



New South Wales

# **Election Funding and Disclosures Amendment Act 2010 No 95**

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New South Wales

# **Election Funding and Disclosures Amendment Act 2010 No 95**

Act No 95, 2010

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An Act to amend the *Election Funding and Disclosures Act 1981* with respect to election funding, expenditure and disclosures and other matters. [Assented to 16 November 2010]

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

**1 Name of Act**

This Act is the *Election Funding and Disclosures Amendment Act 2010*.

**2 Commencement**

This Act commences on 1 January 2011.

## **Schedule 1 Amendments to Election Funding and Disclosures Act 1981 No 78 relating to political donations and electoral expenditure**

**[1] Section 1 Name of Act**

Omit “*Election Funding and Disclosures Act*”.

Insert instead “*Election Funding, Expenditure and Disclosures Act*”.

**[2] Section 4 Definitions**

Insert in alphabetical order in section 4 (1):

*electoral communication expenditure*—see section 87.

*electoral expenditure*—see section 87.

*political donation*—see section 85.

*reportable political donation*—see section 86.

*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.

**[3] Section 83 Application**

Insert “(other than Divisions 2A and 2B)” after “councils” in section 83 (b).

**[4] Section 83, note**

Insert at the end of the section:

**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.

**[5] Section 84 Definitions—general**

Insert in alphabetical order in section 84 (1):

*applicable cap on electoral expenditure*—see Division 2B.

*applicable cap on political donations*—see Division 2A.

*capped expenditure period*—see section 95H.

*financial year* means a financial year ending 30 June.

**[6] Section 84 (1)**

Omit the definition of *major political donor*.

Insert instead:

*major political donor* means an entity or other person (not being a party, elected member, group or candidate) who makes a reportable political donation of or exceeding \$1,000.

**[7] Section 84 (7)**

Insert after section 84 (6):

- (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).

**[8] Section 85 Meaning of “political donation”**

Insert after section 85 (3):

- (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.

**[9] Section 85 (5)**

Insert after section 85 (4):

- (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.

**[10] Section 86 Meaning of “reportable political donation”**

Omit section 86 (1). Insert instead:

- (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.

**[11] Section 86 (2)**

Insert “, third-party campaigner” after “candidate”.

**[12] Section 87**

Omit the section. Insert instead:

**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.

**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.

**[13] Section 88 Disclosures required to be made**

Insert “or made” after “received” in section 88 (1).

**[14] Section 88 Disclosures required to be made**

Omit section 88 (2). Insert instead:

(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.

**[15] Section 89 Relevant disclosure period**

Omit “is each 6-month period ending on 30 June and on 31 December” from section 89 (1).

Insert instead “is each 12-month period ending on 30 June”.

**[16] Section 90 Person responsible for making disclosures**

Omit section 90 (d). Insert instead:

- (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.



**[17] Section 91 When and how disclosures to be made**

Omit from the note to section 91 (1) “before 26 February for the period ending on 31 December in the previous year, and”.

**[18] Section 91 (5A)**

Insert after section 91 (5):

- (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.

**[19] Section 92 Political donations required to be disclosed**

Omit “major political donor” from section 92 (2) (a).

Insert instead “third-party campaigner”.

**[20] Section 92 (2) (f)**

Omit “the Australian Business Number of the entity”.

Insert instead “the relevant business number of the entity referred to in section 96D”.

**[21] Section 92 (3) Small donations**

Insert “third-party campaigners or” before “major political donors”.

**[22] Section 93 Electoral expenditure required to be disclosed**

Omit section 93 (1). Insert instead:

- (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).

**[23] Part 6, Divisions 2A and 2B**

Insert after Division 2 of Part 6:

**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 entity or other person 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 entity or other person 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 entity or other person 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 entity or person 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) **Donors required to disclose related corporation donors**

It is unlawful for an individual to make a political donation on behalf of a corporation that is related to another corporation (referred to in section 84 (6)) that has made a political donation to the same party, elected member, group, candidate or third-party campaigner in the same financial year unless the individual complies with the requirements of the regulations relating to the disclosure to the person accepting the donation of particulars of the other corporation and its political donations.

(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.

**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.

**[24] Section 96 Requirements for parties**

Insert at the end of the section:

- (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).

**[25] Section 96AA**

Insert after section 96A:

**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.

**[26] Section 96D**

Omit the section. Insert instead:

**96D Restrictions on persons from whom donations can be accepted**

- (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:
  - (a) 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 a local government election, or
  - (b) an entity that has a relevant business number.
- (2) A relevant business number is:
  - (a) an Australian Business Number (ABN), or

- (b) any other number allocated or recognised by the Australian Securities and Investments Commission for the purposes of identifying the entity.

**[27] Section 96EA**

Insert after section 96E:

**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.

**[28] Section 96GAA**

Insert before section 96GA:

**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.

**[29] Sections 96GA and 96GE**

Omit “property developer” wherever occurring.

Insert instead “prohibited donor”.

**[30] Section 96GB Meaning of “property developer”, “tobacco industry business entity” and “liquor or gambling industry business entity”**

Insert after section 96GB (2):

- (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).

**[31] Section 96H Offences relating to disclosures**

Omit “or candidate” from section 96H (3) wherever occurring.

Insert instead “, candidate or third-party campaigner”.

**[32] Section 96HA**

Insert after section 96H:

**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.

**[33] Section 96I Other offences**

Omit section 96I (1). Insert instead:

- (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.

**[34] Section 96J Recovery of unlawful donations etc**

Insert at the end of the section:

- (2) This section extends to a political donation that would be unlawful under this Part but for section 95B (5) or 95C (3).

**[35] Sections 96K Audit certificate and 96M Amendment of disclosures**

Omit “or candidate” wherever occurring.

Insert instead “, candidate or third-party campaigner”.

**[36] Section 96N**

Insert after section 96M:

**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.

## **Schedule 2 Amendments to Election Funding and Disclosures Act 1981 No 78 relating to election and other funding**

### **[1] Section 4 Definitions**

Insert in alphabetical order in section 4 (1):

*Administration Fund* means the fund established under Division 2 of Part 6A.

*Election Campaigns Fund* means the fund established under Part 5.

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

### **[2] Section 4 (1)**

Omit the definitions of *fund* and *primary votes*.

### **[3] Part 5**

Omit the Part. Insert instead:

## **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.

**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.

**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.

**[4] Part 6A**

Omit the Part. Insert instead:

**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.

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**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 the State election 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:

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- (a) \$80,000 for each elected member endorsed by the party, or
  - (b) \$2,000,000,
- whichever is the lesser.
- (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 \$80,000.
- (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.

### **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 a payment under this Part for a calendar year 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 as the Authority may require under this Division, and
  - (c) be made within 6 months after the end of the calendar year for which payment is to be made.
- (3) Entitlement to payments under this Part are 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.

**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.

[5] **Schedule 1**

Omit the Schedule. Insert instead:

**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).

### **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.

**4 Adjustment of administrative funding and policy development caps**

- (1) Each of the adjustable amounts specified in a provision of Division 2 or 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).

**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 3      Miscellaneous amendments to Election Funding and Disclosures Act 1981 No 78**

**[1]      Section 4 Definitions**

Insert in alphabetical order in section 4 (1):

*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*.

**[2]      Section 4 (1), definition of “official agent”**

Insert “(or a person appointed official agent in place of the party agent under section 46A)” after “the party agent of the party” in paragraph (a).

**[3]      Section 4 (1), definition of “official agent”**

Insert “(or a person appointed official agent in place of the party agent under section 46)” after “the party agent of the party” wherever occurring in paragraphs (c) and (d).

**[4]      Section 4 (1), definition of “official agent”**

Omit “section 49” in paragraph (f) of the definition.

Insert instead “section 46”.

**[5]      Section 4 (1), definition of “official agent”**

Insert after paragraph (f) of the definition:

(f1) in relation to an elected member for whom an official agent is registered in the Register of Official Agents—that official agent, or

(f2) in relation to a third-party campaigner—the official agent registered in the Register of Official Agents for the third-party campaigner, or

**[6]      Section 23 Particular functions**

Insert “, and caps on,” after “disclosures of” in section 23 (c).

**[7]      Section 23**

Insert at the end of the section:

(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.

**[8] Section 24 Guidelines**

Insert “, caps” after “claims” in section 24 (2).

**[9] Section 26**

Insert “, third-party campaigners” after “groups”.

**[10] Section 32A**

Insert after section 32:

**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.

**[11] Part 4, Division 2A**

Insert after Division 2 of Part 4:

**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.

**[12] Section 45 Registration**

Omit “candidate or group” from section 45 (1).

Insert instead “candidate, group, elected member or third-party campaigner”.

**[13] Sections 46–46C**

Omit section 46. Insert instead:

**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 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.

**[14] Section 49 Where there is no official agent for a candidate or group**

Omit the section.

**[15] Section 51 Registers for by-elections**

Omit section 51 (1) and (4). Insert instead respectively:

- (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.
- (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.

**[16] Section 84 Definitions—general**

Omit section 84 (2). Insert instead:

- (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.

**[17] Section 84 (3A)**

Insert after section 84 (3):

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

**[18] Section 96A Requirements for political donations to, and electoral expenditure by, elected member, group or candidate**

Omit section 96A (5). Insert instead:

- (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.

**[19] Section 96K Audit certificate**

Omit “either” from section 96K (3). Insert instead “any”.

**[20] Section 96K**

Insert after section 96K (3) (b):

- (c) where the Authority considers the cost of compliance would be unreasonable.

**[21] Section 107 Reports to Parliament**

Insert after section 107 (2):

- (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.

**[22] Section 110 Inspection**

Omit “to enable the Authority to exercise its functions” from section 110 (1).

**[23] Section 110 (6)–(8)**

Omit the subsections.

**[24] Sections 110A and 110B**

Omit section 110A. Insert instead:

**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.

**[25] Section 111A**

Insert after section 111:

**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.

**[26] Schedule 2 Transitional provisions**

Insert at the end of clause 1A (1):

*Election Funding and Disclosures Amendment Act 2010*

[Agreement in principle speech made in Legislative Assembly on 28 October 2010  
Second reading speech made in Legislative Council on 10 November 2010]

BY AUTHORITY