

Act 1993 No. 104

ELECTION FUNDING (AMENDMENT) BILL 1993

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

In September 1992, the Joint Select Committee upon the Process and Funding of the Electoral System delivered its second report to Parliament. The Committee was established as part of the Government's undertaking to reform the system of electoral funding.

The object of this Bill is to amend the Election Funding Act 1981 to give effect to certain recommendations made by the Joint Select Committee in its report, especially those dealing with disclosure requirements and various other administrative matters dealing with reform of the electoral funding system. In particular, the Bill provides for the creation of a Political Education Fund to be administered by the Election Funding Authority. Parties will be entitled to receive payments from the Fund for the purposes of political education.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the proposed Act to commence on a day or days to be proclaimed.

Clause 3 gives effect to the Schedule of amendments.

SCHEDULE 1—AMENDMENTS

Definition of “gift”—Schedule 1 (1) (b)

Schedule 1 (1) (b) substitutes the definition of “gift” so that it will extend to the provision of a service (other than volunteer labour) for no consideration or for inadequate consideration. This will bring the definition into line with the Commonwealth Electoral Act 1918 and widen the scope of disclosure of political contributions received by parties.

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Recovery of advance payments—Schedule 1 (3)

Under Division 5 of Part 5 of the Act, a party is entitled to receive advance payments for expenditure to be incurred for election campaign purposes for a general election.

Schedule 1 (3) inserts proposed section 71A to provide for the immediate repayment of advance payments in certain circumstances (such as where the party ceases to operate before the election) and to enable the Election Funding Authority to recover any such amount as a debt.

False statements—Schedule 1 (4) and (13)

At present under sections 82 and 97, it is an offence for a person to make a false statement in a claim for payment under Part 5 (Public funding of election campaigns) or in a declaration lodged under Part 6 (political contributions and expenditure).

Schedule 1 (4) and (13) provide that it will also be an offence (penalty not exceeding 100 penalty units) if a person gives (or withholds giving) information to the official agent knowing it will result in the making of a false claim or declaration.

Disclosure periods—Schedule 1 (5)

At present, parties are required to lodge a declaration of political contributions received and electoral expenditure incurred covering a period which commences on the day after the polling day for the previous election and ending on the polling day for the current election. Groups and candidates have similar reporting periods.

Schedule 1 (5) substitutes sections 83, 84 and 85 to extend the disclosure period so that it finishes 30 days after the polling day. Where relevant, the starting time of the disclosure period is correspondingly altered. The period for lodging returns is also correspondingly extended.

Third party disclosures—Schedule 1 (6), (7) (a), (9) (a) and (b), (11), (12) and (16)

Generally as a result of the amendments made by these items, third parties (i.e. persons other than parties, groups or candidates) which incur expenditure for political purposes will be required to disclose details relating to the expenditure and certain gifts received to finance that expenditure.

Schedule 1 (6) inserts proposed section 85A to require a person who incurs electoral expenditure of more than \$1,500 to submit a return to the Authority detailing the expenditure. The new section does not apply to parties, groups or candidates.

Schedule 1 (7) (a) and (9) (a) and (b) are consequential amendments on the proposed new section 85A (e.g. Schedule 1 (9) (a) and (b) provides that the electoral expenditure to be disclosed under the Act extends to a third party under the new section 85A and also that it includes any gift made to a party, group or candidate that constitutes a political contribution of a kind required to be disclosed under sections 83–85).

Schedule 1 (11) provides that a declaration under proposed section 85A relating to expenditure does not need to be accompanied by an auditor's certificate.

Schedule 1 (12) makes it an offence (penalty not exceeding 100 penalty units) for a person to fail to lodge a declaration if required by proposed section 85A.

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Schedule 1 (16) extends existing powers of inspection under section 110 in respect of parties, groups and candidates to apply to persons whom the Authority suspects of not furnishing a return as required by proposed section 85A.

“Maintenance” contributions—Schedule 1 (7) (c) and (h)

Schedule 1 (7) (c) removes a provision that in effect provides that contributions to a group or candidate need not be disclosed if they are not made for the purposes of a current election. Retention of this provision could enable groups and candidates to refrain from disclosing contributions made for “maintenance” or “administrative” purposes. However, a new provision is included to make it clear that a gift need not be disclosed if made to a candidate in a private capacity for personal use and not for use solely or substantially for a purpose related to an election. The new provision (section 87 (2)) corresponds to section 304 (5) (b) (i) of the Commonwealth Electoral Act 1918.

Schedule 1 (7) (h) substitutes section 87 (7) to remove paragraph (c) of that section which, in effect, currently provides that contributions need not be disclosed if made under the condition that they not be used for electoral expenditure. It is by this provision that parties presently need not disclose contributions made for “maintenance” or “administrative” purposes.

Decrease of disclosure thresholds for political contributions—Schedule 1 (7) (d), (e), (f), (g) and (10) (a)

The Act currently requires contributions to be disclosed by parties, groups or candidates if the amount of the contribution (or the aggregate amount of 2 or more contributions made by the same person during a 12 month period) to a party or group is \$2,500 or more, or in the case of a candidate, \$500 or more. Schedule 1 (7) (d), (e) and (g) decrease these thresholds to \$1,500 (in the case of a party), to \$1,000 (in the case of groups) and to \$200 (in the case of candidates). Schedule 1 (7) (f) and (10) (a) are consequential amendments.

Reporting source of donations—Schedule 1 (8)

Schedule 1 (8) inserts proposed section 87A which will require parties, groups and candidates to ascertain the names and addresses of persons who make gifts to them of any amount required to be declared to the Authority (\$1,500 or more for parties, \$1,000 or more for groups and \$200 or more for candidates). It will be unlawful to receive such a gift if the person’s name and address is not known or disclosed and the gift will be forfeited to the State.

Fund-raising events—Schedule 1 (7) (b) and (10) (c)

Schedule 1 (7) (b) inserts a new provision (section 87 (1AA)) to provide that the net proceeds from political fund-raising events are a gift for the purposes of that section and will be required to be disclosed in returns in the same way as ordinary political donations. The disclosure requirements for these net proceeds will also be subject to the same disclosure thresholds as for ordinary political donations.

Schedule 1 (10) (c) amends section 89 to avoid the double disclosure of proceeds from fund-raising ventures and functions.

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Annual subscriptions to parties—Schedule 1 (7) (h) and (10) (b)

The substitution of section 87 (7) by **Schedule 1 (7) (h)** also provides that an annual subscription of any amount paid to a party by a member does not have to be disclosed by the party. However, **Schedule 1 (10) (b)** substitutes section 89 (b) to provide that a statement of the subscription rates and the number of subscribers at each such rate have to be disclosed, as well as the total amount of annual subscriptions paid.

Political Education Fund—Schedule 1 (1) (a), (2), (14), (15) and (17)

Schedule 1 (14) inserts proposed Part 6A (sections 97A—97K) which contains provisions relating to the Political Education Fund. The main feature of the new Part is that parties will be entitled to receive, following each general election, annual payments from the Fund for the purposes of political education (such as the posting of written materials about the party). The spending of payments from the Fund must be in accordance with any determinations made and published by the Election Funding Authority.

The amount that a party will be entitled to receive each year is the amount received by multiplying the cost of an ordinary postage stamp with the number of first preferential votes recorded at the last general election for the candidates endorsed by the party for election to the Legislative Assembly.

A party will have to claim each year for payments from the Fund. Payments will be made to the party's agent, who will be required to declare how previous payments were spent. This declaration must be accompanied by an auditor's certificate. The Authority will be able to recover from a party any unauthorised expenditure (such as spending payments contrary to the Authority's determinations).

A new offence is created of making a statement in any claim for payments from the Fund, or in a declaration made with a claim, that is false or misleading (penalty not exceeding 100 penalty units).

Schedule 1 (1) (a) distinguishes the Political Education Fund from the funds established under Part 5 (i.e. the Central Fund and Constituency Fund).

Schedule 1 (2) recognises the Authority's functions as including the responsibility of dealing with claims for payments from the Fund.

Schedule 1 (15) provides for the appropriation of the Consolidated Fund for the purposes of making payments to parties out of the Political Education Fund.

Schedule 1 (17) extends section 112 (Prosecution of unincorporated parties) to enable proceedings relating to the recovery of amounts that are to be returned to the Authority under the new Part 6A (and under the new section 71A) to be instituted against officers of unincorporated parties.

Transitional provisions

Schedule 1 (18) inserts transitional provisions consequent on the enactment of the proposed Act.
