if the Authority so requires, be determined by valuers appointed or approved by the Authority in accordance with the regulations.

Note. The regulations may make provision for requiring agents to obtain valuations from a valuer approved by the Authority of political donations that are not gifts of money (or enabling the Authority to obtain any such valuations—see section 117 (1) (a1)).

- (5) (Repealed)

- (6) For the purposes of this Part, corporations that are related to each other (as determined in accordance with the *Corporations Act 2001* of the Commonwealth) are taken to be a single corporation.

-
- (7) For the purposes of this Part, an amount of electoral expenditure by a candidate for election to the Assembly includes, if the candidate is the endorsed candidate of a registered party, any amount of electoral expenditure that is:
- (a) incurred by that party for the benefit of the candidate or for the benefit of the candidate and other candidates endorsed by the party at the election (whether or not as an agent for the candidate), and
 - (b) invoiced by that party to the candidate for payment (whether or not the candidate has a legal liability to pay to the party the amount invoiced).

85 Meaning of “political donation”

- (1) For the purposes of this Act, a *political donation* is:
- (a) a gift made to or for the benefit of a party, or
 - (b) a gift made to or for the benefit of an elected member, or
 - (c) a gift made to or for the benefit of a candidate or a group of candidates, or
 - (d) a gift made to or for the benefit of an entity or other person (not being a party, elected member, group or candidate), the whole or part of which was used or is intended to be used by the entity or person:
 - (i) to enable the entity or person to make, directly or indirectly, a political donation or to incur electoral expenditure, or
 - (ii) to reimburse the entity or person for making, directly or indirectly, a political donation or incurring electoral expenditure.
- (2) An amount paid by a person as a contribution, entry fee or other payment to entitle that or any other person to participate in or otherwise obtain any benefit from a fund-raising venture or function (being an amount that forms part of the proceeds of the venture or function) is taken to be a gift for the purposes of this section.
- (3) An annual or other subscription paid to a party by:
- (a) a member of the party, or
 - (b) a person or entity (including an industrial organisation) for affiliation with the party,
- is taken to be a gift to the party for the purposes of this section.

Note. Unless details of any such subscription are required to be disclosed because it is a reportable political donation of or above \$1,000, the total amount

of subscriptions and other details are required to be disclosed under section 92 (4).

(3A) The following dispositions of property are taken to be a gift for the purposes of this section:

- (a) a disposition of property to a NSW branch of a party from the federal branch of the party,
- (b) a disposition of property to a NSW branch of a party from another State or Territory branch of the party,
- (c) a disposition of property from a party to another associated party (whether associated because of common membership, coalition arrangements or otherwise).

Note. Any such disposition will be a political donation that is required to be disclosed and subject to the cap on political donations under this Part, but will not be subject to the cap to the extent that it is paid into (or held as the assets of) an account of a party that is used only for the purposes of expenditure incurred for federal election campaigns or local government election campaigns—see section 95B (2).

(3B) Uncharged interest on a loan to an entity or other person is taken to be a gift to the person for the purposes of this section. Uncharged interest is the additional amount that would have been payable by the person if:

- (a) the loan had been made on terms requiring the payment of interest at the generally prevailing interest rate for a loan of that kind, and
- (b) any interest payable had not been waived, and
- (c) any interest payments were not capitalised.

(4) The following are not political donations:

- (a) a gift to an individual that was made in a private capacity to the individual for his or her personal use and that the individual has not used, and does not intend to use, solely or substantially for a purpose related to an election or to his or her duties as an elected member,
- (b) a payment under Part 5 (Public funding of election campaigns) or Part 6A (Political Education Fund).

Note. Even though an election funding payment to a group or candidate is not a donation required to be disclosed, the amount is required to be paid into the separate campaign account that is established for donations to and electoral expenditure by the group or candidate—see section 77 (2A).

(5) However, if any part of a gift referred to in subsection (4) (a) is subsequently used to incur electoral expenditure, that part of the gift becomes a political donation.

86 Meaning of “reportable political donation”

- (1) For the purposes of this Act, a *reportable political donation* is:
 - (a) in the case of disclosures under this Part by a party, elected member, group, candidate or third-party campaigner—a political donation of or exceeding \$1,000 made to or for the benefit of the party, elected member, group, candidate or third-party campaigner, or
 - (b) in the case of disclosures under this Part by a major political donor—a political donation of or exceeding \$1,000 made by the major political donor to or for the benefit of a party, elected member, group, candidate or third-party campaigner.
- (2) A political donation of less than an amount specified in subsection (1) made by an individual is to be treated as a reportable political donation if that and other separate political donations made by that individual to the same party, elected member, group, candidate, third-party campaigner or person within the same financial year (ending 30 June) would, if aggregated, constitute a reportable political donation under subsection (1).
- (3) A political donation of less than an amount specified in subsection (1) made by an individual to a party is to be treated as a reportable political donation if that and other separate political donations made by that individual to an associated party within the same financial year (ending 30 June) would, if aggregated, constitute a reportable political donation under subsection (1). This subsection does not apply in connection with disclosures of political donations by parties.
- (4) For the purposes of subsection (3), parties are associated parties if endorsed candidates of both parties were included in the same group in the last periodic Council election or are to be included in the same group in the next periodic Council election.

87 Meaning of “electoral expenditure” and “electoral communication expenditure”

- (1) For the purposes of this Act, *electoral expenditure* is expenditure for or in connection with promoting or opposing, directly or indirectly, a party or the election of a candidate or candidates or for the purpose of influencing, directly or indirectly, the voting at an election.
- (2) For the purposes of this Act, *electoral communication expenditure* is electoral expenditure of any of the following kinds:
 - (a) expenditure on advertisements in radio, television, the Internet, cinemas, newspapers, billboards, posters, brochures, how-to-vote cards and other election material,

- (b) expenditure on the production and distribution of election material,
 - (c) expenditure on the Internet, telecommunications, stationery and postage,
 - (d) expenditure incurred in employing staff engaged in election campaigns,
 - (e) expenditure incurred for office accommodation for any such staff and candidates (other than for the campaign headquarters of a party or for the electorate office of an elected member),
 - (f) such other expenditure as may be prescribed by the regulations as electoral communication expenditure,
- but is not electoral expenditure of the following kinds:
- (g) expenditure on travel and travel accommodation,
 - (h) expenditure on research associated with election campaigns,
 - (i) expenditure incurred in raising funds for an election or in auditing campaign accounts,
 - (j) such other expenditure as may be prescribed by the regulations as not being electoral communication expenditure.
- (3) Electoral expenditure (and electoral communication expenditure) does not include:
- (a) expenditure incurred substantially in respect of an election of members to a Parliament other than the NSW Parliament, or
 - (b) expenditure on factual advertising of:
 - (i) meetings to be held for the purpose of selecting persons for nomination as candidates for election, or
 - (ii) meetings for organisational purposes of parties, branches of parties or conferences, committees or other bodies of parties or branches of parties, or
 - (iii) any other matter involving predominantly the administration of parties or conferences, committees or other bodies of parties or branches of parties.
- (4) Electoral expenditure (and electoral communication expenditure) does not include expenditure incurred by an entity or other person (not being a registered party, elected member, group or candidate) if the expenditure is not incurred for the dominant purpose of promoting or opposing a party or the election of a candidate or candidates or influencing the voting at an election.

Note. Division 2B caps electoral communication expenditure during a State election campaign (and Part 5 limits public funding for such expenditure at State election campaigns to part of that capped amount). Division 2 (section 93) requires disclosure of the above electoral expenditure incurred at any time for

State and local government elections. Section 96N also requires the annual disclosure under this Part by a party of donations and electoral expenditure to be accompanied by an audited annual financial statement of the party.

Division 2 Disclosure of political donations and electoral expenditure

88 Disclosures required to be made

(1) Parties, members, groups and candidates

Disclosure is required under this Part of political donations received or made, and electoral expenditure incurred, by or on behalf of the following during the relevant disclosure period:

- (a) a party (whether or not a registered party),
- (b) an elected member,
- (c) a group,
- (d) a candidate.

(1A) Third-party campaigners

Disclosure is required under this Part of:

- (a) electoral communication expenditure incurred by a third-party campaigner in a capped expenditure period during the relevant disclosure period, and
- (b) political donations received by the third-party campaigner during the relevant disclosure period for the purposes of incurring that expenditure.

(2) Major political donors

Disclosure is required under this Part of reportable political donations made by a major political donor who has, during the relevant disclosure period, made a reportable political donation of or exceeding \$1,000.

(3) Single declaration of disclosures by party and its members

The regulations may provide for a single declaration of disclosures by an agent of a party relating to the party and to elected members and candidates (and groups of candidates) who are members of the party. The disclosures relating to the party and to each member, candidate or group are to be separately identified.

(4) Disclosure is required even if the entity or person has ceased to be a party, elected member, candidate or group (as the case requires) at the time the disclosure is required to be made, so long as the entity or person was a party, elected member, candidate or group at any time during the relevant disclosure period.

Note. See section 84 (2) for extension of disclosure and other requirements to individuals who accept donations before they nominate or register as candidates or groups.

89 Relevant disclosure period

- (1) For the purposes of this Part, the *relevant disclosure period* is each 12-month period ending on 30 June.
- (2) In the case of a candidate, the first relevant disclosure period for the candidate registered for an election (the current election) includes the period commencing on:
 - (a) if the candidate was registered at any time in the Register of Candidates for the previous general election—the 31st day after polling day for that previous general election, or
 - (b) if the candidate was registered at any time in the Register of Candidates for a by-election (not being the current election) following the previous general election—the 31st day after polling day for that by-election, or
 - (c) the day that is 12 months before the day on which the candidate was nominated for election at the current election,whichever first occurs, but not including a period during which he or she was an elected member.

Note. The transitional provisions (Part 5 of Schedule 2) make special provision for the first relevant disclosure period.

90 Person responsible for making disclosures

The person who is responsible for making a disclosure required under this Part is as follows:

- (a) in the case of a party—the party agent,
- (b) in the case of an elected member—the official agent of the member,
- (c) in the case of a group or candidate—the official agent of the group or candidate,
- (d) in the case of a third-party campaigner—the official agent of the third-party campaigner,
- (e) in the case of a major political donor—the political donor.

91 When and how disclosures to be made

- (1) Disclosures under this Part are to be made within 8 weeks after the end of each relevant disclosure period (or within such other period as may be prescribed by the regulations).

Note. Unless otherwise prescribed, disclosures are to be made before 26 August for the period ending on 30 June in that year. See section 96L for the

extension of the due date for making disclosures in particular cases, and section 96M for the amendment of disclosures that have been made.

- (2) Disclosures are to be made in a declaration lodged with the Authority in the form and manner approved by the Authority (except as provided by this section).
- (3) A particular political donation is not required to be disclosed in such a declaration if the disclosure of the donation has been made on a website maintained by the Authority for that purpose, but only if:
- (a) the donation is of a category that is authorised to be so disclosed according to the directions on that website, and
 - (b) the disclosure is made in accordance with those directions.

The regulations may make provision with respect to any such website.

- (4) A declaration lodged under this section is to contain a statement to the effect that all disclosures required to be made in relation to the relevant disclosure period have been made.
- (5) A declaration is required to be lodged under this section even if it does not contain any disclosures (unless all the disclosures required to be made have been made under subsection (3) on the website maintained by the Authority).

For the purposes of this Act (including this section and sections 90, 95 and 96H):

- (a) the declaration is taken to be the making of a disclosure required by this Part, and
 - (b) the time required by this Part for lodging the declaration is taken to be the time prescribed by subsection (1) for the making of disclosures under this Part.
- (5A) Disclosures by a third-party campaigner who is also a major political donor in a relevant disclosure period may be made in a single declaration.
- (6) Disclosures in a declaration lodged under this section, or made on a website maintained by the Authority, are required to be vouched for in the manner prescribed by the regulations.

Note. Sections 110 and 110A contain investigative powers to enable the Authority to investigate compliance with the disclosure requirements under this Part.

92 Political donations required to be disclosed

(1) General

Political donations are to be disclosed in accordance with this section.

(2) Reportable political donations

Disclosure of reportable political donations is to include disclosure of the following details of each such donation made during the relevant disclosure period:

- (a) the party, elected member, group or candidate to or for whose benefit the donation was made (or, if the case requires, the third-party campaigner to whom the donation was made),
- (b) the date on which the donation was made,
- (c) the name of the donor,
- (d) the residential address of the donor,
- (e) the amount of the donation.
- (f) (Repealed)

(3) Small donations

Disclosure of political donations (that are not reportable political donations) is to include disclosure of:

- (a) the total amount of those donations during the relevant disclosure period, and
- (b) the total number of persons who made those donations.

This subsection does not apply to disclosures by third-party campaigners or major political donors.

(4) Annual party membership or affiliation subscriptions

Disclosure by a party of political donations is to include disclosure of:

- (a) the total amount of annual or other subscriptions paid to the party by members or affiliates of the party during the relevant disclosure period, and
- (b) each subscription rate, and
- (c) the number of members who paid the subscriptions at each such rate.

Disclosure of any such subscription is not required if it is disclosed as a reportable political donation.

(5) Fund-raising ventures or functions

Disclosure of political donations is to include, in connection with fund-raising ventures or functions during the relevant disclosure period:

- (a) either the net or gross proceeds of each such venture or function (together with a disclosure as to whether the amount is the net or gross proceeds), and

(b) details of each such venture or function (including a brief description of its nature and the date on which or period in which it was held),

but not including any amount of those proceeds that is separately disclosed as a political donation.

(6) **Loans**

Disclosure of reportable political donations is to include disclosure of the amount and lender of any reportable loan under section 96G.

(7) **Discretionary disclosures**

Details of a political donation may be disclosed under this Part even if they are not required to be disclosed under this section.

93 Electoral expenditure required to be disclosed

- (1) All electoral expenditure is required to be disclosed under this Part (whether or not it is incurred during the capped expenditure period for an election).
- (2) The obligation under this Part to disclose any such expenditure of a party in relation to any period can be complied with by lodging with the Authority a copy of a return furnished to the Electoral Commission by the agent of the party under section 314AB of the *Commonwealth Electoral Act 1918* of the Commonwealth in respect of that period.

94 Separate disclosures not required of same item

- (1) An item disclosed under this Part in relation to an elected member need not be also disclosed in the member's capacity as a candidate or as a member of a group, and an item disclosed under this Part in relation to a candidate or a group that includes the candidate need not be also disclosed in the candidate's capacity as an elected member.
- (2) An item disclosed under this Part in relation to a group need not be also disclosed in relation to a member of the group, and an item disclosed under this Part in relation to a candidate need not be also disclosed in relation to the group of which the candidate is a member.

95 Public access to disclosures, expenditure etc

- (1) The Authority is to publish on a website maintained by the Authority the disclosures of reportable political donations and electoral expenditure under this Part (and other information it considers relevant).
- (2) The disclosures are to be published on the website as soon as practicable after the due date for the making of the disclosures.

- (3) The Authority may decline to publish on the website any disclosure of political donations by a major political donor that the Authority has reason to suspect is vexatious, false or misleading.
- (4) Copies of disclosures made in a declaration under this Part are to be kept by the Authority for at least 6 years after the period to which they relate and are to be available for public inspection during ordinary office hours.
- (5) The Authority may, on application made to it and the payment of a reasonable fee determined by the Authority, provide copies of or extracts from any such disclosures kept by the Authority.

Division 2A Caps on political donations for State elections

95AA Application to State elections only

- (1) This Division does not apply to donations in relation to local government elections and elected members of councils.
- (2) Accordingly, a reference in this Division:
 - (a) to an election is a reference that relates to a State election, and
 - (b) to an elected member or to a candidate or other person is a reference that relates to a member of Parliament or to a candidate or other person in connection with a State election.

95A Applicable cap on political donations

(1) General cap

The applicable cap on political donations is as follows:

- (a) \$5,000 for political donations to or for the benefit of a registered party,
- (b) \$2,000 for political donations to or for the benefit of a party that is not a registered party,
- (c) \$2,000 for political donations to or for the benefit of an elected member,
- (d) \$5,000 for political donations to or for the benefit of a group,
- (e) \$2,000 for political donations to or for the benefit of a candidate,
- (f) \$2,000 for political donations to or for the benefit of a third-party campaigner.

(2) Aggregation of donations during financial year

A political donation of or less than an amount specified in subsection (1) made by an individual is to be treated as a donation that exceeds the applicable cap on political donations if that and other separate political

donations made by that individual to the same party, elected member, group, candidate or third-party campaigner within the same financial year would, if aggregated, exceed the applicable cap on political donations referred to in subsection (1).

(3) **Aggregation of donations to elected members, groups or candidates of same party**

A political donation of or less than an amount specified in subsection (1) made by an individual to an elected member, group or candidate is to be treated as a donation that exceeds the applicable cap on political donations if that and other separate political donations made by that individual to elected members, groups or candidates of the same party within the same financial year would, if aggregated, exceed the applicable cap on political donations referred to in subsection (1).

(4) **Non-aggregation of contributions to candidate's own campaign**

For the avoidance of doubt, a candidate's contribution to finance his or her own election campaign is not a political donation and is not included in the applicable cap on political donations to the candidate.

Note. Political donations in relation to separately registered parties that are in coalition or otherwise associated are not aggregated and, accordingly, the applicable cap applies separately in relation to each such registered party.

(5) **Indexation of capped amounts**

Each of the amounts referred to in subsection (1) is an adjustable amount that is to be adjusted for inflation as provided by Schedule 1.

(6) **Meaning of candidates etc of same party**

For the purposes of this section, elected members, groups and candidates are of the same party if the same party endorsed the elected members, members of the group or candidates at the last election (including any subsequent by-election) or are to be endorsed by the same party at the next election. If any such person ceases to be a member of that party after being elected or endorsed as a candidate, the person ceases to be of the same party for the purposes of this section.

95B Prohibition on political donations that exceed applicable cap

(1) **General prohibition**

It is unlawful (subject to this section) for a person to accept a political donation to a party, elected member, group, candidate or third-party campaigner if the donation exceeds the applicable cap on political donations.

(2) **Exception—federal or local government campaign donations**

It is not unlawful for a person to accept a political donation that exceeds the applicable cap if the donation (or that part of the donation that exceeds the applicable cap) is to be paid into (or held as an asset of) an account kept exclusively for the purposes of federal or local government election campaigns.

(3) A political donation of property (not being money) that is held as an asset of an account kept for federal or local government election campaigns ceases to be excluded by subsection (2) from the prohibition under this section if the proceeds of the disposal of the property are paid into any other account.

(4) **Exception for third-party campaigner**

It is not unlawful for a person to accept a political donation to a third-party campaigner that exceeds the applicable cap if the donation (or that part of the donation that exceeds the applicable cap) is not to be paid into (or held as an asset of) the campaign account of the third-party campaigner under section 96AA.

(5) **Defence—aggregation**

If a political donation to a person exceeds the applicable cap because of the aggregation of political donations made to other persons, the acceptance of the donation is not unlawful if the person did not know and could not reasonably have known of the political donations made to the other persons.

(6) (Repealed)

(7) **Transitional—donations before 1 January 2011**

In calculating whether a political donation made after 1 January 2011 exceeds the applicable donation cap, a political donation made at any time after 30 June 2010 is to be taken into account as a donation made during the 2010–2011 financial year.

95C Prohibition on donations to more than 3 third-party campaigners

(1) It is unlawful for a person to make or accept political donations to more than 3 third-party campaigners in the same financial year.

(2) This section applies only to a political donation to a third-party campaigner that is to be paid into (or held as an asset of) the campaign account of the third-party campaigner under section 96AA.

(3) A political donation to a third-party campaigner in contravention of this section is not unlawful if the person making or accepting the donation did not know and could not reasonably have known of the political

donations to which this section applies made to the other third-party campaigners.

95D Exemption from donation cap for party subscriptions and party levies

- (1) A party subscription paid to a party is to be disregarded for the purposes of this Division, except so much of the amount of the subscription as exceeds the relevant maximum subscription under subsection (3).
- (2) A *party subscription* is:
 - (a) an annual or other subscription paid to the party by a member of the party, or
 - (b) an annual or other subscription paid to the party by an entity or other person (including an industrial organisation) for affiliation with the party.
- (3) For the purposes of this section:
 - (a) the maximum subscription in respect of membership of a party is \$2,000, and
 - (b) the maximum subscription in respect of affiliation with a party is:
 - (i) if the amount of the subscription is not calculated by reference to the number of members of the affiliate—\$2,000, or
 - (ii) if the amount of the subscription is calculated by reference to the number of members of the affiliate—\$2,000 multiplied by the number of those members of the affiliate.
- (4) A party levy paid to a party by an elected member endorsed by the party is to be disregarded for the purposes of this Division.

Note. Bequests are not donations for the purposes of this Part (see definition of *gift* in section 84) and accordingly are not subject to the political donation cap.

Division 2B Caps on electoral communication expenditure for State election campaigns

95E Application to State elections only

- (1) This Division does not apply in relation to local government elections.
- (2) Accordingly, a reference in this Division:
 - (a) to an election is a reference to a State election, and
 - (b) to a candidate or other person is a reference that relates to a candidate or other person in connection with a State election.

95F Applicable caps on electoral communication expenditure on State election campaigns

(1) General

The applicable caps on electoral communication expenditure for a State election campaign are as provided by this section, as modified by section 95G.

(2) Parties with Assembly candidates in a general election

For a State general election, the applicable cap for a party that endorses candidates for election to the Assembly is \$100,000 multiplied by the number of electoral districts in which a candidate is so endorsed.

(3) Subsection (2) does not apply to a party that endorses candidates in a group for election to the Council and endorses candidates for election to the Assembly in not more than 10 electoral districts.

Note. The total cap for a party that endorses candidates in all 93 electorates at a general election is \$9.3 million.

(4) Other parties with Council candidates in a general election

For a State general election, the applicable cap for a party that endorses candidates in a group for election to the Council, but does not endorse any candidates for election to the Assembly or does not endorse candidates in more than 10 electoral districts, is \$1,050,000.

(5) Independent groups of candidates in Council general elections

For a periodic Council election, the applicable cap for a group of candidates who are not endorsed by any party is \$1,050,000.

(6) Party candidates in Assembly general election

For a State general election, the applicable cap for a candidate endorsed by a party for election to the Assembly is \$100,000.

(7) Independent candidates in Assembly general election

For a State general election, the applicable cap for a candidate not endorsed by any party for election to the Assembly is \$150,000.

(8) Non-grouped candidates in Council general election

For a periodic Council election, the applicable cap for a candidate who is not included in a group is \$150,000.

(9) Candidates in Assembly by-election

For a by-election for the Assembly, the applicable cap for a candidate (whether or not endorsed by a party) is \$200,000.

(10) **Third-party campaigners**

For a State general election, the applicable cap for a third-party campaigner is:

- (a) \$1,050,000 if the third-party campaigner was registered under this Act before the commencement of the capped expenditure period for the election, or
- (b) \$525,000 in any other case.

(11) For a by-election for the Assembly, the applicable cap for a third-party campaigner is \$20,000 for each by-election.

(12) **Additional cap for individual Assembly seats**

The applicable cap for parties and third-party campaigners is subject to an additional cap (within the overall applicable cap) in relation to State general elections, or by-elections in more than one electorate, for electoral communication expenditure incurred substantially for the purposes of the election in a particular electorate, being:

- (a) in the case of a party—\$50,000 in respect of each such electorate, or
- (b) in the case of a third-party campaigner—\$20,000 in respect of each such electorate.

(13) For the purposes of subsection (12), electoral communication expenditure is only incurred for the purposes of the election in a particular electorate if the expenditure is for advertising or other material that:

- (a) explicitly mentions the name of a candidate in the election in that electorate or the name of the electorate, and
- (b) is communicated to electors in that electorate, and
- (c) is not mainly communicated to electors outside that electorate.

(14) **Indexation of capped amounts**

Each of the amounts referred to in this section is an adjustable amount that is to be adjusted for inflation as provided by Schedule 1.

95G Aggregation of applicable caps

- (1) For the purposes of this section, registered parties are *associated* if:
 - (a) they endorse the same candidate for a State election, or
 - (b) they endorse candidates included in the same group in a periodic Council election, or

- (c) they form a recognised coalition and endorse different candidates for a State election or endorse candidates in different groups in a periodic Council election.

(2) **Aggregation of expenditure of associated parties**

If 2 or more registered parties are associated:

- (a) the amount of \$100,000 of electoral communication expenditure in respect of any electoral district in which there are candidates endorsed by the associated parties is, for the purpose of calculating the applicable cap on electoral communication expenditure by those parties under section 95F (2), to be shared by those parties (and is not a separate amount for each of those parties), and
- (b) the amount of \$1,050,000 of electoral communication expenditure in respect of any group of candidates endorsed by those parties is, for the purpose of calculating the applicable cap on electoral communication expenditure by those parties under section 95F (4), to be shared by those parties (and is not a separate amount for each of those parties).

(3) **Aggregation of expenditure of multiple endorsed candidates in Assembly electorate**

The amount of \$100,000 of electoral communication expenditure in respect of an election in an electoral district in which there are 2 or more candidates endorsed by the same party (or by associated parties) is, for the purpose of calculating the applicable cap on electoral communication expenditure by the candidates under section 95F (6), to be shared by those candidates (and is not a separate amount for each of those candidates).

(4) **Aggregation of expenditure of parties and endorsed Council candidates**

Electoral communication expenditure incurred by a party for a State election campaign that is of or less than the amount specified in section 95F for the party (as modified by subsection (2) in the case of associated parties) is to be treated as expenditure that exceeds the applicable cap if that expenditure and any other electoral communication expenditure incurred by a candidate for election to the Council who is endorsed by the party (or associated party) exceed the applicable cap so specified for the party.

(5) **Aggregation of expenditure of endorsed candidates and parties for Assembly by-elections**

Electoral communication expenditure incurred by a candidate endorsed by a party for an Assembly by-election campaign that is of or less than

the amount specified in section 95F for the candidate is to be treated as expenditure that exceeds the applicable cap if that expenditure and any other electoral communication expenditure incurred by the party (or by any associated party) for that by-election exceed the applicable cap so specified for the candidate.

(6) **Aggregation of expenditure of parties and affiliated organisations**

Electoral communication expenditure incurred by a party that is of or less than the amount specified in section 95F for the party (as modified by subsection (2) in the case of associated parties) is to be treated as expenditure that exceeds the applicable cap if that expenditure and any other electoral communication expenditure by an affiliated organisation of that party exceed the applicable cap so specified for the party.

- (7) In subsection (6), an *affiliated organisation* of a party means a body or other organisation, whether incorporated or unincorporated, that is authorised under the rules of that party to appoint delegates to the governing body of that party or to participate in pre-selection of candidates for that party (or both).

95H Capped expenditure period

The applicable cap on electoral communication expenditure for a State election applies to electoral communication expenditure during each of the following periods (the *capped expenditure period*):

- (a) in the case of the first general election to be held in 2011—the period from and including 1 January 2011 to the end of polling day for the election,
- (b) in the case of a subsequent general election to be held following the expiry of the Legislative Assembly by the effluxion of time—the period from and including 1 October in the year before which the election is to be held to the end of polling day for the election,
- (c) in any other case—the period from and including the day of the issue of the writ or writs for the election to the end of polling day for the election.

95I Prohibition on incurring electoral communication expenditure exceeding applicable cap during State campaigns

- (1) It is unlawful for a party, group, candidate or third-party campaigner to incur electoral communication expenditure for a State election campaign during the capped expenditure period for the election if it exceeds the applicable cap on electoral communication expenditure.
- (2) If the electoral communication expenditure of any party, group, candidate or third-party campaigner is less than the applicable cap, the

balance is not transferrable so as to increase the applicable cap of any other party or person.

- (3) The applicable cap for a candidate or group of candidates is for electoral communication expenditure directed at the election of the candidate or group.

95J When is electoral communication expenditure incurred

- (1) For the purposes of this Division, electoral communication expenditure is taken to be incurred when the services for which the expenditure is incurred are actually provided or the goods for which the expenditure is incurred are actually delivered.
- (2) In particular:
 - (a) expenditure on advertising is incurred when the advertising is broadcast or published, and
 - (b) expenditure on the production and distribution of election material is incurred when the material is distributed, and
 - (c) expenditure on the employment of staff is incurred during the period of their employment, and
 - (d) expenditure of a class prescribed by the regulations is incurred at the time so prescribed.

Division 3 Management of donations and expenditure

96 Requirements for parties

- (1) It is unlawful for political donations to a party to be used otherwise than for the objects and activities of the party, including the administration of the party and community activities.
- (2) In particular, it is unlawful for political donations to be used for the personal use of an individual acting in a private capacity.
- (3) It is unlawful for a party to make payments for electoral expenditure for a State election campaign unless the payment is made from the State campaign account of the party kept in accordance with this section.
- (4) The State campaign account of a party is to be a separate account with a bank, credit union, building society or other entity prescribed by the regulations.
- (5) The following may be paid into the State campaign account of a party:
 - (a) political donations made to the party after 1 January 2011 (including the proceeds of the investment or disposal of any political donation of property after that date that is held as an asset of the account),

-
- (b) payments made to the party under Part 5 at any time,
 - (c) money borrowed by the party at any time,
 - (d) a bequest to the party,
 - (e) money belonging to the party on 1 January 2011 (including the proceeds of the investment or disposal of any other property belonging to the party on or before that date),
 - (f) any other money of a kind that is prescribed by the regulations for the purposes of this subsection.
- (6) However, the following may not be paid into the State campaign account of a party:
- (a) a party subscription referred to in section 95D, other than any amount that exceeds the maximum subscription referred to in that section and that constitutes a political donation to the party,
 - (b) any amount of a political donation to the party that exceeds the applicable cap on political donations to the party under Division 2A,
 - (c) any money paid to the party under Part 6A,
 - (d) any other money of a kind that is prescribed by the regulations for the purposes of this subsection.
- (7) This section does not prevent payments being made out of the State campaign account that are in addition to the payments for electoral expenditure referred to in subsection (3).

96A Requirements for political donations to, and electoral expenditure by, elected member, group or candidate

- (1) It is unlawful for political donations to an elected member to be accepted unless:
 - (a) the member has an official agent, and
 - (b) the donations are made to that agent.
- (2) It is unlawful for political donations to a group or candidate to be accepted unless:
 - (a) the group or candidate is registered under this Act, and
 - (b) the group or candidate has an official agent, and
 - (c) the donations are made to that agent.
- (3) It is unlawful for political donations to an elected member, group or candidate to be used to incur electoral expenditure or reimburse a person for incurring electoral expenditure unless:

- (a) the donations were paid by the official agent into a campaign account of the member, group or candidate kept in accordance with section 96B, and
 - (b) the payment for that electoral expenditure is made by that agent from that campaign account.
 - (4) Subject to the regulations, a person (other than an elected member or candidate) may be appointed in writing by an official agent to accept political donations to be made to the official agent or to make payments for electoral expenditure from a campaign account by the official agent, or both.
 - (5) It is unlawful for an elected member to make payments for electoral expenditure for their own election or re-election unless the payments are made from their campaign account kept in accordance with section 96B. The guidelines of the Authority may exclude minor payments from the operation of this subsection.
 - (5A) It is unlawful for a candidate or group to make payments for electoral expenditure for their own election or re-election unless the group or candidate is registered under this Act and the payments are made from their campaign account kept in accordance with section 96B. The guidelines of the Authority may exclude minor payments from the operation of this subsection.
 - (6) It is unlawful for political donations to an elected member, group or candidate to be used otherwise than:
 - (a) to incur electoral expenditure or reimburse a person for incurring electoral expenditure, or
 - (b) for any other purpose authorised by this Act.
- Note.** See section 96B (5).
- (7) Despite anything to the contrary in this section, it is not unlawful for an elected member, group or candidate to accept political donations and incur electoral expenditure without a campaign account if:
 - (a) the political donations are not reportable political donations and the total amount of those donations for the election period does not exceed \$1,000, or
 - (b) the political donations are not reportable political donations and the total amount of electoral expenditure for the election period does not exceed \$1,000, or
 - (c) the regulations authorise the member, group or candidate to do so.

The election period includes the period ending 30 days after the polling day for the election and also includes the period commencing 30 days

after polling day for the previous general election for the State or local government area, as the case requires.

Note. See also section 49 which provides for the candidate to be his or her own official agent when a campaign account is not required. Disclosure of political donations and electoral expenditure is still required even if a campaign account is not required under this subsection.

96AA Requirements for third-party campaigners

- (1) It is unlawful for a third-party campaigner to make payments for electoral communication expenditure incurred during a capped expenditure period, or to accept political donations for the purposes of incurring that expenditure, unless:
 - (a) the third-party campaigner is registered under this Act, and
 - (b) the third-party campaigner has an official agent, and
 - (c) the payments are made by, and the donations are made to, that agent.

Note. Section 38C prevents registration of third-party campaigners in the period of 7 days before any State election.
- (2) It is unlawful for third-party campaigners to make payments for any such electoral communication expenditure, or to use political donations for any such purpose, unless:
 - (a) the payments for that expenditure are made by the official agent of the third-party campaigner from a campaign account of the third-party campaigner kept in accordance with this section, and
 - (b) the donations were paid by the official agent into the campaign account of the third-party campaigner kept in accordance with this section.
- (3) Subject to the regulations, a person may be appointed in writing by the official agent of a third-party campaigner to make payments for electoral communication expenditure from a campaign account by the official agent or to accept political donations to be made to the official agent, or both.
- (4) The campaign account of a third-party campaigner is to be a separate account with a bank, credit union, building society or other entity prescribed by the regulations.
- (5) The following may not be paid into the campaign account of a third-party campaigner:
 - (a) any amount of a political donation to the third-party campaigner that exceeds the applicable cap on political donations to the campaigner under Division 2A,
 - (b) any other amount of a kind that is prescribed by the regulations.

- (6) This section does not prevent payments being made out of the campaign account of the third-party campaigner that are in addition to the payments for electoral communication expenditure referred to in this section.

96B Campaign accounts of elected members, groups or candidates

- (1) The campaign account of an elected member, group or candidate is to be a separate account with a bank, credit union, building society or other entity prescribed by the regulations.
- (2) The official agent for the time being of the elected member, group or candidate to whom the account belongs is to be authorised to operate the account, and that member, group or candidate is not to operate the account.
- (3) A single account may be kept for a number of elected members, groups or candidates with the same official agent if the funds of (and relevant transactions relating to) each member, group or candidate are accounted for separately. This subsection has effect despite subsection (1) but subject to the regulations under subsection (7).
- (4) In addition to political donations, money may be paid into a campaign account by the elected member, group or candidate to whom the account belongs. In that case, the amount paid and the terms on which the payment was made are to be disclosed in the relevant declaration lodged under this Part for the period in which the amount was paid.
- Note.** Section 77 (2A) requires election funding payments under Part 5 for a candidate or group to be paid into the relevant campaign account.
- (5) Payments out of a campaign account may only be made:
- (a) for the purposes of electoral expenditure incurred by or on behalf of the elected member, group or candidate to whom the account belongs, or
 - (b) with the approval of the elected member, group or candidate to whom the account belongs, for the purposes of lawful expenditure referred to in section 96 incurred by or on behalf of the party of which they are a member, or
 - (c) to reimburse the elected member, group or candidate for money paid into the account by the member, group or candidate, or
 - (d) for the purpose of the elected member, group or candidate to whom the account belongs to make political donations to elected members, groups or candidates who are members of the same party, or
 - (e) for the purposes of expenditure incurred in connection with parliamentary or council duties of the person to whom the account belongs or in connection with community activities.

-
- (6) Any amount remaining in a campaign account after the elected member, group or candidate to whom the account belongs ceases to be an elected member, group or candidate and no longer requires the account is to be paid:
- (a) to any party of which any such person was a member at the time the person last became an elected member or last contested an election to become an elected member, or
 - (b) in the case of a group—to the campaign accounts (if any) belonging to the candidates who were members of the group (the amount being divided equally among the candidates), or
 - (c) subject to paragraphs (a) and (b)—to a charity nominated by the person or by the Authority (if the person cannot be contacted after due inquiry).
- (7) The regulations may make provision for or with respect to campaign accounts (including the control of accounts, the keeping of joint accounts and the provision of information to and the audit of accounts by the Authority).

96C Person accepting reportable political donations to record details

- (1) It is unlawful for a person to accept a reportable political donation that is required to be disclosed under this Part unless the person:
- (a) makes a record of the details required to be disclosed under this Part in relation to the donation, and
 - (b) provides a receipt for the donation (being a receipt that includes a statement required by the regulation as to the circumstances in which the donor is obliged to disclose the donation under this Part).

Note. Section 96I (2) requires the above record to be kept for at least 3 years.

- (2) This section does not apply to a political donation that is not a reportable political donation at the time it is made.

Note. Political donations of less than \$1,000 may become reportable political donations if separate donations by the same person in the same financial year exceed \$1,000.

Division 4 Prohibition of certain political donations etc

96D Prohibition on political donations other than by individuals on the electoral roll

- (1) It is unlawful for a political donation to a party, elected member, group, candidate or third-party campaigner to be accepted unless the donor is an individual who is enrolled on the roll of electors for State elections,

the roll of electors for federal elections or the roll of electors for local government elections.

- (2) It is unlawful for an individual to make a political donation to a party, elected member, group, candidate or third-party campaigner on behalf of a corporation or other entity.
- (3) It is unlawful for a corporation or other entity to make a gift to an individual for the purpose of the individual making a political donation to a party, elected member, group, candidate or third-party campaigner.
- (4) Annual or other subscriptions paid to a party by a person or entity (including an industrial organisation) for affiliation with the party that are, by the operation of section 85 (3), taken to be gifts (and political donations to the party) are subject to this section. Accordingly, payment of any such subscription by an industrial organisation or other entity is unlawful under this section.
- (5) Dispositions of property between branches of parties or between associated parties that are, by the operation of section 85 (3A), taken to be gifts (and political donations to the parties) are not subject to this section.

96E Prohibition on certain indirect campaign contributions

- (1) It is unlawful for a person to make any of the following indirect campaign contributions to a party, elected member, group or candidate:
 - (a) the provision of office accommodation, vehicles, computers or other equipment for no consideration or inadequate consideration for use solely or substantially for election campaign purposes,
 - (b) the full or part payment by a person other than the party, elected member, group or candidate of electoral expenditure for advertising or other purposes incurred or to be incurred by the party, elected member, group or candidate (or an agreement to make such a payment),
 - (c) the waiving of all or any part of payment to the person by the party, elected member, group or candidate of electoral expenditure for advertising incurred or to be incurred by the party, elected member, group or candidate,
 - (d) any other goods or services of a kind prohibited by the regulations.

Electoral expenditure for advertising is taken to be incurred by a party, elected member, group or candidate if the advertising is authorised by the party, elected member, group or candidate.

- (2) It is unlawful for a person to accept any such indirect campaign contribution.

-
- (3) However, an *indirect campaign contribution* prohibited by this section does not include:
- (a) the provision of volunteer labour or the incidental or ancillary use of vehicles or equipment of volunteers or other things authorised by the guidelines of the Authority, or
 - (b) anything provided or done by a party for the candidates endorsed by the party in accordance with arrangements made by the party agent of the party, or
 - (c) anything provided or done whose value as a gift does not exceed \$1,000 unless the total value of all such things provided or done by the same person over the same financial year (ending 30 June) exceeds \$1,000, or
 - (d) a payment under Part 5 or 6A, or
 - (e) any other thing of a kind permitted by the regulations.

Note. An indirect campaign contribution that is a political donation as a gift (although excluded from the operation of this section if its value as a gift does not exceed \$1,000) cannot be made by a corporation because of section 96D.

96EA Prohibition on political donations by parties etc to independent candidates

- (1) It is unlawful for a party (or a candidate or elected member endorsed by a party) to make a political donation to a candidate, or a group of candidates, not endorsed by that or any other party.
- (2) It is unlawful for such a candidate or candidates to accept the political donation.

96F Prohibition on receiving gifts of unknown source

It is unlawful for a person to accept a reportable political donation that is required to be disclosed under this Part unless:

- (a) the name and address of the person who made the donation are known to the person accepting the donation, and
- (b) when the donation is made, the person making the donation gives to the person accepting the donation his or her name and address, and the person accepting the donation has no grounds to believe that the name and address so given are not the true name and address of the person making the donation.

96G Prohibition on receiving loans unless details recorded

- (1) It is unlawful for a person to receive a reportable loan (other than a loan from a financial institution), unless the person makes a record of the following:
 - (a) the terms and conditions of the loan,

- (b) the name and address of the person making the loan.
- (2) A **reportable loan** is a loan that, if it had been a gift, would be a reportable political donation that is required to be disclosed under this Part.
- (3) For the purposes of this section:
- (a) separate loans made by one person to the same party, elected member, group, candidate or person within a relevant disclosure period are to be aggregated and treated as a single loan, and
- (b) each transaction in which credit is provided by the use of a credit card is taken to be a separate loan.
- (4) In this section:
- financial institution** means an entity whose principal business is the provision of financial services or financial products, and includes a bank, credit union, building society or other entity prescribed by the regulations.
- loan** means an advance of money, the provision of credit or any other transaction that in substance effects a loan of money.

Division 4A Prohibition of donations from property developers or tobacco, liquor or gambling industries

96GAA Meaning of "prohibited donor"

For the purposes of this Division, a **prohibited donor** is:

- (a) a property developer, or
- (b) a tobacco industry business entity, or
- (c) a liquor or gambling industry business entity,

and includes any industry representative organisation if the majority of its members are such prohibited donors.

96GAB Superseded provision of Division relating to corporate donations

After the commencement of Schedule 1 [3] to the *Election Funding, Expenditure and Disclosures Amendment Act 2012*, section 96D makes it unlawful for a political donation to be made other than by an individual. Accordingly, a person cannot be punished twice for an offence arising under section 96I for a single act that is unlawful under both this Division and section 96D.

96GA Political donations by prohibited donors unlawful

- (1) It is unlawful for a prohibited donor to make a political donation.

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

Note. Section 96I makes it an offence for a person to do any act that is unlawful under this Division if the person is, at the time of the act, aware of the facts that result in the act being unlawful. Section 96J also provides for the recovery by the Authority of unlawful political donations.

96GB Meaning of “property developer”, “tobacco industry business entity” and “liquor or gambling industry business entity”

- (1) Each of the following persons is a *property developer* for the purposes of this Division:
 - (a) a corporation engaged in a business that regularly involves the making of relevant planning applications by or on behalf of the corporation in connection with the residential or commercial development of land, with the ultimate purpose of the sale or lease of the land for profit,
 - (b) a person who is a close associate of a corporation referred to in paragraph (a).
- (2) Any activity engaged in by a corporation for the dominant purpose of providing commercial premises at which the corporation or a related body corporate of the corporation will carry on business is to be disregarded for the purpose of determining whether the corporation is a property developer unless that business involves the sale or leasing of a substantial part of the premises.
- (2A) Each of the following persons is a *tobacco industry business entity*:
 - (a) a corporation engaged in a business undertaking that is mainly concerned with the manufacture or sale of tobacco products,
 - (b) a person who is a close associate of a corporation referred to in paragraph (a).
- (2B) Each of the following persons is a *liquor or gambling industry business entity*:
 - (a) a corporation engaged in a business undertaking that is mainly concerned with either or a combination of the following, but only if it is for the ultimate purpose of making a profit:

- (i) the manufacture or sale of liquor products,
 - (ii) wagering, betting or other gambling (including the manufacture of machines used primarily for that purpose),
or
 - (b) a person who is a close associate of a corporation referred to in paragraph (a).
- (3) In this section:
- close associate** of a corporation means each of the following:
- (a) a director or officer of the corporation or the spouse of such a director or officer,
 - (b) a related body corporate of the corporation,
 - (c) a person whose voting power in the corporation or a related body corporate of the corporation is greater than 20% or the spouse of such a person,
 - (d) if the corporation or a related body corporate of the corporation is a stapled entity in relation to a stapled security—the other stapled entity in relation to that stapled security,
 - (e) if the corporation is a trustee, manager or responsible entity in relation to a trust—a person who holds more than 20% of the units in the trust (in the case of a unit trust) or is a beneficiary of the trust (in the case of a discretionary trust).

officer has the same meaning as in the *Corporations Act 2001* of the Commonwealth.

related body corporate has the same meaning as in the *Corporations Act 2001* of the Commonwealth.

relevant planning application has the same meaning as in section 147 (Disclosure of political donations and gifts) of the *Environmental Planning and Assessment Act 1979*.

spouse of a person includes a de facto partner of that person.

Note. "De facto partner" is defined in section 21C of the *Interpretation Act 1987*.

stapled entity means an entity the interests in which are traded along with the interests in another entity as stapled securities and (in the case of a stapled entity that is a trust) includes any trustee, manager or responsible entity in relation to the trust.

voting power has the same meaning as in the *Corporations Act 2001* of the Commonwealth.

96GC Loans included as political donations

- (1) A loan that, if it had been a gift, would be a political donation is to be regarded as a political donation for the purposes of this Division unless the loan is from a financial institution.

-
- (2) In this section:

financial institution means an entity whose principal business is the provision of financial services or financial products, and includes a bank, credit union, building society or other entity prescribed by the regulations.

loan means an advance of money, the provision of credit or any other transaction that in substance effects a loan of money.

96GD Exception for membership contributions

An annual or other subscription paid to a party by an individual as a member of the party or for the individual's affiliation with the party is not a political donation for the purposes of this Division unless it is a reportable political donation.

Note. A political donation of \$1,000 or more is a reportable political donation—see section 86.

96GE Determination by Authority that person not a prohibited donor

- (1) A person (*the applicant*) may apply to the Authority for a determination by the Authority that the applicant or another person is not a prohibited donor for the purposes of this Division.
- (2) The Authority is authorised to make such a determination if the Authority is satisfied that it is more likely than not that the person is not a prohibited donor. The Authority is to make its determination solely on the basis of information provided by the applicant.
- (3) The Authority's determination remains in force for 12 months after it is made but can be revoked by the Authority at any time by notice in writing to the applicant.
- (4) The Authority's determination is conclusively presumed to be correct in favour of any person for the purposes of a political donation that the person makes or accepts while the determination is in force (even if the determination is subsequently found to be incorrect).
- (5) The Authority's determination is not presumed to be correct in favour of any person who makes or accepts a political donation knowing that information provided to the Authority in connection with the making of the determination was false or misleading in a material particular.
- (6) The Authority is to maintain a public register of the determinations made under this section and is to publish the register on a website maintained by the Authority.
- (7) A person who provides information to the Authority in connection with an application for a determination by the Authority under this section

knowing that the information is false or misleading in a material particular is guilty of an offence.

Maximum penalty: 200 penalty units or imprisonment for 12 months, or both.

- (8) The Authority may establish and publicise policies as to how the Authority will deal with applications for determinations under this section.

Division 5 Miscellaneous

96H Offences relating to disclosures

- (1) A person who is required to lodge a declaration under section 91 but who fails to do so within the time required by this Part is guilty of an offence.

Maximum penalty: 200 penalty units.

- (2) A person who makes a statement:

- (a) in a declaration or other disclosure under this Part, or
(b) in a request under this Part for an extension of the due date for making the disclosure,

that the person knows is false, or that the person does not reasonably believe is true, is guilty of an offence.

Maximum penalty: 200 penalty units or imprisonment for 12 months, or both.

- (3) An elected member, member of a group, candidate or third-party campaigner who, in relation to a matter required to be disclosed under this Part by the official agent of the elected member, group, candidate or third-party campaigner, gives or withholds information to or from the agent knowing that it will result in the making of a false statement in a disclosure or request under this Part by the agent is guilty of an offence.
Maximum penalty: 200 penalty units.

96HA Offences relating to caps on donations and expenditure

- (1) A person who does any act that is unlawful under Division 2A or 2B is guilty of an offence if the person was, at the time of the act, aware of the facts that result in the act being unlawful.

- (2) A person who makes a donation with the intention of causing the donation to be accepted in contravention of Division 2A is guilty of an offence.

Maximum penalty: In the case of a party, 200 penalty units or in any other case, 100 penalty units.

96I Other offences

- (1) A person who does any act that is unlawful under Division 3, 4 or 4A is guilty of an offence if the person was, at the time of the act, aware of the facts that result in the act being unlawful.
- (2) A person who fails to keep for at least 3 years:
 - (a) a record made by the person under section 96C relating to a reportable political donation, or
 - (b) any other record that is required by the regulations to be kept by the person for that period,is guilty of an offence.
Maximum penalty: In the case of a party, 200 penalty units or in any other case, 100 penalty units.

96J Recovery of unlawful donations etc

- (1) If a person accepts a political donation, loan or indirect campaign contribution that is unlawful because of this Part, an amount equal to the amount or value of the donation, loan or contribution (or double that amount if that person knew that it was unlawful) is payable by that person to the State and may be recovered by the Authority as a debt due to the State from:
 - (a) in the case of a donation, loan or contribution received by a party that is a body corporate—the party, or
 - (b) in the case of a donation, loan or contribution received by a party that is not a body corporate—the party agent of the party, or
 - (c) in any other case—the person who received the donation, loan or contribution or the official agent of the person.
- (2) This section extends to a political donation that would be unlawful under this Part but for section 95B (5) or 95C (3).

96K Audit certificate

- (1) A declaration of disclosures under this Part (other than a declaration lodged by a major political donor) is to be accompanied by a certificate of an auditor stating:
 - (a) that the auditor was given full and free access at all reasonable times to all accounts and documents of the agent responsible for lodging the declaration and of the party, elected member, group, candidate or third-party campaigner (as the case requires) relating directly or indirectly to any matter required to be disclosed under this Part, and

- (b) that the auditor duly examined such of those accounts and documents as the auditor considered material for the purposes of giving the certificate, and
 - (c) that the auditor received all information and explanations that the auditor asked for with respect to any matter required to be set out in the declaration, subject to the qualifications (if any) specified in the certificate, and
 - (d) that the auditor has no reason to think that any statement in the declaration is not correct.
- (2) Subsection (1) does not apply to a declaration lodged in relation to a group, candidate or third-party campaigner if the regulations exempt, or the Authority waives, compliance with the audit requirement for the disclosure.
- (3) The Authority may waive compliance with the audit requirement in any of the following cases:
- (a) where the declaration contains a statement to the effect that no political donations were received and no electoral expenditure was incurred,
 - (b) where the group, candidate or third-party campaigner to whom the declaration relates is not eligible to receive a payment under Part 5,
 - (c) where the Authority considers the cost of compliance would be unreasonable.
- (4) Such a waiver is at the discretion of the Authority, and may be made before or after the disclosure is made.
- (5) The Authority may revoke the waiver at any time. Revocation does not affect the validity of a declaration already lodged, unless the required certificate of an auditor is not forwarded to the Authority within the time specified by the Authority.
- (6) A declaration that is required by this section to be accompanied by a certificate is not duly lodged under this Part unless it is accompanied by the certificate.

96L Extension of due date for making disclosures

- (1) A person who is required to lodge a declaration of disclosures under this Part but who is unable to lodge a complete declaration by the due date may, before that date, request the Authority to extend the due date for lodging the declaration.

-
- (2) The Authority may, if satisfied that there is good cause to do so, extend the due date for the lodging of the declaration to a date that the Authority considers appropriate in the circumstances.
 - (3) The due date for lodging a declaration cannot be extended or further extended under this section by more than 8 weeks in total.
 - (4) The Authority may, as a condition of extending the due date, require the person to lodge a declaration containing disclosures that the person is in a position to make at that time.

96M Amendment of disclosures

- (1) The person who lodged a declaration under this Part (or that person's successor as the agent of the party, elected member, group, candidate or third-party campaigner concerned) may amend the declaration by lodging an amended declaration with the Authority.
- (2) The obligations under section 95 (Public access to disclosures, expenditure etc) and section 96K (Audit certificate) extend to both the original and any amended declaration.
- (3) This section does not affect the liability for an offence in connection with the declaration that is amended.
- (4) In this section:
amend includes alter, omit, add or substitute.
declaration includes a disclosure made in accordance with this Part on the website of the Authority.

96N Annual financial statements of registered parties to accompany disclosures

- (1) A declaration of disclosures by a party under this Part is to be accompanied by a copy of the duly audited annual financial statement of the party in a form approved by the Authority.
- (2) The annual financial statement must set out the following:
 - (a) the total amount received by, or on behalf of, the party during the financial year,
 - (b) the total amount paid by, or on behalf of, the party during the financial year,
 - (c) the total outstanding amount, as at the end of the financial year, of all debts incurred by, or on behalf of, the party,
 - (d) such other details about the amounts (or about particular kinds of the amounts) so received or paid, or debts so incurred, as the regulations require.

97 (Repealed)

Part 6A Administrative and policy development funding

Division 1 Preliminary

97A Application to State members and parties only

- (1) This Part does not apply in relation to councillors.
- (2) Accordingly, a reference in this Part to an elected member (or a party with endorsed elected members) or to an election is a reference that relates to a member of either House of Parliament or to a State election.

97AB (Repealed)

97B Administrative expenditure—payments from Administration Fund

- (1) For the purposes of Division 2, a reference to administrative expenditure is a reference to expenditure for administrative and operating expenses and:
 - (a) includes a reference to the following:
 - (i) expenditure for the administration or management of the activities of the eligible party or elected member,
 - (ii) expenditure for conferences, seminars, meetings or similar functions at which the policies of the eligible party or elected member are discussed or formulated,
 - (iii) expenditure on providing information to the public or a section of the public about the eligible party or elected member,
 - (iv) expenditure on providing information to members and supporters of the eligible party or elected member,
 - (v) expenditure in respect of the audit of the financial accounts of, or claims for payment or disclosures under this Act of, the eligible party or elected member,
 - (vi) expenditure on the remuneration of staff engaged in the above activities for the eligible party or elected member (being the proportion of that remuneration that relates to the time spent on those activities),
 - (vii) expenditure on equipment or vehicles used for the purposes of the above activities (being the proportion of the cost of their acquisition and operation that relates to the use of the equipment or vehicles for those activities),
 - (viii) expenditure on office accommodation for the above staff and equipment,
 - (ix) expenditure on interest payments on loans, but

- (b) does not include a reference to the following:
 - (i) electoral expenditure,
 - (ii) expenditure for which a member may claim a parliamentary allowance as a member,
 - (iii) expenditure incurred substantially in respect of operations or activities that relate to the election of members to a Parliament other than the NSW Parliament,
 - (iv) expenditure prescribed by the regulations.
- (2) The decision of the Authority as to whether any expenditure is or is not administrative expenditure in accordance with this Act, the regulations and the guidelines determined under section 24 is final. The Auditor-General or an auditor is, for the purposes of this Act, entitled to rely on any such decision of the Authority.

97C Policy development expenditure—payments from Policy Development Fund

- (1) For the purposes of Division 3, a reference to policy development expenditure:
 - (a) includes a reference to the following:
 - (i) expenditure for providing information to the public or a section of the public about the eligible party,
 - (ii) expenditure for conferences, seminars, meetings or similar functions at which the policies of the eligible party are discussed or formulated,
 - (iii) expenditure on providing information to members and supporters of the eligible party,
 - (iv) expenditure in respect of the audit of the financial accounts of, or claims for payment or disclosures under this Act of, the eligible party,
 - (v) expenditure on the remuneration of staff engaged in the above activities for the eligible party (being the proportion of that remuneration that relates to the time spent on those activities),
 - (vi) expenditure on equipment or vehicles used for the purposes of the above activities (being the proportion of the cost of their acquisition and operation that relates to the use of the equipment or vehicles for those activities),
 - (vii) expenditure on office accommodation for the above staff and equipment,
 - (viii) expenditure on interest payments on loans, but
 - (b) does not include a reference to the following:

-
- (i) electoral expenditure,
 - (ii) expenditure incurred substantially in respect of activities that relate to the election of members to a Parliament other than the NSW Parliament,
 - (iii) expenditure prescribed by the regulations.
- (2) The decision of the Authority as to whether any expenditure is or is not policy development expenditure in accordance with this Act, the regulations and the guidelines determined under section 24 is final. The Auditor-General or an auditor is, for the purposes of this Act, entitled to rely on any such decision of the Authority.

Division 2 Administrative funding for parties and independent members

97D Establishment of Administration Fund

- (1) There is to be an Administration Fund to be kept by the Authority in respect of parties and elected members.
- (2) Payments from the Administration Fund are to be distributed in accordance with this Division.

97E Public funding of eligible parties for administrative expenditure

- (1) Parties are, subject to and in accordance with this Act, eligible for annual payments, on a calendar year basis, from the Administration Fund.
- (2) A party is eligible for payments from the Administration Fund if:
 - (a) it was a registered party on polling day for the previous State election and continues to be a registered party on the date that the entitlement for an annual payment is determined under this Division, and
 - (b) candidates endorsed by the party were elected at a State election (including at a joint sitting to fill a vacancy in the Legislative Council) and the Authority is satisfied that the elected members claimed to be endorsed by the party, and
 - (c) the Authority is satisfied that the elected members continue to be members or representatives of the party on the date that the entitlement for an annual payment is determined under this Division.
- (3) The annual amount to be distributed from the Administration Fund to any such eligible party is the amount of actual administrative expenditure incurred by or on behalf of the party during the calendar year to which the payment relates, but not exceeding:

- (a) \$200,000 if there is only one elected member endorsed by the party, or
 - (b) \$350,000 if there are only 2 elected members endorsed by the party, or
 - (c) \$450,000 if there are only 3 elected members endorsed by the party, or
 - (d) \$450,000 if there are more than 3 elected members endorsed by the party plus \$83,000 for each such member in excess of 3 up to a maximum of 22 members in excess of 3.
- (4) The number of endorsed elected members of a party in relation to any annual payment is to be determined as at the date that the entitlement for an annual payment is determined under this Division.
 - (5) Each of the amounts referred to in this section is an adjustable amount that is to be adjusted for inflation as provided by Schedule 1.

97F Public funding of Independent members for administrative expenditure

- (1) Elected members are, subject to and in accordance with this Act, eligible for annual payments, on a calendar year basis, from the Administration Fund.
- (2) An elected member is eligible for payments from the Administration Fund if:
 - (a) the elected member was not an endorsed candidate of any party at the State election at which the member was elected, and
 - (b) the Authority is satisfied that the elected member is not a member or representative of any party on the date that the entitlement for an annual payment is determined under this Division.
- (3) The annual amount to be distributed from the Administration Fund to any such eligible elected member is the amount of actual administrative expenditure incurred by or on behalf of the elected member during the calendar year to which the payment relates, but not exceeding \$200,000.
- (4) The amount referred to in subsection (3) is an adjustable amount that is to be adjusted for inflation as provided by Schedule 1.

97G Parties with the same endorsed elected members

- (1) If the Authority is satisfied that 2 or more registered parties endorsed the same elected members for the State election at which they were elected and that the members each claim to be endorsed by those parties:
 - (a) those parties are taken, for the purposes of this Division, to constitute one registered party instead of 2 or more registered parties in relation to those elected members, and

-
- (b) the amount that would otherwise be payable from the Administration Fund to that one registered party in respect of the election is payable instead to those 2 or more registered parties as shared funding.
 - (2) An amount payable to 2 or more parties as shared funding is payable to them:
 - (a) in equal shares, or
 - (b) in such other shares as the party agents of those parties agree on and as are specified in a direction in writing (a *shared funding direction*) signed by them and served on the Authority.
 - (3) If a registered party would, but for this subsection, be entitled to be paid 2 or more amounts by virtue of subsection (1), the party is entitled to be paid only one of those amounts, being the largest amount.
 - (4) A shared funding direction remains effective until revoked by the party agents of the parties concerned and notice in writing of the revocation is served on the Authority.

97GA Quarterly payments

- (1) A party or an elected member is, subject to and in accordance with this Act, eligible for quarterly payments from the Administration Fund for actual administrative expenditure incurred by or on behalf of the party or elected member in a calendar year (*the relevant calendar year*) determined in accordance with this section.
- (2) A quarterly payment may be made in respect of each of the first three quarters of the relevant calendar year.
- (3) A quarterly payment must not exceed:
 - (a) 25% of the annual amount if the payment is in respect of the first quarter, and
 - (b) 50% of the annual amount if the payment is in respect of the second quarter, less any amounts paid in respect of the first quarter, and
 - (c) 75% of the annual amount if the payment is in respect of the third quarter, less any amounts paid in respect of the first and second quarters.
- (4) The *annual amount* is the maximum amount of annual payment for which the party concerned would be eligible under section 97E (3), or the elected member concerned would be eligible under section 97F (3), in respect of the relevant calendar year.
- (5) The annual amount is to be determined on the assumption that:

- (a) in the case of a party, the number of elected members endorsed by the party at the end of the relevant calendar year will be the same as the number of elected members endorsed by the party at the date on which the claim for the quarterly payment is determined, and
 - (b) in the case of a person who is an elected member, the person will continue to be an elected member at the end of the relevant calendar year.
- (6) All amounts paid to a party or an elected member by way of quarterly payments under this section in respect of a calendar year are to be deducted from the annual payment to which the party or elected member is entitled under section 97E or 97F in respect of that year.
 - (7) If a party or elected member receives amounts by way of quarterly payment under this section in respect of a calendar year in excess of the amount (if any) to which the party or elected member becomes eligible under section 97E or 97F in respect of that year, the amount of the excess must be repaid to the Authority within 60 days after the party or elected member (or agent of the party or elected member) receives notice in writing from the Authority of the amount of the excess payment.
 - (8) All amounts received by a party or elected member by way of quarterly payments under this section in respect of a calendar year must be repaid, on demand by the Authority, to the Authority if the party or elected member is not eligible under section 97E or 97F for an annual payment from the Administration Fund in relation to that year.

Division 3 Policy development funding for parties not entitled to administrative funding

97H Establishment of Policy Development Fund

- (1) There is to be a Policy Development Fund to be kept by the Authority in respect of parties that are not eligible for payments from the Administration Fund.
- (2) Payments from the Policy Development Fund are to be distributed in accordance with this Division.

97I Public funding of eligible parties for policy development expenditure

- (1) Parties that are not eligible for payments from the Administration Fund are, subject to and in accordance with this Act, eligible for annual payments, on a calendar year basis, from the Policy Development Fund.
- (2) A party is eligible for payments from the Policy Development Fund if:

-
- (a) it is a registered party and has been a registered party for at least 12 months on the date the entitlement for an annual payment is determined under this Division, and
 - (b) the Authority is satisfied that it operates as a genuine political party, and
 - (c) it is not entitled to payments from the Administration Fund.
- (3) The annual amount to be distributed from the Policy Development Fund to any such eligible party is the amount of actual policy development expenditure incurred by or on behalf of the party during the calendar year to which the payment relates, but not exceeding the relevant maximum amount of payment in relation to the party.
- (4) The relevant maximum amount of an annual payment in relation to an eligible party is the amount of 25 cents for each first preference vote received by any candidate at the previous State election who was endorsed by the party, being either:
- (a) votes received by any such candidate at the previous Assembly general election, or
 - (b) votes received by any such candidate (or any candidate included in the same group) at the previous periodic Council election.
- The relevant maximum amount is zero if no such first preference votes were received.
- (5) Despite subsection (4), the relevant maximum amount is \$5,000 if the amount referred to in subsection (4) is less than \$5,000, but only:
- (a) during the first 8 calendar years after the commencement of this Division in the case of a party that was a registered party on that commencement, or
 - (b) during the first 8 calendar years after a party first becomes a registered party after that commencement.
- (6) The amounts referred to in subsections (4) and (5) are adjustable amounts that are to be adjusted for inflation as provided by Schedule 1.

Division 4 General provisions relating to funding

97J Claims for payment

- (1) A party or elected member is entitled to receive an annual payment for a calendar year, or a quarterly payment, under this Part only if the party or member makes a claim for the payment in accordance with this Division.
- (2) A claim must:
 - (a) be lodged with the Authority and be in writing, and

- (b) be accompanied by a declaration and such information or evidence as the Authority may require under this Division, including (but not limited to) information or evidence that the Authority requires to establish the eligibility of the party or elected member to make the claim, and
 - (c) be made within 6 months after the end of the calendar year for which payment is to be made, unless the claim is for a quarterly payment.
- (3) Entitlement to an annual payment under this Part is to be determined as at the end of the calendar year for which the payment is to be made.
- (4) Payments under this Part are to be made to the agent of the party or elected member concerned.
- (5) A payment under this Part for which a party or elected member is eligible is required to be made within the period of 6 weeks after the Authority receives all of the following:
 - (a) a claim for the payment that complies with this Division,
 - (b) all other documentation that is required to be provided under this Division in connection with the claim,
 - (c) information or evidence required by the Authority under this Division in connection with the claim.
- (6) Any amount required to be repaid to the Authority under this Part or to which the recipient is not entitled may be recovered by the Authority as a debt in any court of competent jurisdiction.
- (7) The Authority may deduct from any payment due under this Part in respect of a party or elected member any amount that the Authority is authorised by this Part to recover as a debt from the party or elected member or agent of the party or elected member.

97K Declarations etc by agents

- (1) An agent of any party or elected member who makes a claim for a payment under this Part is required to make such declarations and provide such information (accompanied by a certificate of an auditor) as the Authority may require in connection with the payment.
- (2) The Authority is to make available to members of the public for inspection the contents of any declaration, certificate or other information it receives under this section.

97L Payments conditional on compliance with other obligations under this Act

- (1) A party or elected member is not eligible for any payment under this Part while any failure to lodge a requisite declaration (or annual

financial statement) under Part 6 for a past period continues in respect of the party or member.

- (2) If the Authority is authorised under section 96J to recover from a party or elected member (or from the official agent of the party or member) an amount relating to the unlawful acceptance of a political donation or other amount, the Authority may deduct the amount from any payment under this Part.

97M False statements

- (1) A person who, in any claim lodged with the Authority for a payment under this Part or in any declaration under this Part, makes a statement that is false or misleading in a material particular, knowing it to be false or not reasonably believing it to be true, is guilty of an offence.
- (2) A person who, in relation to any matter to be included in a claim or declaration under this Part, gives or withholds giving information to the party or agent knowing that it will result in the making of a false or misleading claim or declaration in whole or in part is guilty of an offence.

Maximum penalty: 100 penalty units.

Part 7 Financial provisions

98 Appropriation of Consolidated Fund for election funding

There shall be paid from the Consolidated Fund, from time to time, such amounts as are necessary to meet the amount of any payments to be made in accordance with Part 5 or 6A and the Consolidated Fund is to the necessary extent hereby appropriated accordingly.

99 Funding of other expenses

- (1) Expenditure incurred in the administration or execution of this Act (other than payments referred to in section 98 and subsection (2)) shall be deemed to be expenses lawfully incurred under and in the execution of the *Parliamentary Electorates and Elections Act 1912*.
- (2) Expenditure incurred in connection with research referred to in section 25, and the engaging of consultants to assist the Authority, shall be met from money provided by Parliament.

100 Money received by Authority

Any money received or recovered by the Authority shall be paid to the Consolidated Fund.

101 Financial year of the Authority

The financial year of the Authority shall be:

- (a) where no period is prescribed as referred to in paragraph (b)—the year commencing on 1 July, or
- (b) the period (not exceeding 2 years) prescribed for the purposes of this section.

102, 103 (Repealed)

Part 8 Miscellaneous

104 Shortened references to Authority

In any other Act, in any instrument made under any Act or in any other instrument of any kind, except in so far as the context or subject-matter otherwise indicates or requires, a reference to the "Election Funding Authority" shall be read and construed as a reference to the Election Funding Authority of New South Wales.

105 Proof of certain matters not required

In any legal proceedings, no proof shall be required (until evidence is given to the contrary) of:

- (a) the constitution of the Authority,
- (b) any resolution of the Authority,
- (c) the appointment of or holding of office by any member, or
- (d) the presence or nature of a quorum at any meeting of the Authority.

106 Extensions of time

- (1) The Authority may, in any particular case, extend the time for doing anything under this Act, if it is satisfied that proper reasons exist justifying the extension.
- (2) Subsection (1) has effect notwithstanding any other provision of this Act, and whether or not the time for doing the thing under any such provision has expired.

107 Reports to Parliament

- (1) A reference in this section to a reporting period is a reference to each year ending on 30 June or to such other periods (each not exceeding 2 years) as the Governor may from time to time determine.
- (2) As soon as practicable after, but within 3 months after, each reporting period, the Authority shall prepare and forward to the President of the Council and the Speaker of the Assembly a report of its work and activities for that reporting period.
- (2A) The Authority is required to include in the reports required by subsection (2) statistical information about the use of its enforcement powers under this Act.
- (3) The Authority may prepare and forward to the President of the Council and the Speaker of the Assembly reports of its work and activities for such periods and at such times as the Authority thinks fit, in addition to the reports required by subsection (2).

- (4) The President of the Council shall cause each such report to be laid before the Council as soon as practicable after the receipt by the President of the report.
- (5) The Speaker of the Assembly shall cause each such report to be laid before the Assembly as soon as practicable after the receipt by the Speaker of the report.

108 (Repealed)

109 Certain persons not to be auditors

An elected member, a candidate, a party agent or an official agent, or a person appointed to any office or position under the *Parliamentary Electorates and Elections Act 1912*, is not qualified to perform any action as an auditor for the purposes of Part 5 or 6.

110 Inspection

- (1) In this section:
bankers' books means books of a bank, building society or credit union, or cheques, orders for the payment of money, bills of exchange or promissory notes in the possession or under the control of a bank, building society or credit union.
inspector means a person:
 - (a) who is employed under Chapter 1A of the *Public Sector Employment and Management Act 2002* in the Government Service, or
 - (b) who is not so employed but is subject to the control and direction of the Authority in relation to any function under this section, and who is appointed by the Authority as an inspector for the purposes of this section.
- (2) For the purpose of ascertaining whether this Act is being or has been contravened, an inspector may:
 - (a) inspect or make copies of, or take extracts from, any records kept by or on behalf of, or any bankers' books so far as they relate to, a party, elected member, group or candidate or agent for a party, elected member, group or candidate or a former party, elected member, group, candidate or agent, and
 - (b) enter at any reasonable time any place at which the inspector has reasonable grounds for believing that any such records or bankers' books are kept.
- (3) For the purpose of and in connection with an inspection under subsection (2), an inspector may:

-
- (a) request any person employed or engaged at any place entered pursuant to that subsection to produce to the inspector such records or, as the case may be, such bankers' books, relating to a party, elected member, group, candidate or agent or former party, elected member, group, candidate or agent as are in the custody or under the control of the person so employed or engaged,
 - (b) examine with respect to matters under this Act any person employed or engaged at any place so entered, and
 - (c) make such examination and inquiries as the inspector thinks fit for the purpose of ascertaining whether this Act is being or has been contravened.
- (4) A person shall not:
- (a) refuse or intentionally delay the admission to any place of an inspector in the exercise by the inspector of his or her powers under this section,
 - (b) intentionally obstruct an inspector in the exercise by the inspector of any such power, or
 - (c) fail to comply with a request of an inspector made under any such power.
- Penalty: 100 penalty units.
- (5) Every inspector shall be provided with a certificate of his or her appointment, and on applying for admission to any place where the inspector is empowered by this section to enter, shall, if requested to do so, produce the certificate to the occupier of the place.

(6)–(8) (Repealed)

110A Power to require provision of documents and information

- (1) The Authority may, by notice in writing to a person, require the person:
- (a) to provide such information as the Authority reasonably requires for the purposes of the enforcement of this Act, or
 - (b) to produce to the Authority, at the place and time specified in the notice, any document that the Authority reasonably requires for the purposes of the enforcement of this Act, or
 - (c) to answer questions about any matters in respect of which information is reasonably required for the purposes of the enforcement of this Act, or
 - (d) to attend at a specified place and time to answer questions under this section if attendance at that place is reasonably required in order that the questions can be properly put and answered.

- (2) The place and time at which a person may be required to produce a document, or to attend and answer questions, is to be a place and time nominated by the Authority that is reasonable in the circumstances.
- (3) A notice under this section that requires a person to produce a document may only require a person to produce existing documents that are in the person's possession or that are within the person's power to obtain lawfully.
- (4) The Authority may take copies of any documents provided under this section.
- (5) If the Authority has reason to believe that any documents provided under this section are evidence of an offence against this Act or the regulations, the Authority may retain the documents until proceedings for the offence have been heard and determined.
- (6) A person who, without reasonable excuse, fails to comply with a requirement made of the person under this section is guilty of an offence.
Maximum penalty: 100 penalty units.
- (7) A person who provides any document or information, or answers any question, in purported compliance with a requirement made under this section, knowing that the document, information or answer is false or misleading in a material particular, is guilty of an offence.
Maximum penalty: 200 penalty units or imprisonment for 12 months, or both.
- (8) A function conferred on the Authority by this section may be exercised by any person authorised by the Authority to exercise its functions under this section:
 - (a) who is employed under Chapter 1A of the *Public Sector Employment and Management Act 2002* in the Government Service, or
 - (b) who is not so employed but is subject to the control and direction of the Authority in relation to any function under this section.

110B Compliance agreements

- (1) The Authority may enter into a written agreement (a *compliance agreement*) with any person affected by this Act for the purpose of ensuring that the person complies with this Act or remedies an apparent contravention of this Act.
- (2) A person affected by this Act includes a party, a group, an elected member, a candidate and a third-party campaigner.

-
- (3) A compliance agreement may specify the measures to be taken by the person affected by this Act to ensure that the person complies with this Act or remedies an apparent contravention of this Act.
 - (4) A compliance agreement may be varied or terminated by further agreement between the parties.
 - (5) The Supreme Court may, on application by the Authority, make a declaration that a person has contravened a compliance agreement, and make ancillary orders to enforce the compliance agreement.
 - (6) This section does not affect proceedings for an offence in relation to a contravention of this Act.

111 Proceedings for offences

- (1) Proceedings for an offence against this Act or the regulations may be taken before the Local Court or before the Supreme Court in its summary jurisdiction.
- (2) If proceedings in respect of an offence against this Act or the regulations are brought in the Local Court, the maximum monetary penalty that the court may impose in respect of the offence is, notwithstanding any other provision of this Act, 40 penalty units or the maximum monetary penalty provided by this Act in respect of the offence, whichever is the lesser.
- (3) If proceedings in respect of an offence against this Act or the regulations are brought in the Supreme Court in its summary jurisdiction, the Supreme Court may impose a penalty not exceeding the maximum penalty provided by this Act or the regulations in respect of the offence.
- (4) Proceedings in respect of an offence against this Act or the regulations may be commenced within 3 years after the offence was committed and no longer.
- (5) Proceedings in respect of an offence against this Act (section 102 excepted) or the regulations may only be commenced with the consent of the Authority.

111A Penalty notices

- (1) An authorised officer may serve a penalty notice on a person if it appears to the officer that the person has committed an offence against this Act or the regulations, being an offence prescribed by the regulations as a penalty notice offence.
- (2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter determined by a court, the person can pay, within the time and to the person specified in the notice, the amount of

the penalty prescribed by the regulations for the offence if dealt with under this section.

- (3) A penalty notice under this section is declared to be a penalty notice for the purposes of the *Fines Act 1996*.
- (4) A penalty notice may be served personally or by post.
- (5) If the amount of penalty prescribed for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence.
- (6) Payment under this section is not to be regarded as an admission of liability for the purpose of, and does not in any way affect or prejudice, any civil claim, action or proceeding arising out of the same occurrence.
- (7) The regulations may:
 - (a) prescribe an offence for the purposes of this section by specifying the offence or by referring to the provision creating the offence, and
 - (b) prescribe the amount of penalty payable for the offence if dealt with under this section, and
 - (c) prescribe different amounts of penalties for different offences or classes of offences.
- (8) The amount of a penalty prescribed under this section for an offence is not to exceed the maximum amount of penalty that could be imposed for the offence by a court.
- (9) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.
- (10) In this section, *authorised officer* means an inspector within the meaning of section 110.

112 Prosecution of unincorporated bodies

A proceeding in respect of an offence against this Act alleged to be committed by a party that is unincorporated, or in respect of any amount recoverable from such a party under section 71, 71A, 77, 77A, 97I or 97J, may be instituted against an officer or officers of the party as a representative or representatives of the members of the party, and a proceeding so instituted shall be deemed to be a proceeding against all the persons who were members of the party at any relevant time.

113 Recovery of penalties etc from parties

For the purposes of enforcing any judgment or order given or made in a proceeding under this Act against a party that is unincorporated, process

may be issued and executed against any property of the party, or any property in which the party has, or any members of the party have in their capacity as such members, a beneficial interest, whether vested in trustees or however otherwise held, as if the party were a corporation and the absolute owner of the property or interest, but no process shall be issued or executed against any other property of members, or against any property of officers, of the party.

114 Evidence

A certificate signed by the Commissioner or a person authorised generally or specifically by the Commissioner to do so certifying:

- (a) that a specified party, group or candidate was or was not registered in a specified register kept under this Act at a specified time or during a specified period,
- (b) that a specified person was or was not registered as an agent in a specified register kept under this Act at a specified time or during a specified period, or
- (c) that there was no person registered at a specified time or during a specified period as the agent of a specified party, group or candidate,

is admissible in any proceedings and shall be prima facie evidence of the matters so certified.

115 Delegation

- (1) The Authority may, by instrument in writing under seal, delegate to the Chairperson the exercise of such of the functions (other than this power of delegation) conferred or imposed on the Authority by or under this or any other Act as may be specified in the instrument of delegation, and may, by such an instrument, revoke wholly or in part any such delegation.
- (2) A function the exercise of which has been delegated under this section may, while the delegation remains unrevoked, be exercised from time to time in accordance with the terms of the delegation.
- (3) A delegation under this section may be made subject to such conditions or such limitations as to the exercise of any of the functions delegated, or as to time or circumstance, as may be specified in the instrument of delegation.
- (4) Notwithstanding any delegation under this section, the Authority may continue to exercise all or any of the functions delegated.
- (5) Any act or thing done or suffered by a delegate while acting in the exercise of a delegation under this section shall have the same force and

effect as if the act or thing had been done or suffered by the Authority and shall be deemed to have been done or suffered by the Authority.

- (6) An instrument purporting to be signed by a delegate of the Authority in his or her capacity as such a delegate shall in all courts and before all persons acting judicially be received in evidence as if it were an instrument executed by the Authority under seal and, until the contrary is proved, shall be deemed to be an instrument signed by a delegate of the Authority under this section.

116 Transitional provisions

Schedule 2 has effect.

117 Regulations

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular, for or with respect to:
- (a) requiring the making, keeping and auditing of records of political donations given or received, and electoral expenditure incurred, by parties, elected members, groups, candidates and other persons, and requiring and otherwise providing for the production, examination and copying of those records, and
 - (a1) requiring the agents of parties, elected members, groups or candidates to obtain valuations from a valuer approved by the Authority of political donations that are not gifts of money (or enabling the Authority to obtain any such valuations), and
 - (a2) compliance audits by or on behalf of the Authority in connection with disclosures under Part 6, and
 - (b) the exemption of any class or description of persons, organisations or bodies, or of acts, matters or things, from all or any of the provisions of this Act.
- (2) A regulation may impose a penalty not exceeding 20 penalty units for any contravention thereof.
- (3) A provision of a regulation may:
- (a) apply generally or be limited in its application by reference to specified exceptions or factors,
 - (b) apply differently according to different factors of a specified kind, or
 - (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body,

or may do any combination of those things.

- (4) The Minister shall, before a regulation is at any time made under this Act, certify to the Governor that the regulation is not unfairly biased against or in favour of any particular parties, elected members, groups, candidates or other persons, bodies or organisations, but nothing in this subsection affects the validity of that or any other regulation.

Schedule 1 Adjustment for inflation of monetary caps

1 Definitions

In this Schedule:

adjustable amount means an amount that a provision of this Act provides is to be adjusted for inflation under this Schedule.

Consumer Price Index means the Consumer Price Index (All Groups Index) for Sydney published by the Australian Statistician.

Consumer Price Index number, in relation to a quarter, means the number for that quarter appearing in the Consumer Price Index.

2 Adjustment of political donation caps

- (1) Each of the adjustable amounts specified in a provision of Division 2A of Part 6 applies for the first financial year to which the provision applies and is to be adjusted for inflation for subsequent financial years as provided by this clause.
 - (2) The adjustable amounts that are to apply for a subsequent financial year are to be determined by multiplying the adjustable amounts that applied for the previous financial year by the annual increase in the Consumer Price Index during that previous financial year.
 - (3) The annual increase in the Consumer Price Index during a financial year is to be calculated as B/A where:

A is the Consumer Price Index number for the last quarter for which such a number was published before the start of the financial year.

B is the Consumer Price Index number for the last quarter for which such a number was published before the end of the financial year.
 - (4) If B/A is less than 1 (as a result of deflation), B/A is deemed to be 1.
 - (5) Before the start of each financial year after the first financial year of the operation of this clause, the Authority is to publish notice on the NSW legislation website and its website of the amount of each adjustable amount for the financial year (as adjusted under this Schedule).
- Editorial note.** See *Election Funding, Expenditure and Disclosures (Adjustable Amounts) Notice*.

3 Adjustment of electoral communication expenditure caps

- (1) Each of the adjustable amounts specified in a provision of Division 2B of Part 6 applies for the first election period that is current when the provision commences and is then to be adjusted for inflation for subsequent election periods as provided by this clause.

-
- (2) An *election period* is the period between the polling days of successive Assembly general elections.
 - (3) The adjustable amounts that are to apply for a subsequent election period are to be determined by multiplying the adjustable amounts that applied for the previous election period by the increase in the Consumer Price Index during that previous election period.
 - (4) The annual increase in the Consumer Price Index during an election period is to be calculated as B/A where:
A is the Consumer Price Index number for the last quarter for which such a number was published before the start of the election period.
B is the Consumer Price Index number for the last quarter for which such a number was published before the end of the election period.
 - (5) If B/A is less than 1 (as a result of deflation), B/A is deemed to be 1.
 - (6) Before the start of each election period after the election period that is current when this clause commences, the Authority is to publish notice on the NSW legislation website and its website of the amount of each adjustable amount for the election period that results from an adjustment under this clause.
Editorial note. See *Election Funding, Expenditure and Disclosures (Adjustable Amounts) Notice*.

4 Adjustment of administrative funding and policy development caps

- (1) Each of the adjustable amounts specified in a provision of Division 2 of Part 6A applies for the year 2012 and is to be adjusted for inflation for subsequent calendar years as provided by this clause.
- (1A) Each of the adjustable amounts specified in a provision of Division 3 of Part 6A applies for the first calendar year to which the provision applies and is to be adjusted for inflation for subsequent calendar years as provided by this clause.
- (2) The adjustable amounts that are to apply for a subsequent calendar year are to be determined by multiplying the adjustable amounts that applied for the previous calendar year by the annual increase in the Consumer Price Index during that previous calendar year.
- (3) The annual increase in the Consumer Price Index during a calendar year is to be calculated as B/A where:
A is the Consumer Price Index number for the last quarter for which such a number was published before the start of the calendar year.
B is the Consumer Price Index number for the last quarter for which such a number was published before the end of the calendar year.
- (4) If B/A is less than 1 (as a result of deflation), B/A is deemed to be 1.

- (5) Before the start of each calendar year after the first calendar year of the operation of this clause, the Authority is to publish notice on the NSW legislation website and on its website of the amount of each adjustable amount for the calendar year (as adjusted under this Schedule).

Editorial note. See *Election Funding, Expenditure and Disclosures (Adjustable Amounts) Notice*.

5 Rounding of adjustments

- (1) If the determination of an adjustable amount for a year or election period under this Schedule results in an amount that is not a whole number multiple of \$100, the amount calculated is to be rounded up to the nearest whole number multiple of \$100 and that amount as so rounded is the adjustable amount for that year or election period.
- (2) In the case of an adjustment of the amount of 25 cents specified in section 97I (4) of this Act, the amount is to be rounded up to the nearest whole number multiple of 0.01 cent if the determination results in an amount that is not a whole number multiple of 0.01 cent.

Schedule 2 Savings, transitional and other provisions

(Section 116)

Part 1A Regulations

1A Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of any Act that amends this Act.
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.
- (4) The regulations under this clause have effect despite anything to the contrary in this Schedule.

Part 1 Provisions consequent on enactment of this Act

1 Term of office of appointed members and alternates

Each appointed member or alternate first appointed under this Act shall, subject to this Act, hold office:

- (a) from the day appointed and notified under section 2 (2) or from the date the appointment is made, whichever is the later, and
- (b) until the end of the period of 6 months commencing on and including the day for the return of the writs for the next general election.

2 First general election to which Act applies

- (1) If the day appointed and notified under section 2 (3) is later than the day of the issue of the writs for the next general election after that day, this

Act does not apply to that election, but applies to the following general election.

- (2) If the day appointed and notified under section 2 (3) occurs during the period of 70 days before the day of the issue of the writs for the first general election to which this Act applies, section 29 (1) shall have no force or effect in relation to that election.
- (3) In relation to the first general election to which this Act applies, references in Part 4 to the polling day for the previous general election shall, except in so far as the Authority otherwise directs, be construed as references to the day appointed and notified under section 2 (3).
- (4) In relation to the first general election to which this Act applies, where the period in respect of which a declaration under Part 6 would, but for this subclause, commence before the day appointed and notified under section 2 (3), the period shall commence on the day so appointed and notified and not at the earlier time.

3 Advance payments

Advance payments may not be made in respect of the first general election to which this Act applies.

4 By-elections

This Act does not apply to any by-elections held or to be held before the first general election to which this Act applies.

Part 2 Provisions consequent on enactment of Election Funding (Amendment) Act 1987

5 Declarations of political contributions

Section 87 as amended by the *Election Funding (Amendment) Act 1987* applies to and in respect of declarations of political contributions required to be made after the commencement of that Act.

6 Register of Parties

- (1) The Register of Parties kept as from the polling day for the general election held in 1984 shall be the Register of Parties required to be kept under this Act after the commencement of the *Election Funding (Amendment) Act 1987*.
- (2) The amendments made to sections 28 and 29 by the *Election Funding (Amendment) Act 1987* do not apply to the registration of a party effected, or an application to register a party made, before the period of 60 days before the commencement of that Act.

Part 3 Provisions consequent on enactment of Election Funding (Amendment) Act 1991

7 Operation of amendments

- (1) In this clause, *the amendments* means the amendments made by the *Election Funding (Amendment) Act 1991*, other than the amendments made to this Schedule.
- (2) The amendments apply to elections held after the date of assent to the *Election Funding (Amendment) Act 1991*.
- (3) This Act as in force before the date of assent to that Act continues to apply to elections held before that date.
- (4) However, if the date of assent to that Act is later than the day of issue of the writ or writs for the next election held after that day, the amendments do not apply to that election and this Act as in force before the date of assent to that Act applies to it.
- (5) This clause has effect subject to clause 8.

8 Advance payments

- (1) The amendment made to section 69 by the *Election Funding (Amendment) Act 1991* does not apply to advance payments calculated by reference to any previous general election held before the date of assent to that Act.
- (2) Section 69 as in force before the date of assent to the *Election Funding (Amendment) Act 1991* continues to apply to advance payments calculated by reference to any such previous general election.

Part 4 Provisions consequent on the enactment of Election Funding (Amendment) Act 1993

9 Definition

In this Part, *amending Act* means the *Election Funding (Amendment) Act 1993*.

10 Disclosure periods

The amendment made by Schedule 1 (5) to the amending Act does not affect the disclosure period for a party or candidate that has started before, but which finishes after, the commencement of that amendment.

11 Third party disclosures

The amendments made by Schedule 1 (6), (7) (a), (9) (a) and (b), (11), (12) and (16) to the amending Act do not apply to contributions received and expenditure incurred before the commencement of those amendments.

12 Fund-raising events

The amendments made by Schedule 1 (7) (b) and (10) (c) to the amending Act do not apply to contributions or payments made before the commencement of those amendments.

13 Disclosure of political contributions

- (1) The amendments made by Schedule 1 (7) (d)–(g) to the amending Act apply to and in respect of declarations of political contributions required to be made after the commencement of those amendments.
- (2) The amendment made by Schedule 1 (7) (c) to the amending Act does not apply to contributions or payments made before the commencement of that amendment.

14 Annual subscriptions to parties

The amendments made by Schedule 1 (7) (h) and (10) (b) to the amending Act apply to subscriptions paid before the commencement of the amendments in respect of any current disclosure period.

15 Reporting source of gifts

The amendment made by Schedule 1 (8) to the amending Act does not apply to gifts received before the commencement of the amendment.

Part 5 Provisions consequent on enactment of Election Funding Amendment (Political Donations and Expenditure) Act 2008

16 Definitions

In this Part:

amending Act means the *Election Funding Amendment (Political Donations and Expenditure) Act 2008*.

last disclosure date means:

- (a) in relation to a party registered under the *Parliamentary Electorates and Elections Act 1912* and in relation to State elections—23 April 2007, or

-
- (b) in relation to a party registered under the *Local Government Act 1993* and in relation to local government elections—the date that is 30 days after the election date for the last ordinary council election.

17 First relevant disclosure period—parties, elected members, groups or candidates

For the purposes of Part 6 of this Act, the first relevant disclosure period in relation to:

- (a) parties, or
- (b) elected members, or
- (c) groups or candidates,

is the period commencing on the day after the last disclosure date and ending on 30 June 2008.

Note. The disclosures for that first relevant disclosure period are to be made, subject to the regulations, within 8 weeks after the end of that period (ie before 26 August 2008). Section 95 (2) requires the Authority to publish the declaration of disclosures for that first relevant disclosure period on the website of the Authority as soon as practicable after that date. Candidates required to make disclosures include persons who have accepted political donations for the 2008 local government elections even if they have not yet nominated for election or registered as a candidate (see section 84 (2)).

18 First relevant disclosure period—major political donors

For the purposes of Part 6 of this Act, the first relevant disclosure period (except where clause 17 applies) is the 6-month period ending on 31 December 2008, and including the period commencing on the day after the last disclosure date and ending at the beginning of that 6-month period.

19 Date on which new requirements for receipt and management of political donations and electoral expenditure have effect

- (1) The requirements of the following provisions do not have effect until 1 August 2008:
 - (a) section 96A (Requirements for political donations to, and electoral expenditure by, elected member, group or candidate),
 - (b) section 96B (Campaign accounts of elected members, groups or candidates),
 - (c) section 96C (Person accepting reportable political donations to record details),
 - (d) Division 4 (Prohibition of certain political donations).
- (2) After the date those provisions have effect in relation to a party, elected member, candidate or group, section 96A extends to the use of political

donations made before that date to incur electoral expenditure or reimbursing a person for incurring electoral expenditure after that date.

Note. Subclause (2) will operate to require political donations made but not spent before the relevant date for the establishment of campaign accounts to be paid into the relevant campaign account if the money is to be spent on electoral expenditure.

- (3) The Authority may, if satisfied there is good cause to do so, waive compliance with those provisions, in any particular case or class of cases, in relation to matters arising during the period ending on the date that is 30 days after the election date for the ordinary council election in 2008. Any such waiver may be given before or after the date on which the provision is required to be complied with, and may be given subject to any conditions specified by the Authority.

Part 6 Provisions consequent on enactment of Election Funding, Expenditure and Disclosures Amendment Act 2012

20 Definition

In this Part, *amending Act* means the *Election Funding, Expenditure and Disclosures Amendment Act 2012*.

21 Application of amendments

- (1) The amendment made by Schedule 1 [2] to the amending Act applies to elections held after the commencement of that amendment.
- (2) The amendment made by Schedule 1 [3] to the amending Act applies to political donations made after the commencement of that amendment.

Part 7 Provisions consequent on enactment of Election Funding, Expenditure and Disclosures Further Amendment Act 2012

22 Application of amendment

- (1) The amendment to section 91 (5) of this Act made by the *Election Funding, Expenditure and Disclosures Further Amendment Act 2012* extends to a declaration containing no disclosures for the relevant disclosure period ending on 30 June 2012.
- (2) The time required by Part 6 of this Act for lodging such a declaration is taken to be the day that is 28 days after the commencement of the amendment to section 91 (5) of this Act.

Part 8 Provisions consequent on enactment of Election Funding, Expenditure and Disclosures Amendment (Administrative Funding) Act 2013

23 Definition

In this Part, *amending Act* means the *Election Funding, Expenditure and Disclosures Amendment (Administrative Funding) Act 2013*.

24 Payments from Administration Fund in respect of 2012 calendar year

- (1) The amendments made to sections 97E and 97F by the amending Act are taken to have effect in respect of the 2012 calendar year.
- (2) The Authority may, on application by a party or elected member, redetermine any payment that has been made to the party or elected member under Division 2 of Part 6A, or any claim for payment under that Division, in respect of the 2012 calendar year that was determined under section 97E or 97F as in force before its amendment by the amending Act.
- (3) If the amount of any payment for which the party or elected member was eligible would have been more if the amendments made to sections 97E and 97F by the amending Act had been in force at the time the payment or claim was made, the Authority is to redetermine the amount to which the party or elected member is eligible under those sections as so amended.
- (4) Sections 97K–97M apply to an application for redetermination of a payment or claim under this clause and the payment of an additional amount under this clause in the same way as they apply to a claim for payment under Part 6A and a payment from the Administration Fund under that Part.
- (5) Any amount that is required to be paid to a party or elected member on a redetermination of a payment or claim under this clause is to be paid within 6 weeks after the Authority receives the application for redetermination.
- (6) Section 97J (5) (as inserted by the amending Act):
 - (a) applies to a payment for which a claim is made after the commencement of that subsection, and
 - (b) applies to a payment in respect of the 2012 calendar year that has not been made but for which a claim (including the required supporting documentation and information) was made before that commencement as if the claim had been received by the Authority on that commencement.

25 Notice of adjustable amounts

The adjustable amounts for 2013 inserted in the *Election Funding, Expenditure and Disclosures (Adjustable Amounts) Notice* by the amendment made by Schedule 2 to the amending Act are taken to have been determined and published by the Authority in accordance with Schedule 1 to this Act.

Historical notes

The following abbreviations are used in the Historical notes:

Am	amended	LW	legislation website	Sch	Schedule
Cl	clause	No	number	Schs	Schedules
Cll	clauses	p	page	Sec	section
Div	Division	pp	pages	Secs	sections
Divs	Divisions	Reg	Regulation	Subdiv	Subdivision
GG	Government Gazette	Regs	Regulations	Subdivs	Subdivisions
Ins	inserted	Rep	repealed	Subst	substituted

Table of amending instruments

Election Funding, Expenditure and Disclosures Act 1981 No 78 (formerly Election Funding and Disclosures Act 1981 and Election Funding Act 1981). Assented to 2.6.1981. Date of commencement of Part 1, assent, sec 2 (1); date of commencement of Parts 2 and 8, secs 24 and 25 and Sch 2, 17.7.1981, sec 2 (2) and GG No 102 of 17.7.1981, p 3801; date of commencement (Parts 1, 2 and 8, secs 24 and 25 and Sch 2 excepted), 14.8.1981, sec 2 (3) and GG No 115 of 14.8.1981, p 4303. This Act has been amended as follows:

1981 No 98	Election Funding (Amendment) Act 1981. Assented to 27.8.1981.
1982 No 48	Election Funding (Legislative Assembly) Amendment Act 1982. Assented to 6.5.1982. Date of commencement, 14.8.1981, sec 2.
1983 No 153	Miscellaneous Acts (Public Finance and Audit) Repeal and Amendment Act 1983. Assented to 29.12.1983. Date of commencement of Sch 2, 6.1.1984, sec 2 (2) and GG No 4 of 6.1.1984, p 19.
1984 No 35	Election Funding (Amendment) Act 1984. Assented to 13.6.1984.
No 153	Statute Law (Miscellaneous Amendments) Act 1984. Assented to 10.12.1984.
1987 No 48	Statute Law (Miscellaneous Provisions) Act (No 1) 1987. Assented to 28.5.1987. Date of commencement of Sch 32, except as provided by sec 2 (13), 1.9.1987, sec 2 (12) and GG No 136 of 28.8.1987, p 4809.
No 133	Election Funding (Amendment) Act 1987. Assented to 16.6.1987.
1988 No 131	Statute Law (Miscellaneous Provisions) Act (No 3) 1988. Assented to 30.12.1988. Date of commencement of Sch 7, 3.4.1989, sec 2 (2) and GG No 37 of 31.3.1989, p 1603.

- 1989** No 34 Public Accountants Registration (Repeal and Amendment) Act 1989. Assented to 10.5.1989.
Date of commencement, 1.7.1989, sec 2 and GG No 81 of 30.6.1989, p 3821.
- 1990** No 111 Constitution and Parliamentary Electorates and Elections (Amendment) Act 1990. Assented to 18.12.1990.
Date of commencement, 29.3.1991, sec 2 and GG No 52 of 28.3.1991, p 2462.
- 1991** No 13 Election Funding (Amendment) Act 1991. Assented to 3.5.1991.
Date of commencement, assent, sec 2.
- No 17 Statute Law (Miscellaneous Provisions) Act 1991. Assented to 3.5.1991.
Date of commencement of the provisions of Sch 1 relating to the Election Funding Act 1981, assent, sec 2.
- 1992** No 112 Statute Law (Penalties) Act 1992. Assented to 8.12.1992.
Date of commencement, assent, sec 2.
- 1993** No 104 Election Funding (Amendment) Act 1993. Assented to 2.12.1993.
Date of commencement, 1.1.1994, sec 2 and GG No 142 of 24.12.1993, p 7415. Amended by Statute Law (Miscellaneous Provisions) Act 1994 No 32. Assented to 2.6.1994. Date of commencement of the provision of Sch 2 relating to the Election Funding (Amendment) Act 1993, assent, Sch 2.
- 1994** No 32 Statute Law (Miscellaneous Provisions) Act 1994. Assented to 2.6.1994.
Date of commencement of the provision of Sch 2 relating to the Election Funding Act 1981, assent, Sch 2.
- No 95 Statute Law (Miscellaneous Provisions) Act (No 2) 1994. Assented to 12.12.1994.
Date of commencement of the provision of Sch 1 relating to the Election Funding Act 1981, assent, Sch 1.
- 1995** No 11 Statute Law Revision (Local Government) Act 1995. Assented to 9.6.1995.
Date of commencement of Sch 1.37, 23.6.1995, sec 2 (1) and GG No 77 of 23.6.1995, p 3279.
- 1996** No 24 Financial Institutions (Miscellaneous Amendments) Act 1996. Assented to 21.6.1996.
Date of commencement, 12.7.1996, sec 2 and GG No 84 of 12.7.1996, p 3984.
- 1997** No 55 Statute Law (Miscellaneous Provisions) Act 1997. Assented to 2.7.1997.
Date of commencement of Sch 3, 3 months after assent, sec 2 (3).

-
- No 147 Statute Law (Miscellaneous Provisions) Act (No 2) 1997. Assented to 17.12.1997.
Date of commencement of Sch 3, 3 months after assent, sec 2 (3).
- 1999** No 53 Election Funding Amendment Act 1999. Assented to 22.11.1999.
Date of commencement, assent, sec 2.
- No 85 Statute Law (Miscellaneous Provisions) Act (No 2) 1999. Assented to 3.12.1999.
Date of commencement of Sch 2.14, assent, sec 2 (2).
- 2001** No 34 Corporations (Consequential Amendments) Act 2001. Assented to 28.6.2001.
Date of commencement of Schs 1.2, 2.12 and 4.15, 15.7.2001, sec 2 (1) and Commonwealth Gazette No S 285 of 13.7.2001.
- No 121 Justices Legislation Repeal and Amendment Act 2001. Assented to 19.12.2001.
Date of commencement of Sch 2, 7.7.2003, sec 2 and GG No 104 of 27.6.2003, p 5978.
- 2002** No 101 Election Funding Amendment Act 2002. Assented to 29.11.2002.
Date of commencement, assent, sec 2.
- 2006** No 2 Public Sector Employment Legislation Amendment Act 2006. Assented to 13.3.2006.
Date of commencement, 17.3.2006, sec 2 and GG No 35 of 17.3.2006, p 1378.
- No 68 Parliamentary Electorates and Elections Amendment Act 2006. Assented to 5.10.2006.
Date of commencement of Sch 19.6, 20.10.2006, sec 2 and GG No 124 of 20.10.2006, p 8781.
- No 75 Election Funding Amendment Act 2006. Assented to 27.10.2006.
Date of commencement, 10.11.2006, sec 2 and GG No 135 of 10.11.2006, p 9494.
- 2007** No 27 Statute Law (Miscellaneous Provisions) Act 2007. Assented to 4.7.2007.
Date of commencement of Sch 2, assent, sec 2 (2).
- No 94 Miscellaneous Acts (Local Court) Amendment Act 2007. Assented to 13.12.2007.
Date of commencement of Sch 2, 6.7.2009, sec 2 and 2009 (314) LW 3.7.2009. Amended by Statute Law (Miscellaneous Provisions) Act (No 2) 2008 No 114. Assented to 10.12.2008. Date of commencement of Sch 2.17, assent, sec 2 (2).

-
- 2008** No 43 Election Funding Amendment (Political Donations and Expenditure) Act 2008. Assented to 30.6.2008.
Date of commencement, 10.7.2008, sec 2 and GG No 86 of 10.7.2008, p 6857.
- 2009** No 113 Election Funding and Disclosures Amendment (Property Developers Prohibition) Act 2009. Assented to 14.12.2009.
Date of commencement, assent, sec 2.
- 2010** No 19 Relationships Register Act 2010. Assented to 19.5.2010.
Date of commencement of Sch 3, assent, sec 2 (2).
- No 95 Election Funding and Disclosures Amendment Act 2010. Assented to 16.11.2010.
Date of commencement, 1.1.2011, sec 2.
- No 119 Statute Law (Miscellaneous Provisions) Act (No 2) 2010. Assented to 29.11.2010.
Date of commencement of Sch 2, 7.1.2011, sec 2 (2).
- 2011** No 27 Statute Law (Miscellaneous Provisions) Act 2011. Assented to 27.6.2011.
Date of commencement of Sch 1.4, 8.7.2011, sec 2 (2).
- 2012** No 1 Election Funding, Expenditure and Disclosures Amendment Act 2012. Assented to 21.2.2012.
Date of commencement, 9.3.2012, sec 2 and 2012 (82) LW 9.3.2012.
- No 95 Statute Law (Miscellaneous Provisions) Act (No 2) 2012. Assented to 21.11.2012.
Date of commencement of Schs 1.8 and 2, 4.1.2013, sec 2 (1).
- No 99 Election Funding, Expenditure and Disclosures Further Amendment Act 2012. Assented to 26.11.2012.
Date of commencement, assent, sec 2.
- 2013** No 13 Election Funding, Expenditure and Disclosures Amendment (Administrative Funding) Act 2013. Assented to 3.4.2013.
Date of commencement, assent, sec 2.

This Act has also been amended pursuant to an order under sec 9A of the *Reprints Act 1972* No 48. Order dated 7.5.1985 and published in GG No 80 of 10.5.1985, p 2040.

Table of amendments

No reference is made to certain amendments made by Schedule 3 (amendments replacing gender-specific language) to the *Statute Law (Miscellaneous Provisions) Act 1997* and the *Statute Law (Miscellaneous Provisions) Act (No 2) 1997*.

Long title Am 2008 No 43, Sch 1 [1].

Sec 1	Am 2008 No 43, Sch 1 [2]; 2010 No 95, Sch 1 [1].
Sec 3	Rep 1991 No 13, Sch 1 (1).
Sec 4	Am 1984 No 153, Sch 16; 1987 No 133, Sch 1 (1); 1989 No 34, Sch 1; 1990 No 111, Sch 3 (1); 1993 No 104, Sch 1 (1); 2001 No 34, Sch 2.12; 2006 No 68, Sch 19.6 [1]; 2007 No 27, Sch 2.15; 2008 No 43, Sch 1 [3]–[6]; 2010 No 95, Schs 1 [2], 2 [1] [2], 3 [1]–[5]; 2012 No 95, Schs 1.8 [1]–[3], 2.9 [1].
Sec 9	Am 1991 No 17, Sch 1; 1995 No 11, Sch 1.37 [1].
Sec 13	Am 1987 No 48, Sch 32; 1991 No 17, Sch 1; 1995 No 11, Sch 1.37 [2]; 2006 No 68, Sch 19.6 [2].
Sec 22	Am 2006 No 2, Sch 4.15 [1].
Sec 23	Am 1993 No 104, Sch 1 (2); 2008 No 43, Sch 1 [7]; 2010 No 95, Sch 3 [6] [7].
Sec 24	Am 2008 No 43, Sch 1 [8]; 2010 No 95, Sch 3 [8].
Sec 25	Am 2008 No 43, Sch 1 [9].
Part 4, Div 1	Rep 1990 No 111, Sch 3 (2). Ins 2008 No 43, Sch 1 [10].
Sec 26	Am 1987 No 133, Sch 1 (2). Rep 1990 No 111, Sch 3 (2). Ins 2008 No 43, Sch 1 [10]. Am 2010 No 95, Sch 3 [9].
Sec 27	Rep 1990 No 111, Sch 3 (2). Ins 2008 No 43, Sch 1 [10].
Sec 28	Am 1987 No 133, Sch 1 (3). Rep 1990 No 111, Sch 3 (2).
Sec 29	Am 1987 No 133, Sch 1 (4). Rep 1990 No 111, Sch 3 (2).
Sec 30	Am 1987 No 133, Sch 1 (5). Rep 1990 No 111, Sch 3 (2).
Sec 31	Am 2008 No 43, Sch 1 [11].
Sec 32A	Ins 2010 No 95, Sch 3 [10].
Sec 33	Am 2008 No 43, Sch 1 [12] [13].
Sec 35	Am 2006 No 68, Sch 19.6 [3] [4]; 2008 No 43, Sch 1 [14] [15].
Sec 38	Am 1992 No 112, Sch 1.
Part 4, Div 2A (secs 38A–38F)	Ins 2010 No 95, Sch 3 [11].
Sec 39	Am 2008 No 43, Sch 1 [16].
Sec 41	Am 1992 No 112, Sch 1; 2008 No 43, Sch 1 [17]; 2012 No 99, Sch 1 [1].
Sec 45	Am 2010 No 95, Sch 3 [12].
Sec 46	Am 2008 No 43, Sch 1 [18] [19]. Subst 2010 No 95, Sch 3 [13].
Secs 46A–46C	Ins 2010 No 95, Sch 3 [13].

Sec 47	Am 2008 No 43, Sch 1 [20]; 2012 No 95, Sch 2.9 [2].
Sec 49	Am 2008 No 43, Sch 1 [21]. Rep 2010 No 95, Sch 3 [14].
Sec 51	Am 2008 No 43, Sch 1 [22]–[24]; 2010 No 95, Sch 3 [15].
Sec 52	Am 2008 No 43, Sch 1 [25].
Sec 54	Am 1992 No 112, Sch 1.
Part 5	Subst 2010 No 95, Sch 2 [3].
Part 5, Div 1	Subst 2010 No 95, Sch 2 [3].
Sec 54A	Ins 2008 No 43, Sch 1 [26]. Subst 2010 No 95, Sch 2 [3].
Sec 54B	Ins 2010 No 95, Sch 2 [3].
Sec 55	Subst 2010 No 95, Sch 2 [3].
Part 5, Div 2	Subst 2010 No 95, Sch 2 [3].
Sec 56	Subst 2010 No 95, Sch 2 [3].
Sec 57	Am 1988 No 131, Sch 7 (1); 1990 No 111, Sch 3 (3); 1999 No 53, Sch 1. Subst 2010 No 95, Sch 2 [3].
Sec 58	Subst 2010 No 95, Sch 2 [3].
Sec 59	Am 1981 No 98, Sch 1; 1987 No 133, Sch 1 (6); 1990 No 111, Sch 3 (4); 1991 No 13, Sch 1 (2); 2008 No 43, Sch 1 [27]. Subst 2010 No 95, Sch 2 [3].
Sec 60	Am 1990 No 111, Sch 3 (5); 1991 No 13, Sch 1 (3). Subst 2010 No 95, Sch 2 [3].
Sec 61	Am 1990 No 111, Sch 3 (6); 1991 No 13, Sch 1 (4). Subst 2010 No 95, Sch 2 [3].
Secs 62, 63	Subst 2010 No 95, Sch 2 [3].
Part 5, Div 3	Subst 2010 No 95, Sch 2 [3].
Sec 64	Subst 2010 No 95, Sch 2 [3].
Sec 65	Am 1990 No 111, Sch 3 (7); 1991 No 13, Sch 1 (5). Subst 2010 No 95, Sch 2 [3].
Secs 66, 67	Subst 2010 No 95, Sch 2 [3].
Sec 68	Am 2002 No 101, Sch 1 [1]. Subst 2010 No 95, Sch 2 [3].
Sec 69	Am 1990 No 111, Sch 3 (8); 1991 No 13, Sch 1 (6); 2002 No 101, Sch 1 [2]. Subst 2010 No 95, Sch 2 [3].
Secs 70, 71	Subst 2010 No 95, Sch 2 [3].
Sec 71A	Ins 1993 No 104, Sch 1 (3). Rep 2010 No 95, Sch 2 [3].
Sec 72	Subst 2010 No 95, Sch 2 [3].

Sec 73	Am 1982 No 48, sec 3; 1988 No 131, Sch 7 (2); 1990 No 111, Sch 3 (9). Subst 2010 No 95, Sch 2 [3].
Sec 73A	Ins 1991 No 13, Sch 1 (7). Rep 2010 No 95, Sch 2 [3].
Sec 74	Am 1984 No 35, sec 2; 1994 No 95, Sch 1; 2006 No 75, Sch 1 [1]; 2008 No 43, Sch 1 [28]. Subst 2010 No 95, Sch 2 [3].
Sec 75	Subst 2010 No 95, Sch 2 [3].
Part 5, Div 4	Rep 2010 No 95, Sch 2 [3].
Part 5, Div 6	Rep 2010 No 95, Sch 2 [3].
Part 5, Div 7	Rep 2010 No 95, Sch 2 [3].
Sec 76	Rep 2010 No 95, Sch 2 [3].
Sec 76A	Ins 2002 No 101, Sch 1 [3]. Am 2008 No 43, Sch 1 [29]. Rep 2010 No 95, Sch 2 [3].
Sec 77	Am 1992 No 112, Sch 1; 1996 No 24, Sch 1.33 [1]; 2008 No 43, Sch 1 [30] [31]. Rep 2010 No 95, Sch 2 [3].
Sec 77A	Ins 1991 No 13, Sch 1 (8). Am 2002 No 101, Sch 1 [4]. Rep 2010 No 95, Sch 2 [3].
Sec 78	Subst 2008 No 43, Sch 1 [32]. Rep 2010 No 95, Sch 2 [3].
Secs 79–81	Rep 2010 No 95, Sch 2 [3].
Sec 82	Am 1992 No 112, Sch 1; 1993 No 104, Sch 1 (4); 2008 No 43, Sch 1 [33]. Rep 2010 No 95, Sch 2 [3].
Part 6	Subst 2008 No 43, Sch 1 [34].
Part 6, Div 1, heading	Ins 2008 No 43, Sch 1 [34].
Sec 83	Subst 1993 No 104, Sch 1 (5); 2008 No 43, Sch 1 [34]. Am 2010 No 95, Sch 1 [3] [4].
Sec 84	Subst 1993 No 104, Sch 1 (5); 2008 No 43, Sch 1 [34]. Am 2010 No 95, Schs 1 [5]–[7], 3 [16] [17]; 2012 No 1, Sch 2 [1] [2].
Sec 85	Subst 1993 No 104, Sch 1 (5); 2008 No 43, Sch 1 [34]. Am 2010 No 95, Sch 1 [8] [9].
Sec 85A	Ins 1993 No 104, Sch 1 (6). Am 2001 No 34, Sch 4.15 [1]. Rep 2008 No 43, Sch 1 [34].
Sec 86	Subst 2008 No 43, Sch 1 [34]. Am 2010 No 95, Sch 1 [10] [11]; 2012 No 1, Sch 2 [3].
Sec 87	Am 1987 No 133, Sch 1 (7); 1993 No 104, Sch 1 (7); 1994 No 32, Sch 2; 2001 No 34, Sch 1.2. Subst 2008 No 43, Sch 1 [34]; 2010 No 95, Sch 1 [12]. Am 2012 No 1, Sch 1 [1].

Sec 87A	Ins 1993 No 104, Sch 1 (8). Am 2001 No 34, Sch 4.15 [2]. Rep 2008 No 43, Sch 1 [34].
Part 6, Div 2, heading	Ins 2008 No 43, Sch 1 [34].
Sec 88	Am 1993 No 104, Sch 1 (9). Subst 2008 No 43, Sch 1 [34]. Am 2010 No 95, Sch 1 [13] [14].
Sec 89	Am 1993 No 104, Sch 1 (10). Subst 2008 No 43, Sch 1 [34]. Am 2010 No 95, Sch 1 [15].
Sec 90	Subst 2008 No 43, Sch 1 [34]. Am 2010 No 95, Sch 1 [16].
Sec 91	Subst 2008 No 43, Sch 1 [34]. Am 2010 No 95, Sch 1 [17] [18]; 2012 No 99, Sch 1 [2].
Sec 92	Subst 2008 No 43, Sch 1 [34]. Am 2010 No 95, Sch 1 [19]–[21]; 2012 No 1, Sch 2 [4] [5].
Sec 93	Am 1991 No 13, Sch 1 (9); 1993 No 104, Sch 1 (11). Subst 2008 No 43, Sch 1 [34]. Am 2010 No 95, Sch 1 [22].
Secs 94, 95	Subst 2008 No 43, Sch 1 [34].
Part 6, Div 2A	Ins 2010 No 95, Sch 1 [23].
Sec 95AA	Ins 2010 No 95, Sch 1 [23].
Sec 95A	Ins 2010 No 95, Sch 1 [23]. Am 2012 No 1, Sch 2 [6].
Sec 95B	Ins 2010 No 95, Sch 1 [23]. Am 2010 No 119, Sch 2.17; 2012 No 1, Sch 2 [7].
Secs 95C, 95D	Ins 2010 No 95, Sch 1 [23].
Part 6, Div 2B	Ins 2010 No 95, Sch 1 [23].
Secs 95E, 95F	Ins 2010 No 95, Sch 1 [23].
Sec 95G	Ins 2010 No 95, Sch 1 [23]. Am 2012 No 1, Sch 1 [2].
Secs 95H–95J	Ins 2010 No 95, Sch 1 [23].
Part 6, Div 3, heading	Ins 2008 No 43, Sch 1 [34].
Sec 96	Am 1992 No 112, Sch 1; 1993 No 104, Sch 1 (12). Subst 2008 No 43, Sch 1 [34]. Am 2010 No 95, Sch 1 [24].
Sec 96A	Ins 2008 No 43, Sch 1 [34]. Am 2010 No 95, Sch 3 [18].
Sec 96AA	Ins 2010 No 95, Sch 1 [25].
Secs 96B, 96C	Ins 2008 No 43, Sch 1 [34].
Part 6, Div 4	Ins 2008 No 43, Sch 1 [34].
Sec 96D	Ins 2008 No 43, Sch 1 [34]. Subst 2010 No 95, Sch 1 [26]; 2012 No 1, Sch 1 [3].

Sec 96E	Ins 2008 No 43, Sch 1 [34]. Am 2012 No 1, Sch 2 [8].
Sec 96EA	Ins 2010 No 95, Sch 1 [27].
Sec 96F	Ins 2008 No 43, Sch 1 [34].
Sec 96G	Ins 2008 No 43, Sch 1 [34]. Am 2012 No 1, Sch 2 [9].
Part 6, Div 4A, heading	Ins 2009 No 113, Sch 1 [1]. Subst 2012 No 95, Sch 2.9 [3].
Part 6, Div 4A	Ins 2009 No 113, Sch 1 [1].
Sec 96GAA	Ins 2010 No 95, Sch 1 [28].
Sec 96GAB	Ins 2012 No 1, Sch 2 [10].
Sec 96GA	Ins 2009 No 113, Sch 1 [1]. Am 2010 No 95, Sch 1 [29]; 2012 No 95, Sch 2.9 [4].
Sec 96GB	Ins 2009 No 113, Sch 1 [1]. Am 2010 No 19, Sch 3.37; 2010 No 95, Sch 1 [30].
Secs 96GC, 96GD	Ins 2009 No 113, Sch 1 [1].
Sec 96GE	Ins 2009 No 113, Sch 1 [1]. Am 2010 No 95, Sch 1 [29].
Part 6, Div 5	Ins 2008 No 43, Sch 1 [34].
Sec 96H	Ins 2008 No 43, Sch 1 [34]. Am 2010 No 95, Sch 1 [31].
Sec 96HA	Ins 2010 No 95, Sch 1 [32].
Sec 96I	Ins 2008 No 43, Sch 1 [34]. Am 2009 No 113, Sch 1 [2]. Am 2010 No 95, Sch 1 [33].
Secs 96J	Ins 2008 No 43, Sch 1 [34]. Am 2010 No 95, Sch 1 [34].
Sec 96K	Ins 2008 No 43, Sch 1 [34]. Am 2010 No 95, Schs 1 [35], 3 [19] [20].
Sec 96L	Ins 2008 No 43, Sch 1 [34].
Sec 96M	Ins 2008 No 43, Sch 1 [34]. Am 2010 No 95, Sch 1 [35].
Sec 96N	Ins 2010 No 95, Sch 1 [36].
Sec 97	Am 1992 No 112, Sch 1; 1993 No 104, Sch 1 (13). Rep 2008 No 43, Sch 1 [34].
Part 6A	Ins 1993 No 104, Sch 1 (14). Subst 2010 No 95, Sch 2 [4].
Part 6A, Div 1, heading	Ins 2010 No 95, Sch 2 [4].
Sec 97A	Ins 1993 No 104, Sch 1 (14). Subst 2010 No 95, Sch 2 [4].
Sec 97AB	Ins 2008 No 43, Sch 1 [35]. Rep 2010 No 95, Sch 2 [4].
Secs 97B, 97C	Ins 1993 No 104, Sch 1 (14). Subst 2010 No 95, Sch 2 [4].

Part 6A, Div 2, heading	Ins 2010 No 95, Sch 2 [4].
Sec 97D	Ins 1993 No 104, Sch 1 (14). Subst 2010 No 95, Sch 2 [4].
Sec 97E	Ins 1993 No 104, Sch 1 (14). Subst 2010 No 95, Sch 2 [4]. Am 2011 No 27, Sch 1.4; 2013 No 13, Sch 1 [1].
Sec 97F	Ins 1993 No 104, Sch 1 (14). Subst 2010 No 95, Sch 2 [4]. Am 2013 No 13, Sch 1 [2].
Sec 97G	Ins 1993 No 104, Sch 1 (14). Subst 2010 No 95, Sch 2 [4].
Sec 97GA	Ins 2013 No 13, Sch 1 [3].
Part 6A, Div 3, heading	Ins 2010 No 95, Sch 2 [4].
Secs 97H, 97I	Ins 1993 No 104, Sch 1 (14). Subst 2010 No 95, Sch 2 [4].
Part 6A, Div 4, heading	Ins 2010 No 95, Sch 2 [4].
Sec 97J	Ins 1993 No 104, Sch 1 (14). Subst 2010 No 95, Sch 2 [4]. Am 2013 No 13, Sch 1 [4]–[7].
Sec 97K	Ins 1993 No 104, Sch 1 (14). Subst 2010 No 95, Sch 2 [4].
Secs 97L, 97M	Ins 2010 No 95, Sch 2 [4].
Sec 98	Am GG No 80 of 10.5.1985, p 2040; 1993 No 104, Sch 1 (15).
Sec 99	Am 2006 No 2, Sch 4.15 [2].
Sec 100	Am GG No 80 of 10.5.1985, p 2040.
Sec 101	Subst 1983 No 153, Sch 2.
Secs 102, 103	Rep 1983 No 153, Sch 2.
Sec 107	Am 2010 No 95, Sch 3 [21].
Sec 108	Rep 2006 No 2, Sch 4.15 [3].
Sec 109	Am 2008 No 43, Sch 1 [36].
Sec 110	Am 1992 No 112, Sch 1; 1993 No 104, Sch 1 (16); 1996 No 24, Sch 1.33 [2] [3]; 2006 No 2, Sch 4.15 [4]; 2008 No 43, Sch 1 [37]–[42]; 2010 No 95, Sch 3 [22] [23].
Sec 110A	Ins 2006 No 75, Sch 1 [2]. Am 2008 No 43, Sch 1 [43] [44]. Subst 2010 No 95, Sch 3 [24].
Sec 110B	Ins 2010 No 95, Sch 3 [24].
Sec 111	Am GG No 80 of 10.5.1985, p 2040; 1992 No 112, Sch 1; 1999 No 85, Sch 2.14; 2001 No 121, Sch 2.92; 2007 No 94, Sch 2.
Sec 111A	Ins 2010 No 95, Sch 3 [25].

Sec 112	Am 1991 No 13, Sch 1 (10); 1993 No 104, Sch 1 (17) (am 1994 No 32, Sch 2).
Sec 117	Am 1992 No 112, Sch 1; 2008 No 43, Sch 1 [45]–[47].
Sch 1	Subst 2010 No 95, Sch 2 [5]. Am 2013 No 13, Sch 1 [8].
Sch 2, heading	Subst 2013 No 13, Sch 1 [9].
Sch 2	Am 1987 No 133, Sch 1 (8); 1991 No 13, Sch 1 (11); 1993 No 104, Sch 1 (18); 2008 No 43, Sch 1 [48] [49]; 2010 No 95, Sch 3 [25]; 2012 No 1, Sch 2 [11] [12]; 2012 No 99, Sch 1 [3] [4]; 2013 No 13, Sch 1 [10].



Commonwealth Electoral Act 1918

No. 27, 1918 as amended

Compilation start date: 29 March 2013

Includes amendments up to: Act No. 26, 2013

Prepared by the Office of Parliamentary Counsel, Canberra

Division 4—Disclosure of donations

303 Interpretation

- (1) In this Division, unless the contrary intention appears:

by-election means an election of a member of the House of Representatives that is not part of a general election.

election means a general election or an election of Senators for a State or Territory.

- (2) A reference in this Division to a gift made to or received by a group shall be read as a reference to a gift made to or received by a member of the group for the benefit of all of the members of the group.
- (3) A reference in this Division to a gift made to or received by a candidate shall be read as not including a reference to a gift made to or received by the candidate for the benefit of a group of which the candidate is a member.

304 Disclosure of gifts

- (2) The agent of each person (including a member of a group) who was a candidate in an election or by-election shall, within 15 weeks after the polling day in the election, furnish to the Electoral Commission a return, in an approved form, setting out the total amount or value of all gifts, the number of persons who made gifts, and the relevant details of each gift, received by the person during the disclosure period for the election.
- (3) Subject to subsection (3A), the agent of each group shall, within 15 weeks after the polling day in the election in relation to which the members of the group had their names grouped in the ballot papers, furnish to the Electoral Commission a return, in an approved form, setting out the total amount or value of all gifts, the number of persons who made gifts, and the relevant details of each gift, received by the group during the disclosure period for the election.
- (3A) In the case of a group all of whose members were endorsed by the same registered political party, a gift received by the group shall be taken to have been received:

Section 304

- (a) if the party has 2 or more State branches—by the relevant State branch of the party; and
 - (b) in any other case—by the party.
- (4) For the purposes of this section, a reference to the relevant details, in relation to a gift, shall be read as a reference to the amount or value of the gift, the date on which the gift was made and:
- (a) in the case of a gift made on behalf of the members of an unincorporated association, other than a registered industrial organisation:
 - (i) the name of the association; and
 - (ii) the names and addresses of the members of the executive committee (however described) of the association;
 - (b) in the case of a gift purportedly made out of a trust fund or out of the funds of a foundation:
 - (i) the names and addresses of the trustees of the fund or of the funds of the foundation; and
 - (ii) the title or other description of the trust fund or the name of the foundation, as the case requires; and
 - (c) in any other case—the name and address of the person who made the gift.
- (5) Notwithstanding subsections (2) and (3), the agent of a candidate or group is not required, in a return under subsection (2) or (3), as the case may be, to set out the relevant details of a gift if:
- (b) in the case of a gift made to a candidate (including a member of a group):
 - (i) the gift was made in a private capacity to the candidate for his or her personal use and the candidate has not used, and will not use, the gift solely or substantially for a purpose related to an election or a by-election; or
 - (ii) the amount or value of the gift is \$10,000 or less; or
 - (c) in the case of a gift made to a group—the amount or value of the gift is \$10,000 or less.

Note: The dollar amounts mentioned in this subsection are indexed under section 321A.

- (6) Subparagraph (5)(b)(ii) or paragraph (5)(c) does not apply in relation to a return under subsection (2) or (3), as the case may be, in relation to a gift made by a person if:
-

- (b) in the case of a gift made to a candidate (including a member of a group)—the sum of the amount or value of that gift and of all other gifts (not being gifts of the kind referred to in subparagraph (5)(b)(i)) made by that person to that candidate during the period to which the return relates exceeds \$10,000; or
- (c) in the case of a gift made to a group—the sum of the amount or value of that gift and of all other gifts made by that person to that group during the period to which the return relates exceeds \$10,000.

Note: The dollar amounts mentioned in this subsection are indexed under section 321A.

- (8) Notwithstanding subsection (2), the agent of a person is not required, in a return under subsection (2), to set out the total amount or value of, or the number of persons who made, gifts of the kind referred to in subparagraph (5)(b)(i).

305A Gifts to candidates etc.

- (1) A person must provide a return in accordance with this section if:
 - (a) the person makes a gift or gifts, during the disclosure period in relation to an election, to any candidate in the election or a member of a group; and
 - (b) the total amount or value of the gift or gifts was:
 - (i) equal to or more than the amount prescribed for the purposes of this paragraph; or
 - (ii) if no amount is prescribed—more than \$10,000; and
 - (c) at the time the person makes the gift or gifts the person is not:
 - (i) a registered political party; or
 - (ii) a State branch of a registered political party; or
 - (iii) an associated entity; or
 - (iv) a candidate in an election; or
 - (v) a member of a group.

Note: The dollar amount mentioned in this subsection is indexed under section 321A.

- (1A) A person must provide a return in accordance with this section if:
 - (a) the person makes a gift or gifts, during the disclosure period in relation to an election, to any person or body (whether

Part XX Election funding and financial disclosure

Division 4 Disclosure of donations

Section 305A

incorporated or not) specified, by legislative instrument, by the Electoral Commission; and

- (b) the total amount or value of the gift or gifts was:
 - (i) equal to or more than the amount prescribed for the purposes of this paragraph; or
 - (ii) if no amount is prescribed—more than \$10,000; and
- (c) at the time the person makes the gift or gifts the person is not:
 - (i) a registered political party; or
 - (ii) a State branch of a registered political party; or
 - (iii) an associated entity; or
 - (iv) a candidate in an election; or
 - (v) a member of a group.

Note: The dollar amount mentioned in this subsection is indexed under section 321A.

- (2) The person must provide to the Electoral Commission a return setting out the required details of:
 - (a) all gifts covered by subsections (1) and (1A) made during the disclosure period; and
 - (b) all gifts of more than \$10,000, received by the person at any time, that the person used during the period (either wholly or partly):
 - (i) to enable the person to make the gifts mentioned in paragraph (a); or
 - (ii) to reimburse the person for making such gifts.

Note: The dollar amount mentioned in this subsection is indexed under section 321A.

- (2A) For the purposes of subsection (2), 2 or more gifts made, during the disclosure period in relation to an election, by the same person to another person are taken to be one gift.

- (3) The return must:
 - (a) be provided to the Electoral Commission before the end of 15 weeks after the polling day for the election; and
 - (b) be in the approved form.
- (4) For the purposes of this section, the required details of a gift are its amount or value, the date on which it was made and:

- (a) if the gift was made to an unincorporated association, other than a registered industrial organisation:
 - (i) the name of the association; and
 - (ii) the names and addresses of the members of the executive committee (however described) of the association; or
 - (b) if the gift was purportedly made to a trust fund or paid into the funds of a foundation:
 - (i) the names and addresses of the trustees of the fund or of the foundation; and
 - (ii) the title or other description of the trust fund, or the name of the foundation, as the case requires; or
 - (c) in any other case—the name and address of the person or organisation.
- (5) This section does not apply to a gift made before 1 July 1992.

305B Gifts to political parties

- (1) If, in a financial year, a person makes gifts totalling more than \$10,000 to:
- (a) the same registered political party; or
 - (b) the same State branch of a registered political party;
- the person must furnish a return to the Electoral Commission within 20 weeks after the end of the financial year, covering all the gifts that the person made to that political party or branch during the financial year.
- Note: The dollar amount mentioned in this subsection is indexed under section 321A.
- (2) If a person makes a gift to any person or body with the intention of benefiting a particular registered political party or State branch of a registered political party, the person is taken for the purposes of subsection (1) to have made that gift directly to that registered political party or branch.
- (3) For each gift, the return must set out the following:
- (a) the amount of the gift;
 - (b) the date on which it was made;
 - (c) the name and address of the registered political party or branch.

Section 306

- (3A) The return must also set out the relevant details of all gifts received by the person at any time, being gifts used to make gifts the whole or part of which were used to make gifts totalling more than \$10,000 in a financial year to the same registered political party or the same State branch of a registered political party and the amount or value of each of which exceeds \$10,000.

Note: The dollar amounts mentioned in this subsection are indexed under section 321A.

- (3B) Relevant details for the purpose of subsection (3A), in relation to a gift, are:
- (a) the amount or value of the gift; and
 - (b) the date on which the gift was made; and
 - (c) in the case of a gift made on behalf of the members of an unincorporated association, other than a registered industrial organisation:
 - (i) the name of the association; and
 - (ii) the names and addresses of the members of the executive committee (however described) of the association; and
 - (d) in the case of a gift purportedly made out of a trust fund or out of the funds of a foundation:
 - (i) the names and addresses of the trustees of the fund or of the funds of the foundation; and
 - (ii) the title or other description of the trust fund or the name of the foundation, as the case requires; and
 - (e) in any other case—the name and address of the person who made the gift.
- (4) The return must be in the approved form.
- (5) This section does not apply to gifts made by any of the following:
- (a) a registered political party;
 - (b) a State branch of a registered political party;
 - (c) an associated entity;
 - (d) a candidate in an election;
 - (e) a member of a group.

306 Certain gifts not to be received

- (1) It is unlawful for:
-

- (a) a political party; or
- (b) a State branch of a political party; or
- (c) a person acting on behalf of a political party or a State branch of a political party;

to receive a gift made to or for the benefit of the party or branch by another person, being a gift the amount or value of which exceeds \$10,000, unless:

- (d) the name and address of the person making the gift are known to the person receiving the gift; or
- (e) at the time when the gift is made:
 - (i) the person making the gift gives to the person receiving the gift his or her name and address; and
 - (ii) the person receiving the gift has no grounds to believe that the name and address so given are not the true name and address of the person making the gift.

Note: The dollar amount mentioned in this subsection is indexed under section 321A.

(2) It is unlawful for:

- (a) a candidate; or
- (b) a member of a group; or
- (c) a person acting on behalf of a candidate or group;

to receive a gift made to or for the benefit of the candidate or the group, as the case may be, being a gift the amount or value of which exceeds \$10,000, unless:

- (d) the name and address of the person making the gift are known to the person receiving the gift; or
- (e) at the time when the gift is made:
 - (i) the person making the gift gives to the person receiving the gift his or her name and address; and
 - (ii) the person receiving the gift has no grounds to believe that the name and address so given are not the true name and address of the person making the gift.

Note: The dollar amount mentioned in this subsection is indexed under section 321A.

(2A) The references in subsections (1) and (2) to a gift made by a person includes a reference to a gift made on behalf of the members of an unincorporated association.

Section 306

- (2B) A reference in subsection (1) or (2) to the name and address of a person making a gift is:
- (a) in the case of a gift made on behalf of the members of an unincorporated association, other than a registered industrial organisation—a reference to:
 - (i) the name of the association; and
 - (ii) the names and addresses of the members of the executive committee (however described) of the association; and
 - (b) in the case of a gift purportedly made out of a trust fund or out of the funds of a foundation—a reference to:
 - (i) the names and addresses of the trustees of the fund or of the funds of the foundation; and
 - (ii) the title or other description of the trust fund or the name of the foundation, as the case requires.
- (2C) For the purpose of subsection (2), a person who is a candidate in an election shall be taken to remain a candidate for 30 days after the polling day in the election.
- (2D) For the purpose of subsection (2), persons who constituted a group in an election shall be taken to continue to constitute the same group for 30 days after the polling day in the election.
- (3) For the purposes of this section, 2 or more gifts made by the same person to or for the benefit of a political party, a State branch of a political party, a candidate or a group shall be deemed to be one gift.
- (5) Where a person receives a gift that, by virtue of this section, it is unlawful for the person to receive, an amount equal to the amount or value of the gift is payable by that person to the Commonwealth and may be recovered by the Commonwealth as a debt due to the Commonwealth by action, in a court of competent jurisdiction, against:
- (a) in the case of a gift to or for the benefit of a political party or a State branch of a political party:
 - (i) if the party or branch, as the case may be is a body corporate—the party or branch, as the case may be; or
 - (ii) in any other case—the agent of the party or branch, as the case may be; or

- (b) in any other case—the candidate or a member of the group or the agent of the candidate or of the group, as the case may be.

306A Certain loans not to be received

- (1) It is unlawful for a political party or a State branch of a political party or a person acting on behalf of a political party or a State branch of a political party to receive a loan of more than \$10,000 from a person or entity other than a financial institution unless the loan is made in accordance with subsection (3).

Note: The dollar amount mentioned in this subsection is indexed under section 321A.

- (2) It is unlawful for a candidate or a member of a group or a person acting on behalf of a candidate or group to receive a loan of more than \$10,000 from a person or entity other than a financial institution unless the loan is made in accordance with subsection (3).

Note: The dollar amount mentioned in this subsection is indexed under section 321A.

- (3) The receiver of the loan must keep a record of the following:
- (a) the terms and conditions of the loan;
 - (b) if the loan was received from a registered industrial organisation other than a financial institution:
 - (i) the name of the organisation; and
 - (ii) the names and addresses of the members of the executive committee (however described) of the organisation;
 - (c) if the loan was received from an unincorporated association:
 - (i) the name of the organisation or association; and
 - (ii) the names and addresses of the members of the executive committee (however described) of the association or organisation;
 - (d) if the loan was paid out of a trust fund or out of the funds of a foundation:
 - (i) the names and addresses of the trustees of the fund or of the foundation; and
 - (ii) the title or other description of the trust fund, or the name of the foundation, as the case requires; or

Section 306A

- (e) in any other case—the name and address of the person or organisation.
- (4) For the purpose of subsection (2), a person who is a candidate in an election is taken to remain a candidate for 30 days after the polling day in the election.
- (5) For the purpose of subsection (2), persons who constituted a group in an election are taken to continue to constitute the same group for 30 days after the polling day in the election.
- (6) Where a person receives a loan that, by virtue of this section, it is unlawful for the person to receive, an amount equal to the amount or value of the loan is payable by that person to the Commonwealth and may be recovered by the Commonwealth as a debt due to the Commonwealth by action, in a court of competent jurisdiction, against:
 - (a) in the case of a loan to or for the benefit of a political party or a State branch of a political party:
 - (i) if the party or branch, as the case may be, is a body corporate—the party or branch, as the case may be; or
 - (ii) in any other case—the agent of the party or branch, as the case may be; or
 - (b) in any other case—the candidate or a member of the group or the agent of the candidate or of the group, as the case may be.
- (7) For the purposes of this section, if credit is provided on a credit card in respect of card transactions, the credit is to be treated as a separate loan for each transaction.
- (8) In this section:
 - credit card* means:
 - (a) any article of a kind commonly known as a credit card; or
 - (b) any similar article intended for use in obtaining cash, goods or services on credit;
 - and includes any article of a kind that persons carrying on business commonly issue to their customers or prospective customers for use in obtaining goods or services from those persons on credit.
 - financial institution* means an entity which carries on a business that consists of, or includes, the provision of financial services or financial products and which is:

- (a) a bank; or
- (b) a credit union; or
- (c) a building society; or
- (d) any other entity registered under the Australian Financial Institutions Commission Codes as a special service provider; or

Note: See section 111AZB of the *Corporations Act 2001* for the Australian Financial Institutions Commission Codes.

- (e) an entity prescribed by the regulations for the purposes of this paragraph.

loan means any of the following:

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

306B Repayment of gifts where corporations wound up etc.

Where:

- (a) a political party, a candidate or a member of a group receives a gift from a corporation being a gift the amount of which exceeds \$10,000; and
- (b) the corporation within a period concluding one year after making the gift has been wound up in insolvency or wound up by the court on other grounds;

an amount equal to the amount of the gift is payable by the political party to the liquidator and may be recovered by the liquidator as a debt due to the liquidator by action, in a court of competent jurisdiction against:

- (c) in the case of a gift to or for the benefit of a political party or a State branch of a political party:
 - (i) if the party or branch, as the case may be, is a body corporate—the party or branch, as the case may be; or
 - (ii) in any other case—the agent of the party or branch, as the case may be; or

Part XX Election funding and financial disclosure
Division 4 Disclosure of donations

Section 307

(d) in any other case—the candidate or a member of the group or the agent of the candidate or of the group, as the case may be.

- Note 1: The gift received by the liquidator is an asset of the corporation to be distributed under the provisions of the *Corporations Act 2001*.
- Note 2: This section applies to gifts made after the commencement of this provision.
- Note 3: The dollar amount mentioned in this section is indexed under section 321A.

307 Nil returns

- (1) Where no details are required to be included in a return under this Division in respect of a candidate, the return shall nevertheless be lodged and shall include a statement to the effect that no gifts of a kind required to be disclosed were received.
- (2) Where no details are required to be included in a return under this Division in respect of a group, the return shall nevertheless be lodged and shall include a statement to the effect that no gifts were received.

Division 5—Disclosure of electoral expenditure

308 Interpretation

- (1) In this Division, *electoral expenditure*, in relation to an election, means expenditure incurred (whether or not incurred during the election period) on:
 - (a) the broadcasting, during the election period, of an advertisement relating to the election; or
 - (b) the publishing in a journal, during the election period, of an advertisement relating to the election; or
 - (c) the display, during the election period, at a theatre or other place of entertainment, of an advertisement relating to the election; or
 - (d) the production of an advertisement relating to the election, being an advertisement that is broadcast, published or displayed as mentioned in paragraph (a), (b) or (c); or
 - (e) the production of any material (not being material referred to in paragraph (a), (b) or (c)) that is required under section 328, 328A or 328B to include the name and address of the author of the material or of the person authorizing the material and that is used during the election period; or
 - (f) the production and distribution of electoral matter that is addressed to particular persons or organisations and is distributed during the election period; or
 - (g) the carrying out, during the election period, of an opinion poll, or other research, relating to the election.
 - (2) For the purposes of this Division, electoral expenditure incurred by or with the authority of a division of a State branch of a political party shall be deemed to have been incurred by that State branch.
 - (3) A reference in this Division to a participant in an election shall be read as a reference to:
 - (a) a political party, a State branch of a political party, a division of a State branch of a political party or a candidate; or
 - (b) a person (not being a political party, a State branch of a political party, a division of a State branch of a political party or a candidate) by whom or with the authority of whom electoral expenditure in relation to an election was incurred.
-

Section 309

309 Returns of electoral expenditure

- (1) This section does not apply to electoral expenditure incurred by or with the authority of a registered political party or a State branch of a registered political party.
- (1A) Where electoral expenditure in relation to an election is incurred by or with the authority of members of a group all the members of which are endorsed by the same registered political party, this section applies as if the expenditure had been incurred by or with the authority of:
 - (a) if the party has 2 or more State branches—the relevant State branch of the party; and
 - (b) in any other case—the party.
- (2) The agent of each person who was a candidate in an election (not being a member of a group) shall, before the expiration of 15 weeks after the polling day in the election, furnish to the Electoral Commission a return, in an approved form, setting out details of all electoral expenditure in relation to the election incurred by or with the authority of the candidate.
- (3) The agent of each group shall, before the expiration of 15 weeks after the polling day in an election in relation to which the members of the group have their names grouped in the ballot papers, furnish to the Electoral Commission a return, in an approved form, setting out details of all electoral expenditure in relation to the election incurred by or with the authority of members of the group.

311A Annual returns of income and expenditure of Commonwealth Departments

- (1) Subject to this section, the principal officer of each Commonwealth Department must attach a statement to its annual report setting out particulars of all amounts paid by, or on behalf of, the Commonwealth Department during the financial year to:
 - (a) advertising agencies;
 - (b) market research organisations;
 - (c) polling organisations;
 - (d) direct mail organisations; and

(e) media advertising organisations;
and the persons or organisations to whom those amounts were paid.

- (2) Nothing in subsection (1) requires particulars of a payment made by a Commonwealth Department in a financial year to be included in a return if the value of the payment is \$10,000 or less.

Note: The dollar amount mentioned in this subsection is indexed under section 321A.

- (3) The first return under this section need only contain particulars in relation to the period starting on the commencement of this section and ending on the next 30 June.

- (4) In this section:

Commonwealth Department means:

- (a) a Department of State of the Commonwealth; or
- (b) a Department of the Parliament established under the *Parliamentary Service Act 1999*; or
- (c) an Agency (within the meaning of the *Public Service Act 1999*).

principal officer means:

- (a) in relation to a Department—the person holding, or performing the duties of, the office of Secretary of the Department; and
- (b) in relation to an Agency—the Agency Head (within the meaning of the *Public Service Act 1999*) of the Agency.

313 Nil returns

- (1) Where no electoral expenditure in relation to an election was incurred by or with the authority of a particular candidate or the members of a particular group, a return under this Division in respect of the candidate or group shall nevertheless be lodged and shall include a statement to the effect that no expenditure of that kind was incurred by or with the authority of the candidate or the members of the group.
- (2) If no electoral expenditure in relation to an election was incurred by or with the authority of a particular registered political party or State branch of a registered political party that endorsed a

Section 314

candidate in the election, a return under this Division in respect of the party or branch must nevertheless be lodged and must include a statement to the effect that no electoral expenditure was incurred in relation to the election by or with the authority of the party or branch.

314 Two or more elections on the same day

(1) Where:

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

the person may, in lieu of furnishing those returns, furnish one return, in an approved form, setting out the particulars that the person would have been required to set out in those returns.

(2) Where:

- (a) a return is furnished by a person pursuant to subsection (1); and
 - (b) particular electoral expenditure details of which are required to be set out in the return relates to more than one election;
- it is sufficient compliance with this Division if the return sets out details of the expenditure without showing the extent to which it relates to any particular election.

Division 5A—Annual returns by registered political parties and other persons

314AA Interpretation

In this Division:

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

314AB Annual returns by registered political parties

- (1) Subject to this Division, the agent of each registered political party and of each State branch of each registered political party must, within 16 weeks after the end of each financial year beginning on or after 1 July 1992, furnish to the Electoral Commission a return:
 - (a) that is in an approved form; or
 - (b) that is constituted by the audited annual accounts of the registered political party or the State branch, in a form that is approved by the Electoral Commission.
- (2) A return under paragraph (1)(a) or (1)(b) must set out the following:
 - (a) the total amount received by, or on behalf of, the party during the financial year, together with the details required by section 314AC;
 - (b) the total amount paid by, or on behalf of, the party during the financial year;
 - (c) the total outstanding amount, as at the end of the financial year, of all debts incurred by, or on behalf of, the party, together with the details required by section 314AE.

314AC Amounts received

- (1) If the sum of all amounts received by, or on behalf of, the party from a person or organisation during a financial year is more than \$10,000, the return must include the particulars of that sum.

Note: The dollar amount mentioned in this subsection is indexed under section 321A.

- (2) In calculating the sum, an amount of \$10,000 or less need not be counted.

Part XX Election funding and financial disclosure

Division 5A Annual returns by registered political parties and other persons

Section 314AE

Note: The dollar amount mentioned in this subsection is indexed under section 321A.

- (3) The particulars of the sum required to be furnished under subsection (1) are the amount of the sum and:
- (a) if the sum was received from an unincorporated association, other than a registered industrial organisation:
 - (i) the name of the association; and
 - (ii) the names and addresses of the members of the executive committee (however described) of the association; or
 - (b) if the sum was purportedly paid out of a trust fund or out of the funds of a foundation:
 - (i) the names and addresses of the trustees of the fund or of the foundation; and
 - (ii) the title or other description of the trust fund, or the name of the foundation, as the case requires; or
 - (ba) if the sum was received as a result of a loan—the information required to be kept under subsection 306A(3), or the name of the financial institution, as the case requires; or
 - (c) in any other case—the name and address of the person or organisation.

314AE Outstanding amounts

- (1) If the sum of all outstanding debts incurred by, or on behalf of, the party to a person or an organisation during a financial year is more than \$10,000, the return must include the particulars of that sum.

Note: The dollar amount mentioned in this subsection is indexed under section 321A.

- (2) The particulars of a sum required to be furnished under subsection (1) are the amount of the sum and:
- (a) if the sum was owed to an unincorporated association, other than a registered industrial organisation:
 - (i) the name of the association; and
 - (ii) the names and addresses of the members of the executive committee (however described) of the association; or
 - (b) if the sum was purportedly incurred as a debt to a trust fund or to a foundation:

- (i) the names and addresses of the trustees of the fund or of the foundation; and
- (ii) the title or other description of the trust fund, or the name of the foundation, as the case requires; or
- (c) in any other case—the name and address of the person or organisation.

314AEA Annual returns by associated entities

- (1) If an entity is an associated entity at any time during a financial year, the entity's financial controller must furnish a return to the Electoral Commission, in the approved form, within 16 weeks after the end of the financial year, setting out:
 - (a) the total amount received by, or on behalf of, the entity during the financial year, together with the details required by section 314AC; and
 - (b) the total amount paid by, or on behalf of, the entity during the financial year; and
 - (c) if the entity is an associated entity at the end of the financial year—the total outstanding amount, as at the end of the financial year, of all debts incurred by or on behalf of the entity, together with the details required by section 314AE.
- (2) Amounts received or paid at a time when the entity was not an associated entity are not to be counted for the purposes of paragraphs (1)(a) and (b).
- (3) If any amount required to be set out under paragraph (1)(b):
 - (a) was paid to or for the benefit of one or more registered political parties; and
 - (b) was paid out of funds generated from capital of the associated entity;the return must also set out the following details about each person who contributed to that capital after the commencement of this section:
 - (c) the name and address of the person;
 - (d) the total amount of the person's contributions to that capital, up to the end of the financial year.
- (4) Subsection (3) does not apply to contributions that have been set out in a previous return under this section.

Section 314AEB

- (5) Sections 314AC and 314AE apply for the purposes of paragraphs (1)(a), (b) and (c) of this section to a return for an associated entity in the same way as they apply for the purposes of paragraphs 314AB(2)(a), (b) and (c) to a return for a registered political party.

314AEB Annual returns relating to political expenditure

- (1) A person must provide a return for a financial year in accordance with this section if:
- (a) the person incurred expenditure for any of the following purposes during the year, by or with his or her own authority:
 - (i) the public expression of views on a political party, a candidate in an election or a member of the House of Representatives or the Senate by any means;
 - (ii) the public expression of views on an issue in an election by any means;
 - (iii) the printing, production, publication or distribution of any material (not being material referred to in subparagraph (i) or (ii)) that is required under section 328, 328A or 328B to include a name, address or place of business;
 - (iv) the broadcast of political matter in relation to which particulars are required to be announced under subclause 4(2) of Schedule 2 to the *Broadcasting Services Act 1992*;
 - (v) the carrying out of an opinion poll, or other research, relating to an election or the voting intentions of electors; and
 - (b) the amount of the expenditure incurred was more than \$10,000; and
 - (c) at the time the person gave the authority the person was not:
 - (i) a registered political party; or
 - (ii) a State branch of a registered political party; or
 - (iii) the Commonwealth (including a Department of the Commonwealth, an Executive Agency or a Statutory Agency (within the meaning of the *Public Service Act 1999*)); or
 - (iiia) a member of the House of Representatives or the Senate; or

- (iv) a candidate in an election; or
- (v) a member of a group.

Note: The dollar amount mentioned in this subsection is indexed under section 321A.

- (2) The person must provide to the Electoral Commission a return for the financial year setting out details of the expenditure incurred.
- (3) The return must:
 - (a) be provided before the end of 20 weeks after the end of the financial year; and
 - (b) be in the approved form.

314AEC Annual returns relating to gifts received for political expenditure

- (1) A person must provide a return for a financial year in accordance with this section if:
 - (a) the person is required to provide a return for the year under section 314AEB; and
 - (b) the person received a gift or gifts, at any time, that the person used during the year (either wholly or partly):
 - (i) to enable the person to incur expenditure for a purpose mentioned in paragraph 314AEB(1)(a); or
 - (ii) to reimburse the person for incurring expenditure for such a purpose; and
 - (c) the amount of at least one such gift was more than \$10,000.

Note: The dollar amount mentioned in this subsection is indexed under section 321A.

- (2) The person must provide to the Electoral Commission a return for the financial year setting out the following details in respect of each gift of more than \$10,000 that is mentioned in paragraph (1)(b):
 - (a) the amount of the gift;
 - (b) the date on which the gift was made;
 - (c) in the case of a gift made on behalf of the members of an unincorporated association (other than a registered industrial organisation):
 - (i) the name of the association; and

Part XX Election funding and financial disclosure

Division 5A Annual returns by registered political parties and other persons

Section 314AF

- (ii) the names and addresses of the members of the executive committee (however described) of the association;
- (d) in the case of a gift purportedly made out of a trust fund, or out of the funds of a foundation:
 - (i) the names and addresses of the trustees of the fund, or of the funds of the foundation; and
 - (ii) the title or other description of the trust fund, or the name of the foundation, as the case requires;
- (e) in any other case—the name and address of the person who made the gift.

Note: The dollar amount mentioned in this subsection is indexed under section 321A.

- (3) The return must:
 - (a) be provided before the end of 20 weeks after the end of the financial year; and
 - (b) be in the approved form.
- (4) For the purposes of subsection (2), 2 or more gifts made, during the financial year, by the same person to another person are taken to be one gift.

314AF Returns not to include lists of party membership

Returns provided in accordance with this Division are not to include lists of party membership.

314AG Regulations

- (1) The regulations may require greater detail to be provided in returns than is required by this Division.
- (2) Without limiting subsection (1), the regulations may require that the total amounts referred to in section 314AB be broken down in the way specified in the regulations.
- (3) The regulations may reduce the amount of information to be provided in returns under section 314AEA.

Section 327

(e) the order in which the names of candidates nominated for election to the Senate whose names are included in a group in accordance with section 168 appear on a ballot paper; will, in any manner, be influenced or affected.

Penalty: \$5,000 or imprisonment for 2 years, or both.

- (2) A person shall not, with the intention of influencing or affecting:
- (a) any vote of another person;
 - (b) any candidature of another person; or
 - (c) any support of, or opposition to, a candidate, a group of candidates or a political party by another person;
 - (d) the doing of any act or thing by another person the purpose of which is, or the effect of which is likely to be, to influence the preferences set out in the vote of an elector; or
 - (e) the order in which the names of candidates for election to the Senate whose names are included in a group in accordance with section 168 appear on a ballot paper;
- give or confer, or promise or offer to give or confer, any property or benefit of any kind to that other person or to a third person.

Penalty: \$5,000 or imprisonment for 2 years, or both.

- (3) This section does not apply in relation to a declaration of public policy or a promise of public action.

327 Interference with political liberty etc.

- (1) A person shall not hinder or interfere with the free exercise or performance, by any other person, of any political right or duty that is relevant to an election under this Act.

Penalty: \$1,000 or imprisonment for 6 months, or both.

- (2) A person must not discriminate against another person on the ground of the making by the other person of a donation to a political party, to a State branch or a division of a State branch of a political party, to a candidate in an election or by-election or to a group:
- (a) by denying him or her access to membership of any trade union, club or other body;
 - (b) by not allowing him or her to work or to continue to work;

Section 328

- (c) by subjecting him or her to any form of intimidation or coercion;
- (d) by subjecting him or her to any other detriment.

Penalty:

- (a) if the offender is a natural person—\$5,000 or imprisonment for 2 years, or both; or
 - (b) if the offender is a body corporate—\$20,000.
- (3) A law of a State or Territory has no effect to the extent to which the law discriminates against a member of a local government body on the ground that:
- (a) the member has been, is, or is to be, nominated; or
 - (b) the member has been, is, or is to be, declared;
- as a candidate in an election for the House of Representatives or the Senate.
- (4) In subsection (3):

member of a local government body means a member of a local governing body established by or under a law of a State or Territory.

328 Printing and publication of electoral advertisements, notices etc.

- (1) A person shall not print, publish or distribute or cause, permit or authorize to be printed, published or distributed, an electoral advertisement, handbill, pamphlet, poster or notice unless:
 - (a) the name and address of the person who authorized the advertisement, handbill, pamphlet, poster or notice appears at the end thereof; and
 - (b) in the case of an electoral advertisement, handbill, pamphlet, poster or notice that is printed otherwise than in a newspaper—the name and place of business of the printer appears at the end thereof.
- (1A) A person must not produce, publish or distribute or cause, permit or authorise to be produced, published or distributed an electoral video recording unless the name and address of the person who authorised the video recording appears at the end of it.



The Constitution

Printed on 1 January 2012

together with

**Proclamation Declaring the
Establishment of the Commonwealth**

**Letters Patent Relating to the
Office of Governor-General**

Statute of Westminster Adoption Act 1942

Australia Act 1986

with

Overview, Notes and Index

by the

Attorney-General's Department
and
Australian Government Solicitor

Prepared by the Office of Legislative Drafting and Publishing,
Attorney-General's Department, Canberra

Part II—The Senate

7 The Senate

The Senate shall be composed of senators for each State, directly chosen by the people of the State, voting, until the Parliament otherwise provides, as one electorate.

But until the Parliament of the Commonwealth otherwise provides, the Parliament of the State of Queensland, if that State be an Original State, may make laws dividing the State into divisions and determining the number of senators to be chosen for each division, and in the absence of such provision the State shall be one electorate.

Until the Parliament otherwise provides there shall be six senators for each Original State. The Parliament may make laws increasing or diminishing the number of senators for each State,⁵ but so that equal representation of the several Original States shall be maintained and that no Original State shall have less than six senators.

The senators shall be chosen for a term of six years, and the names of the senators chosen for each State shall be certified by the Governor to the Governor-General.

8 Qualification of electors

The qualification of electors of senators shall be in each State that which is prescribed by this Constitution, or by the Parliament, as the qualification for electors of members of the House of Representatives; but in the choosing of senators each elector shall vote only once.

9 Method of election of senators

The Parliament of the Commonwealth may make laws prescribing the method of choosing senators, but so that the method shall be uniform for all the States. Subject to any such law, the Parliament

of each State may make laws⁶ prescribing the method of choosing the senators for that State.

Times and places

The Parliament of a State may make laws⁶ for determining the times and places of elections of senators for the State.

10 Application of State laws

Until the Parliament otherwise provides, but subject to this Constitution, the laws in force in each State, for the time being, relating to elections for the more numerous House of the Parliament of the State shall, as nearly as practicable, apply to elections of senators for the State.

11 Failure to choose senators

The Senate may proceed to the despatch of business, notwithstanding the failure of any State to provide for its representation in the Senate.

12 Issue of writs

The Governor of any State may cause writs to be issued for elections of senators for the State. In case of the dissolution of the Senate the writs shall be issued within ten days from the proclamation of such dissolution.

13 Rotation of senators⁷

As soon as may be after the Senate first meets, and after each first meeting of the Senate following a dissolution thereof, the Senate shall divide the senators chosen for each State into two classes, as nearly equal in number as practicable; and the places of the senators of the first class shall become vacant at the expiration of three years, and the places of those of the second class at the expiration of six years, from the beginning of their term of service; and afterwards the places of senators shall become vacant at the expiration of six years from the beginning of their term of service.

The election to fill vacant places shall be made within one year before the places are to become vacant.

Part III—The House of Representatives

24 Constitution of House of Representatives

The House of Representatives shall be composed of members directly chosen by the people of the Commonwealth, and the number of such members shall be, as nearly as practicable, twice the number of the senators.

The number of members chosen in the several States shall be in proportion to the respective numbers of their people, and shall, until the Parliament otherwise provides, be determined, whenever necessary, in the following manner:

- (i) a quota shall be ascertained by dividing the number of the people of the Commonwealth, as shown by the latest statistics of the Commonwealth, by twice the number of the senators;
- (ii) the number of members to be chosen in each State shall be determined by dividing the number of the people of the State, as shown by the latest statistics of the Commonwealth, by the quota; and if on such division there is a remainder greater than one-half of the quota, one more member shall be chosen in the State.

But notwithstanding anything in this section, five members at least shall be chosen in each Original State.

25 Provisions as to races disqualified from voting

For the purposes of the last section, if by the law of any State all persons of any race are disqualified from voting at elections for the more numerous House of the Parliament of the State, then, in reckoning the number of the people of the State or of the Commonwealth, persons of that race resident in that State shall not be counted.

26 Representatives in first Parliament

Notwithstanding anything in section twenty-four, the number of members to be chosen in each State at the first election shall be as follows:

New South Wales	twenty-three;
Victoria	twenty;
Queensland	eight;
South Australia	six;
Tasmania.....	five;

Provided that if Western Australia is an Original State, the numbers shall be as follows:

New South Wales	twenty-six;
Victoria	twenty-three;
Queensland	nine;
South Australia	seven;
Western Australia	five;
Tasmania.....	five.

27 Alteration of number of members

Subject to this Constitution, the Parliament may make laws for increasing or diminishing the number of the members of the House of Representatives.

28 Duration of House of Representatives

Every House of Representatives shall continue for three years from the first meeting of the House, and no longer, but may be sooner dissolved by the Governor-General.

29 Electoral divisions

Until the Parliament of the Commonwealth otherwise provides, the Parliament of any State may make laws¹¹ for determining the divisions in each State for which members of the House of Representatives may be chosen, and the number of members to be chosen for each division. A division shall not be formed out of parts of different States.

Section 30

In the absence of other provision, each State shall be one electorate.

30 Qualification of electors

Until the Parliament otherwise provides, the qualification of electors of members of the House of Representatives shall be in each State that which is prescribed by the law of the State as the qualification of electors of the more numerous House of Parliament of the State; but in the choosing of members each elector shall vote only once.

31 Application of State laws

Until the Parliament otherwise provides, but subject to this Constitution, the laws in force in each State for the time being relating to elections for the more numerous House of the Parliament of the State shall, as nearly as practicable, apply to elections in the State of members of the House of Representatives.

32 Writs for general election

The Governor-General in Council may cause writs to be issued for general elections of members of the House of Representatives.

After the first general election, the writs shall be issued within ten days from the expiry of a House of Representatives or from the proclamation of a dissolution thereof.

33 Writs for vacancies

Whenever a vacancy happens in the House of Representatives, the Speaker shall issue his writ for the election of a new member, or if there is no Speaker or if he is absent from the Commonwealth the Governor-General in Council may issue the writ.

34 Qualifications of members

Until the Parliament otherwise provides, the qualifications of a member of the House of Representatives shall be as follows:

Part V—Powers of the Parliament

51 Legislative powers of the Parliament

The Parliament shall, subject to this Constitution, have power¹² to make laws for the peace, order, and good government of the Commonwealth with respect to:

- (i) trade and commerce with other countries, and among the States;
- (ii) taxation; but so as not to discriminate between States or parts of States;
- (iii) bounties on the production or export of goods, but so that such bounties shall be uniform throughout the Commonwealth;
- (iv) borrowing money on the public credit of the Commonwealth;
- (v) postal, telegraphic, telephonic, and other like services;
- (vi) the naval and military defence of the Commonwealth and of the several States, and the control of the forces to execute and maintain the laws of the Commonwealth;
- (vii) lighthouses, lightships, beacons and buoys;
- (viii) astronomical and meteorological observations;
- (ix) quarantine;
- (x) fisheries in Australian waters beyond territorial limits;
- (xi) census and statistics;
- (xii) currency, coinage, and legal tender;
- (xiii) banking, other than State banking; also State banking extending beyond the limits of the State concerned, the incorporation of banks, and the issue of paper money;
- (xiv) insurance, other than State insurance; also State insurance extending beyond the limits of the State concerned;
- (xv) weights and measures;
- (xvi) bills of exchange and promissory notes;
- (xvii) bankruptcy and insolvency;
- (xviii) copyrights, patents of inventions and designs, and trade marks;
- (xix) naturalization and aliens;

- (xx) foreign corporations, and trading or financial corporations formed within the limits of the Commonwealth;
- (xxi) marriage;
- (xxii) divorce and matrimonial causes; and in relation thereto, parental rights, and the custody and guardianship of infants;
- (xxiii) invalid and old-age pensions;
- (xxiiiA) the provision of maternity allowances, widows' pensions, child endowment, unemployment, pharmaceutical, sickness and hospital benefits, medical and dental services (but not so as to authorize any form of civil conscription), benefits to students and family allowances;¹³
- (xxiv) the service and execution throughout the Commonwealth of the civil and criminal process and the judgments of the courts of the States;
- (xxv) the recognition throughout the Commonwealth of the laws, the public Acts and records, and the judicial proceedings of the States;
- (xxvi) the people of any race for whom it is deemed necessary to make special laws;¹⁴
- (xxvii) immigration and emigration;
- (xxviii) the influx of criminals;
- (xxix) external affairs;
- (xxx) the relations of the Commonwealth with the islands of the Pacific;
- (xxxi) the acquisition of property on just terms from any State or person for any purpose in respect of which the Parliament has power to make laws;
- (xxxii) the control of railways with respect to transport for the naval and military purposes of the Commonwealth;
- (xxxiii) the acquisition, with the consent of a State, of any railways of the State on terms arranged between the Commonwealth and the State;
- (xxxiv) railway construction and extension in any State with the consent of that State;
- (xxxv) conciliation and arbitration for the prevention and settlement of industrial disputes extending beyond the limits of any one State;
- (xxxvi) matters in respect of which this Constitution makes provision until the Parliament otherwise provides;

Section 52

- (xxxvii) matters referred to the Parliament of the Commonwealth by the Parliament or Parliaments of any State or States,¹⁵ but so that the law shall extend only to States by whose Parliaments the matter is referred, or which afterwards adopt the law;
- (xxxviii) the exercise within the Commonwealth, at the request or with the concurrence of the Parliaments of all the States directly concerned, of any power which can at the establishment of this Constitution be exercised only by the Parliament of the United Kingdom or by the Federal Council of Australasia;
- (xxxix) matters incidental to the execution of any power vested by this Constitution in the Parliament or in either House thereof, or in the Government of the Commonwealth, or in the Federal Judicature, or in any department or officer of the Commonwealth.

52 Exclusive powers of the Parliament

The Parliament shall, subject to this Constitution, have exclusive power to make laws for the peace, order, and good government of the Commonwealth with respect to:

- (i) the seat of government of the Commonwealth, and all places acquired by the Commonwealth for public purposes;
- (ii) matters relating to any department of the public service the control of which is by this Constitution transferred to the Executive Government of the Commonwealth;
- (iii) other matters declared by this Constitution to be within the exclusive power of the Parliament.

53 Powers of the Houses in respect of legislation

Proposed laws appropriating revenue or moneys, or imposing taxation, shall not originate in the Senate. But a proposed law shall not be taken to appropriate revenue or moneys, or to impose taxation, by reason only of its containing provisions for the imposition or appropriation of fines or other pecuniary penalties, or for the demand or payment or appropriation of fees for licences, or fees for services under the proposed law.

The Senate may not amend proposed laws imposing taxation, or proposed laws appropriating revenue or moneys for the ordinary annual services of the Government.



New South Wales

Constitution Act 1902 No 32

Status information

Currency of version

Current version for 5 June 2012 to date (generated 27 June 2013 at 18:34).

Legislation on the NSW legislation website is usually updated within 3 working days.

Provisions in force

All the provisions displayed in this version of the legislation have commenced. For commencement and other details see the Historical notes.

Does not include amendments by:

Constitution Amendment (Governor's Salary) Act 2003 No 66 (not commenced — to commence on the day on which the first person to be appointed to the office of Governor after the date of assent to that Act is so appointed)

Government Sector Employment Act 2013 No 40 (not commenced)

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of New South Wales in Parliament assembled, with the approval of the electors, in accordance with the provisions of section 5B of the *Constitution Act 1902*, as amended by subsequent Acts, and by the authority of the same, as follows:

Any alteration of a Bill necessary to give effect to this subsection shall not be deemed to be an amendment of the Bill.

6 (Repealed)

7 Power to alter constitution of Legislative Council or Legislative Assembly

The Legislature may, by any Act, alter the laws in force for the time being under this Act or otherwise concerning the Legislative Council or Legislative Assembly.

7A Referendum for Bills with respect to Legislative Council and certain other matters

- (1) The Legislative Council shall not be abolished or dissolved, nor shall:
 - (a) its powers be altered,
 - (b) section 11A, Division 2 of Part 3 (sections 22G, 22H, 22I and 22J excepted), the Sixth Schedule or this section be expressly or impliedly repealed or amended,
 - (c) any provision with respect to the persons capable of being elected or of sitting and voting as Members of either House of Parliament be enacted, or
 - (d) any provision with respect to the circumstances in which the seat of a Member of either House of Parliament becomes vacant be enacted,

except in the manner provided by this section.

- (2) A Bill for any purpose within subsection (1) shall not be presented to the Governor for His Majesty's assent until the Bill has been approved by the electors in accordance with this section.
- (3) On a day not sooner than two months after the passage of the Bill through both Houses of the Legislature the Bill shall be submitted to the electors qualified to vote for the election of Members of the Legislative Assembly.

Such day shall be appointed by the Legislature.

-
- (4) When the Bill is submitted to the electors the vote shall be taken in such manner as the Legislature prescribes.
 - (5) If a majority of the electors voting approve the Bill, it shall be presented to the Governor for His Majesty's assent.
 - (6) The provisions of this section do not apply to:
 - (a) a Bill for the repeal, the amendment from time to time or the re-enactment from time to time with or without modifications of:
 - (i) any of the provisions of section 15 or 38A, or
 - (ii) any provision for the time being in force so far as it relates to the subject-matter dealt with in any of the provisions referred to in subparagraph (i),
 - (b) a provision of a Bill, being a provision which would, upon its coming into operation, be a law referred to in section 22A (5),
 - (c) a provision of a Bill, being a provision with respect to the capacity of a person who holds or accepts an office of profit under the Crown specified in the Bill to be elected or to sit and vote as a Member of either House of Parliament,
 - (d) a provision with respect to the persons capable of being elected or of sitting and voting as Members of either House of Parliament which applies in the same way to the persons capable of being elected or of sitting and voting as Members of the other House of Parliament, or
 - (e) a provision with respect to the circumstances in which the seat of a Member of either House of Parliament becomes vacant which applies in the same way to the circumstances in which the seat of a Member of the other House of Parliament becomes vacant.
 - (7) (Repealed)
 - (8) In this section a reference to the Legislative Council shall be construed as a reference to the Legislative Council as reconstituted from time to time in accordance with this Act.

7B Referendum for Bills with respect to Legislative Assembly and certain other matters

- (1) A Bill that:
 - (a) expressly or impliedly repeals or amends section 11B, 26, 27, 28 or 29, Part 9, the Seventh Schedule or this section, or
 - (b) contains any provision to reduce or extend, or to authorise the reduction or extension of, the duration of any Legislative Assembly or to alter the date required to be named for the taking of the poll in the writs for a general election,

shall not be presented to the Governor for Her Majesty's assent until the Bill has been approved by the electors in accordance with this section.

- (2) On a day not sooner than two months after the passage of the Bill through both Houses of the Legislature the Bill shall be submitted to the electors entitled to vote at a general election of Members of the Legislative Assembly.
- (3) The day referred to in subsection (2) shall be appointed by the Governor under and in accordance with the *Constitution Further Amendment (Referendum) Act 1930* and any Act amending or replacing that Act.
- (4) When the Bill is submitted to the electors the vote shall be taken under and in accordance with the *Constitution Further Amendment (Referendum) Act 1930* and any Act amending or replacing that Act.
- (5) If a majority of the electors voting approve the Bill, it shall be presented to the Governor for Her Majesty's assent.
- (6) Nothing contained in this section affects the operation of section 5B and a Bill to which this section would otherwise apply which has been submitted to the electors under and in accordance with section 5B and has been approved by a majority of the electors voting may be presented to the Governor for Her Majesty's assent as if this section had not been enacted.
- (7) The provisions of this section do not apply to a provision of a Bill, being a provision which would, upon its coming into operation, be a law referred to in section 29 (2).
- (8) The provisions of this section do not apply to a provision of a Bill, being a provision that would, upon its coming into operation, be a law that amends section 52 for the purpose of extending the application of Part 9 to additional judicial offices or classes of judicial offices.

8 (Repealed)

8A Assent to Bills

- (1) Except as otherwise provided by this Act, every Bill:
 - (a) shall be presented to the Governor for Her Majesty's assent after its passage through the Legislative Council and the Legislative Assembly, and
 - (b) shall become an Act of the Legislature when it is assented to by the Governor in the name and on behalf of Her Majesty.
- (2) Nothing in subsection (1) (b) precludes Her Majesty from assenting to a Bill while Her Majesty is personally present in the State.

Part 3 The Legislative Council and Legislative Assembly

Division 1 General provisions

10 Time and place for holding sessions of Parliament

The Governor may fix the time and place for holding every Session of the Legislative Council and Assembly, and may change or vary such time or place as he may judge advisable and most consistent with general convenience and the public welfare, giving sufficient notice thereof.

10A Prorogation of Parliament

- (1) The Governor may, by proclamation, prorogue the Legislative Council and Assembly whenever the Governor considers it expedient to do so (subject to this section and section 24B).
- (2) The Premier or Executive Council may not advise the Governor to prorogue the Legislative Council and Assembly on a date that is before 26 January in the calendar year in which the Legislative Assembly is due to expire and that is after the fourth Saturday in the preceding September.

11 One session of Parliament to be held in each year

There shall be a Session of the Legislative Council and Assembly once at least in every year, so that a period of twelve months shall not intervene between the last sitting of the Legislative Council and Assembly in one Session and the first sitting of the Legislative Council and Assembly in the next Session.

11A Elections to be held pursuant to writs

Every general election of Members of the Legislative Assembly and every periodic Council election shall be held pursuant to writs issued by the Governor.

11B Compulsory voting

A person who is entitled to vote at a periodic Council election or the election of a Member of the Legislative Assembly shall vote at the election and if he does not do so shall be liable to such penalty as may be provided by law.

-
- (f) the proper presentation of the same to the Governor for His Majesty's Assent, and
 - (g) any other matter that, by or under this Act, is required or permitted to be regulated by Standing Rules and Orders.
- (2) Such Rules and Orders shall by such Council and Assembly respectively be laid before the Governor, and being by him approved shall become binding and of force.

Division 2 Special provisions relating to the Legislative Council

16 Definitions

In this Division:

periodic Council election includes an election for the return of 15 Members of the Legislative Council held after the commencement of the *Constitution and Parliamentary Electorates and Elections (Amendment) Act 1978* and before the commencement of the 1991 reconstitution Act.

the 1991 reconstitution Act means the *Constitution (Legislative Council) Amendment Act 1991*.

17 Reconstitution of the Legislative Council

- (1) On the commencement of the 1991 reconstitution Act, the Legislative Council is reconstituted.
- (2) On and from that commencement, the Legislative Council shall (subject to this Division) consist of 42 Members elected at periodic Council elections.
- (3) The following Members of the Legislative Council cease to be Members on the commencement of the 1991 reconstitution Act:
 - (a) the last 3 members of the Legislative Council elected at the third-last periodic Council election held before that commencement,
 - (b) if the seat of such a Member has become vacant since that periodic Council election—a Member of the Legislative Council who is the successor (whether immediate, intermediate or ultimate) of that Member.

17A–21 (Repealed)

Assembly expressing confidence in an alternative Government in which a named person would be Premier.

25 Number of Members of Legislative Assembly

Every Legislative Assembly shall consist of 93 Members.

26 Single Member electorates

Each Member of a Legislative Assembly shall be elected to represent one electoral district only.

27 Distribution of New South Wales into electoral districts

- (1) A distribution of New South Wales into electoral districts shall be made:
 - (a) forthwith after the date of assent to the *Constitution (Amendment) Act 1979*,
 - (b) forthwith after the enactment of any Act for the alteration of the number of Members of the Legislative Assembly,
 - (c) forthwith after a general election of Members of the Legislative Assembly if the next previous distribution applied for the purpose of that general election and the next previous such general election, and
 - (d) at such additional times as may be provided by law.
- (2) The number of electoral districts into which New South Wales shall be distributed upon any such distribution shall be the number that is equal to the number, provided by law, of Members of the Legislative Assembly to be returned at the general election of Members of the Legislative Assembly to be held next after that distribution.

28 Number of voters in electoral districts

Upon any distribution of New South Wales into electoral districts, the boundaries of each proposed electoral district shall be so determined that, at the time the distribution is made, the number of persons entitled to vote at a general election of Members of the Legislative Assembly in each proposed electoral district is equal to the quotient obtained by dividing the number of persons entitled at that time to vote at any such general election in all of the proposed electoral districts by the number of those proposed electoral districts, but subject to a margin of allowance not exceeding 10 per cent more or less of that quotient.

Sixth Schedule Conduct of Legislative Council elections

(Sections 16, 22A)

Part 1 System of election

- 1 At a periodic Council election, the whole of the State of New South Wales shall be a single electoral district for the return of 21 Members of the Legislative Council.
- 2 (1) At a poll for a periodic Council election, a voter shall be required to record his vote for 15 candidates and no more but shall be permitted to record his vote for as many more candidates as he pleases, so as to indicate in such manner as may be provided by law the candidates for whom he votes and the order of his preferences for them.
(2) Notwithstanding subclause (1) of this clause, a ballot-paper on which the voter has recorded not less than 15 votes is not informal by reason only that:
 - (a) the same preference (other than his first preference) has been recorded on the ballot-paper for more than 1 candidate, but the ballot-paper shall be treated as if those preferences and any subsequent preferences had not been recorded on the ballot-paper, or
 - (b) there is a break in the order of his preferences, but the ballot-paper shall be treated as if any subsequent preference had not been recorded on the ballot-paper.
- 3 For the purpose of a periodic Council election, 2 or more candidates may, in the manner provided by law, be included in a group in such order as may be determined by them.

Part 2 Counting of votes at elections

- 4 (1) In this Part of this Schedule:
continuing candidate means a candidate not already elected or not excluded from the count.
Council returning officer means the person for the time being appointed by law to conduct periodic Council elections.
(2) In relation to any stage of the scrutiny, a reference in this Part of this Schedule to the surplus votes of an elected candidate is a reference to the number at that stage by which the elected candidate's votes exceed the quota, reduced by the excess, if any, of the number at that stage of

-
- the elected candidate's votes on which a next available preference for a continuing candidate is not indicated over the quota.
- 5 The method of counting the votes to ascertain the result of a periodic Council election shall be as provided in this Part of this Schedule.
- 6 At the close of the poll the Council returning officer shall ascertain the total number of first preference votes recorded for each candidate on all ballot-papers not rejected by him as informal and the total of all such votes.
- 7 The Council returning officer shall then determine a quota by dividing the total number of first preference votes for all candidates by 22 and by increasing the quotient so obtained (disregarding any remainder) by 1.
- 8 Any candidate who has received a number of first preference votes equal to or greater than the quota so determined shall be elected.
- 9 Where the number of first preference votes received by a candidate is equal to the quota, the whole of the ballot-papers containing those votes shall be set aside as finally dealt with.
- 10 Unless all vacancies have been filled, the surplus votes of each elected candidate shall be transferred to the continuing candidates, in proportion to the voters' preferences, as follows:
- (a) The Council returning officer shall divide the number of the elected candidate's surplus votes by the number of first preference votes (excluding any first preference votes indicated on ballot-papers which do not bear a next available preference for a continuing candidate) received by him and the resulting fraction shall, for the purposes of this clause, be the transfer value of that candidate's surplus votes.
 - (b) The Council returning officer shall take all of the ballot-papers of the elected candidate on which a next available preference is indicated for a continuing candidate and arrange them in separate parcels for the continuing candidates according to the next available preference indicated on them.
 - (c) The Council returning officer shall ascertain, from the parcel referred to in paragraph (b) in respect of each continuing candidate, the total number of ballot-papers of the elected candidate which bear the next available preference for that continuing candidate and shall, by multiplying that total by the transfer value of the elected candidate's surplus votes, determine the number of votes to be transferred from the elected candidate to each continuing candidate.

-
- (d) If, as a result of the multiplication, any fraction results, so many of those fractions, taken in the order of their magnitude, beginning with the largest, as are necessary to ensure that the number of votes transferred equals the number of the elected candidate's surplus votes shall be reckoned as of the value of unity and the remaining fractions shall be ignored.
- (e) The Council returning officer shall then determine the number of ballot-papers to be transferred from the elected candidate to each continuing candidate.
- (f) The Council returning officer shall then, in respect of each continuing candidate, forthwith take at random, from the parcel referred to in paragraph (b) containing the ballot-papers of the elected candidate which bear the next available preference for that continuing candidate, the number of ballot-papers determined under paragraph (e) and transfer those ballot-papers to the continuing candidate.
- (g) The ballot-papers containing the first preference votes of the elected candidate which have not been transferred (that is, the ballot-papers containing the number of votes equal to the quota) shall be set aside as finally dealt with.
- 11** (1) When the surplus votes of all elected candidates have been transferred to the continuing candidates as provided by clause 10, any continuing candidate who has received a number of votes equal to or greater than the quota shall be elected.
- (2) Unless all the vacancies have been filled, the surplus votes of the elected candidate shall be transferred to the continuing candidates in accordance with the provisions of clause 10, but, in the application of those provisions, only those ballot-papers which have been transferred to the elected candidate from a candidate previously elected shall be taken into consideration.
- 12** (1) If, as a result of the transfer of the surplus votes of a candidate elected in pursuance of clause 11 or elected at a later stage of the scrutiny, a continuing candidate has received a number of votes equal to or greater than the quota, he shall be elected.
- (2) Unless all the vacancies have been filled, the surplus votes of the elected candidate shall be transferred to the continuing candidates in accordance with the provisions of clause 10, but, in the application of those provisions, only those ballot-papers which have been transferred to the elected candidate from the candidate or candidates elected at the last preceding count shall be taken into consideration.

-
- 13** The ballot-papers containing the first preference votes of a candidate who has been elected in pursuance of the provisions of clause 11 or 12, together with the ballot-papers transferred to him from a candidate previously elected or excluded which have not been further transferred, shall be set aside as finally dealt with.
- 14** (1) If, after the transfer of the surplus votes of the elected candidates, no candidate has, or less than the number of candidates required to be elected have, received a number of votes equal to the quota, the candidate who has the fewest votes shall be excluded and the whole of his ballot-papers shall be transferred to the continuing candidates next in order of the voters' available preferences.
- (2) If thereupon, or as the result of the exclusion of a candidate at any subsequent stage of the scrutiny, a continuing candidate has received a number of votes equal to or greater than the quota, he shall be elected.
- (3) Unless all the vacancies have then been filled, the surplus votes of the elected candidate shall be transferred to the continuing candidates in accordance with the provisions of clause 10, but, in the application of those provisions, only those ballot-papers which have been transferred to the elected candidate from the candidate last excluded shall be taken into consideration.
- (4) The ballot-papers containing the first preference votes of the elected candidate, together with the ballot-papers transferred to him from a candidate previously elected or excluded which have not been further transferred, shall be set aside as finally dealt with.
- (5) If no continuing candidate has then received a number of votes equal to the quota, the process of excluding the candidate with the fewest votes and the transferring of ballot-papers containing those votes to the continuing candidates shall be repeated until a continuing candidate has received a number of votes equal to the quota or, in respect of the last vacancy, a majority of the votes remaining in the count, but the process of excluding candidates shall not be repeated after the number of continuing candidates is equal to the number of unfilled vacancies.
- (6) A ballot-paper that under this clause is, pursuant to the exclusion of a candidate, required to be transferred to a continuing candidate shall be set aside as finally dealt with if it does not indicate a next available preference for a continuing candidate.
- 15** After all the candidates who have received a number of votes equal to the quota are elected:
- (a) where there is 1 remaining unfilled vacancy—the candidate who has received a majority of the votes remaining in the count, or

-
- (b) where the number of continuing candidates is equal to the number of remaining unfilled vacancies—those candidates, shall be elected.
- 16** Where, on the count of the first preference votes, or at the same time at any subsequent stage of the scrutiny, 2 or more candidates are elected by reason of their having received a number of votes equal to or greater than the quota, any transfer of the surplus votes of those candidates shall be carried out in the order, first of the candidate with the largest surplus, second of the candidate with the next largest surplus and so on.
- 17** (1) Notwithstanding anything contained in this Part of this Schedule, a transfer of the surplus votes of an elected candidate shall be deferred (but without affecting the order of that transfer) so long as the total number of those surplus votes and any other surplus votes not transferred is less than the difference between the total votes of the 2 continuing candidates with the fewest votes.
- (2) In any such case, unless all vacancies have been filled, the candidate with the fewest votes shall be first excluded and the ballot-papers containing his votes shall be transferred to the continuing candidates as provided in clause 14 (1).
- 18** (1) If, on any count, 2 or more candidates have an equal number of votes, and 1 of them has to be excluded, the candidate whose name is on the slip drawn in accordance with subclause (4) of this clause shall be excluded.
- (2) If, at the time of their election, 2 or more candidates have an equal number of votes that is more than the quota, the candidate whose name is on the slip drawn in accordance with subclause (4) of this clause shall, for the purposes of clause 16, be deemed to have had the larger or largest surplus.
- (3) If, on the final count for filling the last vacancy, 2 candidates have an equal number of votes, 1 candidate shall be excluded in accordance with subclause (1) of this clause and the other shall be elected.
- (4) For the purposes of subclauses (1) and (2) of this clause, the names of the candidates who have an equal number of votes having been written on similar slips of paper by the Council returning officer and the slips having been folded by him so as to prevent the description being seen and having been mixed, 1 of those slips shall be drawn at random by him.



Australia Act 1986

Act No. 142 of 1985

This compilation was prepared on 31 March 2003

Prepared by the Office of Legislative Drafting,
Attorney-General's Department, Canberra

AustraliaAct86.doc 02/04/2003 2:34 pm

Commonwealth or the Statute of Westminster 1931 as amended and in force from time to time.

6 Manner and form of making certain State laws

Notwithstanding sections 2 and 3(2) above, a law made after the commencement of this Act by the Parliament of a State respecting the constitution, powers or procedure of the Parliament of the State shall be of no force or effect unless it is made in such manner and form as may from time to time be required by a law made by that Parliament, whether made before or after the commencement of this Act.

7 Powers and functions of Her Majesty and Governors in respect of States

- (1) Her Majesty's representative in each State shall be the Governor.
- (2) Subject to subsections (3) and (4) below, all powers and functions of Her Majesty in respect of a State are exercisable only by the Governor of the State.
- (3) Subsection (2) above does not apply in relation to the power to appoint, and the power to terminate the appointment of, the Governor of a State.
- (4) While Her Majesty is personally present in a State, Her Majesty is not precluded from exercising any of Her powers and functions in respect of the State that are the subject of subsection (2) above.
- (5) The advice to Her Majesty in relation to the exercise of the powers and functions of Her Majesty in respect of a State shall be tendered by the Premier of the State.

8 State laws not subject to disallowance or suspension of operation

An Act of the Parliament of a State that has been assented to by the Governor of the State shall not, after the commencement of this Act, be subject to disallowance by Her Majesty, nor shall its