

# Electoral Funding Regulation 2018

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New South Wales

## Status Information

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### Authorisation

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New South Wales

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# Electoral Funding Regulation 2018



New South Wales

## Part 1 Preliminary

### 1 Name of Regulation

This Regulation is the *Electoral Funding Regulation 2018*.

### 2 Commencement

This Regulation commences on 1 July 2018 and is required to be published on the NSW legislation website.

### 3 Definitions

(1) In this Regulation:

**Part 3 declaration** means a declaration of disclosures under Part 3 of the Act.

**Part 4 payment** means a payment under Part 4 of the Act.

**party records** means the accounting records required to be kept by a party under Division 4 of Part 2.

**property** does not include money.

**responsible person**, for an elected member, group, candidate, associated entity or third-party campaigner, means the person who is responsible under section 14 of the Act for making disclosures required under Part 3 of the Act for the elected member, group, candidate, associated entity or third-party campaigner.

**the Act** means the *Electoral Funding Act 2018*.

#### Note—

The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this Regulation.

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

#### 4 Expenditure that is not electoral expenditure

(1) For the purposes of section 7 (2) (c) of the Act, expenditure incurred in the use or acquisition of any of the following items is prescribed as expenditure that is not electoral 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 an election day and is terminated or disposed of within that period.

(2) If there is a purchase and disposal of property in the exception referred to in subclause (1), electoral 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 Act 2013](#).

**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, computers, calculators, 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.

## Part 2 Political donations and electoral expenditure

### Division 1 Party agents consenting to be responsible for disclosure

#### 5 Special provisions dealing with making and withdrawal of notices relating to

### **responsibility for disclosure**

- (1) If a party agent of a registered party consents, by notice in writing in accordance with section 14 (4) of the Act, to be the person who is responsible for making disclosures required under Part 3 of the Act for an elected member, candidate or group and the notice is given during a relevant disclosure period, the following applies:
  - (a) the elected member, candidate or group concerned is not responsible for making the disclosures required under that Part for the elected member, candidate or group of political donations received or made, and electoral expenditure incurred, after the giving of the notice,
  - (b) the party agent concerned is responsible for making the disclosures required under that Part for the elected member, candidate or group of political donations received or made, and electoral expenditure incurred, after the giving of the notice,
  - (c) the party agent and the elected member, candidate or group concerned must make the disclosures required under that Part for that part of the relevant disclosure period for which the party agent and the elected member, candidate or group is responsible (as the case requires).
- (2) If a party agent, elected member, candidate or group withdraws a consent or agreement (as the case requires) in accordance with section 14 (5) of the Act during a relevant disclosure period, the following applies:
  - (a) the elected member, candidate or group concerned is responsible for making the disclosures required under Part 3 of the Act for the elected member, candidate or group of political donations received or made, and electoral expenditure incurred, after the withdrawal,
  - (b) the party agent concerned is not responsible for making the disclosures required under that Part for the elected member, candidate or group of political donations received or made, and electoral expenditure incurred, after the withdrawal of the declaration,
  - (c) the party agent and the elected member, candidate or group concerned must make the disclosures required under that Part for that part of the relevant disclosure period for which the party agent and the elected member, candidate or group is responsible (as the case requires).

## **Division 2 Disclosures under Part 3 of Act**

### **6 Information to accompany Part 3 declaration by party**

- (1) The information specified in subclause (2) is to accompany a Part 3 declaration by a party made in accordance with section 15 (1) (b) of the Act after the end of the half-

year that ends on 30 June.

- (2) The following information in respect of the financial year that includes the half-year concerned is specified:
  - (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).
- (3) Such accompanying information is to be lodged in the form and manner approved by the Electoral Commission.

#### **7 Disclosure of electoral expenditure—further requirements: section 18 (1)**

A disclosure under Part 3 of the Act by a party or a candidate of electoral expenditure incurred during a capped State expenditure period or a capped local government expenditure period is to separately identify expenditure incurred in each kind of expenditure specified in section 7 (1) of the Act.

#### **8 Donors required to disclose related corporation donors: section 24 (6)**

An individual who makes a political donation on behalf of a corporation that is related to another corporation (as referred to in section 9 (8) of the Act) that has made a political donation to the same party, elected member, group, candidate, third-party campaigner or associated entity in the same financial year must disclose to the person accepting the donation the following particulars of the other corporation and its political donations:

- (a) the name of the corporation making the political donation,
- (b) the names of the other corporations and the amounts of the political donations made during that same financial year.

### **Division 3 Vouching**

#### **9 Vouching for political donations**

- (1) For the purposes of section 17 (8) of the Act, the prescribed manner of vouching for political donations received by a party, an elected member, a group, a candidate, associated entity or a third-party campaigner is by lodging with the relevant Part 3 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.
- (2) If a party, an elected member, a group, a candidate, associated entity or a third-party campaigner maintains its financial records by means of a computer system, the prescribed manner of vouching for political donations received by that party, elected member, group, candidate, associated entity or third-party campaigner is by lodging with the relevant Part 3 declaration an electronic copy of the relevant receipt book and acknowledgement book.

#### **10 Vouching for electoral expenditure**

- (1) For the purposes of section 17 (8) of the Act, the prescribed manner of vouching for electoral expenditure is by attaching to the relevant Part 3 declaration:
- (a) copies of either the accounts or receipts (or a mixture of both) issued in respect of the expenditure, and
  - (b) copies of any advertising material to which any portion of the expenditure relates, but not online advertising material if the cost of the transaction for the advertising material did not exceed \$20.
- (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, **copy of advertising material** means, in the case of an advertisement by radio, television or in a cinema:
- (a) the text (if any) of the advertisement, or
  - (b) an electronic copy of the radio, television or cinema advertisement.

#### **11 Vouching for repayments to party by candidate**

For the purposes of section 17 (8) of the Act, the prescribed manner of vouching for expenditure that is included (because of section 9 (9) 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 3 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 4 Accounting records of party**

### **12 Party records**

- (1) A party must keep at its party headquarters in New South Wales, or at some other address approved by the Electoral Commission, 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.

### **13 Party records may be maintained by computer**

- (1) Despite clauses 15–20, 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 15–20 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 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.

#### **14 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.

#### **15 Receipt book**

- (1) The receipt book must contain forms of receipt in triplicate.
- (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 of the individual, or the name and relevant business number of the entity (as referred to in section 46 of the Act), 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) Carbon impressions of the receipt must be made on the duplicate and triplicate forms.
- (7) The duplicate form must be retained by the party.
- (8) The triplicate form must be retained in the receipt book.
- (9) 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.

- (10) A receipt must be cancelled by writing the word "CANCELLED" across the face of the original and the 2 copies of the form.
- (11) The party must retain in the receipt book the original form of a cancelled receipt and the 2 copies.
- (12) 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 Electoral Commission.

## **16 Acknowledgment book**

- (1) The acknowledgment book must contain forms of acknowledgment in triplicate.
- (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 of the individual, or the name and relevant business number of the entity (as referred to in section 46 of the Act), 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) Carbon impressions of the acknowledgment must be made on the duplicate and triplicate forms.
- (7) The duplicate form must be retained by the party.
- (8) The triplicate form must be retained in the acknowledgment book.
- (9) An acknowledgment must be cancelled by writing the word "CANCELLED" across the

face of the original and the 2 copies of the form.

- (10) The party must retain in the acknowledgment book the original form of a cancelled acknowledgment and the 2 copies.
- (11) In this clause, **gift** does not include a gift in the form of money.
- (12) 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 Electoral Commission.

## **17 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.

## **18 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.

## **19 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.

## **20 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.

## **21 Party records to be retained**

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

### **Note—**

It is an offence under section 145 of the Act not to keep the records for 3 years.

## **22 Alternative system of accounts**

- (1) The party agent for a party may apply to the Electoral Commission 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 3 declaration is ascertainable from the proposed system.
- (3) The Electoral Commission 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 3 declaration, and
  - (b) that the information to be included in such a declaration is ascertainable from the proposed system.
- (4) The Electoral Commission may, for any reason, and on giving at least 1 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 5 Accounting records of elected members, candidates, groups, associated entities and third-party campaigners**

### **Note—**

Section 14 (1) of the Act provides that where State parliamentary elected members and candidates are members of a registered party, the party agent of the party is responsible for making the disclosures required under Part 3 of the Act.

Section 14 (1) and (2) of the Act provide that local government elected members and candidates are generally responsible for making the disclosures required under Part 3 of the Act.

However, section 14 (3) of the Act provides that a party agent may consent to be the person responsible for the disclosures of elected members and candidates who are members of the party agent's registered party.

The official agent of an associated entity or third-party campaigner is the person responsible for making the disclosures required under Part 3 of the Act for the associated entity or third-party campaigner.

### **23 Records of elected member, candidate, group, associated entity or third-party campaigner**

- (1) The responsible person for an elected member, candidate, group, associated entity or third-party campaigner 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.
- (2) The accounting records must be kept in accordance with the requirements of this Division.

Maximum penalty: 20 penalty units.

#### **24 Accounting records may be maintained by computer**

- (1) Despite clauses 25–28, the accounting records referred to in clause 23 may be maintained by means of a computer system.
- (2) If a responsible person for an elected member, candidate, group, associated entity or third-party campaigner maintains the accounting records by means of a computer system, the responsible person must ensure that:
- (a) the records comply with the requirements of clauses 25–28 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.

#### **25 Receipt book**

- (1) The receipt book must be one issued by the Electoral Commission containing forms of receipt in triplicate.
- (2) If a reportable political donation in the form of money is received by the responsible person for an elected member, candidate, group, associated entity or third-party campaigner, or a person appointed under section 39 (6), 42 (4) or 43 (3) of the Act,

the responsible person or person appointed 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 of the individual, or the name and relevant business number of the entity (as referred to in section 46 of the Act), 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 responsible person or person appointed under section 39 (6), 42 (4) or 43 (3) 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 responsible person 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 responsible person 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 3 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 Electoral Commission.

## **26 Acknowledgment book**

- (1) The acknowledgment book must be one issued by the Electoral Commission containing forms of acknowledgment in triplicate.
- (2) If a reportable political donation that is a gift is received by the responsible person for an elected member, candidate, group, associated entity or third-party campaigner, or a person appointed under section 39 (6), 42 (4) or 43 (3) of the Act, the responsible person or person appointed 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 of the individual, or the name and relevant business number of the entity (as referred to in section 46 of the Act), 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 responsible person or person appointed under section 39 (6), 42 (4) or 43 (3) 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 responsible person 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 responsible person 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 3 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 Electoral Commission.

## **27 Petty cash book**

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

## **28 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 responsible person for an elected member, candidate, group, associated entity or third-party campaigner 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 responsible person, or a person appointed under section 39 (6), 42 (4) or 43 (3) 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 responsible person, or a person appointed under section 39 (6), 42 (4) or 43 (3) 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.

## **29 Records of elected members, candidates, groups, associated entities and third-party campaigners to be retained**

The responsible person for an elected member, candidate, group, associated entity or third-party campaigner must retain the accounting records for an election campaign for at least 3 years.

### **Note—**

It is an offence under section 145 of the Act not to keep the records for 3 years.

## **Division 6 Other matters relating to political donations and political**

## **expenditure**

### **30 Receipt statement for reportable political donations: section 45 (1) (b)**

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 Electoral Commission in accordance with the *Electoral Funding Act 2018*. 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 entity), elected member, group, candidate, third-party campaigner or person in the same financial year is \$1,000 or more. Penalties apply for failing to lodge a declaration.

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

For the purposes of sections 38 (7), 39 (6), 42 (4) and 43 (3) of the Act, a person may not be appointed to accept political donations or to make payments for electoral expenditure from a campaign account under any of those subsections if section 102 (1) (c) or (d) of the Act would disqualify the person from being appointed as a party agent or an official agent.

### **32 Campaign accounts**

- (1) An elected member or candidate (including the lead member of a group) is exempted from section 41 (3) or (4) of the Act (as the case requires) if the Electoral Commission has authorised a person other than the elected member or candidate (including the lead candidate of the group) to operate the campaign account of the elected member or candidate (or group) for a period, or for a purpose, specified by the Electoral Commission.
- (2) An authorisation under subclause (1) may be revoked.
- (3) The Electoral Commission may only give an authorisation under subclause (1) if it is satisfied that there are exceptional circumstances that warrant the giving of the authorisation.

### **33 Local government campaign accounts**

- (1) For the purposes of section 37 (4) (e) of the Act, the following may be paid into the local government campaign account of a party:
  - (a) money belonging to the party on the commencement of the *Local Government and Elections Legislation Amendment (Integrity) Act 2016* (including the proceeds of the investment or disposal of any other property belonging to the party on or

before that commencement),

(b) a bequest to the party.

(2) For the purposes of section 37 (5) (c) of the Act, any money paid to a party under the following may not be paid into the local government campaign account of the party:

(a) Part 5 or 6A of the *Election Funding, Expenditure and Disclosures Act 1981* after the commencement of the *Local Government and Elections Legislation Amendment (Integrity) Act 2016*,

(b) Parts 4 (Public funding of State election campaigns) and 5 (Administrative and New Party policy development funding) of the Act.

### **34 Compliance audits**

The Electoral Commission may conduct a compliance audit of compliance with the requirements of Part 3 of the Act by a party, an elected member, candidate (including a lead candidate of a group), associated entity or third-party campaigner.

### **35 Exemption from requirements to publish residential address of donors who are silent electors**

(1) The Electoral Commission is exempt from any requirement under section 22 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 Electoral Commission is aware that the donor is a silent elector.

(2) In this clause, a **silent elector** means a person who is a silent elector within the meaning of the *Electoral Act 2017*.

### **36 Exemption for political donations for federal government election and third party campaigns**

(1) **Federal government campaign donations** The making, acceptance or soliciting of a political donation, or the making of a gift to an individual for the purpose of the individual making a political donation, that is to be paid into (or held as an asset of) an account kept exclusively for the purposes of federal government election campaigns is exempt from sections 46 and 52 of the Act.

(2) The acceptance of a political donation of property (not being money) that is held as an asset of an account kept for federal government election campaigns ceases to be exempt under subclause (1) if the proceeds of the disposal of the property are paid into any other account.

(3) **Third-party campaigner donations** The making, acceptance or soliciting of a political donation, or the making of a gift to an individual for the purpose of the individual making a political donation, to a third-party campaigner that is not to be paid into (or

held as an asset of) the campaign account of the third-party campaigner under section 42 of the Act is exempt from sections 46 and 52 of the Act.

### **Part 3 Public funding of election campaigns**

#### **37 Vouching for election campaign expenditure in claim for Part 4 payment**

- (1) For the purposes of section 75 of the Act, the prescribed manner of vouching for expenditure specified in a claim for a Part 4 payment is:
  - (a) by the party agent for the party or the candidate attaching to the claim the relevant Part 3 declaration or a copy of the declaration, or, if the claim is required to be lodged before the relevant Part 3 declaration is required to be lodged, copies of the accounts or receipts (or a mixture of both) issued in respect of the expenditure, and
  - (b) if the amount claimed exceeds the amount of expenditure vouched for under paragraph (a), by the party agent or the candidate attaching to the claim the copies 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 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.

### **Part 4 Registration of electoral participants**

#### **38 Applications for registration in the Register of Associated Entities**

For the purposes of section 112 (2) (b) (ii), an application for registration must set out the following particulars:

- (a) the Australian Business Number (ABN) or Australian Company Number (ACN) (if any) of the associated entity,
- (b) the telephone number and email address of the associated entity,
- (c) the names of the registered parties or elected members for which or whom the associated entity operates solely for the benefit of,
- (d) the name, date of birth and occupation of the official agent of the associated entity,
- (e) the enrolled address and, if different, the postal address of the official agent of the associated entity,
- (f) the telephone number and email address of official agent of the associated entity.

### **39 Applications for registration in the Register of Third-party Campaigners**

For the purposes of section 117 (2) (c) (ii), an application for registration must set out the following particulars:

- (a) whether registration is for a State or local government election,
- (b) if the third-party campaigner is an individual, the date of birth of the third-party campaigner,
- (c) if the third-party campaigner is not an individual, the Australian Business Number (ABN) or Australian Company Number (ACN) (if any) of the third-party campaigner,
- (d) the enrolled address (if any) of the third-party campaigner,
- (e) the address of the office of the third-party campaigner (if any),
- (f) the telephone number and email address of the third-party campaigner,
- (g) the name, date of birth and occupation of the official agent of the third-party campaigner,
- (h) the enrolled address and, if different, the postal address of the official agent of the third-party campaigner,
- (i) the telephone number and email address of official agent of the third-party campaigner.

## **Part 5 Miscellaneous**

### **40 Training requirements for party agents or official agents**

- (1) For the purposes of section 102 (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 Electoral Commission 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 Electoral Commission 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 Institute of Public Accountants who holds a Professional Practice Certificate issued by that Institute.

**41 Exemption from requirements to publish in registers residential address of persons who are silent electors**

- (1) The Electoral Commission is exempt from any requirement under section 132 of the Act to publish in a register kept under Part 7 of the Act the residential address of any person who is a silent elector, if the Electoral Commission is aware that the person is a silent elector.
- (2) In this clause, a **silent elector** means a person who is a silent elector within the meaning of the [Electoral Act 2017](#).

**42 Determination of value of property disposed of**

- (1) The Electoral Commission may, if it is of the opinion that the value of property disposed of has not been correctly stated, appoint or approve persons to assess the value of the property 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 that property.
- (2) However, the Electoral Commission 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 appointed to any office or position under the [Electoral Act 2017](#),
  - (d) members of staff of the Electoral Commission.
- (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.

**43 Accounts and records to be kept**

- (1) This clause applies to the following persons:
  - (a) the party agent of a party,
  - (b) an elected member who is responsible for making a disclosure required under Part 3 of the Act,
  - (c) a candidate who is responsible for making a disclosure required under Part 3 of the Act (including a lead candidate of a group who is responsible for making a disclosure required under Part 3 of the Act for the group).

**Note—**

Section 14 (1) of the Act provides that where a State parliamentary elected members and candidates are members of a registered party, the party agent of the party is responsible for making the disclosures required under Part 3 of the Act.

Section 14 (1) and (2) of the Act provide that local government elected members and candidates are generally responsible for making the disclosures required under Part 3 of the Act.

However, section 14 (3) of the Act provides that a party agent may consent to be the person responsible for the disclosures of elected members and candidates who are members of the party agent's registered party.

- (2) A person to whom this clause applies must keep all accounts, records, documents and papers that relate directly or indirectly to an expenditure referred to in a claim for a Part 4 payment or any matter required to be set out in a Part 3 declaration in such a manner as to disclose a true and fair view of the transactions of the party, elected member, group or candidate.

Maximum penalty: 20 penalty units.

**44 Direction by Electoral Commission to lodge certain records**

- (1) If a Part 3 declaration or a claim for a Part 4 payment is not validly lodged or is, in the opinion of the Electoral Commission, incorrect in a material particular, the Electoral Commission may by notice in writing require:

- (a) a current or former elected member or candidate (including lead candidate of a group), or  
(b) a current or former party agent of a party,

to lodge with the Electoral Commission within the time specified in the notice such records as the Electoral Commission may require of political donations made or received or electoral expenditure incurred by the party, group or candidate concerned.

- (2) A person must not fail, without reasonable excuse, to comply with any such requirement.

Maximum penalty: 20 penalty units.

- (3) The Electoral Commission may copy any records lodged with it which it considers may be of assistance in determining:
- (a) the reason why a Part 3 declaration or a claim for a Part 4 payment was not validly lodged, or  
(b) whether, in a Part 3 declaration or a claim for a Part 4 payment, the party agent of a party, elected member or candidate has made a statement that is false or misleading in a material particular.

#### **45 DVDs, video tapes, films and electronic video files**

- (1) This clause applies to any DVD, video tape, film, transparency or electronic video file 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, elected member, group, candidate, associated entity or third-party campaigner.

- (2) The party, elected member, group, candidate, associated entity or third-party campaigner must retain any such DVD, video tape, film, transparency or electronic video file 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 Electoral Commission, the party, elected member, group, candidate, associated entity or third-party campaigner must arrange for any such DVD, video tape, film, transparency or electronic video file to be viewed by a member of the Electoral Commission or by a person authorised by the Electoral Commission.

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, transparency or electronic video file to which this clause applies did not give rise to:
  - (a) electoral expenditure that is included in a claim for a Part 4 payment, or
  - (b) electoral expenditure that is required to be disclosed by the party agent of a party or an elected member or candidate in accordance with the Act.

#### **46 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 45).
- (2) The party or the 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 or a copy of the 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 145 of the Act to fail to keep the material for 3 years.

**Schedule 1 Penalty notice offences**

For the purposes of section 148 (2) and (4) of the Act:

- (a) each offence specified in this Schedule is an offence for which a penalty notice may be issued, and
- (b) the amount payable under any such penalty notice is the amount specified in this Schedule for the offence.

<b>Column 1</b>	<b>Column 2</b>
<b>Provision</b>	<b>Penalty</b>
<b>Offences under the Act</b>	
Section 109 (1)	\$55
Section 114 (1)	\$55
Section 119 (1)	\$55
Section 122—in relation to offence committed by a party (section 122 (6) (a))	\$2,750
Section 122—in relation to the offence committed by an officer of the party (section 122 (6) (b))	\$1,100
Section 138 (6)	\$2,750
Section 141 (1)—if the offence was committed by a party agent	\$2,750
Section 141 (1)—in any other case	\$1,100
Section 141 (2)—if the offence was committed by a party agent	\$2,750
Section 141 (2)—in any other case	\$1,100
Section 145 (1)—in relation to a contravention of sections 36 (3) (a) and (b), 38 (3)-(6), 39 (3)-(5), 40 (1), 42 (1)-(3), 43 (1) and (2)—if the offence was committed by a party or a party agent	\$2,750

Section 145 (1)—in relation to a contravention of sections 36 (3) (a) and (b), 38 (3)–(6), 39 (3)–(5), 40 (1), 42 (1)–(3), 43 (1) and (2)—in any other case	\$1,100
Section 145 (2)—if the offence was committed by a party	\$2,750
Section 145 (2)—in any other case	\$1,100

**Offences under this Regulation**

Clause 12 (Party records)	\$220
Clause 22 (5) (Alternative system of accounts)	\$220
Clause 23 (Records of elected member, candidates, group, associated entity or third-party campaigners)	\$220
Clause 43 (Accounts and records to be kept)	\$220
Clause 44 (2) (Direction by Electoral Commission to lodge certain records)	\$220
Clause 45 (2) and (3) (DVDs, video tapes, films and electronic video files)	\$220

## Schedule 2 Amendment of Schedule 2 to **Electoral Funding Act 2018**

### [1] Clause 4

Omit the clause. Insert instead:

#### **4 Former Act and regulations continue to apply to donations and expenditure made before commencement**

The former Act and the *Electoral Funding, Expenditure and Disclosures Regulation 2009*, as in force immediately before the commencement of this clause, continue to apply, as if that Act and regulation had not been repealed, to political donations made and received and electoral expenditure incurred before that commencement.

### [2] Clauses 7-10

Insert after clause 6:

#### **7 Existing registers**

- (1) Each register under the former Act (an **existing register**) is taken to be the register for the purposes of this Act (a **corresponding register**).
- (2) An existing register that becomes a corresponding register by operation of this clause may continue to include information that was recorded for the purposes

of the former Act for which the register was maintained.

- (3) Without limiting any other provision of this Act, the Electoral Commission may update or correct information recorded in an existing register that becomes a corresponding register to reflect changes resulting from the commencement of provisions of this Act.

## **8 Existing delegations and instruments**

- (1) Any delegation of a function under a provision of the former Act that corresponds to a provision of this Act that was in force immediately before the repeal of that Act is taken to be a delegation of the comparable function under the corresponding provision of this Act.
- (2) If the manner and form of making or lodging an instrument or notice under a provision of the former Act that corresponds to a provision of this Act was approved and in force immediately before the repeal of that Act, the comparable instrument or notice may be made or lodged in that approved manner and form under this Act.

## **9 Pending applications, claims, disclosures, declarations and notices**

- (1) Any application, claim for payment, disclosure or declaration made under the former Act before its repeal and not finally determined or disposed of with may be dealt with under this Act as if it were an application, claim for payment, disclosure or declaration made under this Act.
- (2) A notice under section 110A of the former Act given to a person before the repeal of that Act and not finally determined may continue to be dealt with under the former Act as if that Act had not been repealed.

## **10 Timing of disclosures of reportable political donations of certain kinds: section 15**

- (1) Despite section 15 (1) (a), disclosure of a reportable political donation received or made during the pre-election period for an Assembly general election that is of an amount that is less than an amount specified in section 6 (1), but is treated as a reportable political donation by operation of section 6 (2), is to be made within the period specified under section 15 (1) (b) after the political donation was received or made.

### **Note—**

Section 6 (2) provides that a political donation made by an entity or other person of less than the expressed reportable political donation amount (generally \$1,000) is to be treated as a reportable political donation if that donation and other previous, separate political donations made by that entity or other person to the same party, elected member, group, candidate, associated entity, third-party campaigner or person within the same financial year (ending 30 June) would, if aggregated, constitute a reportable political donation (ie total or exceed \$1,000).

- (2) Subclause (1) ceases to have effect 12 months after the commencement of this clause.

## **11 Certain local government by-elections**

- (1) The former Act and the *Election Funding, Expenditure and Disclosures Regulation 2009*, as in force immediately before the commencement of this Act, continue to apply as if that Act and regulation had not been repealed, to and in relation to the following by-elections under the *Local Government Act 1993*:
- (a) the election of 1 councillor in the Berrigan local government area to be held on 14 July 2018,
  - (b) the election of 1 councillor in the West Ward of The Hills Shire local government area to be held on 28 July 2018,
  - (c) any other by-election to fill a casual vacancy in a civic office that occurred but had not yet been filled before the commencement of this clause.
- (2) This Act does not apply to or in relation to the by-elections referred to in subclause (1).

## **12 Transfer of amounts**

- (1) If, on the commencement of Part 3 of this Act, the party agent of a registered party is the person who is responsible for making a disclosure required under that Part for an elected member, group or candidate, any amount in a campaign account of the elected member, group or candidate immediately before that commencement is to be paid to the party agent on behalf of an elected member, group or candidate and paid into the campaign account of the registered party.
- (2) The funds of (and relevant transactions relating to) each member, group or candidate are to be accounted for separately.

## **13 Quarterly advance payments**

Despite section 91 (2), the amount payable, by way of a quarterly advance payment from the Administration Fund in respect of the third quarter of 2018, is payable 2 weeks after the beginning of that quarter.

## **14 Claims for quarterly payments**

Despite section 94 (2) (c), a claim for a quarterly payment in relation to the first or second quarter of 2018 may be made before the end of 31 December 2018.

## **15 Requirements for associated entities**

Section 43 does not apply to or in respect of an associated entity until 1 October

2018.

**16 Provision of list of party senior office holders**

Section 98 does not apply to or in respect of a party until 1 November 2018.