

Passed by both Houses



New South Wales

Election Funding Amendment (Political Donations and Expenditure) Bill 2008

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I certify that this PUBLIC BILL, which originated in the LEGISLATIVE COUNCIL, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

Legislative Council
2008

Clerk of the Parliaments



New South Wales

Election Funding Amendment (Political Donations and Expenditure) Bill 2008

Act No , 2008

An Act to amend the *Election Funding Act 1981* in relation to political donations and electoral expenditure.

See also *Local Government and Planning Legislation Amendment (Political Donations) Act 2008*.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Election Funding Amendment (Political Donations and Expenditure) Act 2008*.

2 Commencement

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

3 Amendment of Election Funding Act 1981 No 78

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

4 Consequential repeal of provisions of Local Government Act 1993 No 30 and regulation

- (1) The *Local Government Act 1993* is amended by omitting Part 8 of Chapter 10.
- (2) The *Local Government (General) Regulation 2005* is amended by omitting clause 393 of, and Schedule 6 to, that Regulation.

5 Repeal of Act

- (1) This Act is repealed on the day following the day on which all of the provisions of this Act have commenced.
- (2) The repeal of this Act does not, because of the operation of section 30 of the *Interpretation Act 1987*, affect any amendment made by this Act.

Schedule 1 Amendments

(Section 3)

[1] Long title

Omit “political contributions and electoral expenditure”.

Insert instead “political donations and electoral expenditure for Parliamentary or local government election campaigns”.

[2] Section 1 Name of Act

Omit “*Election Funding Act*”.

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

[3] Section 4 Definitions

Omit the definitions of *by-election*, *day of nomination*, *donor*, *election*, *expenditure*, *general election*, *gift*, *group* and *official agent* from section 4 (1).

Insert in alphabetical order:

by-election means:

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

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

donor—see section 84.

elected member means:

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

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

election means a State election or a local government election.

entity—see section 84.

expenditure—see section 84.

general election means:

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

gift—see section 84.

group means:

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

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

official agent means:

- (a) in relation to an elected member of Parliament who is a member of a registered party—the party agent of the party, or
- (b) in relation to any other elected member who is a candidate or member of a group—the official agent of the candidate or group, or
- (c) in relation to a State election candidate who is a member of a registered party—the party agent of the party, or
- (d) in relation to a State election group whose members are all members of a registered party—the party agent of the party, or
- (e) in relation to a candidate or group of a class specified in the regulations for the purposes of this paragraph—the Authority or a government agency so specified, or
- (f) in relation to any other candidate or group—the official agent registered in the Register of Official Agents for that candidate or group (or the person taken to be the official agent under section 49), or
- (g) in any other case—a person (including the elected member or candidate) designated by the Authority.

For the purposes of this definition, if some of the candidates in a State election group are members of one registered party and other candidates in the group are members of another registered

party, the official agent of the group is the party agent of one of those parties as is designated by those candidates.

Note. Except where paragraph (f) applies, the other persons designated as official agents are ex-officio agents who are not entered in the Register of Official Agents. An elected council member or council candidate or group may appoint for entry in the Register of Official Agents the relevant party agent as his or her official agent.

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

[4] Section 4 (1), definition of “candidate”

Insert “or in accordance with the *Local Government Act 1993* (as the case requires)” after “*Parliamentary Electorates and Elections Act 1912*”.

[5] Section 4 (1), definition of “party”

Insert “or a local council” after “to Parliament”.

[6] Section 4 (9) and (10)

Omit the subsections.

[7] Section 23 Particular functions

Omit “declarations of political contributions”.

Insert instead “disclosures of political donations”.

[8] Section 24 Guidelines

Omit “declarations”. Insert instead “disclosures”.

[9] Section 25 Research

Omit “political contributions”. Insert instead “political donations”.

[10] Part 4 Registration, Division 1

Insert before Division 2 of Part 4:

Division 1 Preliminary

26 Application to registration for State and local government elections

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

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

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

[11] Section 31 Register of Candidates to be kept

Insert after section 31 (1):

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

[12] Section 33 Applications for registration of candidates

Insert “in the case of a State election,” before “the House of Parliament” in section 33 (2) (c).

[13] Section 33 (2) (c1)

Insert after section 33 (2) (c):

- (c1) in the case of a local government election, the council for which the candidate is a candidate,

[14] Section 35 Lodging of applications

Omit “the returning officer for any electoral district or” in section 35 (1).

Insert instead “an election official designated by the Authority or”.

[15] Section 35 (2) and (3)

Omit “a returning officer” from section 35 (2) and “A returning officer” from section 35 (3).

Insert instead “an election official” and “An election official” respectively.

[16] Section 39 Register of Party Agents to be kept

Insert after section 39 (1):

- (1A) The Authority is to keep separate Registers of Party Agents for State and local government elections. The register for State elections may be called the State Register of Party Agents and the register for local government elections may be called the Local Government Register of Party Agents.

[17] Section 41 Appointment etc of party agents

Omit section 41 (2). Insert instead:

- (2) If at any time a party does not have a party agent appointed under this section, the party agent is the person who holds office at that time as the registered officer of the party under Part 4A of the *Parliamentary Electorates and Elections Act 1912* or under the *Local Government Act 1993*, as the case requires.

[18] Section 46 Appointment etc of official agents

Insert after section 46 (1):

Note. An appointment of an official agent is only required where the party agent or other person is not the ex-officio agent (see definition of “official agent” in section 4). A candidate or group that does not have an official agent cannot be paid any election funding payment due under Part 5 (see section 77 (1)) and cannot accept political donations under Part 6 (see section 96A).

[19] Section 46 (2)

Omit the subsection.

[20] Section 47 Entries in the Register

Insert after section 47 (3):

- (4) The Authority may include in the Register of Official Agents particulars of the persons who are official agents because of the office they hold and not because of an appointment under this Division.

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

Insert before section 49 (1):

- (1A) This section applies only to candidates, or all candidates in a group, who are authorised under section 96A to accept political donations and incur electoral expenditure without a campaign account under section 96B.

[22] Section 51 Registers for by-elections

Omit section 51 (2). Insert instead:

- (2) The registers are to be kept as from:
 - (a) in the case of a State election—the day of the issue of the writ for the by-election, or
 - (b) in the case of a local government election—the day for the close of the roll of electors for the by-election.

[23] Section 51 (4) (a)

Omit “sections 32, 33, 35, 36 and 38”.

Insert instead “sections 31 (1A), 32, 33, 34, 35, 36, 37 and 38”.

[24] Section 51 (4) (c)

Insert “in the case of a State election,” before “references”.

[25] Section 52 Public access to registers

Omit section 52 (2).

[26] Part 5 Public funding of election campaigns, section 54A

Insert before section 55:

54A Application to State elections only

- (1) This Part does not apply to or in relation to local government elections.

(2) Accordingly, a reference in this Part to an election, general election or by-election is a reference that relates to a State election.

[27] Section 59 General entitlements of parties

Omit “registered agents” wherever occurring. Insert instead “party agents”.

[28] Section 74 Claims for, and approvals of, payments

Omit “registered agent” from section 74 (2) (a) (i).

Insert instead “party or official agent”.

[29] Section 76A Making payments to party at direction of candidate

Omit “registered agent” from section 76A (3) (c). Insert instead “party agent”.

[30] Section 77 Making of payments

Omit “registered agent” wherever occurring.

Insert instead “party or official agent”.

[31] Section 77 (2A)

Insert after section 77 (2):

(2A) Despite subsections (1) and (2), payments to be made to a group or candidate are required to be paid into the campaign account of the group or candidate if such an account is required to be kept under section 96A.

[32] Section 78

Omit the section. Insert instead:

78 Payments conditional on disclosure of political donations etc

A party, group 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 under Part 6 in respect of the party, group or candidate for a past period continues.

[33] Section 82 False statements

Omit “and liable to a penalty not exceeding 100 penalty units” wherever occurring.

Insert at the end of the section:

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

[34] **Part 6**

Omit the Part. Insert instead:

Part 6 Political donations and electoral expenditure

Division 1 Preliminary

83 Application

This Part applies in relation to:

- (a) State elections and elected members of Parliament, and
- (b) local government elections and elected members of councils.

84 Definitions—general

- (1) In this Act:

disposition of property—see section 4.

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

donor means a person who makes a gift.

entity means:

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

expenditure includes any disposition of property.

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

major political donor means a political donor referred to in section 88 (2).

relevant disclosure period—see section 89.

- (2) For the purposes of this Part, a reference to a candidate or group extends to an individual who, or a group of individuals which, accepts gifts for use solely or substantially for a purpose related to the proposed candidacy of the individual or individuals at a future election.

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.

- (3) For the purposes of this Part:
- (a) a person who is a candidate in an election, or
 - (b) a group of candidates in an election,
- is taken to remain a candidate or group for 30 days after the polling day for the election.

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

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

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

- (5) A reference in this Part to the name and address of a person making a donation or loan is:
- (a) in the case of a donation or loan made by an unincorporated association—a reference to the name of the association and the names and addresses of the members of the executive committee (however described) of the association, and
 - (b) in the case of a donation or loan purportedly made out of a trust fund or out of the funds of a foundation—a reference to the names and addresses of the trustees of the fund or of the funds of the foundation and the title or other description of the trust fund or the name of the foundation.
- (6) For the purposes of this Part, corporations that are related to each other (as determined in accordance with the *Corporations Act 2001* of the Commonwealth) are taken to be a single corporation.

85 Meaning of “political donation”

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

Note. Unless details of any such subscription are required to be disclosed because it is a reportable political donation of or above \$1,000, the total amount of subscriptions and other details are required to be disclosed under section 92 (4).

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

Note. Even though an election funding payment to a group or candidate is not a donation required to be disclosed, the amount is required to be

paid into the separate campaign account that is established for donations to and electoral expenditure by the group or candidate—see section 77 (2A).

86 Meaning of “reportable political donation”

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

87 Meaning of “electoral expenditure”

- (1) For the purposes of disclosure of electoral expenditure and other requirements of this Part, the following is *electoral expenditure*:
 - (a) expenditure on advertisements in radio, television, the Internet, cinemas, newspapers, billboards, posters,

- brochures, how-to-vote cards and any other printed election material,
- (b) expenditure on the holding of election rallies,
 - (c) expenditure on the distribution of election material,
 - (d) expenditure on travel and accommodation of a candidate for election,
 - (e) expenditure on research associated with election campaigns,
 - (f) expenditure incurred in raising funds for an election,
 - (g) expenditure on stationery, telephones, messages, postage and electronic transmissions,
 - (h) expenditure incurred in employing staff engaged in election campaigns,
 - (i) expenditure classified as electoral expenditure by the Authority,
 - (j) such other expenditure as may be prescribed by the regulations.
- (2) For the purposes of this Act, expenditure on factual advertising of the following is not electoral expenditure:
- (a) meetings to be held for the purpose of selecting persons for nomination as candidates for election,
 - (b) meetings for organisational purposes of parties, branches of parties or conferences, committees or other bodies of parties or branches of parties,
 - (c) any other matter involving predominantly the administration of parties or conferences, committees or other bodies of parties or branches of parties.

Division 2 Disclosure of political donations and electoral expenditure

88 Disclosures required to be made

(1) Parties, members, groups and candidates

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

- (a) a party (whether or not a registered party),
- (b) an elected member,

- (c) a group,
- (d) a candidate.

(2) **Major political donors**

Disclosure is required under this Part of reportable political donations made or received, and electoral expenditure incurred, by an entity or other person (not being a party, elected member, group or candidate) who has, during the relevant disclosure period:

- (a) made a reportable political donation of or exceeding \$1,000, or
- (b) incurred electoral expenditure of or exceeding \$1,000.

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

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

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

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

89 Relevant disclosure period

- (1) For the purposes of this Part, the *relevant disclosure period* is each 6-month period ending on 30 June and on 31 December.
- (2) In the case of a candidate, the first relevant disclosure period for the candidate registered for an election (the current election) includes the period commencing on:
 - (a) if the candidate was registered at any time in the Register of Candidates for the previous general election—the 31st day after polling day for that previous general election, or
 - (b) if the candidate was registered at any time in the Register of Candidates for a by-election (not being the current election) following the previous general election—the 31st day after polling day for that by-election, or

- (c) the day that is 12 months before the day on which the candidate was nominated for election at the current election,

whichever first occurs, but not including a period during which he or she was an elected member.

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

90 Person responsible for making disclosures

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

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

91 When and how disclosures to be made

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

Note. Unless otherwise prescribed, disclosures are to be made before 26 February for the period ending on 31 December in the previous year, and before 26 August for the period ending on 30 June in that year. See section 96L for the extension of the due date for making disclosures in particular cases, and section 96M for the amendment of disclosures that have been made.

- (2) Disclosures are to be made in a declaration lodged with the Authority in the form and manner approved by the Authority (except as provided by this section).

- (3) A particular political donation is not required to be disclosed in such a declaration if the disclosure of the donation has been made on a website maintained by the Authority for that purpose, but only if:

- (a) the donation is of a category that is authorised to be so disclosed according to the directions on that website, and
- (b) the disclosure is made in accordance with those directions.

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

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

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

92 Political donations required to be disclosed

(1) General

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

(2) Reportable political donations

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

- (a) the party, elected member, group or candidate to or for whose benefit the donation was made (or, if the case requires, the major political donor to whom the donation was made),
- (b) the date on which the donation was made,
- (c) the name of the donor,
- (d) the residential address of the donor (in the case of an individual) or the address of the registered or other official office of the donor (in the case of an entity),
- (e) the amount of the donation,
- (f) in the case of a donor that is an entity and not an individual—the Australian Business Number of the entity.

(3) Small donations

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

- (a) the total amount of those donations during the relevant disclosure period, and

(b) the total number of persons who made those donations.

This subsection does not apply to disclosures by major political donors.

(4) **Annual party membership or affiliation subscriptions**

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

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

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

(5) **Fund-raising ventures or functions**

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

- (a) either the net or gross proceeds of each such venture or function (together with a disclosure as to whether the amount is the net or gross proceeds), and
- (b) details of each such venture or function (including a brief description of its nature and the date on which or period in which it was held),

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

(6) **Loans**

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

(7) **Discretionary disclosures**

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

93 Electoral expenditure required to be disclosed

- (1) Electoral expenditure required to be disclosed under this Part is all 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.

Note. See section 87 for definition of "electoral expenditure".

- (2) The obligation under this Part to disclose any such expenditure of a party in relation to any period can be complied with by lodging with the Authority a copy of a return furnished to the Electoral Commission by the agent of the party under section 314AB of the *Commonwealth Electoral Act 1918* of the Commonwealth in respect of that period.

94 Separate disclosures not required of same item

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

95 Public access to disclosures, expenditure etc

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

Division 3 Management of donations and expenditure

96 Requirements in relation to expenditure of political donations to parties

- (1) It is unlawful for political donations to a party to be used otherwise than for the objects and activities of the party, including the administration of the party and community activities.
- (2) In particular, it is unlawful for political donations to be used for the personal use of an individual acting in a private capacity.

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

- (1) It is unlawful for political donations to an elected member to be accepted unless:
 - (a) the member has an official agent, and
 - (b) the donations are made to that agent.
- (2) It is unlawful for political donations to a group or candidate to be accepted unless:
 - (a) the group or candidate is registered under this Act, and
 - (b) the group or candidate has an official agent, and
 - (c) the donations are made to that agent.
- (3) It is unlawful for political donations to an elected member, group or candidate to be used to incur electoral expenditure or reimburse a person for incurring electoral expenditure unless:
 - (a) the donations were paid by the official agent into a campaign account of the member, group or candidate kept in accordance with section 96B, and
 - (b) the payment for that electoral expenditure is made by that agent from that campaign account.
- (4) Subject to the regulations, a person (other than an elected member or candidate) may be appointed in writing by an official agent to accept political donations to be made to the official agent or to make payments for electoral expenditure from a campaign account by the official agent, or both.
- (5) It is unlawful for elected members, groups or candidates 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.

- (6) It is unlawful for political donations to an elected member, group or candidate to be used otherwise than:
- (a) to incur electoral expenditure or reimburse a person for incurring electoral expenditure, or
 - (b) for any other purpose authorised by this Act.

Note. See section 96B (5).

- (7) Despite anything to the contrary in this section, it is not unlawful for an elected member, group or candidate to accept political donations and incur electoral expenditure without a campaign account if:
- (a) the political donations are not reportable political donations and the total amount of those donations for the election period does not exceed \$1,000, or
 - (b) the political donations are not reportable political donations and the total amount of electoral expenditure for the election period does not exceed \$1,000, or
 - (c) the regulations authorise the member, group or candidate to do so.

The election period includes the period ending 30 days after the polling day for the election and also includes the period commencing 30 days after polling day for the previous general election for the State or local government area, as the case requires.

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

96B Campaign accounts of elected members, groups or candidates

- (1) The campaign account of an elected member, group or candidate is to be a separate account with a bank, credit union, building society or other entity prescribed by the regulations.
- (2) The official agent for the time being of the elected member, group or candidate to whom the account belongs is to be authorised to operate the account, and that member, group or candidate is not to operate the account.

- (3) A single account may be kept for a number of elected members, groups or candidates with the same official agent if the funds of (and relevant transactions relating to) each member, group or candidate are accounted for separately. This subsection has effect despite subsection (1) but subject to the regulations under subsection (7).
- (4) In addition to political donations, money may be paid into a campaign account by the elected member, group or candidate to whom the account belongs. In that case, the amount paid and the terms on which the payment was made are to be disclosed in the relevant declaration lodged under this Part for the period in which the amount was paid.
- Note.** Section 77 (2A) requires election funding payments under Part 5 for a candidate or group to be paid into the relevant campaign account.
- (5) Payments out of a campaign account may only be made:
- (a) for the purposes of electoral expenditure incurred by or on behalf of the elected member, group or candidate to whom the account belongs, or
 - (b) with the approval of the elected member, group or candidate to whom the account belongs, for the purposes of lawful expenditure referred to in section 96 incurred by or on behalf of the party of which they are a member, or
 - (c) to reimburse the elected member, group or candidate for money paid into the account by the member, group or candidate, or
 - (d) for the purpose of the elected member, group or candidate to whom the account belongs to make political donations to elected members, groups or candidates who are members of the same party, or
 - (e) for the purposes of expenditure incurred in connection with parliamentary or council duties of the person to whom the account belongs or in connection with community activities.
- (6) Any amount remaining in a campaign account after the elected member, group or candidate to whom the account belongs ceases to be an elected member, group or candidate and no longer requires the account is to be paid:
- (a) to any party of which any such person was a member at the time the person last became an elected member or last contested an election to become an elected member, or

- (b) in the case of a group—to the campaign accounts (if any) belonging to the candidates who were members of the group (the amount being divided equally among the candidates), or
 - (c) subject to paragraphs (a) and (b)—to a charity nominated by the person or by the Authority (if the person cannot be contacted after due inquiry).
- (7) The regulations may make provision for or with respect to campaign accounts (including the control of accounts, the keeping of joint accounts and the provision of information to and the audit of accounts by the Authority).

96C Person accepting reportable political donations to record details

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

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

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

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

Division 4 Prohibition of certain political donations etc

96D Prohibition on donations from entities without ABN

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

- (a) it is made by an individual, or
- (b) it is made by an entity that has an Australian Business Number (ABN).

96E Prohibition on certain indirect campaign contributions

- (1) It is unlawful for a person to make any of the following indirect campaign contributions to a party, elected member, group or candidate:

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

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

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

96F Prohibition on receiving gifts of unknown source

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

- (a) the name and address of the person who made the donation are known to the person accepting the donation, and

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

96G Prohibition on receiving loans unless details recorded

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

Division 5 Miscellaneous

96H Offences relating to disclosures

- (1) A person who is required to lodge a declaration under section 91 but who fails to do so within the time required by this Part is guilty of an offence.
Maximum penalty: 200 penalty units.

- (2) A person who makes a statement:
- (a) in a declaration or other disclosure under this Part, or
 - (b) in a request under this Part for an extension of the due date for making the disclosure,
- that the person knows is false, or that the person does not reasonably believe is true, is guilty of an offence.
- Maximum penalty: 200 penalty units or imprisonment for 12 months, or both.
- (3) An elected member, member of a group or candidate who, in relation to a matter required to be disclosed under this Part by the official agent of the elected member, group or candidate, gives or withholds information to or from the agent knowing that it will result in the making of a false statement in a disclosure or request under this Part by the agent is guilty of an offence.
- Maximum penalty: 200 penalty units.

96I Other offences

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

96J Recovery of unlawful donations etc

If a person accepts a political donation, loan or indirect campaign contribution that is unlawful because of this Part, an amount equal to the amount or value of the donation, loan or contribution (or double that amount if that person knew that it was unlawful) is payable by that person to the State and may be recovered by the Authority as a debt due to the State from:

- (a) in the case of a donation, loan or contribution received by a party that is a body corporate—the party, or
- (b) in the case of a donation, loan or contribution received by a party that is not a body corporate—the party agent of the party, or

- (c) in any other case—the person who received the donation, loan or contribution or the official agent of the person.

96K Audit certificate

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

96L Extension of due date for making disclosures

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

96M Amendment of disclosures

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

[35] Part 6A Political Education Fund, section 97AB

Insert after section 97A:

97AB Application to State elections only

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

[36] Section 109 Certain persons not to be auditors

Omit “A candidate or registered agent”.

Insert instead “An elected member, a candidate, a party agent or an official agent”.

[37] Section 110 Inspection

Omit paragraph (b) of the definition of *inspector* in section 110 (1).

Insert instead:

- (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,

[38] Section 110 (2) (a) and (3) (a)

Insert “, elected member” after “party” wherever occurring.

[39] Section 110 (6)

Omit “section 93”. Insert instead “section 96K”.

[40] Section 110 (7)

Omit “a person has failed to lodge a declaration as required by section 85A (Obligation of individuals to make disclosure)”.

Insert instead “a major political donor has failed to make a disclosure required under Part 6”.

[41] Section 110 (7)

Omit “the person”. Insert instead “the donor”.

[42] Section 110 (8)

Insert after section 110 (7):

- (8) The Authority may request any person to provide it with relevant information for the purposes of compliance audits in connection with disclosures under Part 6.

[43] Section 110A Power to demand information of major political donors regarding failures to disclose

Omit “a person has failed to lodge a declaration relating to electoral expenditure as required by section 85A” from section 110A (1).

Insert instead “a major political donor has failed to make a disclosure required under Part 6”.

[44] Section 110A (1) (a)

Omit “the person”. Insert instead “the donor”.

[45] Section 117 Regulations

Omit “political contributions” from section 117 (1) (a).

Insert instead “political donations”.

[46] Section 117 (1) (a) and (4)

Insert “, elected members” after “parties” wherever occurring.

[47] Section 117 (1) (a1) and (a2)

Insert after section 117 (1) (a):

- (a1) requiring the agents of parties, elected members, groups or candidates to obtain valuations from a valuer approved by the Authority of political donations that are not gifts of money (or enabling the Authority to obtain any such valuations), and
- (a2) compliance audits by or on behalf of the Authority in connection with disclosures under Part 6, and

[48] Schedule 2 Transitional provisions

Insert before Part 1:

Part 1A Regulations

1A Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:
Election Funding Amendment (Political Donations and Expenditure) Act 2008
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or

- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.
- (4) The regulations under this clause have effect despite anything to the contrary in this Schedule.

[49] Schedule 2, Part 5

Insert after Part 4:

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

16 Definitions

In this Part:

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

last disclosure date means:

- (a) in relation to a party registered under the *Parliamentary Electorates and Elections Act 1912* and in relation to State elections—23 April 2007, or
- (b) in relation to a party registered under the *Local Government Act 1993* and in relation to local government elections—the date that is 30 days after the election date for the last ordinary council election.

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

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

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

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

Note. The disclosures for that first relevant disclosure period are to be made, subject to the regulations, within 8 weeks after the end of that period (ie before 26 August 2008). Section 95 (2) requires the Authority to publish the declaration of disclosures for that first relevant disclosure period on the website of the Authority as soon as practicable after that

date. Candidates required to make disclosures include persons who have accepted political donations for the 2008 local government elections even if they have not yet nominated for election or registered as a candidate (see section 84 (2)).

18 First relevant disclosure period—major political donors

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

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

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

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

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