

# Election Funding Act 1981 No 78

[1981-78]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Does not include amendments by**

*Miscellaneous Acts (Local Court) Amendment Act 2007 No 94* (not commenced)

*Election Funding Amendment (Political Donations and Expenditure) Act 2008 No 43* (not commenced)

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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# Election Funding Act 1981 No 78



New South Wales

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# Election Funding Act 1981 No 78



New South Wales

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

## Part 1 Preliminary

### 1 Name of Act

This Act may be cited as the *Election Funding Act 1981*.

### 2 Commencement

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

### 3 (Repealed)

### 4 Definitions

- (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires:

**agent** means a party agent or official agent.



**alternate** means a person appointed as an alternate under Part 2.

**appointed member** means a member of the Authority appointed by the Governor.

**Assembly** means the Legislative Assembly of New South Wales.

**Assembly general election** means an election held for the return of members of the Assembly pursuant to writs issued by the Governor upon the dissolution or expiry of the Assembly.

**auditor** means a registered company auditor within the meaning of the [Corporations Act 2001](#) of the Commonwealth.

**Authority** means the Election Funding Authority of New South Wales constituted by this Act.

**by-election** means an election held for the return of a member of the Assembly pursuant to a writ other than a writ issued in respect of an Assembly general election.

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

**Chairperson** means the Chairperson of the Authority.

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

**Council** means the Legislative Council of New South Wales.

**day of nomination**, in relation to a general election, means the day named in the writ for the periodic Council election on which all nominations of candidates must be made.

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

- (a) the allotment of shares in a company,
- (b) the creation of a trust in property,
- (c) the grant or creation of any lease, mortgage, charge, servitude, licence, power, partnership or interest in property,
- (d) the release, discharge, surrender, forfeiture or abandonment, at law or in equity, of any debt, contract or chose in action, or of any interest in property,

- (e) the exercise by a person of a general power of appointment of property in favour of any other person, and
- (f) any transaction entered into by any person with intent thereby to diminish, directly or indirectly, the value of the person's own property and to increase the value of the property of any other person.

**donor** means a person who makes a gift.

**election** means an Assembly general election, a periodic Council election or a by-election.

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

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

**expenditure** includes any disposition of property.

**functions** includes powers, authorities and duties.

**fund** means a fund established under Part 5, but does not include the Political Education Fund established under Part 6A.

**general election** means an Assembly general election and a periodic Council election held or to be held concurrently.

**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.

**group** means a group of candidates, or part of a group of candidates, for election to the Council.

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

**member** means a member of the Authority.

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

**official agent** means, subject to section 49, an official agent appointed under section 46.

**Parliament** means the Parliament of New South Wales.

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

**party agent** means a party agent appointed under section 41.

**payment** includes a loan, advance or deposit.

**periodic Council election** has the same meaning as it has in section 3 of the [Constitution Act 1902](#).

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

**primary votes** means:

- (a) in relation to a candidate at an election—the total number of first preference votes recorded for the candidate on all ballot-papers not rejected as informal at the election, or
- (b) in relation to a group of candidates, or a party with endorsed candidates, at an election—the total number of first preference votes recorded for the candidates on all ballot-papers not rejected as informal at the election, other than votes recorded for candidates for election to the Assembly.

**property** includes money.

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

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

**regulations** means regulations under this Act.

**returning officer** means a returning officer appointed as such under the [Parliamentary Electorates and Elections Act 1912](#).

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

different days, the day of the issue of the writs for the general election shall be deemed to be the day on which the writ for the periodic Council election is issued.

- (5) For the purposes of this Act, where the days for the return of the writs for a general election are different, the day for the return of the writs shall be deemed to be the day for the return of the writ for the periodic Council election.
- (6) A reference in this Act to the day for the return of a writ is a reference to the day specified in the writ as the day for the return of the writ.
- (7) A reference in this Act, in relation to a general election, to the periodic Council election is, except in so far as the context or subject-matter otherwise indicates or requires, a reference to the periodic Council election which forms part of the general election.
- (8) For the purposes of this Act, where anything is done by, on behalf of or for the benefit of, or any property is held by, or in trust for or for the members of, a body or organisation, incorporated or unincorporated, being a body or organisation that:
  - (a) forms part of a party,
  - (b) is established by or under the constitution of a party, or
  - (c) has functions conferred by or under the constitution of a party,the thing shall be deemed to be done by, on behalf of or for the benefit of that party or the property shall be deemed to be held by that party, as the case may be.
- (9) For the purposes of this Act, the amount of contribution or expenditure consisting of a disposition of property other than money shall be deemed to be an amount equal to the value of the property disposed of.
- (10) The value of property disposed of or the amount or value of a gift shall, if the regulations so provide, be determined in accordance with principles set out or referred to in the regulations.
- (11) Notes included in this Act do not form part of this Act.

## **Part 2 The Election Funding Authority**

### **5 Constitution of the Authority**

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

### **6 Members of the Authority**

The Authority shall consist of 3 members, of whom:

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

## **7 Chairperson**

The Commissioner shall be the Chairperson of the Authority.

## **8 Alternates**

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

## **9 Eligibility for appointment**

- (1) A person who:
  - (a) (Repealed)
  - (b) is a member of the Council or Assembly or a candidate or an agent for a candidate,
  - (c) is a member of a legislature other than the Parliament or a candidate for election as such a member,
  - (d) is a councillor or mayor of a council, or chairperson or member of a county council, under the [Local Government Act 1993](#) or is a candidate for election to

such an office,

- (e) is a member of a public authority constituted by an Act,
- (f) is an officer of a party,
- (g) is a temporary patient, a continued treatment patient, a protected person or an incapable person within the meaning of the *Mental Health Act 1958* or a person under detention under Part 7 of that Act, or
- (h) is a bankrupt, is applying to take the benefit of any law for the relief of bankrupt or insolvent debtors, whose debts are subject to a composition with the person's creditors, or whose fees and allowances would, upon the person's appointment, be subject to an assignment for their benefit,

is not eligible for appointment as an appointed member or alternate.

- (2) A person is not eligible for appointment as an appointed member or alternate unless:
  - (a) the person consents to his or her nomination by instrument in writing furnished to the Minister, and
  - (b) the person furnishes to the Minister a written statement, verified by statutory declaration, in or to the effect of the prescribed form, that the person is not ineligible for appointment by reason of any of the matters set out in subsection (1).
- (3) For the purposes of making an appointment referred to in subsection (1), and the recommendation to the Governor therefor, the Governor and the Minister are entitled to rely on the information contained in the written statement referred to in subsection (2) and furnished by the appointee.

## **10 Duty of Minister with respect to appointments**

- (1) The Minister shall, as far as practicable, request the appropriate nominations and make the appropriate recommendations to the Governor in sufficient time so as to ensure that:
  - (a) the appointment of appointed members and alternates is, as far as practicable, made within the period of 6 months after the day for the return of the writs for each general election, and
  - (b) the appointment of a person to fill a vacancy under section 14 is made as soon as practicable after the vacancy occurs.
- (2) Where a person has been duly nominated for appointment pursuant to this Part, the Minister shall recommend the person's appointment to the Governor, unless the person nominated is not eligible for appointment.

## **11 Provisions relating to nominations**

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

## **12 Term of office of appointed members and alternates**

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

## **13 Vacation of office**

- (1) An appointed member or alternate shall be deemed to have vacated office:
  - (a) if the appointed member or alternate dies,
  - (b) if the appointed member or alternate is absent from 2 consecutive meetings of the Authority of which reasonable notice has been given to him or her personally or in the ordinary course of post, unless:
    - (i) in the case of an appointed member—his or her alternate was present at either or both of those meetings, or
    - (ii) in the case of an alternate—the member for whom he or she is the alternate was present at either or both of those meetings,
  - (c) if the appointed member or alternate becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her estate, remuneration, fees or allowances for their benefit,

- (d) if the appointed member or alternate becomes a temporary patient, a continued treatment patient, a protected person or an incapable person within the meaning of the *Mental Health Act 1958* or a person under detention under Part 7 of that Act,
  - (e) if the appointed member or alternate is convicted in New South Wales of a crime or offence which is punishable by imprisonment for a period of 12 months or more, or if the appointed member or alternate is convicted elsewhere than in New South Wales of a crime or offence which if committed in New South Wales would be a crime or offence so punishable,
  - (f) if the appointed member or alternate resigns his or her office by instrument in writing addressed to the Minister,
  - (g) if the appointed member or alternate becomes a member of the Council or Assembly or a candidate or an agent for a candidate,
  - (h) if the appointed member or alternate becomes a member of a legislature other than the Parliament or a candidate for election as such a member,
  - (i) if the member or alternate becomes a councillor or mayor of a council, or the chairperson or a member of a county council, under the *Local Government Act 1993* or is a candidate for election to such an office,
  - (j) if the appointed member or alternate becomes a member of a public authority constituted by an Act,
  - (k) if the appointed member or alternate becomes an officer of a party,
  - (l) if there is a vacancy in any other office (other than Chairperson) under this Part (whether of appointed member or alternate) and the vacancy exists at any time during the period commencing on and including the date for the return of the writs for the next general election held after the commencement of the term of office of the members determined in accordance with section 12 (1) and ending on the expiration of that term of office so determined, or
  - (m) if:
    - (i) in the case of an appointed member—he or she is appointed as an alternate, or
    - (ii) in the case of an alternate—he or she is appointed as an appointed member.
  - (n) (Repealed)
- (2) Section 21AB (3) of the *Parliamentary Electorates and Elections Act 1912* applies to and in respect of each appointed member and alternate in the same way as it applies to and in respect of the Commissioner.



- (3) Section 47 (1) (b) of the *Interpretation Act 1987* does not apply to, or to the office of, an appointed member or alternate.

#### **14 Filling of casual vacancies**

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

#### **15 Meetings of the Authority**

- (1) The procedure for the calling of meetings of the Authority and for the conduct of business at those meetings shall, subject to this Act, be as determined by the Authority.
- (2) The Chairperson shall preside at all meetings of the Authority, and a meeting of the Authority shall not be held or continued unless the Chairperson is present at the meeting.
- (3) The Chairperson and one other member shall form a quorum at any meeting of the Authority, and any duly convened meeting of the Authority at which such a quorum is present shall be competent to transact any business of the Authority and shall have and may exercise all the functions of the Authority.
- (4) Meetings of the Authority shall be convened by the Chairperson, who shall give each appointed member and alternate at least 48 hours' notice of each meeting.
- (5) Notwithstanding subsection (4), a meeting of the Authority may be held with less than 48 hours' notice if the Chairperson and each appointed member or his or her alternate agree to its being held.
- (6) For the purposes of this section, an appointed member or alternate shall be deemed to have been given notice of a meeting if the notice is sent to that member's or alternate's usual place of abode or business.
- (7) The Authority shall hold at least 2 meetings in each year ending 31 December.

#### **16 Acting Chairperson**

- (1) The Governor may appoint an officer of the Public Service to act in the office of Chairperson while the Chairperson is absent from duty through illness or for any other cause or while there is a vacancy in the office of the Chairperson.
- (2) A person appointed under subsection (1) may not act as Chairperson if there is a

person who is appointed to act as Commissioner and who is available to exercise his or her functions as Chairperson.

- (3) A person appointed under this section, while acting as Chairperson, shall be deemed to be the Chairperson and shall have and may exercise the functions of the Chairperson.
- (4) No person shall be concerned to inquire whether or not any occasion has arisen in which a person appointed under this section is authorised to act as Chairperson, and all acts or things done or omitted by the person while so acting shall be as valid and effectual and shall have the same consequences as if they had been done or omitted by the Chairperson.

## **17 Voting**

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

## **18 Minutes**

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

## **19 Fees and allowances**

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

## **20 [Public Service Act 1979](#) not to apply**

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

## **21 Members not personally liable**

No matter or thing done by the Authority, and no matter or thing done by any member or by another person acting under the direction of or as delegate of the Authority, shall, if the matter or thing was done in good faith for the purpose of executing this or any other

Act conferring or imposing functions on the Authority, subject the member or person personally to any action, liability, claim or demand.

## **Part 3 Responsibilities of the Authority**

### **22 General functions**

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

**Note—**

Staff may be employed under Chapter 1A of the [Public Sector Employment and Management Act 2002](#) in the Government Service to enable the Authority to exercise its functions.

### **23 Particular functions**

Without affecting the generality of section 22, the Authority has the responsibility of dealing with:

- (a) applications for registration under Part 4, and
- (b) claims for payments under Part 5, and
- (c) declarations of political contributions and electoral expenditure under Part 6, and
- (d) claims for payments under Part 6A.

### **24 Guidelines**

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

### **25 Research**

The Authority may carry out, or arrange for the carrying out of, such research into election funding, political contributions, electoral expenditure and other matters to which this Act relates as the Authority thinks appropriate and may publish the results of any such

research.

## **Part 4 Registration**

### **Division 1**

#### **26-30 (Repealed)**

### **Division 2 Register of Candidates**

#### **31 Register of Candidates to be kept**

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

#### **32 Registration**

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

#### **33 Applications for registration of candidates**

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

the general election and after the polling day for the previous general election.

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

### **34 Application for registration of groups**

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

### **35 Lodging of applications**

- (1) An application for registration in the Register of Candidates may be lodged with the returning officer for any electoral district or with the Authority.
- (2) An application lodged with a returning officer shall be deemed to have been received by the Authority.
- (3) A returning officer with whom an application for registration in the Register of Candidates is lodged shall forthwith forward the application to the Authority.

### **36 Refusal to register candidates**

- (1) The Authority shall not register a candidate in the Register of Candidates for a general election if the application for registration of the candidate was received by the Authority after the day of nomination for the general election.

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

### **37 Refusal to register groups**

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

Authority, amend the application for registration by substituting the name of the group, and

- (c) the amended application shall be deemed to have been received by the Authority when the original application was received by it.

### **38 Amendment of Register**

- (1) Where an alteration is made in any of the particulars as stated in the Register of Candidates in relation to a candidate or group, being particulars of the kind required to be stated in the application for registration of the candidate or group, the candidate's or group's official agent shall, within 30 days after the date of the alteration, furnish the Authority with a statement in writing setting out details of the alteration.

Maximum penalty: 2 penalty units.

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

purposes of this subsection.

## **Division 3 Register of Party Agents**

### **39 Register of Party Agents to be kept**

- (1) The Authority shall keep a register, to be called the Register of Party Agents.
- (2) The Register of Party Agents shall be kept on a continuous basis.
- (3) Subject to this Act, the Register of Party Agents shall be kept in such form and manner as the Authority thinks fit.

### **40 Registration**

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

### **41 Appointment etc of party agents**

- (1) A party shall appoint one party agent.
- (2) A corporation shall not be appointed as a party agent.
- (3) The appointment of a party agent may be revoked.
- (4) If a party agent dies or resigns, the party by which the party agent was appointed shall forthwith give notice of that fact in writing to the Authority.
- (5) If a party agent dies or resigns or his or her appointment is revoked, the party by which the party agent was appointed shall appoint another party agent in his or her place.
- (6) The appointment, or the revocation of the appointment, of a party agent shall be made by notice in writing furnished to the Authority, but does not take effect until the appropriate action has been taken under section 42.
- (7) A notice under this section shall be in the form approved by the Authority.
- (8) A notice of the appointment of a party agent shall be deemed not to have been properly given unless it is accompanied by the signed acceptance of appointment of the person appointed.
- (9) A person appointed to any office or position under the *Parliamentary Electorates and Elections Act 1912* is not eligible to be a party agent.



(10) If a party commits an offence against this section:

- (a) each person who, at the time the offence is committed, is an officer of the party is guilty of an offence and liable to a penalty not exceeding 100 penalty units, and
- (b) the party is liable to a penalty not exceeding 200 penalty units.

#### **42 Entries in the Register**

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

#### **43 Amendment of Register**

The Authority may amend the Register of Party Agents by:

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

### **Division 4 Register of Official Agents**

#### **44 Register of Official Agents to be kept**

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

#### **45 Registration**

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

#### **46 Appointment etc of official agents**

- (1) A candidate or group may appoint one official agent.
- (2) A corporation shall not be appointed as an official agent.
- (3) The appointment of an official agent may be revoked.
- (4) If an official agent dies or resigns, the candidate or group by whom the official agent was appointed shall forthwith give notice of that fact in writing to the Authority.
- (5) If an official agent dies or resigns or his or her appointment is revoked, the candidate or group by whom the official agent was appointed may appoint another official agent in his or her place.
- (6) The appointment, or the revocation of the appointment, of an official agent shall be made by notice in writing to the Authority.
- (7) A notice under this section shall be in the form approved by the Authority.
- (8) A notice of the appointment of an official agent shall be deemed not to have been properly given unless it is accompanied by the signed acceptance of appointment of the person appointed.
- (9) A person appointed to any office or position under the *Parliamentary Electorates and Elections Act 1912* is not eligible to be an official agent.

#### **47 Entries in the Register**

- (1) On receipt of a notice of the appointment of an official agent furnished under section 46, the Authority shall register the official agent in the Register of Official Agents.
- (2) On receipt of a notice furnished under section 46 of the death or resignation, or the revocation of the appointment, of an official agent, the Authority shall remove the name of the official agent from the Register of Official Agents.
- (3) The Authority may reject a notice referred to in subsection (1) or (2) if, in its opinion, the notice is not in accordance with this Act.

#### **48 Amendment of Register**

The Authority may amend the Register of Official Agents by:

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

#### **49 Where there is no official agent for a candidate or group**

(1) At any time:

- (a) before a candidate appoints an official agent under section 46 (1), or
- (b) after the official agent of a candidate has died or resigned or his or her appointment has been revoked and before the group appoints another official agent,

the candidate shall be deemed to be his or her own official agent, and references in this Act to an official agent shall be construed accordingly.

(2) At any time:

- (a) before a group appoints an official agent under section 46 (1), or
- (b) after the official agent of a group has died or resigned or his or her appointment has been revoked and before the group appoints another official agent,

the candidate whose name first appears on the list of members of the group shall be deemed to be the official agent of the group, and references in this Act to an official agent shall be construed accordingly.

### **Division 5 Registers for by-elections**

#### **50 Application of this Division**

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

#### **51 Registers**

- (1) The Authority shall keep 2 registers, to be called the Register of Candidates and the Register of Official Agents respectively, for the by-election.
- (2) The registers shall be kept as from the day of the issue of the writ for the by-election.
- (3) Subject to this Act, the registers shall be kept in such form and manner as the Authority thinks fit.
- (4) The provisions of:
  - (a) sections 32, 33, 35, 36 and 38 apply to and in respect of the Register of Candidates for the by-election in the same way as they apply to and in respect of the Register of Candidates to be kept for a general election, and
  - (b) sections 45, 46, 47, 48 and 49 apply to and in respect of the Register of Official Agents for the by-election in the same way as they apply to and in respect of the Register of Official Agents to be kept for a general election,

and so apply as if:

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

## **Division 6 General**

### **52 Public access to registers**

- (1) Copies of each register kept under this Part shall be retained by the Authority and be available for public inspection during ordinary office hours.
- (2) A copy of, or a summary of or extracts from, each current register kept under this Part shall be published in the Gazette within the period of 2 weeks before the polling day for each election.

### **53 Statutory declarations**

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

### **54 False statements**

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

## **Part 5 Public funding of election campaigns**

### **Division 1 Preliminary**

#### **55 Election campaign expenditure**

- (1) For the purposes of this Part, a reference to expenditure for election campaign purposes:
  - (a) includes a reference to:
    - (i) expenditure for goods and services for those purposes,
    - (ii) expenditure for election campaign preparation purposes, and
    - (iii) expenditure incurred in respect of the audit of the relevant claim for payment under this Part and of the declaration lodged under Part 6 in respect of the period ending on the polling day for the election (in each case not exceeding \$200 or such other amount as may be prescribed), and

(b) does not include a reference to:

- (i) expenditure incurred substantially in respect of an election for a legislature other than the Parliament,
- (ii) expenditure incurred substantially in respect of an election held before that in respect of which the relevant application for payment under this Part is made, or
- (iii) expenditure of a prescribed class or description.

(2) The decision of the Authority as to whether any expenditure is or is not expenditure for election campaign purposes in accordance with this Act, the regulations and the guidelines determined under section 24 is final.

(3) The Auditor-General or an auditor is, for the purposes of this Act, entitled to rely on any decision of the Authority referred to in subsection (2).

## Division 2 Constitution of the funds

### 56 Creation of the funds

- (1) For each general election, there shall be a Central Fund and a Constituency Fund, to be kept by the Authority.
- (2) The funds shall be credited and distributed in accordance with this Act.

### 57 Determination of credits to funds

- (1) The amounts to be credited to the funds for a general election shall be determined by the Authority as soon as possible after 6 pm on the day of the issue of the writs for the general election.
- (2) The amounts to be credited, in the aggregate, to the funds for a general election are to be determined in accordance with the following formula:

$$A = E \times \frac{N}{12} \times \frac{M}{100}$$

where:

**A** represents the aggregate amount (in dollars) to be credited to the funds.

**E** represents the total number of electors enrolled for all electoral districts as at 6 pm on the day of the issue of the writs for the general election.

**N** represents:

- (a) the number of months between the day for the return of the writs for the general election and the day for the return of the writs for the previous general election

(both days inclusive), any fraction of a month being treated as one month, or

(b) 48,

whichever is less.

**M** represents the amount (in cents) of the monetary unit.

(3) For the purposes of subsection (2), the monetary unit for:

(a) the first general election to which this Act applies shall be 22 cents, and

(b) any subsequent general election shall be that amount as adjusted in accordance with Schedule 1, determined by the Authority as at the day of the issue of the writs for the general election or 22 cents, whichever is greater.

## **Division 3 The Central Fund**

### **58 Credits to the Central Fund**

Of the total amount determined in accordance with section 57, two-thirds shall be credited to the Central Fund, any fraction of a dollar being disregarded.

### **59 General entitlements of parties**

(1) Parties are, subject to and in accordance with this Act, eligible for payments from the Central Fund.

(2) A party is eligible to participate in the distribution of the Central Fund for a general election if:

(a) it is a registered party as at the polling day for the general election,

(a1) (Repealed)

(b) it endorses a group for the periodic Council election,

(c) the group is entered on the ballot-papers for the election under section 83B of the *Parliamentary Electorates and Elections Act 1912*,

(d) the Authority is satisfied that the members of the group claim to be endorsed by the party, and

(e) either or both of the following occur:

(i) at least one of the members of the group is elected at the periodic Council election, or

(ii) the total number of first preference votes polled in favour of the members of the group at the periodic Council election is at least 4 per cent of the total

number of first preference votes polled in the election.

- (3) Where the Authority is satisfied that 2 or more registered parties endorse a group for a periodic Council election and that the members of the group each claim to be endorsed by those parties:
  - (a) those parties shall, for the purposes of the application of sections 62 and 63 to and in respect of the general election concerned, be deemed, in relation to that group, to constitute one registered party instead of 2 or more registered parties,
  - (b) the amount calculated in accordance with this Part as being payable from the Central Fund for the general election to the party so deemed to be constituted shall not be so payable, but shall instead be payable from that fund to those 2 or more registered parties in:
    - (i) equal shares, or
    - (ii) such other shares as the registered agents of those parties agree upon in relation to that general election and as are specified in a direction in writing signed by them and served on the Authority, and
  - (c) no amounts, other than those payable by virtue of this subsection, are payable from that fund to those 2 or more registered parties in respect of that general election.
- (4) If a registered party would, but for this subsection, be entitled to be paid 2 or more amounts by virtue of subsection (3), the party is entitled to be paid only one of those amounts, being an amount that is not smaller than any other of those amounts.
- (5) A direction referred to in subsection (3) (b) (ii) remains effective until revoked by the registered agents of the parties concerned and notice in writing of the revocation is served on the Authority.
- (6) In a case where a part only of a group is endorsed by a party, the references in subsection (2) (c) and (e) to “the group” shall be construed as references to the whole group in which the part is included.

## **60 General entitlements of independent groups in Council elections**

- (1) Groups of candidates who have been nominated for election to the Council are, subject to and in accordance with this Act, eligible for payments from the Central Fund.
- (2) A group is eligible to participate in the distribution of the Central Fund for a general election if:
  - (a) it is registered as a group in the Register of Candidates for the general election as at the polling day for the election,

- (b) the group is entered on the ballot-papers for the periodic Council election under section 83B of the *Parliamentary Electorates and Elections Act 1912*,
- (c) the Authority is satisfied that the candidates in the group are not endorsed by any party, and
- (d) either or both of the following occur:
  - (i) at least one of the members of the group is elected at the periodic Council election, or
  - (ii) the total number of first preference votes polled in favour of the members of the group at the periodic Council election is at least 4 per cent of the total number of first preference votes polled in the election.

### **61 General entitlements of independent candidates in Council elections**

- (1) Candidates who have been nominated for election to the Council are, subject to and in accordance with this Act, eligible for payments from the Central Fund.
- (2) A candidate nominated for election to the Council is eligible to participate in the distribution of the Central Fund for a general election if:
  - (a) the candidate is registered as such a candidate in the Register of Candidates for the general election as at the polling day for the election,
  - (b) the Authority is satisfied that the candidate does not claim to be endorsed by any party and that the candidate is not a member of a registered group claiming payment under this Part, and
  - (c) either or both of the following occur:
    - (i) the candidate is elected at the periodic Council election, or
    - (ii) the total number of first preference votes polled in favour of the candidate at the periodic Council election is at least 4 per cent of the total number of first preference votes polled in the election.

### **62 Formula for the distribution of the Central Fund**

The Central Fund for a general election shall be distributed in accordance with the following formula:

$$P = \frac{F \times PV}{TEV}$$

where:



**P** represents the amount (in dollars) payable to a party, group or candidate eligible to participate in the distribution of the Central Fund,

**F** represents the amount (in dollars) standing to the credit of the Central Fund,

**PV** represents the primary votes of the party, group or candidate, and

**TEV** represents the total primary votes of all parties, groups and candidates eligible to participate in the distribution of the Central Fund.

### **63 Maximum amounts payable**

(1) Notwithstanding anything in this Act:

- (a) no one registered party, group or candidate may receive from the Central Fund more than one-half of the amount credited to the Central Fund, and
- (b) a registered party, group or candidate may not receive from the Central Fund an amount that exceeds the amount that bears to the amount credited to the Central Fund the same proportion as the primary votes of the party, group or candidate bear to the total primary votes of:
  - (i) all parties, groups and candidates eligible to participate in the distribution of the Central Fund, and
  - (ii) all parties, groups and candidates who would be so eligible but for the operation of section 59 (2) (a), 60 (2) (a) or 61 (2) (a).

(2) Any surplus amounts arising from the operation of subsection (1) shall not be available for distribution.

## **Division 4 The Constituency Fund**

### **64 Credits to the Constituency Fund**

Of the total amount determined in accordance with section 57, one-third shall be credited to the Constituency Fund, any fraction of a dollar being disregarded.

### **65 General entitlements of candidates in Assembly elections**

- (1) Candidates who have been nominated for election to the Assembly are, subject to and in accordance with this Act, eligible for payments from the Constituency Fund.
- (2) A candidate is eligible to participate in the distribution of the Constituency Fund for a general election if:
  - (a) the candidate is registered as a candidate for election to the Assembly in the Register of Candidates for the general election as at the polling day for the election, and

(b) either or both of the following occur:

(i) the candidate is elected at the election, or

(ii) the total number of first preference votes polled in favour of the candidate at the election is at least 4 per cent of the total number of first preference votes polled in favour of all candidates for election for the electoral district concerned.

#### **66 Constituency Fund to be divided among electoral districts**

- (1) The amount standing to the credit of the Constituency Fund for a general election shall be divided by the number of electoral districts for which there are 2 or more candidates for election (as referred to in section 81 of the *Parliamentary Electorates and Elections Act 1912*), any fraction of a dollar being disregarded.
- (2) The amount ascertained in accordance with subsection (1) shall, subject to and in accordance with this Act, be available for distribution in respect of each electoral district referred to in that subsection.

#### **67 Formula for the distribution of the Constituency Fund**

The Constituency Fund for a general election shall be distributed in accordance with the following formula:

$$C = \frac{F \times CV}{TEV}$$

where:

**C** represents the amount (in dollars) payable to a candidate who has been nominated for election for an electoral district at the general election,

**F** represents the amount (in dollars) available for distribution in respect of the electoral district,

**CV** represents the primary votes of the candidate, and

**TEV** represents the total primary votes of all candidates for election for the electoral district eligible to participate in the distribution of that amount.

#### **68 Maximum amounts payable**

(1) Notwithstanding anything in this Act:

- (a) no one candidate for election for an electoral district may receive from the Constituency Fund more than one-half of the amount available for distribution in respect of the electoral district, and

- (b) a candidate for election for an electoral district may not receive from the Constituency Fund an amount that exceeds the amount that bears to the amount available for distribution in respect of the electoral district the same proportion as the primary votes of the candidate bear to the total primary votes of:
  - (i) all candidates for election for the electoral district eligible to participate in the distribution of the amount available for distribution in respect of the electoral district, and
  - (ii) all candidates for election for the electoral district who would be so eligible but for the operation of section 65 (2) (a).
- (2) Any surplus amounts arising from the operation of subsection (1) shall not be available for distribution.
- (3) Subsection (1) applies to a payment to a candidate even though the candidate has directed that the payment be made to a party under section 76A.

## **Division 5 Advance payments**

### **69 Entitlements to advance payments**

- (1) A party is, subject to and in accordance with this Act, eligible for the payment, as an advance payment for expenditure incurred for election campaign purposes for a general election, of an amount, ascertained in accordance with subsection (2), for each of the first 3 complete years after the day for the return of the writs for the previous general election.
- (2) The amount payable, by way of advance payment, for a complete year after the day for the return of the writs for the previous general election is an amount equal to 10 per cent of the total amount to which the party was entitled under this Part for that previous general election.
- (3) For the purposes of subsection (2), the total amount to which a party was entitled under this Part does not include any amount payable to the party under section 76A.
- (4) The amount payable for a year under this section may be paid, as a lump sum or by way of instalments, at any time after the expiration of that year, but before the polling day for the general election to which the payment relates.
- (5) A party is not eligible for any advance payments under this section for a general election if it is not a registered party as at the polling day for the election.

### **70 Advance payments to be deducted from other entitlements**

Any amount paid to a party by way of advance payment for a general election shall be deducted from the amount payable to the party from the Central Fund for that election.

## 71 Overpayments

- (1) Where a party receives amounts by way of advance payments under this Division in respect of a general election in excess of the amount (if any) to which it becomes entitled from the Central Fund for the general election, the amount of the excess shall be repaid to the Authority within 60 days after the day for the return of the writs for the periodic Council election that forms part of the general election.
- (2) The amount of any excess referred to in subsection (1) may be recovered by the Authority as a debt in any court of competent jurisdiction.

### 71A Recovery of advance payments

- (1) Any amount received by a party by way of advance payments under this Division in respect of a general election must be repaid, on demand by the Authority, to the Authority if:
  - (a) the party does not contest the Assembly general election that forms part of the general election, or
  - (b) before the polling day for the general election, the party ceases to operate or it has, or is being, dissolved or wound up.
- (2) Any such amount required to be repaid may be recovered by the Authority as a debt in any court of competent jurisdiction.

## Division 6 Funds for by-elections

### 72 Application of this Division

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

### 73 By-election Constituency Fund

- (1) There shall be a By-election Constituency Fund for the by-election.
- (2) The amount to be credited to the fund shall be determined by the Authority as soon as possible after 6 pm on the day of the issue of the writ for the by-election.
- (3) The amount to be credited to the fund shall be determined in accordance with the following formula:

$$A = \frac{E \times M \times 3}{100}$$

where:

**A** represents the total amount (in dollars) to be credited to the fund,

**E** represents the total number of electors enrolled for the electoral district concerned as at 6 pm on the day of the issue of the writ for the by-election, and

**M** represents the amount (in cents) of the monetary unit.

- (4) For the purposes of subsection (3), the monetary unit shall be the amount that would, had the by-election been a general election, have been the monetary unit for that general election.
- (5) The amount to be credited to the fund in accordance with this section shall, subject to and in accordance with this Act, be available for distribution among the candidates at the by-election.
- (6) The provisions of sections 65, 67 and 68 apply to and in respect of the fund in the same way as they apply to and in respect of the Constituency Fund to be kept for a general election, and so apply as if:
  - (a) references to a general election were references to the by-election, and
  - (b) any other necessary adaptations were made.

### **73A Entitlement of parties at by-elections**

- (1) Parties are, subject to and in accordance with this Act, eligible for payment from the By-election Constituency Fund for a by-election.
- (2) A party is eligible to participate in the distribution of the fund if:
  - (a) it was a registered party as at the polling day for the by-election, and
  - (b) the Authority is satisfied that a candidate for the by-election claims to be endorsed by the party (and by no other party), and
  - (c) either or both of the following occur:
    - (i) the candidate is elected at the by-election, or
    - (ii) the total number of first preference votes polled in favour of the candidate at the by-election is at least 4 per cent of the total number of first preference votes polled in favour of all candidates for election for the electoral district concerned.
- (3) The amount that a party is eligible to receive under this section is however limited to the maximum amount that is available for distribution to the candidate endorsed by the party. That maximum amount is determined under the provisions referred to in section 73 (6).
- (4) If the amounts payable to the candidate and the party endorsing the candidate together would exceed that maximum amount, those amounts are to be reduced

proportionately, so that they together equal (as closely as possible) that maximum amount.

## **Division 7 General**

### **74 Claims for, and approvals of, payments**

- (1) Subject to this Act, a claim for payment under this Part to a party, group or candidate shall be lodged with the Authority before the expiration of 120 days after the day for the return of the writs for the periodic Council election or, in the case of a by-election, before the expiration of 120 days after the day for the return of the writ for the by-election.
- (1A) Without affecting the generality of section 106, that section operates to enable the Authority, in accordance with that section, to extend the time for lodging a claim under subsection (1).
- (2) Subject to this Act, the Authority shall:
  - (a) approve the making of a payment under this Part to a party, group or candidate if:
    - (i) a claim for the payment is made by the registered agent for the party, group or candidate in the form and manner approved by the Authority,
    - (ii) the claim is audited by an auditor, and
    - (iii) the Authority is satisfied that the party, group or candidate is eligible for the payment, and
  - (b) refuse to approve the making of a payment under this Part to the extent that the payment would exceed the amount of expenditure incurred for election campaign purposes.
- (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) Where 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.
- (5) Where an amount payable under this Part would include a fraction of a dollar, the Authority may round off the amount in such manner as it thinks fit, and the amount as so rounded off shall be the amount payable.
- (6) For the purposes of subsection (2) (b), an amount of expenditure incurred for election campaign purposes 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, and
  - (b) invoiced by that party to the candidate for payment.
- (7) For the purposes of subsection (6), a payment is to be made under this Part even if:
- (a) the electoral expenditure incurred by the registered party was not incurred as an agent for the candidate, and
  - (b) the candidate had no legal liability to pay to the party the amount of electoral expenditure invoiced.

### **75 Audit of claim**

A claim under this Part shall be deemed not to be 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, group or candidate, as the case may require, relating directly or indirectly to the expenditure referred to in the claim,
- (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,
- (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,
- (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.

### **76 Expenditure to be vouched for**

A claim under this Part shall be deemed not to be validly lodged with the Authority unless all expenditure specified in the claim is vouched for in the prescribed manner.

### **76A Making of payments to party at the direction of candidate**

- (1) A candidate to whom a payment is to be made under this Part for an election for an electoral district 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 as at 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 registered agent of the party.

## **77 Making of payments**

- (1) Subject to this Act, a payment to be made to a party, group or candidate under this Part shall be made to the registered agent of the party, group or candidate.
- (2) 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 specified account with a bank, building society or credit union, being an account established by or on behalf of or in trust for or for the members of a party or group or to a specified account with a bank, building society or credit union, being an account established by or on behalf of or in trust for a candidate instead of to the registered agent of the party, group or candidate, and payment shall be made accordingly.
- (3) 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 registered agent referred to in subsection (1), and payment shall be made accordingly.
- (4) Except as prescribed by the regulations, details of any direction under subsection (3) shall be included in the report of the Authority under section 107 (2) for the reporting period in which the direction was given.
- (5) 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.
- (6) An agent shall comply with any condition determined in accordance with subsection (5) and applicable to the agent or any of his or her predecessors.

Maximum penalty: 100 penalty units.
- (7) It is a defence to a prosecution for an offence arising under subsection (6) if the agent establishes that the agent did not know, and could not have been reasonably expected to know, that the condition was applicable as referred to in that subsection.
- (8) 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 may be recovered by the Authority as a debt in any court of competent jurisdiction.

#### **77A 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, reduced by the amount of any advance payments made for the election concerned.
- (2A) For the purposes of subsection (2), the total amount estimated by the Authority to be payable to a party does not include any amount payable to the party under section 76A.
- (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) Preliminary payments are available only for amounts payable under Divisions 3 and 6.
- (5) 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.
- (6) The amount of any such excess may be recovered by the Authority as a debt in any court of competent jurisdiction or may be deducted from any other money owing to the party from the Authority.

#### **78 Payments conditional on disclosure**

A party, group or candidate is not eligible for any payment (other than advance payments) under this Part in respect of a general election unless and until the disclosure required by Part 6 to be made in respect of the party, group or candidate for the period ending on the polling day for the election has been made and the provisions of this Act have been complied with in relation to that disclosure.

#### **79 Death of a candidate**

Where 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 representatives or otherwise in accordance with section 77.

#### **80 Alteration in composition of group**

Where there is an alteration in the composition of a group 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.

### **81 Public access to claims etc**

- (1) A claim lodged with the Authority for a payment under this Part, together with any papers and correspondence relating to the assessment of the claim by the Authority, or a copy thereof, shall be retained by the Authority for at least 6 years after the polling day for the election to which it or they relate, and any such claim, papers and correspondence, or a copy thereof, shall 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, papers or correspondence referred to in subsection (1).

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

## **Part 6 Political contributions and electoral expenditure**

### **83 Obligation of parties to make disclosure**

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

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

### **84 Obligation of groups to make disclosure**

Within 120 days after the day for the return of the writs for a general election (***the current election***), the registered official agent of each group nominated for election at the election must lodge with the Authority a declaration of political contributions received

and electoral expenditure incurred during the period:

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

### **85 Obligation of candidates to make disclosure**

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

- (a) commencing on:
  - (i) where the candidate was registered at any time in the Register of Candidates for the previous general election—the 31st day after the polling day for that previous general election, or
  - (ii) where the candidate was registered at any time in the Register of Candidates for a by-election (not being the current election) following the previous general election—the 31st day after the polling day for that by-election, or
  - (iii) the day that is 12 months before the day on which the candidate was nominated for election at the current election,whichever first occurs, and
- (b) ending on the 30th day after the polling day for the current election.

### **85A Obligation of persons (other than parties etc) to make disclosure**

- (1) Within 120 days after the day for the return of the writs for a general election or by-election (***the current election***), a person (other than a party, candidate or member of a group) who during the current election period incurs electoral expenditure of more than \$1,500 must lodge with the Authority a declaration of electoral expenditure incurred and political contributions received during that period.
- (2) The **current election period** for the purposes of this section is the period:
  - (a) commencing on the 31st day after the polling day for the previous general election, and
  - (b) ending on the 30th day after the polling day for the current election.
- (3) For the purposes of this section, 2 or more gifts made during any period of 12 months during the period to which the declaration relates by the same person, body or organisation are taken to be one gift.
- (4) Corporations that are taken to be related to each other for the purposes of the

*Corporations Act 2001* of the Commonwealth are to be regarded as a single corporation for the purposes of this section.

#### **86 Form and manner of disclosure**

- (1) Subject to this Act, a declaration of political contributions and electoral expenditure under this Part shall be made in the form and manner approved by the Authority.
- (2) The date on which each political contribution is made, and the name and address of the person making the contribution, shall be included in a declaration under this Part, except in relation to contributions excluded from the declaration by virtue of section 87 (3) or (4).
- (3) A declaration shall, for the purposes of section 96, be deemed not to have been lodged under this Part unless it contains a statement to the effect that:
  - (a) no political contributions other than the contributions (if any) specified in the declaration were received during the relevant period, and
  - (b) no electoral expenditure other than the expenditure (if any) specified in the declaration was incurred during that period.

#### **87 Political contributions that are to be disclosed**

- (1) The political contributions to be disclosed under this Part by the agent of a party, group or candidate are gifts made to the party, group or candidate during the relevant period referred to in section 83, 84 or 85.
  - (1A) The political contributions to be disclosed under this Part by a person pursuant to section 85A are gifts of \$1,000 or more received during the current election period referred to in that section, the whole or a part of each of which was used by the person to enable the person to incur the electoral expenditure concerned or to reimburse the person for incurring that expenditure.
  - (1AA) An amount paid by a person as a contribution, entry fee or other payment to entitle that or any other person to participate in or otherwise obtain any benefit from a fund-raising venture or function (being an amount that forms part of the net proceeds of the venture or function) is a gift for the purposes of this section.
- (2) A gift to a candidate need not be disclosed in a declaration if the gift was made in a private capacity to the candidate for his or her personal use and the candidate has not used, and will not use, the gift solely or substantially for a purpose related to an election.
- (3) A contribution to a party need not be disclosed in a declaration if the amount of the contribution is not more than \$1,500.
  - (3A) A contribution to a group need not be disclosed in a declaration if the amount of the

contribution is not more than \$1,000.

- (4) A contribution to a candidate need not be disclosed in a declaration by the candidate if the amount of the contribution is not more than \$200.
- (5) Subsection (3), (3A) or (4) does not apply to 2 or more contributions made by one person, body or organisation during any period of 12 months during the period in respect of which the declaration relates, if the contributions, in the aggregate, exceed \$1,500, \$1,000 or \$200, as the case may require.
- (6) Corporations that are related to each other for the purposes of section 50 of the *Corporations Act 2001* of the Commonwealth shall be regarded as a single corporation for the purposes of this section.
- (7) For the purposes of this Act:
  - (a) a payment under this Act, and
  - (b) an annual subscription paid to a party by a member of the party,are not political contributions.

#### **87A Prohibition on receiving gifts of unknown source**

- (1) It is unlawful for a party, group or candidate or a person acting on behalf of a party, group or candidate to receive a gift of or exceeding the reportable amount made to or for the benefit of the party, group or candidate by another person, unless:
  - (a) the name and address of the person, body or organisation making the gift are known to the person receiving the gift, or
  - (b) when the gift is made, the person making the gift gives to the person receiving the gift his or her name and address and the person receiving the gift has no grounds to believe that the name and address so given are not the true name and address of the person making the gift.
- (2) The **reportable amount** for the purposes of this section is:
  - (a) in the case of a gift made to or for the benefit of a party—\$1,500, or
  - (b) in the case of a gift made to or for the benefit of a group—\$1,000, or
  - (c) in the case of a gift made to or for the benefit of a candidate—\$200.
- (3) A reference in this section to a gift made by a person includes a reference to a gift made on behalf of the members of an unincorporated association.
- (4) A reference in this section to the name and address of a person making a gift is:
  - (a) in the case of a gift made on behalf of the members of an unincorporated

association (other than a registered industrial organisation)—a reference to the name of the association and the names and addresses of the members of the executive committee (however described) of the association, and

(b) in the case of a gift purportedly made out of a trust fund or out of the funds of a foundation—a reference to the names and addresses of the trustees of the fund or of the funds of the foundation and the title or other description of the trust fund or the name of the foundation.

(5) For the purposes of this section:

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

(b) 2 or more gifts made to or for the benefit of a party, group or candidate by the same person, body or organisation are taken to be one gift, and

(c) corporations that are taken to be related to each other for the purposes of the *Corporations Act 2001* of the Commonwealth are to be regarded as a single corporation.

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

(a) in the case of a gift to or for the benefit of a party that is a body corporate—the party, or

(b) in the case of a gift to or for the benefit of a party that is not a body corporate—the registered agent for the party, or

(c) in any other case—the candidate or a member of the group or the registered agent for the candidate or the group.

## **88 Electoral expenditure that is to be disclosed**

(1) The electoral expenditure to be disclosed under this Part by the agent of a party, group or candidate or by a person 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:

(a) expenditure on advertisements in radio, television, cinemas, newspapers, periodicals, 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 expenditure 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 telegrams,
  - (h) expenditure on committee rooms,
  - (i) expenditure classified as electoral expenditure by the Authority, and
  - (j) such other expenditure as may be prescribed,
- is electoral expenditure.

(2A) The electoral expenditure to be disclosed under section 85A includes any gift made to a party, group or candidate that constitutes a political contribution of a kind required to be disclosed under section 83, 84 or 85.

(3) For the purposes of this Act, expenditure on factual advertising of:

- (a) meetings to be held for the purpose of selecting persons for nomination as candidates for election,
- (b) meetings of parties, branches of parties or conferences, committees or other bodies of parties or branches of parties for organisational purposes, and
- (c) any other matter involving solely the administration of parties, branches of parties or conferences, committees or other bodies of parties or branches of parties,

is not electoral expenditure.

### **89 Additional matters to be included in declaration**

Subject to section 87 (2), there shall be included in a declaration made under this Part in respect of a party, group or candidate:

- (a) the amount of each contribution excluded from the declaration by virtue of section 87 (3), (3A) or (4) and the number of donors making contributions of each size,
- (b) the total amount of annual subscriptions excluded from the declaration by virtue of section 87 (7) (b), the subscription rate as paid (or each subscription rate if there are different rates) and the number of members who paid the subscriptions at each such rate, and

- (c) the net proceeds of fund-raising ventures or functions and 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 included in the declaration by virtue of section 87 (1AA).

#### **90 Certain matters to be included in Authority's report to Parliament**

Except as prescribed by the regulations, details of gifts included in a declaration under this Part shall be included in the report of the Authority under section 107 (2) for the reporting period in which the declaration is lodged with the Authority.

#### **91 Nil returns**

Where no details are to be included in a declaration under this Part, the declaration shall nevertheless be lodged, in which shall be included a statement to the effect that no contributions were received and no expenditure was incurred of the kind required to be disclosed.

#### **92 Special provisions relating to group declarations**

An item disclosed in a group's declaration need not be also disclosed in the declaration of a member of the group, and an item disclosed in the declaration of a member of a group need not also be disclosed in the group's declaration.

#### **93 Audit of declaration**

- (1) A declaration under this Part (except section 85A) shall be deemed not to be 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 declaration is to be lodged, and of the party, group or candidate, as the case may require, relating directly or indirectly to any matter required to be set out in the declaration,
  - (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,
  - (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 made in relation to a group or candidate, if the Authority waives compliance with the audit requirement for the



declaration.

- (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 contributions were received and no expenditure was incurred, or
  - (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 declaration is received by the Authority.
- (5) The Authority may revoke a waiver at any time. Revocation does not affect the validity of the lodgment of a declaration already made, unless the required certificate of an auditor is not forwarded to the Authority within the time specified by the Authority.

#### **94 Contributions and expenditure to be vouched for**

A declaration under this Part shall be deemed not to be validly lodged with the Authority unless all political contributions and electoral expenditure specified in the declaration are vouched for in the prescribed manner.

#### **95 Public access to declarations etc**

- (1) A declaration lodged with the Authority under this Part, together with any papers and correspondence relating to the declarations, or a copy thereof, shall be retained by the Authority for at least 6 years after the period to which it or they relate, and any such declaration, papers and correspondence, or a copy thereof, shall 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 declaration, papers or correspondence referred to in subsection (1).

#### **96 Failure to lodge declaration**

- (1) Where the registered party agent of a party fails to lodge a declaration as required by section 83:
  - (a) the agent is guilty of an offence and liable to a penalty not exceeding 100 penalty units, and
  - (b) the party is guilty of an offence and liable to a penalty not exceeding 200 penalty units.
- (2) Where the registered official agent of a group or candidate fails to lodge a declaration

as required by section 84 or 85, the agent is guilty of an offence and liable to a penalty not exceeding 100 penalty units.

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

#### **97 False statements**

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

### **Part 6A Political Education Fund**

#### **97A Definition**

In this Part:

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

#### **97B Political Education Fund**

- (1) There is to be a Political Education Fund to be kept by the Authority in respect of each general election.
- (2) Payments from the Fund are to be distributed and spent in accordance with this Part.

#### **97C Parties entitled to receive annual payments from the Fund for purposes of political education**

- (1) Following a general election, a registered party is entitled to receive annual payments from the Fund, until the polling day for the next general election, for the purposes of political education.
- (2) Political education purposes can include but are not limited to the posting of written materials and information, regardless of whether the information contains material only about the party concerned.
- (3) However, a registered party is not entitled to receive or spend payments from the Fund for political education purposes involving travelling or accommodation expenses.
- (4) A registered party is not entitled to receive payments from the Fund unless the party:

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

**97D Determinations relating to political education purposes**

- (1) The Authority may, from time to time, make and publish determinations with respect to the purposes for which a registered party is entitled to receive and spend payments from the Fund.
- (2) The spending of payments received from the Fund must be in accordance with any such determinations.
- (3) The making of determinations under this section does not prevent the making of guidelines under section 24 with respect to matters under this Part.

**97E How payments from the Fund are to be determined**

- (1) A party's entitlement to annual payments from the Fund is to be determined as at 1 January in each year in respect of the last general election held before that date.
- (2) Payments are to be made from the Fund as soon as practicable after 1 January in each year, with the first payments to be made for the year beginning 1 January 1994.
- (3) The annual payment to a registered party is to be determined in accordance with the following formula:

$$P = CS \times FPV$$

where:

**P** represents the payment to the party from the Fund for the year concerned.

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

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

**97F Party must claim for payments from the Fund**

- (1) A registered party is entitled to receive a payment from the Fund under this Part only if the party claims for such payment in each year.
- (2) A claim must:

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

**97G Payments from the Fund to be made to agents**

- (1) Payments from the Fund under this Part are to be made to the agent of the registered party concerned.
- (2) The registered party must keep a separate account of any money received by it under this Part.

**97H Declarations etc by agents**

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

- (4) The Authority is to make available to members of the public for inspection the contents of any declaration, certificate or other information it receives under this section.

#### **97I Recovery of unauthorised expenditure**

- (1) If the Authority is satisfied that a registered party has spent any amount received by it under this Part in a manner contrary to the Authority's determinations or other approved purpose, the Authority may require the party to return the amount to the Authority within 60 days after the Authority notifies the party.
- (2) If the party fails to return the amount within that time, the Authority may:
  - (a) deduct the amount required to be returned from any amount which the party would be entitled to receive in the following year, or
  - (b) recover the amount required to be returned as a debt in a court of competent jurisdiction.

#### **97J Unspent amounts to be carried over to following year**

- (1) Any amount received by a registered party under this Part, and which is not spent by the party during the year in which the amount was received, is taken to be carried over as part of any amount which the party would be entitled to receive under this Part for the following year.
- (2) Any amount to be received for the following year is to be reduced accordingly by the amount unspent in the previous year.
- (3) If any such unspent amount remains unspent at the end of the following year, it must then be returned to the Authority.
- (4) If the party fails to return the unspent amount, the Authority may:
  - (a) deduct the amount from any amount which the party would be entitled to receive in the following year, or
  - (b) recover the amount as a debt in a court of competent jurisdiction.

#### **97K 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 and liable to a penalty not exceeding 100 penalty units.
- (2) A person who, in relation to any matter to be included in a claim or declaration under this Part, gives or withholds giving information to the party or agent knowing that it will result in the making of a false or misleading claim or declaration in whole or in

part is guilty of an offence and liable to a penalty not exceeding 100 penalty units.

## **Part 7 Financial provisions**

### **98 Appropriation of Consolidated Fund for election funding**

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

### **99 Funding of other expenses**

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

### **100 Money received by Authority**

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

### **101 Financial year of the Authority**

The financial year of the Authority shall be:

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

### **102, 103 (Repealed)**

## **Part 8 Miscellaneous**

### **104 Shortened references to Authority**

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

### **105 Proof of certain matters not required**

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

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

#### **106 Extensions of time**

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

#### **107 Reports to Parliament**

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

#### **108 (Repealed)**

#### **109 Certain persons not to be auditors**

A candidate or registered agent, or a person appointed to any office or position under the [Parliamentary Electorates and Elections Act 1912](#), is not qualified to perform any action as an auditor for the purposes of Part 5 or 6.

#### **110 Inspection**

- (1) In this section:

**bankers' books** means books of a bank, building society or credit union, or cheques, orders for the payment of money, bills of exchange or promissory notes in the

possession or under the control of a bank, building society or credit union.

**inspector** means a person:

(a) who is employed under Chapter 1A of the *Public Sector Employment and Management Act 2002* in the Government Service to enable the Authority to exercise its functions, or

(b) whose services the Authority has arranged to make use of,

and who is appointed by the Authority as an inspector for the purposes of this section.

(2) For the purpose of ascertaining whether this Act is being or has been contravened, an inspector may:

(a) inspect or make copies of, or take extracts from, any records kept by or on behalf of, or any bankers' books so far as they relate to, a party, group or candidate or agent for a party, group or candidate or a former party, group, candidate or agent, and

(b) enter at any reasonable time any place at which the inspector has reasonable grounds for believing that any such records or bankers' books are kept.

(3) For the purpose of and in connection with an inspection under subsection (2), an inspector may:

(a) request any person employed or engaged at any place entered pursuant to that subsection to produce to the inspector such records or, as the case may be, such bankers' books, relating to a party, group, candidate or agent or former party, group, candidate or agent as are in the custody or under the control of the person so employed or engaged,

(b) examine with respect to matters under this Act any person employed or engaged at any place so entered, and

(c) make such examination and inquiries as the inspector thinks fit for the purpose of ascertaining whether this Act is being or has been contravened.

(4) A person shall not:

(a) refuse or intentionally delay the admission to any place of an inspector in the exercise by the inspector of his or her powers under this section,

(b) intentionally obstruct an inspector in the exercise by the inspector of any such power, or

(c) fail to comply with a request of an inspector made under any such power.

Penalty: 100 penalty units.



- (5) Every inspector shall be provided with a certificate of his or her appointment, and on applying for admission to any place where the inspector is empowered by this section to enter, shall, if requested to do so, produce the certificate to the occupier of the place.
- (6) The power of an inspector shall only be exercised under the provisions of this Act when the Authority is satisfied upon reasonable grounds that the provisions of section 93 have not been complied with.
- (7) If the Authority suspects on reasonable grounds that a person has failed to lodge a declaration as required by section 85A (Obligation of individuals to make disclosure), this section applies in respect of the person in the same way as it applies in respect of a candidate except that subsection (6) does not apply.

#### **110A Power to demand information regarding failures to disclose**

- (1) If the Authority, or a member of staff of the Authority authorised by it for the purposes of this section, reasonably suspects that a person has failed to lodge a declaration relating to electoral expenditure as required by section 85A, the Authority, or the authorised staff member, may, by notice in writing, require any other person whom the Authority, or the authorised staff member, reasonably suspects may have information regarding that electoral expenditure:
  - (a) to state the name and address of the person who it is suspected failed to lodge the declaration, or
  - (b) to furnish such other information in connection with the electoral expenditure as the Authority, or the authorised staff member, may reasonably require, or
  - (c) to produce to the Authority, or the authorised staff member, at the time and place specified in that notice, any document that relates to the electoral expenditure and permit the Authority, or the authorised staff member, to inspect, and take copies of or extracts from, the document.
- (2) A person must not, without reasonable excuse, fail to comply with a requirement of the Authority, or an authorised staff member, made under this section.

Maximum penalty: 100 penalty units.

#### **111 Proceedings for offences**

- (1) Proceedings for an offence against this Act or the regulations may be taken before a Local Court or before the Supreme Court in its summary jurisdiction.
- (2) If proceedings in respect of an offence against this Act or the regulations are brought in a Local Court, the maximum monetary penalty that the court may impose in respect of the offence is, notwithstanding any other provision of this Act, 40 penalty units or the maximum monetary penalty provided by this Act in respect of the offence,

whichever is the lesser.

- (3) If proceedings in respect of an offence against this Act or the regulations are brought in the Supreme Court in its summary jurisdiction, the Supreme Court may impose a penalty not exceeding the maximum penalty provided by this Act or the regulations in respect of the offence.
- (4) Proceedings in respect of an offence against this Act or the regulations may be commenced within 3 years after the offence was committed and no longer.
- (5) Proceedings in respect of an offence against this Act (section 102 excepted) or the regulations may only be commenced with the consent of the Authority.

### **112 Prosecution of unincorporated bodies**

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

### **113 Recovery of penalties etc from parties**

For the purposes of enforcing any judgment or order given or made in a proceeding under this Act against a party that is unincorporated, process may be issued and executed against any property of the party, or any property in which the party has, or any members of the party have in their capacity as such members, a beneficial interest, whether vested in trustees or however otherwise held, as if the party were a corporation and the absolute owner of the property or interest, but no process shall be issued or executed against any other property of members, or against any property of officers, of the party.

### **114 Evidence**

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

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

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

### **115 Delegation**

- (1) The Authority may, by instrument in writing under seal, delegate to the Chairperson the exercise of such of the functions (other than this power of delegation) conferred or imposed on the Authority by or under this or any other Act as may be specified in the instrument of delegation, and may, by such an instrument, revoke wholly or in part any such delegation.
- (2) A function the exercise of which has been delegated under this section may, while the delegation remains unrevoked, be exercised from time to time in accordance with the terms of the delegation.
- (3) A delegation under this section may be made subject to such conditions or such limitations as to the exercise of any of the functions delegated, or as to time or circumstance, as may be specified in the instrument of delegation.
- (4) Notwithstanding any delegation under this section, the Authority may continue to exercise all or any of the functions delegated.
- (5) Any act or thing done or suffered by a delegate while acting in the exercise of a delegation under this section shall have the same force and effect as if the act or thing had been done or suffered by the Authority and shall be deemed to have been done or suffered by the Authority.
- (6) An instrument purporting to be signed by a delegate of the Authority in his or her capacity as such a delegate shall in all courts and before all persons acting judicially be received in evidence as if it were an instrument executed by the Authority under seal and, until the contrary is proved, shall be deemed to be an instrument signed by a delegate of the Authority under this section.

### **116 Transitional provisions**

Schedule 2 has effect.

### **117 Regulations**

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular, for or with respect to:
  - (a) requiring the making, keeping and auditing of records of political contributions given or received, and electoral expenditure incurred, by parties, groups, candidates and other persons, and requiring and otherwise providing for the production, examination and copying of those records, and
  - (b) the exemption of any class or description of persons, organisations or bodies, or of acts, matters or things, from all or any of the provisions of this Act.

- (2) A regulation may impose a penalty not exceeding 20 penalty units for any contravention thereof.
- (3) A provision of a regulation may:
  - (a) apply generally or be limited in its application by reference to specified exceptions or factors,
  - (b) apply differently according to different factors of a specified kind, or
  - (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body,or may do any combination of those things.
- (4) The Minister shall, before a regulation is at any time made under this Act, certify to the Governor that the regulation is not unfairly biased against or in favour of any particular parties, groups, candidates or other persons, bodies or organisations, but nothing in this subsection affects the validity of that or any other regulation.

## Schedule 1 Indexation of the monetary unit

(Sections 57, 73)

### 1 Definitions

- (1) In this Schedule, except in so far as the context or subject-matter otherwise indicates or requires:

**adjustment percentage**, in relation to a current quarter, means the percentage for that quarter, calculated in accordance with clause 2.

**base quarter** means the quarter preceding that in which the day on which the writs for the first general election to which this Act applies are issued occurs.

**current quarter** means the last quarter for which an Index number was last published before the day of the issue of the writs for the election for the purposes of which the monetary unit is to be calculated in accordance with this Schedule.

**Index number**, in relation to a quarter, means the number for that quarter appearing in the Consumer Price Index (All Groups Index) for Sydney published by the Australian Statistician.

**quarter** means:

- (a) the period commencing on and including 1 July and ending on and including the next 30 September,
- (b) the period commencing on and including 1 October and ending on and including the next 31 December,

- (c) the period commencing on and including 1 January and ending on and including the next 31 March, or
  - (d) the period commencing on and including 1 April and ending on and including the next 30 June.
- (2) Where the monetary unit is to be adjusted under this Schedule by reference to the adjustment percentage for a quarter, a reference (however expressed) in this Schedule to adjusting the monetary unit is a reference to:
- (a) where the adjustment percentage is calculated in accordance with the formula set out in clause 2 (1) (a)—increasing the monetary unit, or
  - (b) where the adjustment percentage is calculated in accordance with the formula set out in clause 2 (1) (b)—reducing the monetary unit.

## 2 Calculation of adjustment percentage

- (1) For the purposes of the definition of **adjustment percentage** in clause 1 (1), the percentage for a current quarter shall be calculated:
- (a) if the Index number for that current quarter is greater than the Index number for the base quarter—in accordance with the following formula:

$$P = \frac{100 (A - B)}{B}$$

- (b) if the Index number for that current quarter is less than the Index number for the base quarter—in accordance with the following formula:

$$P = \frac{100 (B - A)}{B}$$

where:

**P** represents the percentage to be obtained,

**A** represents the Index number for that current quarter, and

**B** represents the Index number for the base quarter.

- (2) If at any time, whether before or after the commencement of this Schedule, the Australian Statistician has published in respect of a particular quarter an Index number in substitution for an Index number previously published by him or her in respect of that quarter:
- (a) except as provided in paragraph (b)—the publication of the later Index number shall be disregarded, or

(b) if the Authority so directs—regard shall, after the direction is given, be had to the later and not to the earlier Index number,

for the purposes of this Schedule.

(3) Notwithstanding subclause (2), if at any time after the commencement of this Schedule the Australian Statistician changes the reference base for the Consumer Price Index (All Groups Index) for Sydney, then, for the purposes of the application of this Schedule after the change takes place, regard shall be had only to Index numbers published in terms of the new reference base.

### **3 Adjustment of monetary unit**

The monetary unit for an election shall be determined as at the day of the issue of the writs for the election, by adjusting the amount of 22 cents by the adjustment percentage for the current quarter.

### **4 Calculation of percentages and amounts**

Where a percentage that is to be calculated under this Schedule is or includes a fraction of one-tenth of 1 per cent:

- (a) if that fraction is less than one-half of one-tenth—that fraction shall be disregarded, and
- (b) if that fraction is not less than one-half of one-tenth—that fraction shall be treated as one-tenth.

### **5 Rounding off of monetary unit**

For the purposes of the application of the monetary unit in connection with an election, the Authority may round off any fraction of a cent in such manner as it thinks appropriate.

## **Schedule 2 Transitional provisions**

(Section 116)

### **Part 1 Provisions consequent on enactment of this Act**

#### **1 Term of office of appointed members and alternates**

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

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

## **2 First general election to which Act applies**

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

## **3 Advance payments**

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

## **4 By-elections**

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

## **Part 2 Provisions consequent on enactment of [Election Funding \(Amendment\) Act 1987](#)**

### **5 Declarations of political contributions**

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

### **6 Register of Parties**

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

Act.

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

#### **7 Operation of amendments**

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

#### **8 Advance payments**

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

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

#### **9 Definition**

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

#### **10 Disclosure periods**

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

#### **11 Third party disclosures**

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



the commencement of those amendments.

## **12 Fund-raising events**

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

## **13 Disclosure of political contributions**

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

## **14 Annual subscriptions to parties**

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

## **15 Reporting source of gifts**

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