

ELECTION FUNDING (AMENDMENT) ACT 1993 No. 104

NEW SOUTH WALES



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ELECTION FUNDING (AMENDMENT) ACT 1993 No. 104

NEW SOUTH WALES



Act No. 104, 1993

An Act to make miscellaneous amendments to the Election Funding Act 1981. [Assented to 2 December 1993]

The Legislature of New South Wales enacts:**Short title**

1. This Act may be cited as the Election Funding (Amendment) Act 1993.

Commencement

2. This Act commences on a day or days to be appointed by proclamation.

Amendment of Election Funding Act 1981 No. 78

3. The Election Funding Act 1981 is amended as set out in Schedule 1.

SCHEDULE 1—AMENDMENTS

(Sec. 3)

(1) Section 4 (**Definitions**):

- (a) In the definition of “fund” in section 4 (1), after “Part 5”, insert “, but does not include the Political Education Fund established under Part 6A”.
- (b) Omit the definition. of “gift” in section 4 (1), insert instead:

“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;
- (c) In section 4 (10), after “disposed of”, insert “or the amount or value of a gift”.

(2) Section 23 (**Particular functions**):

- (a) At the end of section 23 (a), insert “and”.
- (b) At the end of section 23 (c), insert:

; and
- (d) claims for payments under Part 6A.

SCHEDULE 1—AMENDMENTS—*continued*

(3) Section 71A:

After section 71, insert:

Recovery of advance payments

71A. (1) Any amount received by a party by way of advance payments under this Division 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 Assembly general election that forms part of the general election; or
- (b) before the polling day for the general election, the party ceases to operate or it has, or is being, dissolved or wound up.

(2) Any such amount required to be repaid may be recovered by the Authority as a debt in any court of competent jurisdiction.

(4) Section 82 (**False statements**):

At the end of the section, insert:

(2) A candidate or member of a group 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 or group knowing that it will result in the making of a false or misleading claim by the agent in whole or in part is guilty of an offence and liable to a penalty not exceeding 100 penalty units.

(5) Sections 83–85:

Omit the sections, insert instead:

Obligation of parties to make disclosure

83. Within 120 days after the day for the return of the writs for a general election (“**the current election**”), the registered party agent of each party must lodge with the Authority a declaration of political contributions received and electoral expenditure incurred during the period:

- (a) commencing on the 31st day after the polling day for the previous general election; and
- (b) ending on the 30th day after the polling day for the current election.

SCHEDULE 1—AMENDMENTS—*continued***Obligation of groups to make disclosure**

84. Within 120 days after the day for the return of the writs for a general election (“**the current election**”), the registered official agent of each group nominated for election at the election must lodge with the Authority a declaration of political contributions received and electoral expenditure incurred during the period:

- (a) commencing on the day of nomination for the current election; and
- (b) ending on the 30th day after the polling day for the current election.

Obligation of candidates to make disclosure

85. Within 120 days after the day for the return of the writs for a general election or by-election (“**the current election**”), the registered official agent of each candidate nominated for election at the election must lodge with the Authority a declaration of political contributions received and electoral expenditure incurred during the period:

- (a) commencing on:
 - (i) where the candidate was registered at any time in the Register of Candidates for the previous general election — the 31st day after the polling day for that previous general election; or
 - (ii) where 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 the polling day for that by-election; or
 - (iii) the day that is 12 months before the day on which the candidate was nominated for election at the current election,

whichever first occurs; and

ending on the 30th day after the polling day for the current election.

SCHEDULE 1—AMENDMENTS—*continued*

(6) Section 85A:

After section 85, insert:

Obligation of persons (other than parties etc.) to make disclosure

85A. (1) Within 120 days after the day for the return of the writs for a general election or by-election (“**the current election**”), a person (other than a party, candidate or member of a group) who during the current election period incurs electoral expenditure of more than \$1,500 must lodge with the Authority a declaration of electoral expenditure incurred and political contributions received during that period.

(2) The **current election period** for the purposes of this section is the period:

- (a) commencing on the 31st day after the polling day for the previous general election; and
- (b) ending on the 30th day after the polling day for the current election.

(3) For the purposes of this section, 2 or more gifts made during any period of 12 months during the period to which the declaration relates by the same person, body or organisation are taken to be one gift.

(4) Corporations that are taken to be related to each other for the purposes of the Corporations Law are to be regarded as a single corporation for the purposes of this section.

(7) Section 87 (**Political contributions that are to be disclosed**):

(a) After section 87 (1), insert:

(1A) The political contributions to be disclosed under this Part by a person pursuant to section 85A are gifts of \$1,000 or more received during the current election period referred to in that section, the whole or a part of each of which was used by the person to enable the person to incur the electoral expenditure concerned or to reimburse the person for incurring that expenditure.

(b) Before section 87 (2), insert:

(1AA) 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

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SCHEDULE 1—AMENDMENTS—*continued*

fund-raising venture or function (being an amount that forms part of the net proceeds of the venture or function) is a gift for the purposes of this section.

(c) Omit section 87 (2), insert instead:

(2) A gift to a candidate need not be disclosed in a declaration if 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.

(d) Omit section 87 (3), insert instead:

(3) A contribution to a party need not be disclosed in a declaration if the amount of the contribution is not more than \$1,500.

(3A) A contribution to a group need not be disclosed in a declaration if the amount of the contribution is not more than \$1,000.

(e) From section 87 (4), omit “\$500”, insert instead “\$200”.

(f) In section 87 (5), after “(3)”, insert “, (3A)”.

(g) From section 87 (5), omit “\$2,500 or \$500”, insert instead “\$1,500, \$1,000 or \$200”.

(h) Omit section 87 (7), insert instead:

(7) For the purposes of this Act:

(a) a payment under this Act; and

(b) an annual subscription paid to a party by a member of the party,

are not political contributions.

(8) Section 87A:

After section 87, insert:

Prohibition on receiving gifts of unknown source

87A. (1) It is unlawful for a party, group or candidate or a person acting on behalf of a party, group or candidate to receive a gift of or exceeding the reportable amount made to or for the benefit of the party, group or candidate by another person, unless:

SCHEDULE 1—AMENDMENTS—*continued*

- (a) the name and address of the person, body or organisation making the gift are known to the person receiving the gift; or
- (b) when the gift is made, the person making the gift gives to the person receiving the gift his or her name and address and 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.

(2) The **reportable amount** for the purposes of this section is:

- (a) in the case of a gift made to or for the benefit of a party—\$1,500; or
- (b) in the case of a gift made to or for the benefit of a group—1,000; or
- (c) in the case of a gift made to or for the benefit of a candidate—\$200.

(3) A reference in this section to a gift made by a person includes a reference to a gift made on behalf of the members of an unincorporated association.

(4) A reference in this section 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 the name of the association and 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 the names and addresses of the trustees of the fund or of the funds of the foundation and the title or other description of the trust fund or the name of the foundation.

(5) For the purposes of this section:

- (a) a person who is a candidate in an election is taken to remain a candidate for 30 days after the polling day for the election and persons who constituted a group in an

SCHEDULE 1—AMENDMENTS—*continued*

election are taken to continue to constitute the same group for 30 days after the polling day for the election; and

- (b) 2 or more gifts made to or for the benefit of a party, group or candidate by the same person, body or organisation are taken to be one gift; and
- (c) corporations that are taken to be related to each other for the purposes of the Corporations Law are to be regarded as a single corporation.

(6) If a person receives a gift unlawfully because of this section, an amount equal to the amount or value of the gift is payable by that person to the State and may be recovered by the Authority as a debt due to the Crown from:

- (a) in the case of a gift to or for the benefit of a party that is a body corporate—the party; or
- (b) in the case of a gift to or for the benefit of a party that is not a body corporate—the registered agent for the party; or
- (c) in any other case—the candidate or a member of the group or the registered agent for the candidate or the group.

(9) Section 88 (**Electoral expenditure that is to be disclosed**):

- (a) In section 88 (1), after “or candidate”, insert “or by a person”.
- (b) After section 88 (2) insert:
 - (2A) The electoral expenditure to be disclosed under section 85A includes any gift made to a party, group or candidate that constitutes a political contribution of a kind required to be disclosed under section 83, 84 or 85.

(10) Section 89 (**Additional matters to be included in declaration**):

- (a) In section 89 (a), after “(3)”, insert “, (3A)”.
- (b) Omit section 89 (b), insert instead:
 - (b) the total amount of annual subscriptions excluded from the declaration by virtue of section 87 (7) (b), the subscription rate as paid (or each subscription rate if there are different rates) and the number of members who paid the subscriptions at each such rate; and

SCHEDULE 1—AMENDMENTS—*continued*

(c) After “held” in section 89 (c), insert “, but not including any amount of those proceeds that is included in the declaration by virtue of section 87 (1AA)”.

(11) Section 93 (**Audit of declaration**):

In section 93 (1), after “this Part”, insert “(except section 85A)”.

(12) Section 96 (**Failure to lodge declaration**):

After section 96 (2), insert:

(3) Where a person fails to lodge a declaration as required by section 85A, the person is guilty of an offence and liable to a penalty not exceeding 100 penalty units.

(13) Section 97 (**False statements**):

At the end of the section, insert:

(2) A candidate or member of a group who, in relation to any matter to be included in a declaration under this Part, gives or withholds giving information to the official agent of the candidate or group knowing that it will result in the making of a false or misleading declaration by the agent in whole or in part is guilty of an offence and liable to a penalty not exceeding 100 penalty units.

(14) Part 6A:

After Part 6, insert:

PART 6A—POLITICAL EDUCATION FUND**Definition**

97A. In this Part:

“**Fund**” means the Political Education Fund established under this Part.

Political Education Fund

97B. (1) There is to be a Political Education Fund to be kept by the Authority in respect of each general election.

(2) Payments from the Fund are to be distributed and spent in accordance with this Part.

SCHEDULE 1—AMENDMENTS—*continued***Parties entitled to receive annual payments from the Fund for purposes of political education**

97C. (1) Following a general election, a registered party is entitled to receive annual payments from the Fund, until the polling day for the next general election, for the purposes of political education.

(2) Political education purposes can include but are not limited to the posting of written materials and information, regardless of whether the information contains material only about the party concerned.

(3) However, a registered party is not entitled to receive or spend payments from the Fund for political education purposes involving travelling or accommodation expenses.

(4) A registered party is not entitled to receive payments from the Fund unless the party:

- (a) endorsed candidates for election to the Assembly at the general election; and
- (b) was entitled to receive funding under Division 3 of Part 5 in respect of the general election.

Determinations relating to political education purposes

97D. (1) The Authority may, from time to time, make and publish determinations with respect to the purposes for which a registered party is entitled to receive and spend payments from the Fund.

(2) The spending of payments received from the Fund must be in accordance with any such determinations.

(3) The making of determinations under this section does not prevent the making of guidelines under section 24 with respect to matters under this Part.

How payments from the Fund are to be determined

97E. (1) A party's entitlement to annual payments from the Fund is to be determined as at 1 January in each year in respect of the last general election held before that date.

(2) Payments are to be made from the Fund as soon as practicable after 1 January in each year, with the first payments to be made for the year beginning 1 January 1994.

SCHEDULE 1—AMENDMENTS—*continued*

(3) The annual payment to a registered party is to be determined in accordance with the following formula:

$$P = CS \times FPV$$

where:

P represents the payment to the party from the Fund for the year concerned;

CS represents the cost (as at 1 December before the payment is made) of a postage stamp needed to post a standard postal article (within the meaning of the Australian Postal Corporation Act 1989 of the Commonwealth) by ordinary course of post in Sydney to an address in Sydney;

FPV represents the total number of first preference votes recorded at the last general election, on all ballot-papers not rejected as informal, for the candidates endorsed by the party for election to the Legislative Assembly.

Party must claim for payments from the Fund

97F. (1) A registered party is entitled to receive a payment from the Fund under this Part only if the party claims for such payment in each year.

(2) A claim must:

- (a) be lodged with the Authority and be in writing; and
- (b) be accompanied by a declaration, and such information as the Authority may require, under section 97H; and
- (c) be made before 1 July in the year for which payment is to be made.

Payments from the Fund to be made to agents

97G. (1) Payments from the Fund under this Part are to be made to the agent of the registered party concerned.

(2) The registered party must keep a separate account of any money received by it under this Part.

Declarations etc. by agents

97H. (1) An agent of any registered party which makes a claim for a payment under this Part must declare:

- (a) how any payment, not already declared under this section, was spent by the party; and

SCHEDULE 1—AMENDMENTS—*continued*

- (b) that any such payment was spent only in accordance with the Authority's determinations or for such other purposes relating to political education as may be approved by the Authority.
- (2) Any such declaration must be accompanied by a certificate of an auditor stating that the auditor:
 - (a) was given full and free access at all reasonable times to all records and documents of the party and the agent relating directly to the spending of the payment referred to in the declaration; and
 - (b) examined such of those records and documents as the auditor considers material for the purpose of giving the certificate; and
 - (c) received all information and explanations requested by the auditor with respect to the spending of the payment; and
 - (d) is satisfied that, from the information available to the auditor, the payment was spent in accordance with this Part; and
 - (e) has no reason to think that any statement in the declaration is not correct.
- (3) The Authority may request the agent to provide further information about the spending of any such payments if the Authority is not satisfied with the information provided with the claim.
- (4) 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.

Recovery of unauthorised expenditure

97I. (1) If the Authority is satisfied that a registered party has spent any amount received by it under this Part in a manner contrary to the Authority's determinations or other approved purpose, the Authority may require the party to return the amount to the Authority within 60 days after the Authority notifies the party.

SCHEDULE 1—AMENDMENTS—*continued*

(2) If the party fails to return the amount within that time, the Authority may:

- (a) deduct the amount required to be returned from any amount which the party would be entitled to receive in the following year; or
- (b) recover the amount required to be returned as a debt in a court of competent jurisdiction.

Unspent amounts to be carried over to following year

97J. (1) Any amount received by a registered party under this Part, and which is not spent by the party during the year in which the amount was received, is taken to be carried over as part of any amount which the party would be entitled to receive under this Part for the following year.

(2) Any amount to be received for the following year is to be reduced accordingly by the amount unspent in the previous year.

(3) If any such unspent amount remains unspent at the end of the following year, it must then be returned to the Authority.

(4) If the party fails to return the unspent amount, the Authority may:

- (a) deduct the amount from any amount which the party would be entitled to receive in the following year; or
- (b) recover the amount as a debt in a court of competent jurisdiction.

False statements

97K. (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 and liable to a penalty not exceeding 100 penalty units.

(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 and liable to a penalty not exceeding 100 penalty units.

SCHEDULE 1—AMENDMENTS—*continued*(15) Section 98 (**Appropriation of Consolidated Fund for election funding**):

After “Part 5”, insert “or 6A”.

(16) Section 110 (**Inspection**):

After section 110 (6), insert:

(7) If the Authority suspects on reasonable grounds that a person has failed to lodge a declaration as required by section 85A (Obligation of individuals to make disclosure), this section applies in respect of the person in the same way as it applies in respect of a candidate except that subsection (6) does not apply.

(17) Section 122 (**Prosecution of unincorporated bodies**):

Omit “77 or 77A”, insert instead “71A, 77, 77A, 97I or 97J”.

(18) Schedule 2 (**Transitional provisions**):

At the end of the Schedule, insert:

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

Definition

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

Disclosure periods

10. 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.

Third party disclosures

11. 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.

SCHEDULE 1—AMENDMENTS—*continued***Fund-raising events**

12. 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.

Disclosure of political contributions

13. (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.

Annual subscriptions to parties

14. 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.

Reporting source of gifts

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

*[Minister's second reading speech made in—
Legislative Assembly on 10 November 1993
Legislative Council on 18 November 1993]*