

Election Funding and Disclosures Regulation 2009

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New South Wales

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New South Wales

Contents

Part 1 Preliminary	5
1 Name of Regulation	5
2 Commencement	5
3 Definitions	5
Part 2 Public funding of election campaigns	5
Division 1 Payments under Part 5 of Act	5
4 (Repealed)	5
5 Expenditure that is not electoral communication expenditure	6
6 Vouching for election campaign expenditure in claim for Part 5 payment.....	6
7 Part 5 payments generally	7
8 Part 5 payments to joint party group	7
Division 2 Disclosures under Part 6 of Act	8
8A When disclosures under Part 6 of Act are to be made	8
8B Information to accompany Part 6 declaration by party	8
Part 3 Political donations and electoral expenditure	8
Division 1 Vouching	8
9 Vouching for political donations.....	8
10 Vouching for electoral expenditure relating to advertising	9
10A Vouching for repayments to party by candidate	9

Division 2 Accounting records of party	9
11 Party records	9
12 Party records may be maintained by computer	10
13 Maintenance of party records other than by computer	10
14 Receipt book.....	11
15 Acknowledgment book	11
16 Deposit book	12
17 Cash book.....	13
18 Journal	14
19 Ledger	14
20 Party records to be retained	15
21 Alternative system of accounts	15
Division 3 Accounting records of elected member, group or candidate ...	16
22 Records of elected member, group or candidate.....	16
23 Accounting records may be maintained by computer	16
24 Receipt book.....	17
25 Acknowledgment book	17
26 Petty cash book	18
27 Cash book.....	18
28 Records of elected members, groups and candidates to be retained	19
Division 4 Other matters relating to political donations and political expenditure	
.....	19
29 Receipt statement for reportable political donations.....	20
30 Persons who may not be appointed to accept political donations or make payments for electoral expenditure	20
.....	20
31 Campaign accounts	20
32 Exemption from audit requirements	20
33 Compliance audits	21
34 Exemption from requirements to publish residential address of donors who are silent electors	21
Part 4 Miscellaneous	21

35 Eligibility for appointment to Authority.....	21
36 Training requirements for party agents or official agents	21
37 Determination of value of property disposed of	22
38 Accounts and records to be kept to facilitate audit	22
39 Direction by Authority to lodge certain records	22
40 DVDs, video tapes and films.....	23
41 Other advertising.....	24
42 Savings	24
43 Registration of third-party campaigners	24
44 Advance payments	25
45 Applicable cap on electoral communication expenditure	25
46 Declarations about payments received from Political Education Fund	25
47 Payments from Administration and Policy Development Funds.....	25
Schedule 1 Statutory declaration of eligibility for appointment	25

Election Funding and Disclosures Regulation 2009



New South Wales

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Election Funding and Disclosures Regulation 2009*.

2 Commencement

This Regulation commences on 1 September 2009 and is required to be published on the NSW legislation website.

Note—

This Regulation replaces the *Election Funding and Disclosures Regulation 2004* which is repealed on 1 September 2009 by section 10 (2) of the *Subordinate Legislation Act 1989*.

3 Definitions

(1) In this Regulation:

Part 5 payment means a payment under Part 5 of the Act.

Part 6 declaration means a declaration of disclosures under Part 6 of the Act.

party records means the accounting records required to be kept by a party under Division 2 of Part 3.

property does not include money.

the Act means the *Election Funding and Disclosures Act 1981*.

(2) Notes in this Regulation do not form part of this Regulation.

Part 2 Public funding of election campaigns

Division 1 Payments under Part 5 of Act

4 (Repealed)

5 Expenditure that is not electoral communication expenditure

(1) For the purposes of section 87 (2) (j) of the Act, expenditure incurred in the use or acquisition of any of the following items is prescribed as expenditure that is not electoral communication expenditure:

- (a) a motor vehicle,
- (b) motor vehicle accessories,
- (c) a vessel or aircraft used for the purpose of navigation,
- (d) televisions and radios,
- (e) television and radio broadcasting equipment,
- (f) electronic equipment for recording sounds or visual images,
- (g) photographic equipment,
- (h) computers and associated equipment and computer software,
- (i) office furniture and equipment,

unless the use or acquisition is exercised or effected within a period of 10 weeks that includes a polling day and is terminated or disposed of within that period.

(2) If there is a purchase and disposal of property in the circumstances referred to in subclause (1), electoral communication expenditure includes only so much of the purchase price of the property as is not recovered in the disposal of the property.

(3) In this clause:

motor vehicle means a motor vehicle within the meaning of the [Road Transport \(General\) Act 2005](#).

motor vehicle accessories includes radios, sound reproducing equipment, air conditioning units, spare tyres or tools to be used with a motor vehicle.

office furniture and equipment includes desks, tables, chairs, filing cabinets, library shelving, typewriters, word processors, calculators, accounting machines, cash registers, photocopiers, printing machines, paper collating machines, water coolers, air conditioners, refrigerators, lockers or other items of a durable nature utilised in or ancillary to a work function.

polling day includes the day appointed for the taking of the poll at a by-election.

6 Vouching for election campaign expenditure in claim for Part 5 payment

(1) For the purposes of section 66 of the Act, the prescribed manner of vouching for

expenditure specified in a claim for a Part 5 payment is:

- (a) by the party or official agent for the party, group or candidate attaching to the claim the relevant Part 6 declaration or a copy of the declaration, and
 - (b) if the amount claimed exceeds the amount of expenditure vouched for under paragraph (a), by the party or official agent attaching to the claim the originals of either the accounts or receipts (or a mixture of both) issued in respect of so much of the expenditure not vouched for under that paragraph as in aggregate at least equals the excess amount.
- (2) An account or receipt is to be disregarded for the purposes of subclause (1) (b) if it does not set out such particulars as are sufficient to identify clearly the nature of the expenditure to which it relates.

7 Part 5 payments generally

- (1) In respect of expenditure incurred by a party or group, the Authority must not direct that the whole or any part of a Part 5 payment be made to a person, body or organisation (other than the party or official agent of the party or group) unless:
 - (a) the payment is for an amount of \$5,000 or more, and
 - (b) the party or official agent has authorised the Authority in writing to make the payment.
- (2) In respect of expenditure incurred by a candidate, the Authority must not direct that the whole or any part of a Part 5 payment be made to a person, body or organisation other than the candidate or the party or official agent of the candidate.
- (3) Subclause (2) does not apply to a payment referred to in section 67 of the Act.

8 Part 5 payments to joint party group

- (1) If:
 - (a) a party endorses a candidate who is a member of, or 2 or more candidates who are members of, a group, and
 - (b) another party endorses another candidate who is a member of, or other candidates who are members of, that same group,the Authority may direct that the whole of a Part 5 payment be made to the party agent of the party that endorsed the candidate whose name first appears on the list of members of the group.
- (2) This clause does not apply:
 - (a) if a common agent has been registered by the parties, or

- (b) if the group has notified the Authority in writing of the party agent to whom the whole or any part of a Part 5 payment is to be made.

Division 2 Disclosures under Part 6 of Act

8A When disclosures under Part 6 of Act are to be made

For the purposes of section 91 (1) of the Act, a disclosure under Part 6 of the Act is to be made:

- (a) in the case of a disclosure made by a major political donor (other than a donor who is also a third-party campaigner)—within 16 weeks after the end of each relevant disclosure period, and
- (b) in any other case—within 12 weeks after the end of each relevant disclosure period.

8B Information to accompany Part 6 declaration by party

The following information in respect of the financial year to which the declaration relates is to accompany a Part 6 declaration by a party:

- (a) financial records from the party's accounting records (including the general ledger and subsidiary ledgers),
- (b) the chart of accounts,
- (c) the trial balance,
- (d) statements and reconciliation statements for all accounts held by the party at a bank, credit union or building society,
- (e) any other information that is reasonably required to clarify the information provided under paragraphs (a)–(d).

Part 3 Political donations and electoral expenditure

Division 1 Vouching

9 Vouching for political donations

For the purposes of section 91 (6) of the Act, the prescribed manner of vouching for political donations received by a party, an elected member, a group or a candidate is by lodging with the relevant Part 6 declaration:

- (a) the receipt book, containing the triplicate forms of each receipt issued and the original, duplicate and triplicate of each unused receipt, and
- (b) the acknowledgment book, containing the triplicate forms of each acknowledgment issued and the original, duplicate and triplicate of each unused acknowledgment.

10 Vouching for electoral expenditure relating to advertising

- (1) For the purposes of section 91 (6) of the Act, the prescribed manner of vouching for electoral communication expenditure on advertising is by attaching to the relevant Part 6 declaration:
 - (a) copies of either the accounts or receipts (or a mixture of both) issued in respect of the expenditure, and
 - (b) copies of the advertising material to which the expenditure relates.
- (2) An account or receipt is to be disregarded for the purposes of this clause if it does not set out such particulars as are sufficient to identify clearly the nature of the expenditure to which it relates.
- (3) In this clause:

advertising material means, in the case of an advertisement by radio, television or in a cinema, the text (if any) of the advertisement.

electoral communication expenditure on advertising means expenditure on advertisements in radio, television, the Internet, cinemas, newspapers, billboards, posters, brochures, how-to-vote cards and other election material (as referred to in section 87 (2) (a) of the Act).

10A Vouching for repayments to party by candidate

For the purposes of section 91 (6) of the Act, the prescribed manner of vouching for expenditure that is included (because of section 84 (7) of the Act) as expenditure of a candidate who is the endorsed candidate of a registered party is by the candidate attaching to the relevant Part 6 declaration:

- (a) copies of the relevant invoices issued by the party to the candidate for payment by the candidate, and
- (b) copies of the accounts or receipts issued to the party in respect of the expenditure incurred by the party for the benefit of the candidate, and
- (c) in the case of expenditure incurred by the party for the benefit of 2 or more candidates, evidence of the proportion of the expenditure allocated by the party to the candidate.

Division 2 Accounting records of party

11 Party records

- (1) A party must keep at its party headquarters in New South Wales, or at some other address approved by the Authority, the following accounting records (**party records**):

- (a) a receipt book,
- (b) an acknowledgment book,
- (c) a deposit book,
- (d) a cash book, or a receipts cash book and payments cash book,
- (e) a cheque book,
- (f) a journal,
- (g) a ledger.

Maximum penalty: 20 penalty units.

- (2) The party records must be kept in accordance with the requirements of this Division.

12 Party records may be maintained by computer

- (1) Despite clauses 14–19, a party may maintain its party records by means of a computer system.
- (2) If a party maintains its party records by means of a computer system, the party must ensure that:
 - (a) the records comply with the requirements of clauses 14–19 to the extent that those requirements may reasonably be expected to be complied with in relation to computer records, and
 - (b) any entry produced in visible form appears in chronological sequence, and
 - (c) all entries are numbered sequentially under program control in a manner that enables the completeness of the party records to be conveniently verified, and
 - (d) no amendment to the particulars of a transaction already recorded can be made otherwise than by a separate transaction effecting the amendment, and
 - (e) a back-up copy of all records that are less than 6 years old is made at least once a month, and
 - (f) the most recent back-up copy is kept in a separate location so that any incident that might adversely affect the records would not affect the back-up copy.

13 Maintenance of party records other than by computer

Except in the case where a party maintains its party records by means of a computer system, the party records concerned must be kept either in book or loose-leaf form or in a system of cards.

14 Receipt book

- (1) The receipt book must contain forms of receipt in duplicate.
- (2) Each copy must be machine numbered serially.
- (3) Provision must be made for the following to be entered on each form:
 - (a) the date of the receipt,
 - (b) the amount of money received by the party,
 - (c) the form (cash, cheque or postal order) in which the money was received,
 - (d) the name and address, or ABN (if any), of the person, body or organisation by whom or on whose behalf the amount was paid,
 - (e) the purpose of the payment.
- (4) If a reportable political donation is received by the party, the party must issue from the receipt book a receipt for the amount received.
- (5) The particulars referred to in subclause (3) must be entered on each receipt in ink or indelible pencil and the receipt must be signed by a person authorised by the party agent of the party.
- (6) A carbon impression of the receipt must be made on the duplicate form, which must be retained by the party.
- (7) If the cash book or receipts cash book is used by the party for the purpose of issuing receipts and a carbon impression of the receipt is recorded as a cash book entry, subclause (2) does not require that carbon impression to be machine numbered if the machine number on the original is recorded as part of the cash book entry by some other process.
- (8) A receipt must be cancelled by writing the word "CANCELLED" across the face of the original and copy of the form.
- (9) The party must retain in the receipt book the original form of a cancelled receipt and the copy.
- (10) Despite any other provision of this clause, receipts comply with this clause if they contain the information set out in subclause (3) and are generated by an electronic accounting system approved by the Authority.

15 Acknowledgment book

- (1) The acknowledgment book must contain forms of acknowledgment in duplicate.
- (2) Each copy must be machine numbered serially.

- (3) Provision must be made for the following to be entered on each form:
 - (a) the date of the acknowledgment,
 - (b) the value of any gift that is a reportable political donation that is donated to the party,
 - (c) a description of the gift,
 - (d) the name and address, or ABN (if any), of the person, body or organisation by whom or which or on whose behalf the donation was made,
 - (e) the purpose for which the donation was made.
- (4) If a reportable political donation that is a gift is received by the party, the party must issue from the acknowledgment book an acknowledgment of the donation.
- (5) The particulars referred to in subclause (3) must be entered on each acknowledgment in ink or indelible pencil and the acknowledgment must be signed by a person authorised by the party.
- (6) A carbon impression of the acknowledgment must be made on the duplicate form, which must be retained by the party.
- (7) An acknowledgment must be cancelled by writing the word "CANCELLED" across the face of the original and copy of the form.
- (8) The party must retain in the acknowledgment book the original form of a cancelled acknowledgment and the copy.
- (9) In this clause, **gift** does not include a gift in the form of money.
- (10) Despite any other provision of this clause, acknowledgments comply with this clause if they contain the information set out in subclause (3) and are generated by an electronic accounting system approved by the Authority.

16 Deposit book

- (1) The deposit book must contain deposit forms in duplicate for each bank, credit union or building society at which the party keeps accounts.
- (2) Provision must be made for the following to be entered on each form:
 - (a) the date of the deposit,
 - (b) the amount of the deposit,
 - (c) the form (cash, cheque or postal order) of the deposit,
 - (d) in the case of a deposit by cheque, the name of the drawer of the cheque.

- (3) A carbon impression of the deposit must be made on the duplicate form which must be retained by the party.
- (4) The party must ensure that:
 - (a) the deposit book is produced to the bank, credit union or building society at the time of making a deposit of a political donation, and
 - (b) the particulars referred to in subclause (2) are entered on each deposit form at the time of making such a deposit, and
 - (c) the carbon impression of each complete deposit entry is initialled by an officer of the bank, credit union or building society at which the deposit is being made and is stamped with the stamp of that authorised deposit-taking institution.

17 Cash book

- (1) The cash book must be a book or books, the sheets of which are consecutively numbered.
- (2) The consecutive numbers of receipts issued or cheques drawn must be shown on the respective sheets.
- (3) If the loose-leaf principle is used, separate sheets may be kept for the receipts cash book and the payments cash book, and it is not necessary to number the sheets consecutively.
- (4) As soon as practicable after a transaction is effected, the party must enter:
 - (a) on the receipts side of the cash book, on the receipts cash sheets or in the receipts cash book—particulars of all money received by the party by way of political donations, and
 - (b) on the disbursements side of the cash book, on the payments cash sheets or in the payments cash book—particulars of all money disbursed by the party by way of electoral expenditure.
- (5) At the end of each month, the cash book or books must be balanced and the balance carried forward to the commencement of the next month and to a ledger account provided for that purpose.
- (6) At the end of each month:
 - (a) the entries in the cash book or books must be compared with the pass book or statement of the bank, credit union or building society, and
 - (b) amounts credited to the bank, credit union or building society account and appearing in the relevant pass book or statement for which no receipt had been written and amounts debited to the bank, credit union or building society account

and appearing in the relevant pass book or statement for which no cheque had been drawn must be entered in the cash book or books.

- (7) Any necessary reconciliation (showing the balance in the bank, credit union or building society account as indicated in the relevant pass book or statement, and adding any money received but not banked and deducting any cheques drawn but not presented for payment) must be entered in the cash book at the end of the entries for the month.

18 Journal

- (1) As soon as practicable after a transaction is effected, the party must enter in the journal particulars of:
 - (a) the value of any interest in property donated to the party, and
 - (b) particulars of any interest in property disposed of by the party otherwise than for money, and
 - (c) all adjustments to be made to accounts in the ledger, and
 - (d) all transfers to be effected from one ledger account to another, and
 - (e) all other transactions affecting any ledger account which are not posted or to be posted from the cash book to the ledger,being transactions relating to political donations received or electoral expenditure incurred.
- (2) The particulars of each entry in the journal must be sufficient to identify the transaction in respect of which the entry is made and the reason for that entry.

19 Ledger

- (1) The ledger must contain particulars of all political donations received and electoral expenditure incurred.
- (2) The particulars must, if taken in conjunction with other particulars in the receipt book, cash book or books and journal, be sufficient to identify the transaction in respect of which the political donation was received or the electoral expenditure incurred.
- (3) Each entry in the cash book or books relating to a political donation received or an electoral expenditure incurred must be posted as soon as practicable to the appropriate account in the ledger.
- (4) Against each entry in the ledger account there must be recorded:
 - (a) a reference to the folio of the cash book from which the entry is posted, or

- (b) if the cash book is kept on the loose-leaf principle, a reference to the receipt number or cheque number.
- (5) Each entry in the journal relating to a political donation received or an electoral expenditure incurred must be posted as soon as practicable to the appropriate account in the ledger.
- (6) There must be recorded against each entry in the ledger account a reference to the folio of the journal from which the entry is posted, preceded by the letter "J".
- (7) At the end of each month, each account in the ledger must be balanced and the balance (if any) must be carried forward to the commencement of the next month.

20 Party records to be retained

A party must retain its party records for at least 3 years.

Note—

It is an offence under section 96I of the Act not to keep the records for 3 years.

21 Alternative system of accounts

- (1) The party agent for a party may apply to the Authority for approval for the party to keep a system of accounting records other than that described in this Division.
- (2) Such an application must be accompanied by a statement of an auditor indicating that, in his or her opinion, the information to be included in a Part 6 declaration is ascertainable from the proposed system.
- (3) The Authority may approve an application, either unconditionally or subject to such conditions as it thinks proper to impose at the time of giving the approval, if it is satisfied:
 - (a) that the proposed system will accurately record and explain the transactions in respect of which the party agent is to lodge a Part 6 declaration, and
 - (b) that the information to be included in such a declaration is ascertainable from the proposed system.
- (4) The Authority may, for any reason, and on giving at least one month's notice, cancel an approval.
- (5) While an approval is in force, the party to which the approval relates must keep a system of accounting records that complies with the terms of the application and any condition subject to which the approval was given.

Maximum penalty: 20 penalty units.

- (6) In the event of an inconsistency between the terms of an application for approval and

a condition subject to which the approval was given, the condition prevails to the extent of the inconsistency.

Division 3 Accounting records of elected member, group or candidate

22 Records of elected member, group or candidate

- (1) An official agent of an elected member, group or candidate must keep the following accounting records in respect of an election campaign:
 - (a) a receipt book,
 - (b) an acknowledgment book,
 - (c) a cheque book,
 - (d) a petty cash book,
 - (e) a cash book, or a receipts cash book and payments cash book.

Maximum penalty: 20 penalty units.

- (2) The accounting records must be kept in accordance with the requirements of this Division.

23 Accounting records may be maintained by computer

- (1) Despite clauses 24–27, the accounting records referred to in clause 22 may be maintained by means of a computer system.
- (2) If an official agent of an elected member, group or candidate maintains the accounting records by means of a computer system, the official agent must ensure that:
 - (a) the records comply with the requirements of clauses 24–27 to the extent that those requirements may reasonably be expected to be complied with in relation to computer records, and
 - (b) any entry produced in visible form appears in chronological sequence, and
 - (c) all entries are numbered sequentially under program control in a manner that enables the completeness of the records to be conveniently verified, and
 - (d) no amendment to the particulars of a transaction already recorded can be made otherwise than by a separate transaction effecting the amendment, and
 - (e) a back-up copy of all records that are less than 3 years old is made at least once a month, and
 - (f) the most recent back-up copy is kept in a separate location so that any incident

that might adversely affect the records would not affect the back-up copy.

24 Receipt book

- (1) The receipt book must be one issued by the Authority containing forms of receipt in triplicate.
- (2) If a reportable political donation in the form of money is received by the official agent of an elected member, group or candidate, or a person appointed by the official agent under section 96A (4) of the Act, the official agent or person must issue from the receipt book a receipt for the amount received.
- (3) The following particulars must be entered on each receipt in ink or indelible pencil:
 - (a) the date of the receipt,
 - (b) the amount of money received,
 - (c) the form (cash, cheque or postal order) in which the money was received,
 - (d) the name and address, or ABN (if any), of the person, body or organisation by whom or which or on whose behalf the amount was paid,
 - (e) the purpose of the payment.
- (4) The receipt must be signed by the official agent or person appointed under section 96A (4) of the Act.
- (5) Carbon impressions of the receipt must be made on the duplicate and triplicate forms.
- (6) The duplicate form must be retained by the official agent for his or her records.
- (7) The triplicate form must be retained in the receipt book.
- (8) A receipt must be cancelled by writing the word "CANCELLED" across the face of the original and the 2 copies of the form.
- (9) The official agent must retain in the receipt book the original form of a cancelled receipt and the 2 copies until the book is lodged with the relevant Part 6 declaration.
- (10) Despite any other provision of this clause, receipts comply with this clause if they contain the information set out in subclause (3) and are generated by an electronic accounting system approved by the Authority.

25 Acknowledgment book

- (1) The acknowledgment book must be one issued by the Authority containing forms of acknowledgment in triplicate.
- (2) If a reportable political donation that is a gift is received by the official agent of an

elected member, group or candidate, or a person appointed by the official agent under section 96A (4) of the Act, the official agent or person must issue from the acknowledgment book an acknowledgment of the donation.

- (3) The following particulars must be entered on each acknowledgment in ink or indelible pencil:
 - (a) the date of the acknowledgment,
 - (b) the value of any gift donated,
 - (c) a description of the gift,
 - (d) the name and address, or ABN (if any), of the person, body or organisation by whom or which or on whose behalf the donation was made,
 - (e) the purpose for which the donation was made.
- (4) The acknowledgment must be signed by the official agent or person appointed under section 96A (4) of the Act.
- (5) Carbon impressions of the acknowledgment must be made on the duplicate and triplicate forms.
- (6) The duplicate form must be retained by the official agent for his or her records.
- (7) The triplicate form must be retained in the acknowledgment book.
- (8) An acknowledgment must be cancelled by writing the word "CANCELLED" across the face of the original and the 2 copies of the form.
- (9) The official agent must retain in the acknowledgment book the original form of a cancelled acknowledgment and the 2 copies until the book is lodged with the relevant Part 6 declaration.
- (10) In this clause, **gift** does not include a gift in the form of money.
- (11) Despite any other provision of this clause, acknowledgments comply with this clause if they contain the information set out in subclause (3) and are generated by an electronic accounting system approved by the Authority.

26 Petty cash book

The petty cash book must be a book for recording cash payments for items of expenditure of \$50 or less.

27 Cash book

- (1) The cash book must be a book or books, the sheets of which are consecutively numbered.

- (2) The consecutive numbers of receipts issued or cheques drawn must be shown on the respective sheets.
- (3) If the loose-leaf principle is used, separate sheets may be kept for the receipts cash book and the payments cash book, and it is not necessary to number the sheets consecutively.
- (4) As soon as practicable after a transaction is effected, the official agent must enter:
 - (a) on the receipts side of the cash book, on the receipts cash sheets or in the receipts cash book—particulars of all money received by the official agent of the elected member, group or candidate, or a person appointed by the official agent under section 96A (4) of the Act, by way of political donations, and
 - (b) on the disbursements side of the cash book, on the payments cash sheets or in the payments cash book—particulars of all money disbursed by the official agent of the elected member, group or candidate, or a person appointed by the official agent under section 96A (4) of the Act, by way of electoral expenditure.
- (5) At the end of each month, the cash book or books must be balanced and the balance carried forward to the commencement of the next month.
- (6) At the end of each month:
 - (a) the entries in the cash book or books must be compared with the pass book or statement of the relevant bank, credit union or building society, and
 - (b) amounts credited to the bank, credit union or building society account and appearing in the relevant pass book or statement for which no receipt had been written and amounts debited to the bank, credit union or building society account and appearing in the relevant pass book or statement for which no cheque had been drawn must be entered in the cash book or books.
- (7) Any necessary reconciliation (showing the balance in the bank, credit union or building society account as indicated in the relevant pass book or statement, and adding any money received but not banked and deducting any cheques drawn but not presented for payment) must be entered in the cash book at the end of the entries for the month.

28 Records of elected members, groups and candidates to be retained

The official agent of an elected member, group or candidate must retain the accounting records for an election campaign for at least 3 years.

Note—

It is an offence under section 96I of the Act not to keep the records for 3 years.

Division 4 Other matters relating to political donations and political

expenditure

29 Receipt statement for reportable political donations

A receipt issued for a reportable political donation must include a statement in the following form:

If you make a political donation or incur electoral expenditure of \$1,000 or more, you must complete and lodge a declaration with the Election Funding Authority in accordance with the *Election Funding and Disclosures Act 1981*. A political donation includes a contribution or entry fee or an annual or other subscription. You must also disclose a political donation of less than \$1,000 if the total amount of political donations made by you in respect of the same party (or associated parties), elected member, group, candidate or person in the same financial year is \$1,000 or more. Penalties apply for failing to lodge a declaration.

30 Persons who may not be appointed to accept political donations or make payments for electoral expenditure

For the purposes of section 96A (4) of the Act, a person may not be appointed by an official agent to accept political donations to be made to the agent or to make payments for electoral expenditure from a campaign account by the agent if the person has been convicted of an offence referred to in section 27 of the Act that would disqualify the person from being appointed as a party agent or an official agent.

31 Campaign accounts

- (1) An elected member, candidate or group is exempted from section 96B (2) of the Act if the Authority has approved the operation of the campaign account by the elected member, candidate or group for a period, or for a purpose, specified by the Authority and the approval has not been revoked or otherwise ceased to have effect.
- (2) The Authority may only give an approval under subclause (1) if it is satisfied that there are exceptional circumstances that warrant the giving of the approval.

32 Exemption from audit requirements

- (1) An elected member is exempted from section 96K of the Act if the Authority has given an approval that is in force under this clause.
- (2) The Authority may give an approval under subclause (1) in either of the following cases:
 - (a) where a Part 6 declaration contains a statement to the effect that no political donations were received and no electoral expenditure was incurred,
 - (b) where the elected member to whom the declaration relates is not eligible to receive a Part 5 payment.

- (3) The Authority may give an approval before or after the declaration is made and may revoke the approval at any time.

33 Compliance audits

The Authority may conduct a compliance audit of compliance with the requirements of Part 6 of the Act by a party, an elected member or a group or candidate.

34 Exemption from requirements to publish residential address of donors who are silent electors

- (1) The Authority is exempt from any requirement under section 95 of the Act to publish the residential address of a donor who is a silent elector that is contained in a disclosure of reportable political donations, if the Authority is aware that the donor is a silent elector.
- (2) In this clause, a **silent elector** means a person whose address is not entered on, or is deleted from, the Electoral Roll under section 104 of the *Commonwealth Electoral Act 1918* of the Commonwealth.

Part 4 Miscellaneous

35 Eligibility for appointment to Authority

For the purposes of section 9 (2) (b) of the Act, the prescribed form of written notice to be lodged by a prospective appointed member or alternate is the statutory declaration set out in Schedule 1.

36 Training requirements for party agents or official agents

- (1) For the purposes of section 27 (1) (e) of the Act, a person is not qualified for appointment as a party agent or an official agent unless the person has completed an authorised training program provided by or on behalf of the Authority for that purpose.
- (2) A person is taken to have completed a training program for the purposes of this clause if the person has been notified in writing by the Authority that the person has successfully completed the program.
- (3) The following persons are eligible for appointment as a party agent or an official agent without further training:
 - (a) a Certified Practising Accountant member of CPA Australia, New South Wales Division,
 - (b) a member of the Institute of Chartered Accountants in Australia, New South Wales Region, who holds a Certificate of Public Practice issued by that Institute,
 - (c) a member of the National Institute of Accountants who holds Public Practice Certificate issued by that Institute.

37 Determination of value of property disposed of

- (1) The Authority may appoint or approve any of the following persons to assess the value of property disposed of if it is of the opinion that the value of the property has not been correctly stated:
 - (a) in respect of real property—persons who are registered as valuers under the *Valuers Act 2003*,
 - (b) in respect of property other than real property—persons who have, for a period of (or for periods totalling not less than) 5 years, been engaged in making valuations of property of the same kind as the property disposed of.
- (2) However, the Authority may not appoint or approve any of the following persons to assess the value of the property:
 - (a) candidates,
 - (b) party or official agents,
 - (c) persons who are not eligible under section 9 (1) of the Act for appointment as an appointed member or an alternate,
 - (d) persons appointed to any office or position under the Act,
 - (e) persons appointed to any office or position under the *Parliamentary Electorates and Elections Act 1912*.
- (3) A valuation made by a person appointed or approved in accordance with this clause is, for the purposes of the Act, taken to be a true valuation of the amount of a donation or expenditure consisting of a disposition of property.

38 Accounts and records to be kept to facilitate audit

The official agent of an elected member, party, group or candidate must keep all accounts, records, documents and papers that relate directly or indirectly to an expenditure referred to in a claim for a Part 5 payment or any matter required to be set out in a Part 6 declaration in such a manner as:

- (a) to disclose a true and fair view of the transactions of the elected member, party, group or candidate, and
- (b) to enable an auditor conveniently and properly to issue a certificate under section 75 or 96K of the Act.

Maximum penalty: 20 penalty units.

39 Direction by Authority to lodge certain records

- (1) If a claim for a Part 5 payment or a Part 6 declaration is not validly lodged or is, in the

opinion of the Authority, incorrect in a material particular, the Authority may by notice in writing require:

- (a) a current or former elected member, party, group or candidate, or
 - (b) a current or former agent of an elected member or a party, group or candidate,
- to lodge with the Authority within the time specified in the notice such records as the Authority may require of political donations made or received or electoral expenditure incurred by the party, group or candidate.

(2) A person must not fail to comply with any such requirement.

Maximum penalty: 20 penalty units.

(3) The Authority may copy any records lodged with it which it considers may be of assistance in determining:

- (a) the reason why a claim for a Part 5 payment or a Part 6 declaration was not validly lodged, or
- (b) whether, in a claim for a Part 5 payment or a Part 6 declaration, the agent of a party, group or candidate has made a statement that is false or misleading in a material particular.

40 DVDs, video tapes and films

(1) This clause applies to any DVD, video tape, film or transparency that is used:

- (a) for the purposes of an advertisement appearing on television or at a cinema, and
- (b) at the direction, or with the approval, of a party or an official agent of an elected member or a group or candidate.

(2) The party or an official agent of the elected member, group or candidate must retain any such DVD, video tape, film or transparency for a period of 12 months after the date of the last presentation of the advertisement concerned.

Maximum penalty: 20 penalty units.

(3) If so required by the Authority, the party or an official agent of the elected member, group or candidate must arrange for any such DVD, video tape, film or other transparency to be viewed by a member of the Authority or by a person authorised by the Authority.

Maximum penalty: 20 penalty units.

(4) It is a defence to a prosecution for an offence arising under this clause if it is established that a DVD, video tape, film or other transparency to which this clause applies did not give rise to:

- (a) electoral expenditure that is included in a claim for a Part 5 payment, or
- (b) electoral expenditure that is required to be disclosed by the agent of an elected member or a party, group or candidate in accordance with the Act.

41 Other advertising

- (1) This clause applies to any advertising material in respect of which electoral expenditure is incurred by an elected member or a party, group or candidate (other than material required to be retained under clause 40).
- (2) The party or the official agent of the party, elected member, group or candidate (as the case requires) must keep the following advertising material for a period of 3 years after the date of the last presentation of the advertisement concerned as a record of electoral expenditure incurred in respect of that advertisement:
 - (a) a copy of the text of any radio or internet advertisement,
 - (b) if the expenditure is incurred in respect of an advertisement in one or more newspapers or periodicals:
 - (i) the full page of the newspaper or periodical in which the advertisement is displayed, and
 - (ii) a statement identifying the advertisement and listing the name of each newspaper and periodical in which the advertisement was published, the size of the advertisement and the date of each publication,
 - (c) if the expenditure is incurred in respect of other printed election campaign material, a copy of each printed item.

Note—

It is an offence under section 96I of the Act to fail to keep the material for 3 years.

42 Savings

Any act, matter or thing that, immediately before the repeal of the *Election Funding and Disclosures Regulation 2004*, had effect under that Regulation is taken to have effect under this Regulation.

43 Registration of third-party campaigners

An application for registration as a third-party campaigner may be made and dealt with, and a person can be registered as a third-party campaigner, under Division 2A of Part 4 of the Act (as inserted by the *Election Funding and Disclosures Amendment Act 2010*) before 1 January 2011.

44 Advance payments

The amount of any advance payment made to a party under Division 5 of Part 5 of the Act before 1 January 2011 in respect of the first general election to be held in 2011 is to be deducted from the amount that is paid or payable to the party under Part 5 of the Act (as substituted by the *Election Funding and Disclosures Amendment Act 2010*) in respect of that election.

45 Applicable cap on electoral communication expenditure

If the electoral communication expenditure for the first general election to be held in 2011 incurred by a party or a candidate during the capped expenditure period for that election does not exceed the applicable cap, the electoral communication expenditure for that election for the party or candidate is taken to include any expenditure incurred between 1 July 2010 and 31 December 2010, but only to the extent that:

- (a) that expenditure would be actual expenditure (within the meaning of section 58 of the Act), and
- (b) the sum of expenditure incurred between 1 July 2010 and 31 December 2010 and expenditure incurred during the capped expenditure period does not exceed the applicable cap.

46 Declarations about payments received from Political Education Fund

Section 97H of the Act, as in force immediately before 1 January 2011, continues to apply to an agent of a registered party who, before 1 January 2011, made a claim for payment under Part 6A of the Act, in respect of payments spent by the party in the 2010 calendar year.

47 Payments from Administration and Policy Development Funds

- (1) Annual payments from the Administration or Policy Development Funds under Part 6A of the Act, as inserted by the *Election Funding and Disclosures Amendment Act 2010*, may be made in respect of expenditure incurred during the 2010 calendar year.
- (2) The amount of such an annual payment to a party is to be reduced by any amount paid to the party from the Political Education Fund under the Act, as in force immediately before 1 January 2011, in respect of the 2010 calendar year.

Schedule 1 Statutory declaration of eligibility for appointment

(Clause 35)

Election Funding and Disclosures Act 1981

I [*full name*] of [*residential address*] do solemnly and sincerely declare that I am not ineligible for appointment as an appointed member/alternate for an appointed member* of the Election Funding Authority by reason of any of the matters set out in section 9 (1) of the *Election Funding and Disclosures Act 1981*, and I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the *Oaths Act 1900*.

Declared before me on the *[date and place]*.

Declarant *[Print name and insert signature]*

Justice of the Peace *[Print name and insert signature]*

*[*Delete whichever does not apply]*