

Electoral Funding Act 2018 No 20

[2018-20]



New South Wales

Status Information

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Provisions in force

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

Notes—

- **See also**

[Electoral Legislation Amendment \(Local Government Elections\) Bill 2021](#)

- **Note**

On 29 January 2019, the High Court of Australia in *Unions NSW v New South Wales*[2019] HCA 1 stated in response to the question in the special case that the cap imposed by section 29(10) of the [Electoral Funding Act 2018](#) is invalid.

Authorisation

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

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Electoral Funding Act 2018 No 20



New South Wales

Contents

Long title	11
Part 1 Preliminary	11
1 Name of Act	11
2 Commencement	11
3 Objects of Act	11
Part 2 Interpretation and key concepts	12
4 Definitions	12
5 Meaning of “political donation”	16
6 Meaning of “reportable political donation”	18
7 Meaning of “electoral expenditure”	19
8 References to elections and writs	20
9 Miscellaneous interpretative provisions	21
10 Notes	23
Part 3 Political donations and electoral expenditure	23
Division 1 Preliminary	24
11 Application	24
Division 2 Disclosure of political donations and electoral expenditure	24
12 Disclosures required to be made	24
13 Relevant disclosure period	25
14 Person responsible for making disclosures	25

15	When disclosures of political donations to be made.....	27
16	When disclosures of electoral expenditure to be made.....	28
17	How are disclosures to be made.....	28
18	Disclosure of electoral expenditure—further requirements.....	29
19	Political donations required to be disclosed.....	30
20	Electoral expenditure required to be disclosed.....	31
21	Separate disclosures not required of same item.....	32
22	Public access to disclosures, expenditure etc.....	32
	Division 3 Caps on political donations.....	33
23	Applicable cap on political donations.....	33
24	Prohibition on political donations that exceed applicable cap.....	34
25	Prohibition on donations to more than 3 third-party campaigners.....	35
26	Exemption from donation caps.....	35
	Division 4 Caps on electoral expenditure for election campaigns.....	37
	Note.....	37
27	Capped State expenditure period.....	37
28	Capped local government expenditure period.....	37
29	Applicable caps on electoral expenditure for State election campaigns.....	38
30	Aggregation of applicable caps—State election campaigns.....	40
31	Applicable caps on electoral expenditure for local government election campaigns.....	41
31A	Meaning of “number of enrolled electors for local government area or ward”.....	42
32	Aggregation of applicable caps—local government election campaigns.....	45
33	Prohibition on incurring electoral expenditure exceeding applicable cap during State election campaigns and local government election campaigns.....	46
34	When electoral expenditure is incurred.....	47
35	Limit on electoral expenditure—third-party campaigner acting in concert with others.....	47
	Division 5 Management of donations and expenditure.....	47
	Subdivision 1 Management requirements for parties.....	48
36	Requirements for parties.....	48
37	Campaign accounts of parties.....	48

Subdivision 2 Management requirements for elected members, groups and candidates

..... 50

38 Requirements for political donations to, and electoral expenditure by, elected member, group or candidate—members of registered parties 50

..... 50

39 Requirements for political donations to, and electoral expenditure by, elected member, group or candidate—independent 51

..... 51

40 Requirements for political donations to, and electoral expenditure by, elected member, group or candidate—general provisions 52

..... 52

41 Campaign accounts of elected members, groups or candidates 53

Subdivision 3 Management requirements for third-party campaigners and associated entities

..... 54

42 Requirements for third-party campaigners 54

43 Requirements for associated entities 55

44 Campaign account of associated entities and third-party campaigners 56

Subdivision 4 General 56

45 Person accepting reportable political donations to record details 56

Division 6 Prohibition of certain political donations etc 57

46 Identification of persons from whom donations can be accepted 57

47 Prohibition on certain indirect campaign contributions 58

48 Prohibition on political donations to independent candidates by parties and associated entities and persons 59

..... 59

49 Prohibition on receiving gifts of unknown source 59

50 Prohibition on receiving loans unless details recorded 60

50A Prohibition on political donations in cash that exceed \$100 60

Division 7 Prohibition of donations from property developers or tobacco, liquor or gambling industries

..... 60

51 Meaning of “prohibited donor”	60
52 Political donations by prohibited donors unlawful	61
53 Meaning of “property developer”, “tobacco industry business entity” and “liquor or gambling industry business entity”	61
54 Loans included as political donations	63
55 Exception for membership subscriptions.....	64
56 Determination by Electoral Commission that person not a prohibited donor	64
Division 8 Miscellaneous	64
57 Exception to aggregation for small donations at fundraising ventures and functions	65
58 Recovery of unlawful donations and expenditure and certain other property developer donations	65
59 Electoral Commission may audit disclosures.....	66
60 Extension of due date for making disclosures	67
61 Amendment of disclosures	67
Part 4 Public funding of State election campaigns	68
Division 1 Preliminary	68
62 Application to State elections only	68
63 Definition.....	68
64 Meaning of electoral expenditure for a State election	68
Division 2 Public funding for electoral expenditure of parties and candidates	69
Note.....	69
65 Establishment of Election Campaigns Fund	69
66 Registered parties eligible for public funding of election campaigns.....	69
67 Amount of public funding for eligible parties.....	70
68 Candidates eligible for public funding of election campaigns.....	70
69 Amount of public funding for eligible independent candidates (or eligible candidates of parties not eligible for public campaign funding)	71
70 No public campaign funding for endorsed candidates of eligible parties	71
71 Payments to parties endorsing the same candidate or group	72

72 Entitlements to advance payments	72
Division 3 General provisions relating to funding	73
73 Claims for, and approvals of, payments	73
74 Electoral Commission may audit claims	74
75 Expenditure to be vouched for	74
76 Making of payments	74
77 Prepayment on lodgment of claims	75
78 Payments conditional on disclosure of political donations etc	76
79 Death of a candidate	76
80 Deductions from payment for debts owed	76
81 Special provisions relating to groups	76
82 Public access to claims and related documents	76
Part 5 Administrative and New Party policy development funding	77
Division 1 Preliminary	77
83 Application to State members and parties only	77
84 Administrative expenditure—payments from Administration Fund	77
85 Policy development expenditure—payments from New Parties Fund	78
Division 2 Administrative funding for parties and independent members	
.....	79
Note	79
86 Establishment of Administration Fund	79
87 Public funding of eligible parties for administrative expenditure	80
88 Public funding of independent members for administrative expenditure	80
89 Parties with the same endorsed elected members	81
90 Provisions relating to quarterly payments	82
91 Quarterly advance payments	82
Division 3 Policy development funding for parties not entitled to administrative funding	
.....	83
Note	83
92 Establishment of New Parties Fund	83

93 Public funding of eligible parties for policy development expenditure—payment from New Parties Fund	83
Division 4 General provisions relating to funding	84
94 Claims for payment	84
95 Declarations to be made and documents to be provided by agents and elected members	85
96 Payments conditional on compliance with other obligations under this Act	86
Part 6 Obligations of registered parties and senior office holders	86
Division 1 Annual financial statements	86
97 Annual financial statements of registered parties	86
Division 2 Electoral Commission to be provided with list of senior office holders	87
98 Parties to provide Electoral Commission with list of senior office holders	87
Division 3 Duties of senior office holders of registered parties	88
99 Definition	88
100 Duties of senior office holders of registered parties to report alleged contraventions of this Act ..	88
Part 7 Registration of electoral participants	88
Division 1 Preliminary	88
101 Application to registration for State and local government elections	88
102 Qualification of persons to be appointed as party or official agents.....	88
Division 2 Register of Candidates	89
103 Register of Candidates	89
104 Deemed registration of nominated candidates and groups.....	90
105 Applications for registration of candidates	90
106 Application for registration of groups	91
107 Determination of application to register candidates.....	92
108 Determination of application to register groups	92
109 Requirement to notify Electoral Commission of changes in registered particulars	93
110 Variation and cancellation of registration	94

Division 3 Register of Associated Entities	94
111 Register of Associated Entities	94
112 Applications for registration	95
113 Determination of application	95
114 Requirement to notify Electoral Commission of changes in registered particulars.....	96
115 Variation and cancellation of registration	96
Division 4 Register of Third-party Campaigners	96
116 Register of Third-party Campaigners.....	97
117 Applications for registration	97
118 Determination of application	98
119 Requirement to notify Electoral Commission of changes in registered particulars.....	98
120 Variation and cancellation of registration	99
Division 5 Register of Party Agents	99
121 Register of Party Agents	99
122 Appointment and revocation of appointment of party agents.....	100
123 Procedure for appointing or revoking appointment of party agents	101
124 Amendment of Register.....	101
Division 6 Register of Official Agents	101
125 Register of Official Agents	101
126 Official agents of associated entities and third-party campaigners.....	102
127 Procedure for appointing or revoking appointment of official agents	102
128 Entries in register	103
129 Amendment of Register.....	103
Division 7 Registers for by-elections	103
130 Application of this Division	103
131 Registers for by-elections	103
Division 8 Miscellaneous	104
132 Public access to registers	104
133 Statutory declarations	104

Part 8 Financial provisions	104
134 Appropriation of Consolidated Fund for electoral funding.....	105
135 Money received by Electoral Commission	105
136 Financial year of the Electoral Commission	105
Part 9 Investigation powers	105
137 Inspection of documents	105
138 Power to require provision of documents and information	106
139 Appointment and identification of inspectors	107
140 Arrangements with NSW Police Force	107
Part 10 Criminal and other proceedings	108
Division 1 Offences	108
141 Offences relating to disclosures of political donations and electoral expenditure	108
142 Offences relating to assisting others lodging claims or disclosures.....	108
143 Offences relating to caps on donations and expenditure	109
144 Offence relating to scheme to circumvent political donation or expenditure prohibitions or restrictions	109
145 Other offences relating to political donations and electoral expenditure	109
146 False or misleading information.....	110
Division 2 Proceedings generally	110
147 Nature of proceedings for offences.....	110
148 Penalty notices	111
149 Civil and criminal proceedings against parties that are unincorporated associations	111
150 Evidence.....	112
Part 11 Miscellaneous	112
151 Electoral Commission may educate and inform elected members and candidates.....	112
152 Guidelines.....	112
153 Extensions of time	113
154 Reports to Parliament	113
155 Compliance agreements.....	113
156 Regulations.....	114

157 (Repealed)	115
Schedule 1 Adjustment for inflation of monetary amounts	115
Schedule 2 Savings, transitional and other provisions	119
Schedule 3 (Repealed)	124

Electoral Funding Act 2018 No 20



New South Wales

An Act to make provision for the disclosure, capping and prohibition of certain political donations and electoral expenditure for parliamentary and local government election campaigns; to make provision for the public funding of parliamentary election campaigns and other activities; and for other purposes.

Part 1 Preliminary

1 Name of Act

This Act is the *Electoral Funding Act 2018*.

2 Commencement

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

3 Objects of Act (cf section 4A EFED Act)

The objects of this Act are as follows—

- (a) to establish a fair and transparent electoral funding, expenditure and disclosure scheme,
- (b) to facilitate public awareness of political donations,
- (c) to help prevent corruption and undue influence in the government of the State or in local government,
- (d) to provide for the effective administration of public funding of elections, recognising the importance of the appropriate use of public revenue for that purpose,
- (e) to promote compliance by parties, elected members, candidates, groups, agents, associated entities, third-party campaigners and donors with the requirements of the electoral funding, expenditure and disclosure scheme.

Part 2 Interpretation and key concepts

4 Definitions (cf sections 4 and 84 EFED Act)

In this Act—

Administration Fund means the fund established under Division 2 of Part 5.

agent means a party agent or official agent.

applicable cap on electoral expenditure—see Division 4 of Part 3.

applicable cap on political donations—see Division 3 of Part 3.

Assembly means the Legislative Assembly of New South Wales.

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

associated entity means a corporation or another entity that operates solely for the benefit of one or more registered parties or elected members.

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

by-election means—

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

candidate, in relation to an election, means a person nominated as a candidate at the election in accordance with the [Electoral Act 2017](#) or in accordance with the [Local Government Act 1993](#) (as the case requires) and includes a person applying for registration as, or registered as, a candidate in the Register of Candidates for the election.

capped expenditure period means a capped local government expenditure period or a capped State expenditure period.

capped local government expenditure period—see section 28.

capped State expenditure period—see section 27.

Council means the Legislative Council of New South Wales.

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

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

- (a) the allotment of shares in a company, and
- (b) the creation of a trust in property, and
- (c) the grant or creation of any lease, mortgage, charge, servitude, licence, power, partnership or interest in property, and
- (d) the release, discharge, surrender, forfeiture or abandonment, at law or in equity, of any debt, contract or chose in action, or of any interest in property, and
- (e) the exercise by a person of a special or general power of appointment of property in favour of any other person (or a hybrid of both), and
- (f) any transaction entered into by any person with intent to diminish, directly or indirectly, the value of the person's own property and to increase the value of the property of any other person.

Note—

Property includes money.

donor means a person who or an entity that makes a gift.

elected member means—

- (a) a member of Parliament, or
 - (b) a councillor (including the mayor) of the council of a local government area,
- and includes a person who, during any period after ceasing to be a member of Parliament or a councillor, is entitled to remuneration as such a member or councillor.

election means a State election or a local government election.

Election Campaigns Fund means the fund established under Division 2 of Part 4.

election day means the day appointed for the taking of the polls at the election.

Electoral Commission means the New South Wales Electoral Commission constituted under the [Electoral Act 2017](#).

Electoral Commissioner means the person for the time being holding or acting in the office of Electoral Commissioner under the [Electoral Act 2017](#).

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

electoral expenditure—see section 7.

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

entity means—

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

expenditure includes any disposition of property.

financial year, subject to section 136 (Financial year of the Electoral Commission), means the period of 12 months commencing on 1 July.

first preference votes means the first preference votes recorded for a candidate that are not rejected as informal at the election.

function includes a power, authority or duty, and **exercise** a function includes perform a duty.

general election means—

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

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

- (a) the provision of voluntary labour, and
- (b) the provision of voluntary professional services to a party by an officer or an elected member of the party.

group means—

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

half-year means a period of 6 months ending on 30 June or 31 December.

inspector means a person appointed by the Electoral Commission under section 139.

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

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

major political donor means an entity or other person (not being a party, elected member, group or candidate) who makes a reportable political donation.

New Parties Fund means the fund established under Division 3 of Part 5.

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

official agent means—

- (a) in relation to an associated entity or a third-party campaigner for whom an official agent, appointed by the entity or campaigner under Division 6 of Part 7, is registered in the Register of Official Agents—that official agent, or
- (b) in any other case—a person (including the associated entity or third-party campaigner concerned) designated by the Electoral Commission.

Parliament means the Parliament of New South Wales.

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

party agent means—

- (a) a party agent appointed under Division 5 of Part 7, and
- (b) in relation to a group where some of the candidates in the group are members of one registered party and other candidates in the group are members of another registered party—the party agent of one of those parties as designated by those candidates.

payment includes a loan, advance or deposit.

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

political donation—see section 5.

property includes money.

quarter means a period of 3 months ending on 31 March, 30 June, 30 September or 31

December.

registered, except in the case of a party, means registered in accordance with this Act.

registered party means a party registered under the [Electoral Act 2017](#).

relevant disclosure period—see section 13.

reportable political donation—see section 6.

senior office holder, of a party, means a person involved in the management or control of the party or the operations of the party.

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

third-party campaigner means the following—

- (a) for a State election—a person or another entity (not being an associated entity, party, elected member, group or candidate) who incurs electoral expenditure for a State election during a capped State expenditure period that exceeds \$2,000 in total,
- (b) for a local government election—a person or another entity (not being an associated entity, party, elected member, group or candidate) who incurs electoral expenditure for a local government election during a capped local government expenditure period that exceeds \$2,000 in total,
- (c) a registered third-party campaigner for an election for which it is registered.

Note—

The [Interpretation Act 1987](#) contains definitions and other provisions that affect the interpretation and application of this Act.

5 Meaning of “political donation” (cf section 85 EFED Act)

- (1) For the purposes of this Act, a **political donation** is—
 - (a) a gift made to or for the benefit of a party or a group of candidates, or
 - (b) a gift made to or for the benefit of an elected member, the whole or part of which was used or is intended to be used by the elected member—
 - (i) solely or substantially for a purpose related to an election or to the elected member’s duties as an elected member, or
 - (ii) to enable the elected member to make, directly or indirectly, a political donation or to incur electoral expenditure, or
 - (iii) to reimburse the elected member for making, directly or indirectly, a political donation or incurring electoral expenditure, or

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

Note—

Unless details of any such subscription are required to be disclosed because it is a reportable political donation of or exceeding \$1,000, the total amount of subscriptions and other details are required to be disclosed under section 19(4).

- (4) The following dispositions of property are taken to be a gift for the purposes of this section—
 - (a) a disposition of property to a NSW branch of a party from the federal branch of the party,
 - (b) a disposition of property to a NSW branch of a party from another State or Territory branch of the party,

(c) a disposition of property from a party to another party.

Note—

Any such disposition will be a political donation that is required to be disclosed and subject to the caps on political donations under Part 3. Any such donation paid into (or held against the assets of) a federal election campaign account is not subject to the cap on donations—see section 24(2).

- (5) Uncharged interest on a loan to an entity or other person is taken to be a gift to the entity or person for the purposes of this section. Uncharged interest is the additional amount that would have been payable by the entity or person if—
- (a) the loan had been made on terms requiring the payment of interest at the generally prevailing interest rate for a loan of that kind, and
 - (b) any interest payable had not been waived, and
 - (c) any interest payments were not capitalised.
- (6) A payment under Part 4 (Public funding of State election campaigns) or Part 5 (Administrative and New Party policy development funding) is not a political donation.

Note—

Even though an electoral funding payment to a candidate is not a donation required to be disclosed, the amount is required to be paid into the separate campaign account that is established for donations to and electoral expenditure by the candidate—see section 76(3).

- (7) However, if any part of a gift that is not a political donation pursuant to subsection (1)(b)–(d) is subsequently used to incur electoral expenditure, that part of the gift becomes a political donation.
- (8) For the purposes of this Act, a political donation made to or for the benefit of a party, third-party campaigner or associated entity is a **political donation for a local government election** if—
- (a) in relation to a donation to a party—the donation is paid into (or held as an asset of) the local government campaign account of the party under Subdivision 1 of Division 5 of Part 3, and
 - (b) in relation to a donation to a third-party campaigner or associated entity—the third-party campaigner or associated entity establishes that the donation was made solely for the purposes of a local government election campaign.

6 Meaning of “reportable political donation” (cf section 86 EFED Act)

- (1) For the purposes of this Act, a **reportable political donation** is—
- (a) in the case of disclosures under this Act by a party, elected member, group, candidate, associated entity or third-party campaigner—a political donation of or exceeding \$1,000 made to or for the benefit of the party, elected member, group,

candidate, associated entity or third-party campaigner, or

(b) in the case of disclosures under this Act by a major political donor—a political donation of or exceeding \$1,000 made by the major political donor to or for the benefit of a party, elected member, group, candidate, associated entity or third-party campaigner.

(2) A political donation of less than an amount specified in subsection (1) made by an entity or other person is to be treated as a reportable political donation if that and other earlier, 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 under subsection (1).

7 Meaning of “electoral expenditure” (cf section 87 EFED Act)

(1) For the purposes of this Act, **electoral expenditure** is expenditure for or in connection with promoting or opposing, directly or indirectly, a party or the election of a candidate or candidates or for the purpose of influencing, directly or indirectly, the voting at an election, and which is expenditure of one of the following kinds—

- (a) expenditure on advertisements in radio, television, the internet, cinemas, newspapers, billboards, posters, brochures, how-to-vote cards and other election material,
- (b) expenditure on the production and distribution of election material,
- (c) expenditure on the internet, telecommunications, stationery and postage,
- (d) expenditure incurred in employing staff engaged in election campaigns,
- (e) expenditure incurred for office accommodation for any such staff and candidates (other than for the campaign headquarters of a party or for the electorate office of an elected member),
- (f) expenditure on travel and travel accommodation for candidates and staff engaged in electoral campaigning,
- (g) expenditure on research associated with election campaigns (other than in-house research),
- (h) expenditure incurred in raising funds for an election or in auditing campaign accounts,
- (i) expenditure of a kind prescribed by the regulations.

(2) Electoral expenditure does not include—

- (a) expenditure incurred substantially in respect of an election of members to a

Parliament other than the NSW Parliament, or

(b) expenditure on factual advertising of—

(i) meetings to be held for the purpose of selecting persons for nomination as candidates for election, or

(ii) meetings for organisational purposes of parties, branches of parties or conferences, committees or other bodies of parties or branches of parties, or

(iii) any other matter involving predominantly the administration of parties or conferences, committees or other bodies of parties or branches of parties, or

(c) expenditure of a kind prescribed by the regulations.

- (3) Electoral expenditure does not include expenditure incurred by an entity or other person (not being a party, an associated entity, an elected member, a group or a candidate) if the expenditure is not incurred for the dominant purpose of promoting or opposing a party or the election of a candidate or candidates or influencing the voting at an election.
- (4) For the purposes of Division 4 (Caps on electoral expenditure for election campaigns) of Part 3 (Political donations and electoral expenditure), electoral expenditure does not include expenditure incurred in raising funds for an election or in auditing campaign accounts.
- (5) For the purposes of Division 4 (Caps on electoral expenditure for election campaigns) of Part 3 (Political donations and electoral expenditure), electoral expenditure does not include expenditure of amounts of additional entitlements within the meaning of [Parliamentary Remuneration Act 1989](#).
- (6) Without limiting subsection (1)(i) or (2)(c), a regulation made for the purposes of either of those paragraphs may provide that electoral expenditure of the kind prescribed is or is not electoral expenditure (as the case requires) only for the purposes of one or more specified provisions of this Act.

Note—

Division 4 of Part 3 caps electoral expenditure during an election campaign for State and local government elections (and Part 4 limits public funding for such expenditure at State election campaigns to part of that capped amount). Division 2 of Part 3 requires disclosure of the above electoral expenditure incurred at any time for State and local government elections.

8 References to elections and writs (cf sections 4 and 84 EFED Act)

- (1) For the purposes of this Act, an Assembly general election and a periodic Council election are held or are to be held concurrently if the day for the taking of the polls for each of the elections named in the writs for the elections is the same day, whether or not the taking of any such poll is adjourned.

- (2) For the purposes of this Act, where the writs for a general election for a State election are issued on different days, the day of the issue of the writs for the general election is taken to be the day on which the writ for the periodic Council election is issued.
- (3) For the purposes of this Act, where the days for the return of the writs for a general election for a State election are different, the day for the return of the writs is taken to be the day for the return of the writ for the periodic Council election.
- (4) A reference in this Act to the day for the return of a writ is a reference to the day specified in the writ as the day for the return of the writ.
- (5) A reference in this Act, in relation to a general election, to the periodic Council election is (except in so far as the context or subject matter otherwise indicates or requires) a reference to the periodic Council election that forms part of the general election.

9 Miscellaneous interpretative provisions (cf sections 4 and 84 EFED Act)

- (1) **Parts of parties (such as branches, groups, subdivisions, controlled entities)** For the purposes of this Act, where anything is done by, on behalf of or for the benefit of, or any property is held by, or in trust for, or for the members of, a body or organisation, incorporated or unincorporated, being a body or organisation that—
 - (a) forms part of a party, or
 - (b) is established by or under the constitution of a party, or
 - (c) has functions conferred by or under the constitution of a party, or
 - (d) is controlled (within the meaning of section 50AA of the *Corporations Act 2001* of the Commonwealth) by a party,the thing is taken to be done by, on behalf of or for the benefit of that party or the property is taken to be held by that party, as the case may be.
- (2) **Proposed candidates accepting gifts** An individual who, or a group of individuals that, accepts a gift for use solely or substantially for a purpose related to the proposed candidacy of the individual or individuals at a future election is taken to be a candidate or group when accepting the gift.

Note—

Section 38(3) makes it unlawful for any such political donations to be accepted unless the individual or group is registered as a candidate or group under this Act.

- (3) **Proposed candidates making payments for electoral expenditure** An individual who, or a group of individuals that, makes a payment for electoral expenditure for the election of the individual or individuals at a future election is taken to be a candidate or group when making the payment. The guidelines of the Electoral Commission may exclude

minor payments from the operation of this subsection.

Note—

Section 39(4) makes it unlawful for any such electoral expenditure to be incurred unless the individual or group is registered as a candidate or group under this Act.

(4) End of period of candidature For the purposes of this Act—

- (a) a person who is a candidate in an election, or
- (b) a group of candidates in an election,

is taken to remain a candidate or group for 30 days after the election day for the election.

Note—

A disclosure is still required to be made by candidates and groups after they cease to be candidates or groups following the election if they were a candidate or group during any part of the relevant disclosure period for the disclosure—see section 12(4).

(5) Subsection (4) does not apply to a candidate at a time when the candidate is an elected member.

(6) Value of donations or expenditures other than money For the purposes of this Act—

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

Note—

The regulations may make provision for requiring persons to obtain valuations from a valuer approved by the Electoral Commission of political donations that are not gifts of money (or enabling the Electoral Commission to obtain any such valuations)—see section 156(3)(b)).

(7) Name and address when donation or loan made by unincorporated association, trust fund or foundation A reference in this Act to the name and address of a person making a donation or loan is—

- (a) in the case of a donation or loan made by an unincorporated association—a reference to the name of the association and the names and addresses of the members of the executive committee (however described) of the association, and
- (b) in the case of a donation or loan purportedly made out of a trust fund or out of the funds of a foundation—a reference to the names and addresses of the trustees of the fund or of the funds of the foundation and the title or other description of the trust fund or the name of the foundation.

- (8) **Related corporations** For the purposes of this Act, corporations that are related to each other (as determined in accordance with the *Corporations Act 2001* of the Commonwealth) are taken to be a single corporation.
- (9) **Electoral expenditure of endorsed Assembly candidate includes electoral expenditure incurred by party for, and invoiced to, candidate** For the purposes of this Act, an amount of electoral expenditure by a candidate for election to the Assembly includes, if the candidate is the endorsed candidate of a registered party, any amount of electoral expenditure that is—
- (a) incurred by that party for the direct or indirect benefit of the candidate or for the direct or indirect benefit of the candidate and other candidates endorsed by the party at the election (whether or not as an agent for the candidate), and
 - (b) invoiced by that party to the candidate for payment (whether or not the candidate has a legal liability to pay to the party the amount invoiced).

Such an amount of electoral expenditure is taken, for the purposes of this Act, not to be an amount of electoral expenditure by that party.

- (10) **Political donation made for benefit of a campaign before candidate selection** For the purposes of this Act and despite section 38(3)(a)—
- (a) a political donation may be made to a party agent on behalf of a future candidate for election in an Assembly electoral district before the candidate has been identified, selected or otherwise endorsed by the party, and
 - (b) it is unlawful for such a political donation to be used otherwise than to incur electoral expenditure for or on behalf of the candidate endorsed by the party for election in that electoral district.

Note—

The party agent is responsible for disclosures under Part 3 of this Act for any such political donation and electoral expenditure.

10 Notes

Notes included in this Act do not form part of this Act.

Note—

For the purposes of comparison, a number of provisions of this Act contain bracketed notes in headings drawing attention (“cf”) to equivalent or comparable (though not necessarily identical) provisions of the *Election Funding, Expenditure and Disclosures Act 1981* (as in force immediately before the enactment of this Act). The *Election Funding, Expenditure and Disclosures Act 1981* is abbreviated in these notes as “**EFED Act**”.

Part 3 Political donations and electoral expenditure

(cf Part 6 EFED Act)

Division 1 Preliminary

(cf Division 1, Part 6 EFED Act)

11 Application (cf section 83 EFED Act)

- (1) This Part applies in relation to—
 - (a) State elections and elected members of Parliament, and
 - (b) local government elections and elected members of councils.

Note—

Political donations and electoral expenditure are required to be disclosed in connection with both State and local government elections and members. Caps apply to political donations and electoral expenditure in connection with State and local government elections, but public funding of election campaigns only applies to State elections.

- (2) In this Part, **registered party** includes a party registered under the [Local Government Act 1993](#).

Division 2 Disclosure of political donations and electoral expenditure

(cf Division 2, Part 6 EFED Act)

12 Disclosures required to be made (cf section 88 EFED Act)

- (1) **Parties, elected members, candidates, groups and associated entities** Disclosure is required under this Part of political donations received or made, and electoral expenditure incurred, by or on behalf of the following—
 - (a) a party (whether or not a registered party),
 - (b) an elected member,
 - (c) a candidate,
 - (d) a group,
 - (e) an associated entity.
- (2) **Third-party campaigners** Disclosure is required under this Part of—
 - (a) electoral expenditure incurred by a third-party campaigner in a capped State expenditure period or capped local government expenditure period, and
 - (b) political donations received by the third-party campaigner for the purposes of incurring that expenditure.
- (3) **Major political donors** Disclosure is required under this Part of reportable political donations made by a major political donor who has, during the relevant disclosure

period, made a reportable political donation of or exceeding \$1,000.

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

Note—

See section 9(2) for extension of disclosure and other requirements to individuals who, and groups of individuals that, accept donations before they nominate or register as candidates or groups.

13 Relevant disclosure period (cf section 89 EFED Act)

For the purposes of this Act, the **relevant disclosure period** is each 12-month period ending on 30 June.

14 Person responsible for making disclosures (cf section 90 EFED Act)

- (1) The person who is responsible for making a disclosure required under this Part is as follows—
- (a) in the case of a party—the party agent of that party,
 - (b) in the case of an elected member who is a member of a registered party—the party agent of that registered party,
 - (c) in the case of an elected member who is not a member of a registered party—the elected member,
 - (d) in the case of a candidate who is a member of a registered party—the party agent of that registered party,
 - (e) in the case of a candidate who is not a member of a registered party—the candidate,
 - (f) in the case of a group where all the members of the group are members of the same registered party—the party agent of that registered party,
 - (g) in the case of a group where one or more members of the group are members of a registered party and one or more other members of the group are members of another registered party—the party agent of the registered party of the lead candidate of the group,
 - (h) in the case of any other group—the lead candidate of the group,
 - (i) in the case of an associated entity—the official agent of the associated entity,
 - (j) in the case of a third-party campaigner—the official agent of the third-party

campaigner,

(k) in the case of a major political donor—the major political donor.

(2) Despite subsection (1), the following persons are responsible for making a disclosure required under this Part—

(a) in the case of an elected member who is a councillor (including the mayor) of a local government area who is a member of a registered party—the elected member,

(b) in the case of a candidate in a local government election who is a member of a registered party—the candidate,

(c) in the case of a group in a local government election where all (or one or more) of the members of the group are members of a registered party—the lead candidate of the group.

(3) However, if a party agent consents in accordance with this section to be the person responsible for making any such disclosure, the party agent is the person responsible for making such disclosures for the elected member, candidate or the group concerned.

(4) A party agent of the registered party may, by notice in writing given to the Electoral Commission in an approved manner and form, with the agreement of the elected member, candidate or group concerned, consent to be the person who is responsible for making a disclosure required under this Part for the elected member, candidate or group.

(5) A party agent, elected member, candidate or group may withdraw such a consent or agreement (as the case requires) by a notice in writing given to the Electoral Commission in an approved manner and form.

(6) The regulations may make further provision dealing with the consequences of the giving or withdrawal of notices by persons under this section.

(7) In this section, **lead candidate of a group** means—

(a) the candidate in the group whose name is first in the order of names of candidates specified in the relevant claim made under section 86 (Grouping of periodic Council election candidates) of the *Electoral Act 2017* or section 308A (Grouping of candidates) of the *Local Government Act 1993*, as the case requires, or

(b) if a group has been registered under Division 2 of Part 7 before any such claim has been made, the candidate whose name is first in the order of names specified in the Register of Candidates in relation to the group.

(8) In this section, in relation to elected members of Parliament and candidates and

groups of candidates in State elections, a reference to membership of a registered party does not include a reference to membership of a party registered under section 320(2) of the *Local Government Act 1993*.

- (9) Despite section 63(2)(a) of the *Electoral Act 2017*, a party that becomes registered under Part 6 of that Act is, for the purposes of this section, taken to be registered on the date of its registration.

15 When disclosures of political donations to be made (cf section 91(1) EFED Act)

- (1) Disclosures under this Part of political donations received or made are to be made—
- (a) in relation to a disclosure of a reportable political donation received or made during the pre-election period for an Assembly general election—within 21 days of the political donation being received or made (or within such shorter period as may be prescribed by the regulations), and
 - (b) in any other case—within 4 weeks after the end of the half-year within which the political donation was received or made (or within such longer period as may be prescribed by the regulations).

Note 1—

See section 60 for the extension of the due date for making disclosures in particular cases and section 61 for the amendment of disclosures that have been made.

Note 2—

While certain small political donations are not reportable under this Part if made once in a financial year, section 6(2) provides that such a political donation is a reportable political donation if it and other earlier, separate political donations made by the donor to the same donee within the same financial year would, if aggregated, total an amount that constitutes a reportable political donation.

See also section 19(2)(g) specifying that the disclosure is to include details that separately identify that reportable political donation and the earlier political donation or donations with which it is aggregated.

- (2) Despite subsection (1)—
- (a) disclosures of reportable political donations required to be made by major political donors are to be made within 4 weeks after the end of the relevant disclosure period within which the political donation was received or made (or within such longer period as may be prescribed by the regulations), and

Note—

A disclosure by the person or entity who received the reportable political donation may be required at an earlier time under subsection (1).

- (b) disclosures of reportable political donations that are political donations for a local government election are to be made within 4 weeks after the end of the half-year within which the political donation was received or made (or within such longer period as may be prescribed by the regulations).

Note—

See section 5(8) for the meaning of a **political donation for a local government election**.

- (3) The regulations may make provision for determining, for the purposes of this section, the date on which a political donation is taken to have been received or made.
- (4) For the purposes of this section, the **pre-election period for an Assembly general election** means the following—
 - (a) in the case of a general election to be held following the expiry of the Assembly by the effluxion of time—the period from and including 1 October in the year before which the election is to be held to the end of the election day for the election,
 - (b) in any other case—the period from and including the day of the issue of the writ or writs for the election to the end of the election day for the election.

16 When disclosures of electoral expenditure to be made (cf section 91(1) EFED Act)

Disclosures under this Part of electoral expenditure incurred are to be made within 12 weeks after the end of each relevant disclosure period (or within such longer period as may be prescribed by the regulations).

Note—

Unless otherwise prescribed, disclosures are to be made on or before 22 September for the period ending on 30 June in that year. See section 60 for the extension of the due date for making disclosures in particular cases, and section 61 for the amendment of disclosures that have been made.

17 How are disclosures to be made (cf section 91(2)–(6) EFED Act)

- (1) Disclosures are to be made in a declaration lodged with the Electoral Commission in a manner and form—
 - (a) determined by the regulations (if any), and
 - (b) subject to the regulations, approved by the Electoral Commission.
- (2) Without limiting subsection (1), the regulations or an approval by the Electoral Commission may make provision for an electronic or internet-based system of lodgment of declarations of disclosures.
- (3) If all the members of a group are required to lodge a declaration of disclosures under this Part, any one member of the group may lodge the declaration on behalf of the group.
- (4) A declaration lodged under this section in relation to a relevant disclosure period or a half-yearly period is to contain a statement to the effect that all disclosures required to be made in relation to the period—
 - (a) have been made, and

- (b) are true and correct.
- (5) A declaration is required to be lodged under this section in relation to a relevant disclosure period or half-yearly period even if it does not contain any disclosures.
- (6) For the purposes of this Act (including this section and sections 14, 22 and 141)—
 - (a) the declaration is taken to be the making of a disclosure required by this Part, and
 - (b) the time required by this Part for lodging the declaration is taken to be the time prescribed by sections 15 and 16 for the making of disclosures under this Part.
- (7) The regulations may provide for a single declaration of disclosures by the following—
 - (a) a person or other entity who, in a relevant disclosure period or half-yearly period or in relation to any particular political donations or electoral expenditure, qualifies as more than one of the following—
 - (i) an associated entity,
 - (ii) a third-party campaigner,
 - (iii) a major political donor,
 - (b) a party agent of a registered party in relation to—
 - (i) the party, and
 - (ii) elected members, candidates and groups of candidates who are members of the party, and
 - (iii) associated entities of the party.

The single declaration of disclosures referred to in paragraph (b) is to separately identify the disclosures relating to the party and to each member, candidate, group or associated entity.

- (8) Disclosures in a declaration lodged under this section are required to be vouched for in the manner prescribed by the regulations.

18 Disclosure of electoral expenditure—further requirements

- (1) A disclosure under this Part 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 any category of expenditure specified in the regulations in the manner prescribed by the regulations.
- (2) A disclosure of electoral expenditure under this Part by a party in relation to an Assembly general election is to include, as far as possible, details of electoral expenditure incurred substantially for the purposes of the election in a particular

electoral district.

- (3) For the purposes of subsection (2), electoral expenditure is only incurred for the purposes of the election in a particular electoral district if the expenditure is for advertising or other material that—
- (a) explicitly mentions the name of a candidate in the election in that electoral district or the name of the electoral district, and
 - (b) is communicated to electors in that electoral district, and
 - (c) is not mainly communicated to electors outside that electoral district.

19 Political donations required to be disclosed (cf section 92 EFED Act)

- (1) **General** Political donations are to be disclosed in accordance with this section.
- (2) **Reportable political donations** Disclosure of reportable political donations is to include disclosure of the following details of each such donation made during the relevant disclosure period—
- (a) the party, elected member, group or candidate to or for whose benefit the donation was made (or, if the case requires, the third-party campaigner or associated entity to whom the donation was made),
 - (b) the date on which the donation was made,
 - (c) the name of the donor,
 - (d) the residential address of the donor (in the case of an individual) or the address of the registered or other official office of the donor (in the case of an entity),
 - (e) the amount of the donation,
 - (f) in the case of a donor that is an entity and not an individual—the relevant business number of the entity referred to in section 46,
 - (g) in relation to the disclosure of a political donation that is a reportable political donation by operation of section 6(2)—details that separately identify that political donation and the earlier political donation or donations with which it is aggregated.
- (3) **Small donations** Disclosure of political donations (that are not reportable political donations) is to include disclosure of—
- (a) the total amount of those donations during the relevant disclosure period, and
 - (b) the total number of persons who made those donations.

This subsection does not apply to disclosures by third-party campaigners or major

political donors.

- (4) **Annual party membership or affiliation subscriptions** Disclosure by a party of political donations is to include disclosure of—
- (a) the total amount of annual or other subscriptions paid to the party by members or affiliates of the party during the relevant disclosure period, and
 - (b) each subscription rate, and
 - (c) the number of members who paid the subscriptions at each of those subscription rates.

Disclosure of a subscription under this subsection is not required if it is disclosed as a reportable political donation.

- (5) **Fundraising ventures or functions** Disclosure of political donations is to include, in connection with fundraising ventures or functions during the relevant disclosure period—
- (a) either the net or gross proceeds of each such venture or function (together with a disclosure as to whether the amount is the net or gross proceeds), and
 - (b) details of each such venture or function (including a brief description of its nature and the date on which or period in which it was held),

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

- (6) **Loans** Disclosure of reportable political donations is to include disclosure of the following information in relation to any reportable loan under section 50—
- (a) the amount of the loan,
 - (b) the name and address of the entity or other person making the loan,
 - (c) the terms and conditions of the loan,
 - (d) the total loan repayments made under the loan during the relevant disclosure period.
- (7) **Discretionary disclosures** Details of a political donation may be disclosed under this Part even if they are not required to be disclosed under this section.

20 Electoral expenditure required to be disclosed (cf section 93 EFED Act)

- (1) All electoral expenditure is required to be disclosed under this Part (whether or not it is incurred during the capped State expenditure period or capped local government expenditure period for an election).

- (2) Subject to subsection (3), the obligation under this Part to disclose any such expenditure of a party in relation to a relevant disclosure period can be complied with by lodging with the Electoral Commission a copy of a return furnished to the Australian Electoral Commission by the agent of the party under section 314AB of the *Commonwealth Electoral Act 1918* of the Commonwealth in respect of that period.
- (3) Subsection (2) has effect only if the return furnished to the Australian Electoral Commission contains the information required by section 18(1) and (2).

Note—

Section 18(1) contains a requirement that a disclosure of electoral expenditure under this Part must separately identify, and provide details of, each individual item of expenditure. Section 18(2) contains a requirement that a disclosure of electoral expenditure under this Part, in relation to an Assembly general election, is to include, as far as possible, details of electoral expenditure incurred substantially for the purposes of the election in a particular electoral district.

21 Separate disclosures not required of same item (cf section 94 EFED Act)

An item disclosed under this Part—

- (a) in relation to an elected member—need not also be disclosed in the member's capacity as a candidate or as a member of a group, and
- (b) in relation to a candidate or a group that includes the candidate—need not also be disclosed in the candidate's capacity as an elected member, and
- (c) in relation to a group—need not also be disclosed in relation to a member of the group, and
- (d) in relation to a candidate—need not also be disclosed in relation to the group of which the candidate is a member.

22 Public access to disclosures, expenditure etc (cf section 95 EFED Act)

- (1) The Electoral Commission is to publish on a website maintained by the Electoral Commission—
 - (a) the disclosures of reportable political donations and electoral expenditure under this Part, and
 - (b) any other information it considers relevant.
- (2) The disclosures are to be published on the website as soon as practicable after the due date for the making of the disclosures.
- (3) The Electoral Commission may decline to publish on the website, or may remove from the website, any disclosure of political donations that the Electoral Commission has reason to suspect is vexatious, false or misleading.
- (4) Copies of disclosures made in a declaration under this Part are to be kept by the

Electoral Commission for at least 6 years after the period to which they relate and are to be available for public inspection during ordinary office hours.

- (5) The Electoral Commission may, on application made to it and the payment of a reasonable fee determined by the Electoral Commission, provide copies of or extracts from any such disclosures kept by the Electoral Commission.

Division 3 Caps on political donations

(cf Division 2A, Part 6 EFED Act)

23 Applicable cap on political donations (cf section 95A EFED Act)

Note—

The dollar amounts set out in this section are the adjusted amounts for the financial year beginning 1 July 2017 (see the [Election Funding, Expenditure and Disclosures \(Adjustable Amounts\) Notice](#) under the [Election Funding, Expenditure and Disclosures Act 1981](#)). These dollar amounts are to be adjusted for inflation for the financial year beginning 1 July 2018 by Schedule 1.

- (1) **General cap** The applicable cap on political donations is as follows—
- (a) \$6,100 in the case of any such political donation to or for the benefit of a registered party or of a group,
 - (b) \$2,700 in the case of any such political donation to or for the benefit of—
 - (i) a party that is not a registered party, or
 - (ii) an elected member, or
 - (iii) a candidate, or
 - (iv) a third-party campaigner, or
 - (v) an associated entity.

In this subsection, in relation to political donations for local government elections, **registered party** includes a party registered under the [Local Government Act 1993](#).

Note—

The applicable caps are adjusted for inflation under Schedule 1.

- (2) **Aggregation of donations during financial year** A political donation of or less than an amount specified in subsection (1) made by an entity or other person is to be treated as a donation that exceeds the applicable cap on political donations if that and other separate political donations made by that entity or other person to the same party, elected member, group, candidate, third-party campaigner or associated entity within the same financial year would, if aggregated, exceed the applicable cap on political donations referred to in subsection (1).

- (3) **Aggregation of donations to elected members, groups or candidates of same party** A political donation of or less than an amount specified in subsection (1) made by an entity or other person to an elected member, group or candidate is to be treated as a donation that exceeds the applicable cap on political donations if that and other separate political donations made by that entity or other person to elected members, groups or candidates of the same party within the same financial year would, if aggregated, exceed the applicable cap on political donations to a group referred to in subsection (1).

Note—

Political donations in relation to separately registered parties that are in coalition or otherwise associated are not aggregated and, accordingly, the applicable cap applies separately in relation to each such registered party.

- (4) **Separate aggregation in relation to local government elections** The provisions of subsections (2) and (3) are to be applied separately to political donations for local government elections and to other political donations.
- (5) **Non-aggregation of contributions to candidate's own campaign** For the avoidance of doubt, a candidate's contribution to finance the candidate's own election campaign is not a political donation and is not included in the applicable cap on political donations to the candidate.

Note—

Although there is no applicable political donations cap on a candidate's contribution to finance the candidate's own election campaign, Division 4 of this Part still operates to make it unlawful for such a candidate to incur electoral expenditure that exceeds the applicable cap on electoral expenditure set out in that Division.

- (6) **Indexation of capped amounts** Each of the amounts referred to in subsection (1) is an adjustable amount that is to be adjusted for inflation as provided by Schedule 1.
- (7) **Meaning of candidates etc of same party** For the purposes of this section, elected members, groups and candidates are of the same party if the same party endorsed the elected members, members of the group or candidates at the last election (including any subsequent by-election) or are to be endorsed by the same party at the next election. If any such person ceases to be a member of that party after being elected or endorsed as a candidate, the person ceases to be of the same party for the purposes of this section.

24 Prohibition on political donations that exceed applicable cap (cf section 95B EFED Act)

- (1) **General prohibition** It is unlawful (subject to this section) for a person to accept a political donation to a party, elected member, group, candidate, third-party campaigner or associated entity if the donation exceeds the applicable cap on political donations.
- (2) **Exception—federal campaign donations** It is not unlawful for a person to accept a

political donation that exceeds the applicable cap if the donation (or that part of the donation that exceeds the applicable cap) is to be paid into (or held as an asset of) an account kept exclusively for the purposes of federal election campaigns.

- (3) A political donation of property (not being money) that is held as an asset of an account kept for federal election campaigns ceases to be excluded by subsection (2) from the prohibition under this section if the proceeds of the disposal of the property are paid into any other account.
- (4) **Exception for third-party campaigner** It is not unlawful for a person to accept a political donation to a third-party campaigner that exceeds the applicable cap if the donation (or that part of the donation that exceeds the applicable cap) is not to be paid into (or held as an asset of) the campaign account of the third-party campaigner under Subdivision 3 of Division 5.
- (5) **Defence—aggregation** If a political donation to a person exceeds the applicable cap because of the aggregation of political donations made to other persons, the acceptance of the donation is not unlawful if the person did not know and could not reasonably have known of the political donations made to the other persons.
- (6) **Donors required to disclose related corporation donors** It is unlawful for an individual to make a political donation on behalf of a corporation that is related to another corporation (as referred to in section 9(8)) 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, unless the individual complies with the requirements of the regulations relating to the disclosure to the person accepting the donation of particulars of the other corporation and its political donations.

25 Prohibition on donations to more than 3 third-party campaigners (cf section 95C EFED Act)

- (1) It is unlawful for a person to make or accept political donations (whether for a State or local government election) to more than 3 third-party campaigners in the same financial year.
- (2) This section applies only to a political donation to a third-party campaigner that is to be paid into (or held as an asset of) the campaign account of the third-party campaigner under Subdivision 3 of Division 5.
- (3) A political donation to a third-party campaigner in contravention of this section is not unlawful if the person making or accepting the donation did not know and could not reasonably have known of the political donations to which this section applies made to the other third-party campaigners.

26 Exemption from donation caps (cf section 95D EFED Act)

- (1) A party subscription paid to a party is to be disregarded for the purposes of this

Division, except so much of the amount of the subscription as exceeds the relevant maximum subscription under subsection (8).

- (2) A party levy paid to a party by an elected member or a candidate who is a member of the party is to be disregarded for the purposes of this Division.
- (3) An amount paid, during a financial year in which an Assembly general election or Assembly by-election is conducted, to a party by a candidate in that election who is a member of the party is to be disregarded for the purposes of this Division, except so much of the amount as exceeds the amount of the applicable cap referred to in section 29(12)(a) (as adjusted for inflation by section 29(14) and Schedule 1).

Note—

The applicable cap under section 29(12)(a) (Additional cap for individual Assembly seats) for the 2019 State general election is \$61,500.

- (4) For the avoidance of doubt, it is not unlawful for a candidate for election to the Assembly who is a member of a registered party, during a financial year in which the election is conducted, to make—
 - (a) contributions to the party agent for payment into the State Campaign account of the party to finance the candidate's own election campaign, and
 - (b) political donations to the party, being—
 - (i) political donations subject to the general applicable cap in section 23, and
 - (ii) political donations that are disregarded for the purposes of this Division by subsection (3).

Note—

The applicable caps on electoral expenditure under section 29 for the 2019 State general election limit electoral expenditure by a candidate endorsed by a party to \$122,900. Therefore, such a candidate could self fund and make a contribution of that amount to the party agent and also make political donations to the party, during the financial year of the election, of \$67,600 (being the sum of \$6,100 and \$61,500).

- (5) An amount paid, during a financial year in which a periodic Council election is conducted, to a party by a candidate in that election, who is a member of the party is to be disregarded for the purposes of this Division, except so much of the amount as exceeds \$50,000.
- (6) An amount paid, during a financial year in which a periodic Council election is conducted, to a group by a candidate in that election, who is a member of the group but is not a member of a party is to be disregarded for the purposes of this Division, except so much of the amount as exceeds \$50,000.
- (7) A **party subscription** is—
 - (a) an annual or other subscription paid to the party by a member of the party, or

(b) an annual or other subscription paid to the party by an entity or other person (including an industrial organisation) for affiliation with the party.

(8) For the purposes of this section—

(a) the maximum subscription in respect of membership of a party is \$2,000, and

(b) the maximum subscription in respect of affiliation with a party is—

(i) if the amount of the subscription is not calculated by reference to the number of members of the affiliate—\$2,000, or

(ii) if the amount of the subscription is calculated by reference to the number of members of the affiliate—\$2,000 multiplied by the number of those members of the affiliate.

(9) Each of the amounts referred to in subsections (5) and (6) is an adjustable amount that is to be adjusted for inflation as provided by Schedule 1.

Note—

Requests are not donations for the purposes of this Part (see the definition of *gift* in section 4) and accordingly are not subject to the political donation cap.

Division 4 Caps on electoral expenditure for election campaigns

(cf Division 2B, Part 6 EFED Act)

Note—

Under section 7(4) and (5) certain types of expenditure are taken not to be electoral expenditure for the purposes of this Division (for example, expenditure incurred in raising funds for an election or in auditing campaign accounts).

27 Capped State expenditure period (cf section 95H EFED Act)

The applicable cap on electoral expenditure for a State election applies to electoral expenditure during each of the following periods (the ***capped State expenditure period***)—

(a) in the case of a general election to be held following the expiry of the Assembly by the effluxion of time—the period from and including 1 October in the year before which the election is to be held to the end of the election day for the election,

(b) in any other case—the period from and including the day of the issue of the writ or writs for the election to the end of the election day for the election.

28 Capped local government expenditure period

The applicable cap on electoral expenditure for a local government election applies to electoral expenditure during each of the following periods (the ***capped local government expenditure period***)—

- (a) in the case of an ordinary election of the councillors under section 287(1) of the *Local Government Act 1993*—the period from and including 1 July in the year in which the election is to be held to the end of the election day for the election,
- (b) in the case of an election of councillors under section 287(2) of the *Local Government Act 1993*—the period commencing on the later of the following—
 - (i) the day that is 3 months before the election day for the election,
 - (ii) the day that the proclamation was made under that subsection determining the election day for the election,and concluding at the end of the election day for the election,
- (c) in any other case—the period from and including the day on which the date of the election is publicly notified by the person conducting the election to the end of the election day for the election.

29 Applicable caps on electoral expenditure for State election campaigns (cf section 95F EFED Act)

- (1) **General** The applicable caps on electoral expenditure for a State election campaign are as provided by this section, as modified by section 30 (Aggregation of applicable caps—State election campaigns).
- (2) **Parties with Assembly candidates in a general election** For a State general election, the applicable cap for a party that endorses candidates for election to the Assembly is \$122,900 multiplied by the number of electoral districts in which a candidate is so endorsed.

Note—

Under section 9(9) any amount of electoral expenditure incurred by a party for the benefit of a candidate endorsed by the party and invoiced by that party to the candidate for payment is the electoral expenditure of the candidate (that is subject to the applicable cap). Therefore it is not electoral expenditure of the party that is subject to the applicable cap under this subsection.

- (3) Subsection (2) does not apply to a party that endorses candidates in a group for election to the Council and endorses candidates for election to the Assembly in not more than 10 electoral districts.

Note—

The total cap for a party that endorses candidates in all 93 electoral districts at a general election is \$11,429,700.

- (4) **Other parties with Council candidates in a general election** For a State general election, the applicable cap for a party that endorses candidates in a group for election to the Council, but does not endorse any candidates for election to the Assembly or does not endorse candidates in more than 10 electoral districts, is \$1,288,500.

- (5) **Independent groups of candidates in Council general elections** For a periodic Council election, the applicable cap for a group of candidates who are not endorsed by any party is \$1,288,500.
- (6) **Party candidates in Assembly general election** For a State general election, the applicable cap for a candidate endorsed by a party for election to the Assembly is \$122,900.
- (7) **Independent candidates in Assembly general election** For a State general election, the applicable cap for a candidate not endorsed by any party for election to the Assembly is \$184,200.
- (8) **Non-grouped candidates in Council general election** For a periodic Council election, the applicable cap for a candidate who is not included in a group is \$184,200.
- (9) **Candidates in Assembly by-election** For a by-election for the Assembly, the applicable cap for a candidate (whether or not endorsed by a party) is \$245,600.
- (10) **Third-party campaigners** For a State general election, the applicable cap for a third-party campaigner is—
- (a) \$500,000 if the third-party campaigner was registered under this Act before the commencement of the capped State expenditure period for the election, or
 - (b) \$250,000 in any other case.
- (11) For a by-election for the Assembly, the applicable cap for a third-party campaigner is \$20,000 for each by-election.
- (12) **Additional cap for individual Assembly seats** The applicable cap for parties and third-party campaigners is subject to an additional cap (within the overall applicable cap) in relation to State general elections, or by-elections in more than one electoral district, for electoral expenditure incurred substantially for the purposes of the election in a particular electoral district, being—
- (a) in the case of a party—\$61,500 in respect of each such electoral district, or
 - (b) in the case of a third-party campaigner—\$24,700 in respect of each such electoral district.
- (13) For the purposes of subsection (12), electoral expenditure is only incurred for the purposes of the election in a particular electoral district if the expenditure is for advertising or other material that—
- (a) explicitly mentions the name of a candidate in the election in that electoral district or the name of the electoral district, and
 - (b) is communicated to electors in that electoral district, and

(c) is not mainly communicated to electors outside that electoral district.

- (14) **Indexation of capped amounts** Each of the amounts referred to in this section is an adjustable amount that is to be adjusted for inflation as provided by Schedule 1.

Editorial note—

On 29 January 2019, the High Court of Australia in *Unions NSW v New South Wales*[2019] HCA 1 declared that the cap imposed by section 29(10) is invalid.

30 Aggregation of applicable caps—State election campaigns (cf section 95G EFED Act)

- (1) **Aggregation of expenditure of multiple endorsed candidates in Assembly electoral district**
The amount of \$122,900 of electoral expenditure in respect of an election in an electoral district in which there are 2 or more candidates endorsed by the same party is, for the purpose of calculating the applicable cap on electoral expenditure by the candidates under section 29(6), to be shared by those candidates (and is not a separate amount for each of those candidates).
- (2) **Aggregation of expenditure of parties and endorsed Council candidates** Electoral expenditure incurred by a party for a State election campaign that is of or less than the amount specified in section 29 for the party is to be treated as expenditure that exceeds the applicable cap if that expenditure and any other electoral expenditure incurred by a candidate or a group for election to the Council who or that is endorsed by the party exceed the applicable cap so specified for the party.
- (3) **Aggregation of expenditure of endorsed candidates and parties for Assembly by-elections** Electoral expenditure incurred by a candidate endorsed by a party for an Assembly by-election that is of or less than the amount specified in section 29 for the candidate is to be treated as expenditure that exceeds the applicable cap if that expenditure and any other electoral expenditure incurred by the party for that by-election exceed the applicable cap so specified for the candidate.
- (4) **Aggregation of expenditure of parties, elected members and associated entities** Electoral expenditure incurred by a party or an elected member for a State election campaign that is of or less than the amount specified in section 29 for the party is to be treated as expenditure that exceeds the applicable cap if that expenditure and any other electoral expenditure incurred by an associated entity of the party or elected member exceed the applicable cap so specified for the party or elected member.
- (5) **Aggregation of expenditure of elected members not contesting election** Electoral expenditure incurred by a party for a State election campaign that is of or less than the amount specified in section 29 for the party is to be treated as expenditure that exceeds the applicable cap if that expenditure and any other electoral expenditure incurred by an elected member (being a member of Parliament) who is not a candidate at the State general election, but is a member of the party, exceed the applicable cap so specified for the party.

Note—

A member of Parliament may not be a candidate at a State general election because the member is retiring or is a member of the Legislative Council whose term of office does not expire until the following State general election.

31 Applicable caps on electoral expenditure for local government election campaigns

- (1) **General** The applicable caps on electoral expenditure for a local government election campaign are as provided by this section, as modified by section 32 (Aggregation of applicable caps—local government election campaigns).

Note—

This Act does not apply to an election of mayor by councillors—see the definition of **local government election** in section 4.

- (2) **Parties with candidates** For a local government general election or by-election for a local government area or ward, the applicable cap for a party that endorses a candidate for the election (including a candidate for mayor) or a group of candidates for election as councillor (including a group that includes a candidate for mayor) for electoral expenditure for the candidate or group is the amount of the applicable cap for the candidate or group.
- (3) **Candidates and groups (other than groups including mayoral candidates)** For a local government general election or by-election for a local government area or ward, the applicable cap for a candidate (other than a candidate for mayor) or a group of candidates for election as councillor (other than a group that includes a candidate for mayor), whether or not endorsed by any party, is—
- (a) \$6,000—where the number of enrolled electors for the local government area or ward concerned for the election is 5,000 or fewer, and
 - (b) \$10,000—where the number of enrolled electors for the local government area or ward concerned for the election is more than 5,000 but fewer than 10,001, and
 - (c) \$18,000—where the number of enrolled electors for the local government area or ward concerned for the election is more than 10,000 but fewer than 20,001, and
 - (d) \$25,000—where the number of enrolled electors for the local government area or ward concerned for the election is more than 20,000 but fewer than 30,001, and
 - (e) \$36,000—where the number of enrolled electors for the local government area or ward concerned for the election is more than 30,000 but fewer than 50,001, and
 - (f) \$46,000—where the number of enrolled electors for the local government area or ward concerned for the election is more than 50,000 but fewer than 75,001, and
 - (g) \$63,500—where the number of enrolled electors for the local government area or ward concerned for the election is more than 75,000 but fewer than 125,001, and

(h) \$72,000—where the number of enrolled electors for the local government area or ward concerned for the election is more than 125,000.

(4) **Mayoral candidates (and groups including mayoral candidates)** For a local government general election or by-election, the applicable cap for a candidate for mayor or a group of candidates that includes a candidate for mayor is—

(a) where the local government area concerned is divided into wards—the sum of the following—

(i) 100% of the applicable cap for a candidate for election as councillor in a ward of the local government area,

(ii) 25% of the applicable cap for a candidate for election as councillor in each of the other wards of the local government area, and

Note—

See section 31A(5) regarding the determination of the **number of enrolled electors for a ward** and, in particular, section 31A(5)(b) which provides that the number of enrolled electors for a ward in a local government area is the highest number of enrolled electors in any ward in that area.

(b) where the local government area concerned is not divided into wards—125% of the applicable cap for a candidate for election as a councillor of the local government area (other than a candidate for mayor).

(5) **Third-party campaigners** For a local government general election or by-election for a local government area or ward, the applicable cap for a third-party campaigner is the amount that is one-third of the applicable cap for a candidate for election as councillor (other than mayor) for the local government area or ward election concerned, but if the amount is not a whole number multiple of \$10, the amount is to be rounded up to the nearest whole number multiple of \$10.

(6) **Candidate running for mayor and councillor at same time** For the avoidance of doubt, if a person is a candidate for mayor and a candidate for councillor (other than mayor) at the same general election (or a simultaneous by-election for mayor and by-election for councillor (other than mayor)), the applicable cap for the person is the relevant applicable cap for a candidate for mayor.

(7) **Indexation of capped amounts** Each of the amounts referred to in this section is an adjustable amount that is to be adjusted for inflation as provided by Schedule 1.

31A Meaning of “number of enrolled electors for local government area or ward”

(1) For the purposes of section 31, the **number of enrolled electors for a local government area or ward** for an election for a local government area or ward is the number determined by the Electoral Commissioner in accordance with this section.

(2) **Timing of determination** The Electoral Commissioner is to make the determination as

soon as is reasonably practicable after the following date in relation to an election for a local government area or ward—

- (a) in the case of an ordinary election of councillors under section 287(1) of the [Local Government Act 1993](#) and any election of a mayor by the electors held on the same day—the date that is 12 months before the election day for the election,
- (b) in relation to any other election—the date that the election day for the election is first determined or specified by proclamation.

(3) **“Relevant date” for determination** The **relevant date** for an election for a local government area or ward is—

- (a) in the case of an ordinary election of councillors under section 287(1) of the [Local Government Act 1993](#) and any election of a mayor by the electors held on the same day—the date that is 12 months before the election day for the election, or
- (b) in relation to any other election—
 - (i) the date of the previous general election for the local government area concerned, or
 - (ii) if no general election for the local government area concerned has previously been held—the date that the election day for the election is first specified by proclamation.

(4) The **number of enrolled electors for a local government area** for an election is the sum of the following as at the relevant date—

- (a) the number of electors on the residential roll for the area,
- (b) the number of electors on the non-residential roll and the roll of occupiers and ratepaying lessees for the area who must vote at the election if the election is contested.

Note—

See section 286 of the [Local Government Act 1993](#) and section 22 of the [City of Sydney Act 1988](#) regarding compulsory voting at local government elections.

(5) The **number of enrolled electors for a ward** for an election is to be determined as follows—

- (a) the sum of the following for each ward in the local government area concerned as at the relevant date is to be calculated—
 - (i) the number of electors on the residential roll for the ward,
 - (ii) the number of electors on the non-residential roll and the roll of occupiers and ratepaying lessees for the ward who must vote at the election if the election is contested,

Note—

See section 286 of the *Local Government Act 1993* and section 22 of the *City of Sydney Act 1988* regarding compulsory voting at local government elections.

- (b) the number of enrolled electors for each ward in that local government area is the highest number calculated under paragraph (a).
- (6) The general manager of a local council is, on request, to provide the Electoral Commissioner with the latest copy of the non-residential roll and of the roll of occupiers and ratepaying lessees for the purposes of this section.
- (7) **Electoral Commission to publish number of enrolled electors for elections** The Electoral Commission must, before the commencement of the capped local government expenditure period for an election for a local government area or ward, publish on its website the following information in relation to the election—
- (a) the number of enrolled electors for the local government area or ward determined in accordance with this section,
- (b) the corresponding applicable caps that apply to the local government area or ward.
- (8) **Electoral Commission to notify candidates of number of enrolled electors for elections** The Electoral Commission, as soon as is reasonably practicable after the later of the following occurs—
- (a) the registration of a person as a candidate on a Local Government Register of Candidates for an election under Part 7,
- (b) the determination of a number of enrolled electors at the election for a local government area or ward for which a person is registered as a candidate,
- is to provide the person with the following information in relation to the election—
- (c) the number of enrolled electors for the local government area or ward determined in accordance with this section,
- (d) the corresponding applicable caps that apply to the local government area or ward.
- (9) **Regulations may deal with determinations and redeterminations in certain circumstances** The regulations may deal with the following—
- (a) failures by general managers of local councils to comply with requests for copies of rolls under this section,
- (b) the redetermination of the number of enrolled electors for a local government area or ward if the local council concerned divides its area into wards, abolishes all

its wards, changes its number of wards or alters its ward boundaries,

- (c) the provision of information to the Electoral Commissioner by general managers of local councils,
- (d) the determination or redetermination of the number of enrolled electors for a local government area or ward for an election if the election is delayed or postponed (including, without limitation, a delay or postponement of an election under section 288 or Part 6A of Chapter 10 of the *Local Government Act 1993*).

32 Aggregation of applicable caps—local government election campaigns

- (1) **Aggregation of expenditure of parties, elected members and associated entities** Electoral expenditure incurred by a party or an elected member for a candidate or group of candidates that is of or less than the amount specified in section 31 for the party is to be treated as expenditure that exceeds the applicable cap if that expenditure and any other electoral expenditure incurred by an associated entity of the party or elected member for the candidate or group exceed the applicable cap so specified for the party or elected member.
- (2) **Aggregation of expenditure of groups and candidates within the group** Electoral expenditure incurred by a group of candidates for a local government election campaign that is of or less than the amount specified in section 31 for the group is to be treated as expenditure that exceeds the applicable cap if that expenditure and any other electoral expenditure incurred by a candidate who is a member of the group (including a member of the group who is a candidate for mayor) exceed the applicable cap so specified for the group.
 - (2A) For the avoidance of doubt, for the purposes of subsection (2), electoral expenditure incurred by a candidate includes electoral expenditure incurred for the candidate by a party that endorsed the candidate as referred to in subsection (4).
- (3) **Aggregation of expenditure of parties and councillors not contesting election** Electoral expenditure incurred by a party for a local government election campaign for a candidate or group of candidates that is of or less than the amount specified in section 31 for the party is to be treated as expenditure that exceeds the applicable cap if the total of the following expenditure exceeds the applicable cap specified for the party—
 - (a) the electoral expenditure incurred by the party for the local government election campaign for the candidate or group,
 - (b) any other electoral expenditure incurred by an elected member for the candidate or group, being a councillor (including a mayor) of the council of the local government area, who is—
 - (i) a member of the party, and

- (ii) not a candidate at the local government election.

Note—

A retiring councillor or mayor is not a candidate at a local government general election.

- (4) **Aggregation of expenditure of candidates, groups, parties and associated entities**
Electoral expenditure incurred by a candidate or a group of candidates that is of or less than the amount specified in section 31 for the candidate or group is to be treated as expenditure that exceeds the applicable cap if that expenditure and electoral expenditure for the candidate or group by a party that endorsed the candidate or group exceed the applicable cap specified for the candidate or group.
- (5) Electoral expenditure incurred by a party for a candidate or group of candidates endorsed by the party that is of or less than the amount specified in section 31 for the party is to be treated as expenditure that exceeds the applicable cap if that expenditure and electoral expenditure that is incurred by the candidate or group exceed the applicable cap specified for the party.
- (6) For the purposes of subsections (4) and (5), electoral expenditure incurred by a party for an election for a candidate or group of candidates includes electoral expenditure incurred by the following persons or bodies for the election for the candidate or group—
 - (a) an associated entity of the party,
 - (b) an associated entity of an elected member who is a member of the party.
- (7) The regulations may make provision for or with respect to the apportionment of electoral expenditure incurred by a party for candidates or groups of candidates endorsed by the party among those candidates or groups for the purposes of this section.

33 Prohibition on incurring electoral expenditure exceeding applicable cap during State election campaigns and local government election campaigns (cf section 95I EFED Act)

- (1) It is unlawful for a party, group, candidate, third-party campaigner or associated entity to incur electoral expenditure for a State election campaign during the capped State expenditure period for the election if it exceeds the applicable cap on electoral expenditure.
- (2) It is unlawful for a party, group, candidate, third-party campaigner or associated entity to incur electoral expenditure for a local government election campaign during the capped local government expenditure period for the election if it exceeds the applicable cap on electoral expenditure.
- (3) If the electoral expenditure of any party, group, candidate, third-party campaigner or associated entity is less than the applicable cap, the balance is not transferable so as

to increase the applicable cap of any other party or person.

- (4) The applicable cap for a candidate or group of candidates is for electoral expenditure directed at the election of the candidate or group.

34 When electoral expenditure is incurred (cf section 95J EFED Act)

- (1) For the purposes of this Division, electoral expenditure is taken to be incurred when the services for which the expenditure is incurred are actually provided or the goods for which the expenditure is incurred are actually delivered.
- (2) In particular—
- (a) expenditure on advertising is incurred when the advertising is broadcast or published, and
 - (b) expenditure on the production and distribution of election material is incurred when the material is distributed, and
 - (c) expenditure on the employment of staff is incurred during the period of their employment, and
 - (d) expenditure of a class prescribed by the regulations is incurred at the time so prescribed.

35 Limit on electoral expenditure—third-party campaigner acting in concert with others (cf section 205H (repealed) of Electoral Act 1992 (A.C.T.))

- (1) It is unlawful for a third-party campaigner to act in concert with another person or other persons to incur electoral expenditure in relation to an election campaign during the capped expenditure period for the election that exceeds the applicable cap for the third-party campaigner for the election.
- (2) In this section, a person **acts in concert** with another person if the person acts under an agreement (whether formal or informal) with the other person to campaign with the object, or principal object, of—
- (a) having a particular party, elected member or candidate elected, or
 - (b) opposing the election of a particular party, elected member or candidate.

Note—

See also section 58(5) (Recovery of unlawful donations and expenditure and certain other property developer donations).

Division 5 Management of donations and expenditure

(cf Division 3, Part 6 EFED Act)

Subdivision 1 Management requirements for parties

36 Requirements for parties (cf section 96 EFED Act)

- (1) It is unlawful for political donations to a party to be used otherwise than for the objects and activities of the party, including the following—
 - (a) the administration of the party and community activities,
 - (b) electoral expenditure for State elections and local government elections,
 - (c) electoral expenditure for or on behalf of elected members, candidates or groups of candidates who are members of the party.
- (2) In particular, it is unlawful for political donations to be used for the personal use of an individual acting in a private capacity.
- (3) It is unlawful for a party to make payments for electoral expenditure—
 - (a) for a State election campaign unless the payment is made from the State campaign account of the party kept in accordance with this Subdivision, or
 - (b) for a local government election campaign unless the payment is made from the local government campaign account of the party kept in accordance with this Subdivision.

37 Campaign accounts of parties (cf section 96 EFED Act)

- (1) The State campaign account and the local government campaign account of a party are each to be separate accounts with an authorised deposit-taking institution denominated in Australian dollars.
- (2) The following may be paid into the State campaign account of a party—
 - (a) political donations made to the party (including the proceeds of the investment or disposal of any political donation of property that is held as an asset of the account) other than political donations (or the proceeds of political donations) paid into a local government or federal campaign account,
 - (b) political donations paid to a party agent of the party on behalf of an elected member, candidate or group,
 - (c) contributions by candidates to finance the candidates' own election campaigns,
 - (d) payments made to the party under Part 4 (Public funding of State election campaigns) at any time,
 - (e) money borrowed by the party at any time (other than money borrowed for a local government or federal election),

- (f) a bequest to the party,
 - (g) money belonging to the party on 1 January 2011,
 - (h) the proceeds of the investment or disposal of any other property belonging to the party on or before 1 January 2011,
 - (i) the proceeds of an investment made, or disposal of property purchased, after 1 January 2011 from money or proceeds of the kind referred to in paragraphs (g) and (h),
 - (j) any other money of a kind that is prescribed by the regulations for the purposes of this subsection.
- (3) However, the following may not be paid into the State campaign account of a party—
- (a) a party subscription referred to in section 26, other than any amount that exceeds the maximum subscription referred to in that section and that constitutes a political donation to the party,
 - (b) any amount of a political donation to the party that exceeds the applicable cap on political donations to the party, elected member, candidate or group under section 23,
 - (c) any money paid to the party under Part 5 (Administrative and New Party policy development funding),
 - (d) any other money of a kind that is prescribed by the regulations for the purposes of this subsection.
- (4) The following may be paid into the local government campaign account of a party—
- (a) political donations made to the party that do not exceed the applicable cap on political donations to the party for a local government election (including the proceeds of the investment or disposal of any political donation of property for a local government election that is held as an asset of the account),
 - (b) political donations paid to a party agent of the party on behalf of an elected member, candidate or group,
 - (c) contributions by candidates to finance the candidates' own election campaigns,
 - (d) money borrowed by the party at any time for a local government election,
 - (e) any other money of a kind that is prescribed by the regulations for the purposes of this subsection.
- (5) However, the following may not be paid into the local government campaign account of a party—

- (a) a party subscription referred to in section 26,
 - (b) any amount of a political donation to the party that exceeds the applicable cap on political donations to the party, elected member, candidate or group under section 23,
 - (c) any other money of a kind that is prescribed by the regulations for the purposes of this subsection.
- (6) This section does not prevent payments being made out of the State campaign account, or the local government campaign account, of a party that are in addition to the payments for electoral expenditure referred to in section 36.
- (7) For the avoidance of doubt, an amount of a political donation to a party, elected member, candidate or group that exceeds the applicable cap on political donations under section 23 may be paid into a campaign account of the party despite subsections (3)(b) and (5)(b) if that part of the donation that exceeds the applicable cap is immediately then paid out of the campaign account and paid into an account kept exclusively for the purposes of federal election campaigns.

Note—

Section 24(2) provides that it is not unlawful for a person to accept a political donation that exceeds the applicable cap if the donation (or that part of the donation that exceeds the applicable cap) is to be paid into an account kept exclusively for the purposes of federal election campaigns.

- (8) If political donations are required to be paid to party agent on behalf of an elected member, group or candidate and paid into a campaign account of the party, the funds of (and relevant transactions relating to) each member, group or candidate are to be accounted for separately.
- (9) Any amount standing to the account of an elected member, group or candidate that remains in a campaign account after the elected member, group or candidate ceases to be an elected member, group or candidate becomes the property of the party.
- (10) The regulations may make provision for or with respect to campaign accounts (including the control of accounts, separately accounting for amounts held for elected members, groups and candidates and the provision of information to and the audit of accounts by the Electoral Commission).

Subdivision 2 Management requirements for elected members, groups and candidates

38 Requirements for political donations to, and electoral expenditure by, elected member, group or candidate—members of registered parties (cf section 96A EFED Act)

- (1) This section applies to an elected member, group or candidate if a party agent is, under section 14, the person responsible for making a disclosure required under this

Part on behalf of the elected member, group or candidate.

- (2) It is unlawful for political donations to an elected member to be accepted unless the donations are paid to the party agent.
- (3) It is unlawful for political donations to a group or candidate to be accepted unless—
 - (a) the group or candidate is registered under this Act, and
 - (b) the donations are paid to the party agent.
- (4) It is unlawful for political donations to an elected member, group or candidate to be used to incur electoral expenditure or reimburse a person for incurring electoral expenditure unless—
 - (a) the donations were paid by the party agent into the campaign account of the party of the party agent kept in accordance with this Division, and
 - (b) the payment for that electoral expenditure is made by that party agent from that campaign account.
- (5) It is unlawful for a party agent or any person authorised to operate a campaign account under this section to make payments for electoral expenditure for an elected member's election or re-election unless the payments are made from the campaign account of the elected member's party kept in accordance with this Division. The guidelines of the Electoral Commission may exclude minor payments from the operation of this subsection.
- (6) It is unlawful for a party agent or any person authorised to operate a campaign account under this section to make payments for electoral expenditure for a candidate or group's election or re-election unless the group or candidate is registered under this Act and the payments are made from the campaign account of the candidate or group's party kept in accordance with this Division. The guidelines of the Electoral Commission may exclude minor payments from the operation of this subsection.
- (7) Subject to the regulations, if this section applies to an elected member, group or candidate—
 - (a) the party agent concerned is to be authorised to operate the relevant campaign account of the party and is to operate the account, and
 - (b) the party agent concerned may appoint in writing a person to operate such a campaign account of the party in order to make payments for electoral expenditure from a campaign account on behalf of the party agent for an elected member, group or candidate.

39 Requirements for political donations to, and electoral expenditure by, elected member,

group or candidate—~~independent~~ (cf section 96A EFED Act)

- (1) This section applies to an elected member, group or candidate to which section 38 does not apply.
- (2) It is unlawful for political donations to a group or candidate to be accepted unless the group or candidate is registered under this Act.
- (3) It is unlawful for political donations to an elected member, group or candidate to be used to incur electoral expenditure or reimburse a person for incurring electoral expenditure unless—
 - (a) the donations were paid by the elected member, group or candidate into a campaign account of the member, group or candidate kept in accordance with this Division, and
 - (b) the payment for that electoral expenditure is made by that elected member, group or candidate from that campaign account.
- (4) It is unlawful for an elected member to make payments for electoral expenditure for the elected member's own election or re-election unless the payments are made from the elected member's campaign account kept in accordance with this Division. The guidelines of the Electoral Commission may exclude minor payments from the operation of this subsection.
- (5) It is unlawful for a candidate or group to make payments for electoral expenditure for the candidate or group's own election or re-election unless the group or candidate is registered under this Act and the payments are made from the candidate or group's campaign account kept in accordance with this Division. The guidelines of the Electoral Commission may exclude minor payments from the operation of this subsection.
- (6) Subject to the regulations, an individual (other than an elected member or candidate) may be appointed in writing by an elected member, group or candidate to accept political donations to be made to the elected member, group or candidate or to make payments for electoral expenditure from a campaign account by the elected member, group or candidate, or both.

40 Requirements for political donations to, and electoral expenditure by, elected member, group or candidate—~~general provisions~~

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

Note—

See section 41(6).

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

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

41 Campaign accounts of elected members, groups or candidates (cf section 96B EFED Act)

- (1) This section applies to an elected member, group or candidate to which section 38 does not apply.
- (2) The campaign account of an elected member, group or candidate is to be a separate account with an authorised deposit-taking institution denominated in Australian dollars.
- (3) The elected member or candidate for whom the account is operated is to be authorised to operate the account and is to operate the account.
- (4) The lead candidate of the group (within the meaning of section 14) for whom the account is operated is to be authorised to operate the account and is to operate the account.
- (5) In addition to political donations, money may be paid into a campaign account by the elected member, group or candidate for whom the account is operated. In that case, the amount paid and the terms on which the payment was made are to be disclosed in the relevant declaration lodged under this Part.

Note—

Section 76(3) requires electoral funding payments under Part 4 (Public funding of State election campaigns) for a candidate to be paid into the relevant campaign account.

- (6) Payments out of a campaign account may only be made—
- (a) for the purposes of electoral expenditure incurred by or on behalf of the elected

- member, group or candidate for whom the account is operated, or
- (b) with the approval of the elected member, group or candidate for whom the account is operated, for the purposes of lawful expenditure referred to in section 36 incurred by or on behalf of the party of which they are a member, or
 - (c) to reimburse the elected member, group or candidate for money paid into the account by the member, group or candidate, or
 - (d) for the purpose of the elected member, group or candidate for whom the account is operated to make political donations to elected members, groups or candidates who are members of the same party, or
 - (e) for the purposes of expenditure incurred in connection with parliamentary or council duties of the person for whom the account is operated or in connection with community activities.
- (7) Any amount remaining in a campaign account after the elected member, group or candidate for whom the account is operated ceases to be an elected member, group or candidate and no longer requires the account is to be paid—
- (a) to any party of which any such person was a member at the time the person last became an elected member or last contested an election to become an elected member, or
 - (b) in the case of a group—to the campaign accounts (if any) operated for the candidates who were members of the group (the amount being divided equally among the candidates), or
 - (c) subject to paragraphs (a) and (b)—to a charity nominated by the person or by the Electoral Commission (if the person cannot be contacted after due inquiry).
- (8) The regulations may make provision for or with respect to campaign accounts (including the control of accounts, the keeping of joint accounts and the provision of information to and the audit of accounts by the Electoral Commission).

Subdivision 3 Management requirements for third-party campaigners and associated entities

42 Requirements for third-party campaigners (cf section 96AA EFED Act)

- (1) It is unlawful for a third-party campaigner to make payments for electoral expenditure incurred for a State election during a capped State expenditure period, or to accept political donations for the purposes of incurring that expenditure, unless—
- (a) the third-party campaigner is registered under this Act in the State Register of Third-party Campaigners, and

- (b) the third-party campaigner has an official agent, and
- (c) the payments are made by, and the donations are made to, that agent.

Note—

Section 117 prevents registration of third-party campaigners in the period of 7 days before any State general election.

- (2) It is unlawful for a third-party campaigner to make payments for electoral expenditure incurred for a local government election during a capped local government expenditure period, or to accept political donations for the purposes of incurring that expenditure, unless—
 - (a) the third-party campaigner is registered under this Act in the Local Government Register of Third-party Campaigners, and
 - (b) the third-party campaigner has an official agent, and
 - (c) the payments are made by, and the donations are made to, that agent.

Note—

Section 117 prevents registration of third-party campaigners in the period of 7 days before any local government general election.

- (3) It is unlawful for third-party campaigners to make payments for any such electoral expenditure, or to use political donations for any such purpose, unless—
 - (a) the payments for that expenditure are made by the official agent of the third-party campaigner from a campaign account of the third-party campaigner kept in accordance with this Division, and
 - (b) the donations were paid by the official agent into the campaign account of the third-party campaigner kept in accordance with this Division.
- (4) Subject to the regulations, a person may be appointed in writing by the official agent of a third-party campaigner to make payments for electoral expenditure from a campaign account by the official agent or to accept political donations to be made to the official agent, or both.

43 Requirements for associated entities

- (1) It is unlawful for an associated entity to make payments for electoral expenditure incurred during a capped expenditure period, or to accept political donations for the purposes of incurring that expenditure, unless—
 - (a) the associated entity is registered under this Act in the Register of Associated Entities, and

- (b) the associated entity has an official agent, and
 - (c) the payments are made by, and the donations are made to, that agent.
- (2) It is unlawful for an associated entity to make payments for any such electoral expenditure, or to use political donations for any such purpose, unless—
- (a) the payments for that expenditure are made by the official agent of the associated entity from a campaign account of the associated entity kept in accordance with this Division, and
 - (b) the donations were paid by the official agent into the campaign account of the associated entity kept in accordance with this Division.
- (3) Subject to the regulations, a person may be appointed in writing by the official agent of an associated entity to make payments for electoral expenditure from a campaign account by the official agent or to accept political donations to be made to the official agent, or both.
- (4) The regulations may prescribe amounts of a kind that must not be paid into the campaign account of an associated entity.

44 Campaign account of associated entities and third-party campaigners

- (1) The campaign account of an associated entity or third-party campaigner is to be a separate account with an authorised deposit-taking institution denominated in Australian dollars.
- (2) The following may not be paid into the campaign account of a third-party campaigner—
- (a) any amount of a political donation to the third-party campaigner that exceeds the applicable cap on political donations to the campaigner under Division 3,
 - (b) any other amount of a kind that is prescribed by the regulations.
- (3) This Subdivision does not prevent payments being made out of the campaign account of an associated entity or a third-party campaigner that are in addition to the payments for electoral expenditure referred to in this Subdivision.

Subdivision 4 General

45 Person accepting reportable political donations to record details (cf section 96C EFED Act)

- (1) It is unlawful for a person to accept a reportable political donation that is required to be disclosed under this Part unless the person—
- (a) makes a record of the details required to be disclosed under this Part in relation to

the donation, and

- (b) provides a receipt for the donation (being a receipt that includes a statement required by the regulations as to the circumstances in which the donor is obliged to disclose the donation under this Part).

Note—

Section 145 requires the record to be kept for at least 3 years.

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

Note—

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

Division 6 Prohibition of certain political donations etc

(cf Division 4, Part 6 EFED Act)

46 Identification of persons from whom donations can be accepted (cf section 96D EFED Act)

- (1) It is unlawful for a political donation to a party, elected member, group, candidate, associated entity or third-party campaigner to be accepted unless the donor is—
 - (a) an individual who—
 - (i) is enrolled (within the meaning of the *Electoral Act 2017*), or
 - (ii) is enrolled on the roll of electors for federal elections, or
 - (iii) is enrolled on the roll of electors for a local government election, or
 - (iv) if not so enrolled, has supplied to the Electoral Commission identification that is acceptable to the Electoral Commission showing the individual's full name and an Australian residential address, or
 - (b) an entity that has a relevant business number or a principal or executive officer of which has supplied to the Electoral Commission identification that is acceptable to the Electoral Commission showing the principal or officer's full name and an Australian residential address.
- (2) A **relevant business number** is—
 - (a) an Australian Business Number (ABN), or
 - (b) any other number allocated or recognised by the Australian Securities and Investments Commission for the purposes of identifying the entity.
- (3) The regulations may make provision as to what identification is acceptable for the

purposes of this section.

(4) The objects of this section are—

- (a) to create certainty about who is making a political donation, by requiring the donor to be properly identified, and
- (b) to remove a perception that certain foreign donors could exert influence over the Australian political process, by requiring a donor to have a legitimate link with Australia, either through residence of the donor or its principal or executive officer or by being registered in Australia.

47 Prohibition on certain indirect campaign contributions (cf section 96E EFED Act)

Note—

The dollar amounts set out in this section are amounts equivalent to the applicable cap on political donation amounts for the financial year beginning 1 July 2017 (see the *Election Funding, Expenditure and Disclosures (Adjustable Amounts) Notice* under the *Election Funding, Expenditure and Disclosures Act 1981*). These dollar amounts are to be adjusted for inflation for the financial year beginning 1 July 2018 by Schedule 1.

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

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

- (2) It is unlawful for a person to accept any such indirect campaign contribution.
- (3) However, an **indirect campaign contribution** prohibited by this section does not include—
 - (a) the provision of volunteer labour or the incidental or ancillary use of vehicles or equipment of volunteers or other things authorised by the guidelines of the

Electoral Commission, or

- (b) anything provided or done by a party for the candidates endorsed by the party in accordance with arrangements made by the party agent of the party, or
 - (c) anything provided to or done for the benefit of a registered party or a group whose value as a gift does not exceed \$6,100, unless the total value of all such things provided or done by the same person over the same financial year (ending 30 June) exceeds \$6,100, or
 - (d) anything provided to or done for the benefit of the following whose value as a gift does not exceed \$2,700, unless the total value of all such things provided or done by the same person over the same financial year (ending 30 June) exceeds \$2,700—
 - (i) a party that is not a registered party,
 - (ii) an elected member,
 - (iii) a candidate, or
 - (e) a payment under Part 4 (Public funding of State election campaigns) or Part 5 (Administrative and New Party policy development funding), or
 - (f) any other thing of a kind permitted by the regulations.
- (4) Each of the amounts referred to in subsection (3)(c) and (d) is an adjustable amount that is to be adjusted for inflation as provided by Schedule 1.

48 Prohibition on political donations to independent candidates by parties and associated entities and persons (cf section 96EA EFED Act)

- (1) It is unlawful for a party, or a candidate or elected member endorsed by a party or an associated entity of a party, to make a political donation to a candidate, or a group of candidates, not endorsed by that or any other party.
- (2) It is unlawful for such a candidate or candidates to accept the political donation.

49 Prohibition on receiving gifts of unknown source (cf section 96F EFED Act)

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

- (a) the name and address of the person who made the donation are known to the person accepting the donation, and
- (b) when the donation is made, the person making the donation gives to the person accepting the donation the donor's name and address, and the person accepting the donation has no grounds to believe that the name and address so given are not the

true name and address of the donor.

50 Prohibition on receiving loans unless details recorded (cf section 96G EFED Act)

- (1) It is unlawful for a person to receive a reportable loan (other than a loan from a financial institution), unless the person makes a record of the following—
 - (a) the terms and conditions of the loan,
 - (b) the name and address of the entity or other person making the loan.
- (2) For the purposes of this section—
 - (a) separate loans made by one entity or other person to the same party, elected member, group, candidate or person within a relevant disclosure period are to be aggregated and treated as a single loan, and
 - (b) each transaction in which credit is provided by the use of a credit card is taken to be a separate loan.

- (3) In this section—

financial institution means an entity whose principal business is the provision of financial services or financial products, and includes an authorised deposit-taking institution.

loan means an advance of money, the provision of credit or any other transaction that in substance effects a loan of money.

reportable loan means a loan that, if it had been a gift, would be a reportable political donation that is required to be disclosed under this Part.

50A Prohibition on political donations in cash that exceed \$100

- (1) It is unlawful for a person to make a political donation in cash that exceeds the value of \$100.
- (2) It is unlawful for a person to accept a political donation in cash that exceeds the value of \$100.

Division 7 Prohibition of donations from property developers or tobacco, liquor or gambling industries

(cf Division 4A, Part 6 EFED Act)

51 Meaning of “prohibited donor” (cf section 96GAA EFED Act)

For the purposes of this Division, a **prohibited donor** is—

- (a) a property developer, or

- (b) a tobacco industry business entity, or
- (c) a liquor or gambling industry business entity,

and includes any industry representative organisation if the majority of its members are such prohibited donors.

52 Political donations by prohibited donors unlawful (cf section 96GA EFED Act)

- (1) It is unlawful for a prohibited donor to make a political donation.
- (2) It is unlawful for a person to make a political donation on behalf of a prohibited donor.
- (3) It is unlawful for a person to accept a political donation that was made (wholly or partly) by a prohibited donor or by a person on behalf of a prohibited donor.
- (4) It is unlawful for a prohibited donor to solicit another person to make a political donation.
- (5) It is unlawful for a person to solicit another person on behalf of a prohibited donor to make a political donation.

Note—

Section 145 makes it an offence for a person to do any act that is unlawful under this Division if the person is, at the time of the act, aware of the facts that result in the act being unlawful. Section 58 also provides for the recovery by the Electoral Commission of unlawful political donations.

53 Meaning of “property developer”, “tobacco industry business entity” and “liquor or gambling industry business entity” (cf section 96GB EFED Act)

- (1) Each of the following persons is a **property developer** for the purposes of this Division—
 - (a) an individual or a corporation if—
 - (i) the individual or a corporation carries on a business mainly concerned with the residential or commercial development of land, with the ultimate purpose of the sale or lease of the land for profit, and
 - (ii) in the course of that business—
 - (A) 1 relevant planning application has been made by or on behalf of the individual or corporation and is pending, or
 - (B) 3 or more relevant planning applications made by or on behalf of the individual or corporation have been determined within the preceding 7 years,
 - (b) a person who is a close associate of an individual or a corporation referred to in paragraph (a).

Note—

If a person makes a political donation within 12 months before becoming a property developer, the person must pay double that amount to the State—see section 58(3).

- (2) Any activity engaged in by an individual or corporation for the dominant purpose of providing commercial premises at which the individual or corporation, or a related body corporate of the corporation, will carry on business is to be disregarded for the purpose of determining whether the individual or corporation is a property developer unless that business involves the sale or leasing of a substantial part of the premises.
- (3) Each of the following persons is a **tobacco industry business entity**—
 - (a) a corporation engaged in a business undertaking that is mainly concerned with the manufacture or sale of tobacco products,
 - (b) a person who is a close associate of a corporation referred to in paragraph (a).
- (4) Each of the following persons is a **liquor or gambling industry business entity**—
 - (a) a corporation engaged in a business undertaking that is mainly concerned with either or a combination of the following, but only if it is for the ultimate purpose of making a profit—
 - (i) the manufacture or sale of liquor products,
 - (ii) wagering, betting or other gambling (including the manufacture of machines used primarily for that purpose),
 - (b) a person who is a close associate of a corporation referred to in paragraph (a).
- (5) In this section—

close associate of a corporation means each of the following—

 - (a) a director or officer of the corporation or the spouse of such a director or officer,
 - (b) a related body corporate of the corporation,
 - (c) a person whose voting power in the corporation or a related body corporate of the corporation is greater than 20% or the spouse of such a person,
 - (d) if the corporation or a related body corporate of the corporation is a stapled entity in relation to a stapled security—the other stapled entity in relation to that stapled security,
 - (e) if the corporation is a trustee, manager or responsible entity in relation to a trust—a person who holds more than 20% of the units in the trust (in the case of a unit trust) or is a beneficiary of the trust (in the case of a discretionary trust),

- (f) in relation to a corporation that is a property developer referred to in subsection (1)(a)—a person in a joint venture or partnership with the property developer in connection with a relevant planning application made by or on behalf of the property developer who is likely to obtain a financial gain if development that would be or is authorised by the application is authorised or carried out.

close associate of an individual means each of the following—

- (a) the spouse of the individual,
- (b) in relation to an individual who is a property developer referred to in subsection (1)(a)—a person in a joint venture or partnership with the property developer in connection with a relevant planning application made by or on behalf of the property developer who is likely to obtain a financial gain if development that would be or is authorised by the application is authorised or carried out.

officer has the same meaning as in the [Corporations Act 2001](#) of the Commonwealth.

related body corporate has the same meaning as in the [Corporations Act 2001](#) of the Commonwealth.

relevant planning application has the same meaning as in section 10.4 (Disclosure of political donations and gifts) of the [Environmental Planning and Assessment Act 1979](#).

spouse of a person includes a de facto partner of that person.

Note—

“De facto partner” is defined in section 21C of the [Interpretation Act 1987](#).

stapled entity means an entity the interests in which are traded along with the interests in another entity as stapled securities and (in the case of a stapled entity that is a trust) includes any trustee, manager or responsible entity in relation to the trust.

voting power has the same meaning as in the [Corporations Act 2001](#) of the Commonwealth.

54 Loans included as political donations (cf section 96GC EFED Act)

- (1) A loan that, if it had been a gift, would be a political donation is to be regarded as a political donation for the purposes of this Division unless the loan is from a financial institution.
- (2) In this section—

financial institution means an entity whose principal business is the provision of financial services or financial products, and includes an authorised deposit-taking institution.

loan means an advance of money, the provision of credit or any other transaction that in substance effects a loan of money.

55 Exception for membership subscriptions (cf section 96GD EFED Act)

An annual or other subscription paid to a party by an individual as a member of the party or for the individual's affiliation with the party is not a political donation for the purposes of this Division unless it is a reportable political donation.

Note—

A political donation of \$1,000 or more is a reportable political donation—see section 6.

56 Determination by Electoral Commission that person not a prohibited donor (cf section 96GE EFED Act)

- (1) A person (**the applicant**) may apply to the Electoral Commission for a determination by the Electoral Commission that the applicant or another person is not a prohibited donor for the purposes of this Division.
- (2) The Electoral Commission is authorised to make such a determination if the Electoral Commission is satisfied that it is more likely than not that the person is not a prohibited donor. The Electoral Commission is to make its determination solely on the basis of information provided by the applicant.
- (3) The Electoral Commission's determination remains in force for 12 months after it is made but can be revoked by the Electoral Commission at any time by notice in writing to the applicant.
- (4) The Electoral Commission's determination is conclusively presumed to be correct in favour of any person for the purposes of a political donation that the person makes or accepts while the determination is in force (even if the determination is subsequently found to be incorrect).
- (5) The Electoral Commission's determination is not presumed to be correct in favour of any person who makes or accepts a political donation knowing that information provided to the Electoral Commission in connection with the making of the determination was false or misleading in a material particular.
- (6) The Electoral Commission is to maintain a public register of the determinations made under this section and is to publish the register on a website maintained by the Electoral Commission.
- (7) The Electoral Commission may establish and publicise policies as to how the Electoral Commission will deal with applications for determinations under this section.

Division 8 Miscellaneous

(cf Division 5, Part 6 EFED Act)

57 Exception to aggregation for small donations at fundraising ventures and functions

- (1) This section applies to a political donation that—
 - (a) is of an amount of \$50 or less, and
 - (b) was made by a person at a fundraising venture or function, and
 - (c) was the only such donation made by that person at that venture or function.
- (2) The provisions of sections 6 and 23 relating to the aggregation of political donations—
 - (a) do not apply in relation to the acceptance of a political donation to which this section applies by a party, elected member, group, candidate, associated entity or third-party campaigner, and
 - (b) do apply in relation to the making of a political donation to which this section applies.

Note—

Section 19(3) (Small donations) requires disclosure of political donations (that are not reportable political donations) to include disclosure of—

- (a) the total amount of those donations during the relevant disclosure period, and
- (b) the total number of persons who made those donations.

Section 19(5) (Fundraising ventures or functions) requires disclosure of political donations in connection with fundraising ventures or functions to include—

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

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

58 Recovery of unlawful donations and expenditure and certain other property developer donations (cf section 96J EFED Act)

- (1) If a person accepts a political donation, loan or indirect campaign contribution that is unlawful because of this Part, an amount equal to the amount or value of the donation, loan or contribution (or double that amount if the person knew that it was unlawful) is payable by that person to the State and may be recovered by the Electoral Commission as a debt due to the State from—
 - (a) in the case of a donation, loan or contribution received by a party—the party, or
 - (b) in any other case—the person who received the donation, loan or contribution or the official agent of the person.

- (2) Subsection (1) extends to a political donation that would be unlawful under this Part but for section 24(5) or 25(3).
- (3) If—
 - (a) a person makes a political donation, and
 - (b) within 12 months of making that donation the person becomes a property developer (within the meaning of Division 7),the person must pay an amount that is double the amount or value of the donation to the State and that amount may be recovered by the Electoral Commission as a debt due to the State.
- (4) If a person incurs electoral expenditure that is unlawful because of this Part, an amount equal to double the amount or value of the expenditure is payable by that person to the State and may be recovered by the Electoral Commission as a debt due to the State.
- (5) If a third-party campaigner incurs electoral expenditure in contravention of section 35 (Limit on electoral expenditure—third-party campaigner acting in concert with others), an amount equal to double the amount or value by which that electoral expenditure exceeds the third-party campaigner’s expenditure cap for the election is payable by the third-party campaigner to the State and may be recovered by the Electoral Commission as a debt due to the State.

Note—

Section 78 provides that if the Electoral Commission is authorised under this section to recover an amount from a party or candidate (or from the party agent of the party), the Electoral Commission may deduct the amount from any payment (other than an advance payment) under Part 4 (Public funding of State election campaigns).

Section 94 provides that the Electoral Commission may deduct from any payment due under Part 5 (Administrative and New Party policy development funding) in respect of a party or elected member any amount that the Electoral Commission is authorised by this Part to recover as a debt from the party or elected member or agent of the party or elected member.

Section 96 provides that if the Electoral Commission is authorised under this section to recover an amount from a party or elected member (or from the party agent of the party or member), the Electoral Commission may deduct the amount from any payment under Part 5 (Administrative and New Party policy development funding).

59 Electoral Commission may audit disclosures (cf section 96K EFED Act)

- (1) The Electoral Commission may audit a declaration of disclosures under this Part (other than a declaration lodged by a major political donor).
- (2) A party, elected member, group, candidate, third-party campaigner or associated entity must assist the Electoral Commission by—
 - (a) giving the Electoral Commission full and free access at all reasonable times to all

accounts and documents of the person responsible for lodging the declaration and of the party, elected member, group, candidate, third-party campaigner or associated entity (as the case requires) relating directly or indirectly to any matter required to be disclosed under this Part, and

(b) giving the Electoral Commission all information and explanations that the Electoral Commission reasonably asks for with respect to any matter required to be set out in the declaration.

- (3) The Electoral Commission may appoint an auditor to audit declarations of disclosures on its behalf.
- (4) For the purposes of subsection (3), the auditor has and may exercise the same functions as the Electoral Commission has under this section in relation to an audit of a declaration of disclosures.
- (5) An audit under this section is to be conducted in the manner specified in the regulations (if any).

60 Extension of due date for making disclosures (cf section 96L EFED Act)

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

61 Amendment of disclosures (cf section 96M EFED Act)

- (1) The person who lodged a declaration under this Part (or that person's successor as the agent of the party, elected member, group, candidate, third-party campaigner or associated entity concerned) may amend the declaration by lodging an amended declaration with the Electoral Commission.
- (2) The amended declaration is to be in the manner and form approved by the Electoral Commission.
- (3) The obligations under section 22 (Public access to disclosures, expenditure etc) extend to both the original and any amended declaration.

(4) This section does not affect the liability for an offence in connection with the declaration that is amended.

(5) In this section—

amend includes alter, omit, add or substitute.

declaration includes a disclosure made in accordance with this Part.

Part 4 Public funding of State election campaigns

(cf Part 5 EFED Act)

Division 1 Preliminary

(cf Division 1, Part 5 EFED Act)

62 Application to State elections only (cf section 54A EFED Act)

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

(2) Accordingly, a reference in this Part to an election is a reference to a State election.

63 Definition

In this Part—

actual campaign expenditure—

(a) of a party or candidate in relation to a State general election—means the total actual electoral expenditure incurred by the party or candidate in connection with a State election during the period from and including 1 July preceding the election to the end of the election day for the election (and in the case of expenditure from and including 1 October preceding the election, being expenditure that is within the applicable campaign expenditure cap for the party or candidate), and

(b) of a candidate in relation to a by-election for the Assembly—means the total actual electoral expenditure incurred by the candidate in connection with the by-election during the 3-month period preceding the election day for the by-election.

64 Meaning of electoral expenditure for a State election (cf section 55 EFED Act)

(1) For the purposes of this Part, electoral expenditure for a State election is electoral expenditure incurred during the capped State expenditure period for the election.

(2) The decision of the Electoral Commission as to whether any expenditure is or is not electoral expenditure in accordance with this Act, the regulations and the guidelines determined under section 152 is final.

(3) The Auditor-General or an auditor is, for the purposes of this Act, entitled to rely on

any such decision of the Electoral Commission.

Division 2 Public funding for electoral expenditure of parties and candidates

(cf Division 2, Part 5 EFED Act)

Note—

The dollar amounts set out in this Division are the amounts specified for the 2015 State general election (see the sections 103C and 103D of the *Election Funding, Expenditure and Disclosures Act 1981*). These dollar amounts are to be adjusted for inflation for the 2019 State general election by Schedule 1.

65 Establishment of Election Campaigns Fund (cf section 56 EFED Act)

- (1) There is to be an Election Campaigns Fund to be kept by the Electoral Commission in respect of State elections.
- (2) Payments from the Election Campaigns Fund are to be distributed in accordance with this Part.

66 Registered parties eligible for public funding of election campaigns (cf section 57 EFED Act)

- (1) Parties are, subject to and in accordance with this Act, eligible for payments from the Election Campaigns Fund in respect of a State election (other than a by-election for the Assembly).
- (2) A party is eligible for payments from the Election Campaigns Fund in respect of any such State election if—
 - (a) it is a registered party on the election day for the State election, and
 - (b) it endorses candidates who are duly nominated for the State election and the Electoral Commission is satisfied that the candidates claim to be endorsed by the party, and
 - (c) it satisfies at least one of the party eligibility criteria.
- (3) The party eligibility criteria are as follows—
 - (a) in the case of an Assembly general election—the total number of first preference votes received by all those candidates endorsed by a party is at least 4% of the total number of first preference votes in all electoral districts in which the candidates were duly nominated for election,
 - (b) in the case of a periodic Council election—the total number of first preference votes received by all those candidates endorsed by a party (and by all other candidates included in the same group) is at least 4% of the total number of first preference votes in that election,

- (c) in the case of any election—at least one of those candidates endorsed by a party is elected at the State election.

67 Amount of public funding for eligible parties (cf sections 58 and 103C EFED Act)

- (1) The amount to be distributed from the Election Campaigns Fund to a party eligible for payments from the Fund in respect of a State election is (subject to subsection (2))—
 - (a) \$4 for each first preference vote received by an endorsed candidate of the party in the Assembly general election and \$3 for each first preference vote received by an endorsed candidate of the party in the periodic Council election, or
 - (b) the total amount of the actual campaign expenditure of the party and of those endorsed candidates of the party,whichever is the lesser.
- (2) If a party is under section 66 eligible for payments from the Election Campaigns Fund because it meets the eligibility criteria in the periodic Council election but not the Assembly general election—
 - (a) in the case of a party that had 10 or more endorsed candidates in the Assembly general election—the amount under subsection (1)(a) is to include \$4 for each first preference vote in relation to the Assembly general election (in addition to \$3 for each first preference vote in relation to the periodic Council election), or
 - (b) in any other case—the amount under subsection (1)(a) is to be calculated at the rate of \$4.50 (instead of \$3) for each first preference vote in relation to the periodic Council election (and by excluding any votes received in the Assembly general election).
- (3) Each of the amounts referred to in subsections (1) and (2) is an adjustable amount that is to be adjusted for inflation as provided by Schedule 1.

68 Candidates eligible for public funding of election campaigns (cf section 59 EFED Act)

- (1) Candidates are, subject to and in accordance with this Act, eligible for payments from the Election Campaigns Fund in respect of a State election.
- (2) A candidate who is duly nominated for a State election is eligible for payments from the Election Campaigns Fund in respect of the election if—
 - (a) the candidate is registered in the Register of Candidates for the election on the election day for the election, and
 - (b) in the case of a candidate for a periodic Council election, the candidate was not included in a group, or was included in a group none of whose members were endorsed by a party, and

(c) the candidate satisfies at least one of the candidate eligibility criteria.

(3) The candidate eligibility criteria are as follows—

(a) in the case of an Assembly general election or by-election for the Assembly—the candidate is elected or the total number of first preference votes received by the candidate is at least 4% of the total number of first preference votes in the electoral district in which the candidate was duly nominated for election,

(b) in the case of a periodic Council election—the candidate is elected or the total number of first preference votes received by the candidate (and, if included in a group, by all other candidates included in the same group) is at least 4% of the total number of first preference votes in the election.

69 Amount of public funding for eligible independent candidates (or eligible candidates of parties not eligible for public campaign funding) (cf sections 60 and 103D EFED Act)

(1) This section applies in relation to candidates who are (under section 68) eligible for payments from the Election Campaigns Fund, other than endorsed candidates of a party excluded by section 70.

(2) The amount to be distributed from the Election Campaigns Fund to any such candidate is—

(a) \$4 for each first preference vote received in the Assembly general election or by-election for the Assembly by any such candidate in that election or \$4.50 for each first preference vote received in the periodic Council election by any such candidate in that election, or

(b) the total amount of the actual campaign expenditure of the candidate,
whichever is the lesser.

(3) Each of the amounts referred to in subsection (2) is an adjustable amount that is to be adjusted for inflation as provided by Schedule 1.

70 No public campaign funding for endorsed candidates of eligible parties (cf section 103E EFED Act)

(1) This section applies in relation to candidates who are duly nominated for a State general election and who are endorsed by a party that is eligible for payments from the Election Campaigns Fund under section 66.

(2) Payments from the Election Campaigns Fund are not to be made to any such candidate in respect of such a State general election.

(3) Despite subsection (2), a party may direct in writing that a part of the amount that is to be distributed to the party under section 67 be paid to any such candidate.

(4) This section applies despite section 68.

71 Payments to parties endorsing the same candidate or group (cf section 62 EFED Act)

- (1) If the Electoral Commission is satisfied that 2 or more registered parties endorse the same candidate or same group of candidates for a State election and that the candidate or candidates each claim to be endorsed by those parties—
 - (a) those parties are taken, for the purposes of this Part, to constitute one registered party instead of 2 or more registered parties in relation to the candidate or candidates at that election, and
 - (b) the amount that would otherwise be payable from the Election Campaigns Fund to that one registered party in respect of the election is payable instead to those 2 or more registered parties as shared funding.
- (2) An amount payable to 2 or more parties as shared funding is payable to them—
 - (a) in equal shares, or
 - (b) in such other shares as the party agents of those parties agree on and as are specified in a direction in writing (a **shared funding direction**) signed by them and served on the Electoral Commission.
- (3) If a registered party would, but for this subsection, be entitled to be paid 2 or more amounts by virtue of subsection (1), the party is entitled to be paid only one of those amounts, being the largest amount.
- (4) A shared funding direction remains effective until revoked by the party agents of the parties concerned and notice in writing of the revocation is served on the Electoral Commission.

72 Entitlements to advance payments (cf section 63 EFED Act)

- (1) A registered party is, subject to and in accordance with this Act, eligible for an advance payment from the Election Campaigns Fund for electoral expenditure incurred in connection with a general election of an amount determined in accordance with subsection (2).
- (2) The amount payable, by way of advance payment, is an amount equal to 50% of the total amount to which the party was entitled under this Part in respect of the previous general election.
- (3) The amount payable by way of an advance payment under this section may be paid, as a lump sum or by way of instalments, at any time after the commencement of the capped State expenditure period for the election.
- (4) Any amount paid to a party by way of advance payment under this section in respect

of a general election is to be deducted from the amount payable under this Part to the party from the Election Campaigns Fund in respect of that general election.

- (5) If a party receives amounts by way of advance payment under this section in respect of a general election in excess of the amount (if any) to which it becomes entitled under this Part from the Election Campaigns Fund in respect of that general election, the amount of the excess must be repaid to the Electoral Commission within 60 days after the day for the return of the writs for that general election.
- (6) Any amount received by a party by way of advance payment under this section in respect of a general election must be repaid, on demand by the Electoral Commission, to the Electoral Commission if—
 - (a) the party does not contest the general election, or
 - (b) before the election day for the general election, the party ceases to operate or be registered or it has been, or is being, dissolved or wound up.
- (7) Any amount required to be repaid under this section may be recovered by the Electoral Commission as a debt in any court of competent jurisdiction.

Division 3 General provisions relating to funding

(cf Division 3, Part 5 EFED Act)

73 Claims for, and approvals of, payments (cf section 64 EFED Act)

- (1) A claim for payment under this Part (other than an advance payment) in respect of a State election must be lodged with the Electoral Commission before the expiration of 120 days after the day for the return of the writs for the election.

Note—

Section 153 authorises the Electoral Commission to extend the time for lodging a claim for payment.

- (2) Subject to this Act, the Electoral Commission must—
 - (a) approve the making of the payment under this Part if—
 - (i) a claim for the payment is made by the party or party agent for the party, or by the candidate, in the manner and form approved by the Electoral Commission, and
 - (ii) the Electoral Commission is satisfied that the party or candidate is eligible for the payment, or
 - (b) refuse to approve the making of the payment under this Part to the extent that the payment would exceed the amount of electoral expenditure for which payment may be made under this Part.

- (3) In assessing a claim for payment under this Part, the Electoral Commission may require the applicant to provide the Electoral Commission with further or other information relative to the assessment.
- (4) If the Electoral Commission is satisfied that it is proper to do so, it may disallow, wholly or in part, any items of expenditure covered by a claim under this Part.

74 Electoral Commission may audit claims (cf section 65 EFED Act)

- (1) The Electoral Commission may audit claims under this Part.
- (2) A party agent, party or candidate must assist the Electoral Commission by—
 - (a) giving the Electoral Commission full and free access at all reasonable times to all accounts, records, documents and papers of the agent by whom the claim is to be lodged, and of the party or candidate, as the case may require, relating directly or indirectly to the expenditure referred to in the claim, and
 - (b) giving the Electoral Commission all information and explanations that the Electoral Commission reasonably asks for with respect to the expenditure referred to in the claim.

Maximum penalty—100 penalty units.

- (3) The Electoral Commission may appoint an auditor to audit claims under this Part.
- (4) For the purposes of subsection (3), the auditor has and may exercise the same functions as the Electoral Commission has under this section in relation to an audit of claims under this Part.
- (5) An audit under this section is to be conducted in the manner specified in the regulations (if any).

75 Expenditure to be vouched for (cf section 66 EFED Act)

A claim under this Part is not validly lodged with the Electoral Commission unless all expenditure specified in the claim is vouched for in the manner prescribed by the regulations.

76 Making of payments (cf section 68 EFED Act)

- (1) Subject to this Act, a payment to be made to a party or candidate under this Part is to be made to the party or party agent of the party or to the candidate (as the case requires).
- (2) The Electoral Commission may instead, if it thinks it proper to do so in the circumstances, direct that the whole or any part of a payment under this Part be made to a specified account with a financial institution established for or in trust for a party, for the members of a party or for a candidate.

- (3) Despite subsections (1) and (2), payments to be made to a candidate are required to be paid into the campaign account of the candidate if such an account is required to be kept under Division 5 of Part 3.
- (4) Subject to and in accordance with the regulations, the Electoral Commission may, if it thinks it proper to do so in the circumstances, direct that the whole or any part of a payment under this Part be made to a person, body or organisation other than the party or party agent referred to in subsection (1).
- (5) Except as prescribed by the regulations, details of any direction under subsection (4) are to be included in the report of the Electoral Commission under section 154 for the reporting period in which the direction was given.
- (6) Payments may be made under this Part to an agent subject to such reasonable conditions with respect to the disbursement of the amount paid as the Electoral Commission determines.
- (7) An agent must comply with any condition determined in accordance with subsection (6) and applicable to the agent or any of the agent's predecessors.
Maximum penalty—100 penalty units.
- (8) It is a defence to a prosecution for an offence under subsection (7) if the agent establishes that the agent did not know, and could not reasonably have known, that the condition was applicable as referred to in that subsection.
- (9) If a payment is made under this Part and the recipient is not entitled to receive the whole or any part of the amount paid, whether because of a false statement in a claim or otherwise, the amount or that part of the amount may be recovered by the Electoral Commission as a debt in any court of competent jurisdiction.

77 Prepayment on lodgment of claims (cf section 69 EFED Act)

- (1) If the Electoral Commission is unable to finalise a claim for payment lodged on behalf of a party within 14 days, the Electoral Commission is required to make a preliminary payment within that period of 14 days.
- (2) The preliminary payment is to be of an amount equal to 90% of the total amount estimated by the Electoral Commission to be payable to the party, reduced by the amount of any advance payments made for the election concerned.
- (3) In making an estimate under this section, the Electoral Commission may, but need not, rely on information contained in the claim lodged by the party.
- (4) If a party receives a preliminary payment in excess of the amount (if any) to which it becomes entitled under a claim for payment, the amount of the excess must be repaid to the Electoral Commission within 60 days after the Electoral Commission notifies the

party.

- (5) The amount of any such excess may be recovered by the Electoral Commission as a debt in any court of competent jurisdiction.

78 Payments conditional on disclosure of political donations etc (cf section 70 EFED Act)

- (1) A party or candidate is not eligible for any payment (other than advance payments) under this Part in respect of a general election or a by-election while any failure to lodge a declaration under Part 3 (Political donations and electoral expenditure) or any annual financial statements under Part 6 (Obligations of registered parties and senior office holders) for a past period continues in respect of the party or candidate (or of any group of which the candidate is a member).
- (2) If the Electoral Commission is authorised under section 58 to recover an amount from a party (or party agent of the party) or a candidate, the Electoral Commission may deduct the amount from any payment (other than an advance payment) under this Part.

79 Death of a candidate (cf section 71 EFED Act)

If a candidate dies and would, but for that death, have been entitled to a payment under this Part, the Electoral Commission may make the payment to the candidate's legal personal representative or otherwise in accordance with section 76.

80 Deductions from payment for debts owed (cf section 72 EFED Act)

The Electoral Commission may deduct from any payment due under this Part in respect of a party or candidate all or any overpayment or excess amount that the Electoral Commission is authorised by this Part to recover as a debt from the party or candidate.

81 Special provisions relating to groups (cf section 73 EFED Act)

- (1) If there is an alteration in the composition of a group at a periodic Council election and the Electoral Commission is satisfied that the identity of the group is substantially unaltered, payments may be made under this Part as if its composition had not altered.
- (2) A reference in this Part to the party agent of a candidate or to the campaign account of a candidate is (if a candidate at a periodic Council election) a reference to the party agent or campaign account of the group.

82 Public access to claims and related documents (cf section 74 EFED Act)

- (1) The Electoral Commission must keep a copy of each claim made for a payment under this Part lodged with the Electoral Commission, together with any documents relating to the assessment of the claim by the Electoral Commission, for at least 6 years after the election day for the election to which it or they relate.

(2) The Electoral Commission—

- (a) must publish a copy of any claim referred to in subsection (1) on its website, and
- (b) may, on application, provide copies of or extracts from any other document relating to the assessment of such a claim by the Electoral Commission for public inspection.

Part 5 Administrative and New Party policy development funding

(cf Part 6A EFED Act)

Division 1 Preliminary

(cf Division 1, Part 6A EFED Act)

83 Application to State members and parties only (cf section 97A EFED Act)

- (1) This Part does not apply in relation to councillors.
- (2) Accordingly, a reference in this Part to an elected member (or a party with endorsed elected members) or to an election is a reference that relates to a member of either House of Parliament or to a State election.

84 Administrative expenditure—payments from Administration Fund (cf section 97B EFED Act)

- (1) For the purposes of Division 2, a reference to administrative expenditure is a reference to expenditure for administrative and operating expenses and—
 - (a) includes a reference to the following—
 - (i) expenditure for the administration or management of the activities of the eligible party or elected member,
 - (ii) expenditure for conferences, seminars, meetings or similar functions at which the policies of the eligible party or elected member are discussed or formulated,
 - (iii) expenditure on providing information to the public or a section of the public about the eligible party or elected member,
 - (iv) expenditure on providing information to members and supporters of the eligible party or elected member,
 - (v) expenditure in respect of the audit of the financial accounts of the eligible party or elected member,
 - (vi) expenditure on equipment and training to ensure compliance by the eligible party, elected members or endorsed candidates of the eligible party with the

obligations under this Act,

- (vii) expenditure on the reasonable remuneration of staff engaged in the above activities for the eligible party or elected member (being the proportion of that remuneration that relates to the time spent on those activities),
- (viii) reasonable expenditure on equipment or vehicles used for the purposes of the above activities (being the proportion of the cost of their acquisition and operation that relates to the use of the equipment or vehicles for those activities),
- (ix) expenditure on office accommodation for the above staff and equipment,
- (x) expenditure on interest payments on loans, but

(b) does not include a reference to the following—

- (i) electoral expenditure,
- (ii) expenditure for which a member may claim a parliamentary allowance as a member,
- (iii) expenditure incurred substantially in respect of operations or activities that relate to the election of members to a Parliament other than the NSW Parliament,
- (iv) expenditure prescribed by the regulations.

(2) The decision of the Electoral Commission as to whether any expenditure is or is not administrative expenditure in accordance with this Act, the regulations and the guidelines determined under section 152 is final. The Auditor-General or an auditor is, for the purposes of this Act, entitled to rely on any such decision of the Electoral Commission.

85 Policy development expenditure—payments from New Parties Fund (cf section 97C EFED Act)

(1) For the purposes of Division 3, a reference to policy development expenditure—

(a) includes a reference to the following—

- (i) expenditure for providing information to the public or a section of the public about the eligible party,
- (ii) expenditure for conferences, seminars, meetings or similar functions at which the policies of the eligible party are discussed or formulated,
- (iii) expenditure on providing information to members and supporters of the eligible party,

- (iv) expenditure in respect of the audit of the financial accounts of the eligible party,
 - (v) expenditure on the reasonable remuneration of staff engaged in the above activities for the eligible party (being the proportion of that remuneration that relates to the time spent on those activities),
 - (vi) reasonable expenditure on equipment or vehicles used for the purposes of the above activities (being the proportion of the cost of their acquisition and operation that relates to the use of the equipment or vehicles for those activities),
 - (vii) expenditure on office accommodation for the above staff and equipment,
 - (viii) expenditure on interest payments on loans,
 - (ix) electoral expenditure incurred during a capped State expenditure period, but
- (b) does not include a reference to the following—
- (i) electoral expenditure incurred outside a capped State expenditure period,
 - (ii) expenditure incurred substantially in respect of activities that relate to the election of members to a Parliament other than the NSW Parliament,
 - (iii) expenditure prescribed by the regulations.
- (2) The decision of the Electoral Commission as to whether any expenditure is or is not policy development expenditure in accordance with this Act, the regulations and the guidelines determined under section 152 is final. The Auditor-General or an auditor is, for the purposes of this Act, entitled to rely on any such decision of the Electoral Commission.

Division 2 Administrative funding for parties and independent members

(cf Division 2, Part 6A EFED Act)

Note—

The dollar amounts set out in this Division (other than section 87) are the equivalent of the adjusted amounts for the calendar year beginning 1 January 2018 set out in the *Election Funding, Expenditure and Disclosures (Adjustable Amounts) Notice* under the *Election Funding, Expenditure and Disclosures Act 1981*. The dollar amounts in section 87 have been increased as compared to the amounts that would have been payable under the *Election Funding, Expenditure and Disclosures Act 1981*.

The amounts have been expressed as quarterly amounts instead of annual amounts.

86 Establishment of Administration Fund (cf section 97D EFED Act)

- (1) There is to be an Administration Fund to be kept by the Electoral Commission in respect of parties and elected members.

- (2) Payments from the Administration Fund are to be distributed in accordance with this Division.

87 Public funding of eligible parties for administrative expenditure (cf section 97E EFED Act)

- (1) Parties are, subject to and in accordance with this Act, eligible for quarterly payments from the Administration Fund.
- (2) A party is eligible for payments from the Administration Fund if—
 - (a) it was a registered party on the election day for the previous State election and continues to be a registered party on the date that the entitlement for a quarterly payment is determined under this Division, and
 - (b) candidates endorsed by the party were elected at a State election (including at a joint sitting to fill a vacancy in the Council) and the Electoral Commission is satisfied that the elected members claimed to be endorsed by the party, and
 - (c) the Electoral Commission is satisfied that the elected members continue to be members or representatives of the party on the date that the entitlement for a quarterly payment is determined under this Division.
- (3) The quarterly amount to be distributed from the Administration Fund to any such eligible party is the amount of actual administrative expenditure incurred by or on behalf of the party during the quarter to which the payment relates, but not exceeding—
 - (a) \$87,500 if there is only one elected member endorsed by the party, or
 - (b) \$150,000 if there are only 2 elected members endorsed by the party, or
 - (c) \$187,500 if there are only 3 elected members endorsed by the party, or
 - (d) \$187,500 if there are more than 3 elected members endorsed by the party plus \$30,000 for each such member in excess of 3 up to a maximum of 22 members in excess of 3.
- (4) The number of endorsed elected members of a party in relation to any quarterly payment is to be determined as at the date that the entitlement for a quarterly payment is determined under this Division.
- (5) Each of the amounts referred to in subsection (3) is an adjustable amount that is to be adjusted for inflation as provided by Schedule 1.

88 Public funding of independent members for administrative expenditure (cf section 97F EFED Act)

- (1) Elected members are, subject to and in accordance with this Act, eligible for quarterly payments from the Administration Fund.

- (2) An elected member is eligible for payments from the Administration Fund if—
 - (a) the elected member was not an endorsed candidate of any party at the State election at which the member was elected, and
 - (b) the Electoral Commission is satisfied that the elected member is not a member or representative of any party on the date that the entitlement for a quarterly payment is determined under this Division.
- (3) The quarterly amount to be distributed from the Administration Fund to any such eligible elected member is the amount of actual administrative expenditure incurred by or on behalf of the elected member during the quarter to which the payment relates, but not exceeding \$56,450.
- (4) The amount referred to in subsection (3) is an adjustable amount that is to be adjusted for inflation as provided by Schedule 1.

89 Parties with the same endorsed elected members (cf section 97G EFED Act)

- (1) If the Electoral Commission is satisfied that 2 or more registered parties endorsed the same elected members for the State election at which the members were elected and that the members each claim to be endorsed by those parties—
 - (a) those parties are taken, for the purposes of this Division, to constitute one registered party instead of 2 or more registered parties in relation to those elected members, and
 - (b) the amount that would otherwise be payable from the Administration Fund to that one registered party in respect of the members for the election is payable instead to those 2 or more registered parties as shared funding.
- (2) An amount payable to 2 or more parties as shared funding is payable to them—
 - (a) in equal shares, or
 - (b) in such other shares as the party agents of those parties agree on and as are specified in a direction in writing (a **shared funding direction**) signed by them and served on the Electoral Commission.
- (3) If a registered party would, but for this subsection, be entitled to be paid 2 or more amounts by virtue of subsection (1), the party is entitled to be paid only one of those amounts, being the largest amount.
- (4) A shared funding direction remains effective until revoked by the party agents of the parties concerned and notice in writing of the revocation is served on the Electoral Commission.

90 Provisions relating to quarterly payments (cf section 97GA EFED Act)

- (1) For the purposes of this Division, if actual administrative expenditure is incurred by or on behalf of a party or elected member in a quarter in excess of the amount (if any) to which the party or elected member is eligible under section 87 or 88 in respect of that quarter, the amount of the excess may be carried over to a subsequent quarter in the same calendar year and is to be taken to be actual administrative expenditure incurred in that subsequent quarter.
- (2) If a party or elected member receives amounts by way of quarterly payment in excess of the amount (if any) to which the party or elected member becomes eligible under section 87 or 88 in respect of that quarter, the amount of the excess must be repaid to the Electoral Commission within 60 days after the party or elected member (or agent of the party or elected member) receives notice in writing from the Electoral Commission of the amount of the excess payment.
- (3) All amounts received by a party or elected member by way of quarterly payments must be repaid, on demand by the Electoral Commission, to the Electoral Commission if the party or elected member is not eligible under section 87 or 88 for a quarterly payment from the Administration Fund in relation to that quarter.

91 Quarterly advance payments (cf section 97GB EFED Act)

- (1) A party or elected member is, subject to and in accordance with this Act, eligible for a quarterly advance payment from the Administration Fund in respect of each quarter (a **relevant quarter**) of an amount determined in accordance with this section.
- (2) The amount payable, by way of a quarterly advance payment in respect of a relevant quarter, is payable at the beginning of the relevant quarter and is an amount equal to 50% of the total amount to which the party or elected member would be entitled under section 90 in respect of that relevant quarter.
- (3) The amount is to be determined on the assumption that—
 - (a) in the case of a party, the number of elected members endorsed by the party at the end of the quarter will be the same as the number of elected members endorsed by the party at the date on which the claim for the quarterly advance payment is determined, and
 - (b) in the case of a person who is an elected member, the person will continue to be an elected member at the end of the quarter,and on the assumption that the party or elected member will incur in the quarter the maximum amount that can be payable to the party or member from the Administration Fund for the quarter based on those assumptions.
- (4) Any amount paid to a party or elected member by way of a quarterly advance

payment under this section in respect of a relevant quarter is to be deducted from any amount payable under section 90 to the party or elected member from the Administration Fund in respect of that quarter.

- (5) If a party or elected member receives amounts by way of a quarterly advance payment under this section in respect of a relevant quarter in excess of the amount (if any) to which the party or member becomes entitled under section 90 from the Administration Fund in respect of that quarter, the amount of the excess must be deducted from any amount payable in respect of the next quarter under section 90.
- (6) Any quarterly advance payment that is in excess of the amount payable to the party or elected member under this Part in respect of the quarter is to be repaid within 60 days after the Electoral Commission notifies the party or elected member that the amount is repayable.
- (7) A claim for a quarterly advance payment under this section is to be made—
 - (a) at least 2 weeks before the beginning of the relevant quarter, and
 - (b) in the manner and form determined by the Electoral Commission.
- (8) An advance payment is to be made to the party agent of the party or the elected member. Section 94 does not apply to any such advance payment.

Division 3 Policy development funding for parties not entitled to administrative funding

(cf Division 3, Part 6A EFED Act)

Note—

The amounts set out in this Division are the adjusted amounts for the calendar year beginning 1 January 2018 (see the [Election Funding, Expenditure and Disclosures \(Adjustable Amounts\) Notice](#) under the [Election Funding, Expenditure and Disclosures Act 1981](#)).

92 Establishment of New Parties Fund (cf section 97H EFED Act)

- (1) There is to be a New Parties Fund to be kept by the Electoral Commission in respect of parties that are not eligible for payments from the Administration Fund.
- (2) Payments from the New Parties Fund are to be distributed in accordance with this Division.

93 Public funding of eligible parties for policy development expenditure—payment from New Parties Fund (cf section 97I EFED Act)

- (1) Parties that are not eligible for payments from the Administration Fund are, subject to and in accordance with this Act, eligible for annual payments, on a calendar year basis, from the New Parties Fund.

- (2) A party is eligible for payments from the New Parties Fund if—
- (a) it is a registered party and has been a registered party for at least 12 months on the date the entitlement to an annual payment is determined under this Division, and
 - (b) the Electoral Commission is satisfied that it operates as a genuine political party, and
 - (c) it is not entitled to payments from the Administration Fund.
- (3) The annual amount to be distributed from the New Parties Fund to any such eligible party is the amount of actual policy development expenditure incurred by or on behalf of the party during the calendar year to which the payment relates, but not exceeding the relevant maximum amount of payment in relation to the party.
- (4) The relevant maximum amount of an annual payment in relation to an eligible party is the amount of 63 cents for each first preference vote received by any candidate at the previous State election who was endorsed by the party, being either—
- (a) votes received by any such candidate at the previous Assembly general election, or
 - (b) votes received by any such candidate (or any candidate included in the same group) at the previous periodic Council election.
- The relevant maximum amount is zero if no such first preference votes were received.
- (5) Despite subsection (4), during the first 8 calendar years after a party first becomes a registered party, the relevant maximum amount is \$12,300 if the amount referred to in subsection (4) is less than \$12,300.
- (6) The amounts referred to in subsections (4) and (5) are adjustable amounts that are to be adjusted for inflation as provided by Schedule 1.

Division 4 General provisions relating to funding

(cf Division 4, Part 6A EFED Act)

94 Claims for payment (cf section 97J EFED Act)

- (1) A party or elected member is entitled to receive an annual payment for a calendar year, or a quarterly payment, under this Part only if the party agent of the party or member concerned makes a claim for the payment in accordance with this Division.
- (2) A claim must—
- (a) be lodged with the Electoral Commission and be in writing, and

- (b) be accompanied by a declaration and such information or evidence as the Electoral Commission may require under this Division, including (but not limited to) information or evidence that the Electoral Commission requires to establish the eligibility of the party or elected member to make the claim, and
 - (c) in relation to a claim for a quarterly payment—be made within 3 months after the end of the quarter for which payment is to be made, and
 - (d) in any other case—be made within 6 months after the end of the calendar year for which payment is to be made.
- (3) Entitlement to an annual or quarterly payment under this Part is to be determined as at the end of the calendar year or quarter for which the payment is to be made.
 - (4) Payments under this Part are to be made to the party agent of the party or the elected member concerned.
 - (5) A payment under this Part for which a party or elected member is eligible is required to be made within the period of 30 days after the Electoral Commission receives all of the following—
 - (a) a claim for the payment that complies with this Division,
 - (b) all other documentation that is required to be provided under this Division in connection with the claim,
 - (c) information or evidence required by the Electoral Commission under this Division in connection with the claim.
 - (6) Any amount required to be repaid to the Electoral Commission under this Part or to which the recipient is not entitled may be recovered by the Electoral Commission as a debt in any court of competent jurisdiction.
 - (7) The Electoral Commission may deduct from any payment due under this Part in respect of a party or elected member any amount that the Electoral Commission is authorised by this Part to recover as a debt from the party or elected member or agent of the party or elected member.

95 Declarations to be made and documents to be provided by agents and elected members (cf section 97K EFED Act)

- (1) A party agent of a party, or an elected member, who makes a claim for a payment under this Part is required to make the declaration and provide—
 - (a) the information required by the regulations in connection with the claim (if any), and
 - (b) such other information that the Electoral Commission requires in connection with

the payment (if any).

(2) The Electoral Commission—

- (a) must publish a copy of any claim for a payment under this Part referred to in subsection (1) on its website, and
- (b) may, on application, provide copies of or extracts from any other document received in connection with such a claim by the Electoral Commission for public inspection.

96 Payments conditional on compliance with other obligations under this Act (cf section 97L EFED Act)

- (1) A party or elected member is not eligible for any payment under this Part while any failure to lodge a declaration under Part 3 (Political donations and electoral expenditure) or any annual financial statements under Part 6 (Obligations of registered parties and senior office holders) for a past period continues in respect of the party or member.
- (2) If the Electoral Commission is authorised under section 58 to recover an amount from a party (or party agent of the party) or an elected member, the Electoral Commission may deduct the amount from any payment under this Part.

Part 6 Obligations of registered parties and senior office holders

Division 1 Annual financial statements

97 Annual financial statements of registered parties (cf section 96N EFED Act)

- (1) A registered party must, within 16 weeks after the end of each financial year (or within such longer period as may be prescribed by the regulations), provide the Electoral Commission with a copy of the audited annual financial statements of the party in a form approved by the Electoral Commission.

Note—

Section 78 provides that a party or candidate is not eligible for any payment (other than advance payments) under Part 4 (Public funding of State election campaigns) in respect of a general election while any failure to lodge annual financial statements under this Part for a past period continues in respect of the party or candidate (or of any group of which the candidate is a member).

Section 96 provides that a party or elected member is not eligible for any payment under Part 5 (Administrative and New Party policy development funding) while any failure to lodge annual financial statements under this Part for a past period continues in respect of the party or member.

- (2) The annual financial statements must be prepared in accordance with the Australian Accounting Standards and must deal with such matters as are prescribed by the regulations.
- (3) The annual financial statements must set out the following—

- (a) the total amount received by, or on behalf of, the party during the financial year,
 - (b) the total amount paid by, or on behalf of, the party during the financial year,
 - (c) the total outstanding amount, as at the end of the financial year, of all debts incurred by, or on behalf of, the party,
 - (d) such other details about the amounts (or about particular kinds of the amounts) so received or paid, or debts so incurred, as the regulations require.
- (4) The Electoral Commission may waive compliance with this section in any of the following cases—
- (a) where the party to which the annual financial statements relate is not eligible to receive a payment under Part 4 (Public funding of State election campaigns) or Part 5 (Administrative and New Party policy development funding),
 - (b) where the Electoral Commission considers the cost of compliance would be unreasonable.
- (5) In this section, ***Australian Accounting Standards*** means Accounting Standards issued by the Australian Accounting Standards Board (as in force from time to time).

Division 2 Electoral Commission to be provided with list of senior office holders

98 Parties to provide Electoral Commission with list of senior office holders

- (1) A party is not eligible for any payment under Part 4 or 5 unless the party—
- (a) provides to the Electoral Commission a list of its senior office holders and a summary of the roles and responsibilities of those senior office holders, and
 - (b) promptly notifies the Electoral Commission, in writing, of any changes to those senior office holders or their roles and responsibilities.
- (2) The list of senior office holders is to be provided in the manner and form approved by the Electoral Commission.
- (3) The Electoral Commission is to cause the following to be published on the Electoral Commission's website—
- (a) the names of senior office holders provided under this section, and
 - (b) the summary of the role and responsibilities of a senior office holder under this Act.

Division 3 Duties of senior office holders of registered parties

99 Definition

In this Division, **registered party** includes a party registered under the *Local Government Act 1993*.

100 Duties of senior office holders of registered parties to report alleged contraventions of this Act

(1) A senior office holder of a registered party who fails, without reasonable excuse, to report to the Electoral Commission any conduct in connection with the party that the office holder knows or reasonably believes constitutes a contravention of this Act is guilty of an offence.

Maximum penalty—50 penalty units.

(2) Without limiting subsection (1), it is a reasonable excuse for a person to fail to report conduct under that subsection if the person knows or reasonably believes a report of the conduct has already been made to the Electoral Commission.

(3) A report made to the Electoral Commission under subsection (1) must be in writing.

Part 7 Registration of electoral participants

(cf Part 4 EFED Act)

Division 1 Preliminary

(cf Division 1, Part 4 EFED Act)

101 Application to registration for State and local government elections (cf section 26 EFED Act)

This Part applies to the registration of candidates, groups, third-party campaigners, associated entities and agents for State elections and local government elections.

102 Qualification of persons to be appointed as party or official agents (cf section 27 EFED Act)

(1) The following persons are not qualified to be appointed as party agents or official agents—

(a) a corporation,

(b) a person who is not enrolled to vote at State elections,

(c) a person who has been sentenced to a term of imprisonment of 30 months or more or has been convicted of an indictable offence, an offence against this Act, an electoral offence, or, within the previous 10 years, an offence committed as an

adult involving fraud or dishonesty,

- (d) a person whom the Electoral Commission determines is not a fit and proper person to be such an agent,
- (e) a person who has not completed the training prescribed by the regulations for appointment as such an agent (unless the person is of a class of persons recognised by the regulations as a person eligible for appointment without further training).

(2) A person may be appointed as the official agent of more than one person or entity.

(3) The Electoral Commission may cancel the registration under this Part of a person as a party agent or an official agent if the person is no longer qualified to be appointed as such an agent.

Division 2 Register of Candidates

(cf Division 2, Part 4 EFED Act)

103 Register of Candidates (cf section 31 EFED Act)

- (1) The Electoral Commission is to keep a register of candidates and groups for each general election called the **Register of Candidates**.
- (2) The Electoral Commission is to keep separate Registers of Candidates for State and local government elections. The register for State elections is to be called the **State Register of Candidates** and the register for local government elections is to be called the **Local Government Register of Candidates**.
- (3) The Register of Candidates for a general election is to be kept as from the election day for the previous general election.
- (4) The Register of Candidates is to include the following particulars in relation to a candidate—
 - (a) the full name and enrolled address of the candidate,
 - (b) the candidate's party or group affiliation (if any),
 - (c) in the case of a State election, the House of Parliament for which the candidate is a candidate,
 - (d) in the case of a local government election, the council for which the candidate is a candidate,
 - (e) the address of the candidate's campaign headquarters in New South Wales,
 - (f) particulars of the platform or objectives of the candidate, if the candidate requests

the Electoral Commission to include those particulars,

(g) such other particulars as may be prescribed by the regulations,

(h) such other particulars as the Electoral Commission thinks fit.

(5) The Register of Candidates is to include the following particulars in relation to a group—

(a) the name of the group (if any),

(b) the names of the candidates comprising the group,

(c) the order of the names of the candidates comprising the group,

(d) the party affiliation of the group (if any),

(e) particulars of the platform or objectives of the group, if the group requests the Electoral Commission to include those particulars,

(f) such other particulars as may be prescribed by the regulations,

(g) such other particulars as the Electoral Commission thinks fit.

(6) The Register of Candidates is to be kept in the manner and form determined by the Electoral Commission.

104 Deemed registration of nominated candidates and groups (cf section 32A EFED Act)

(1) A person nominated as a candidate at an election in accordance with the *Electoral Act 2017* or in accordance with the *Local Government Act 1993* is taken to be registered under this Act as a candidate for the election.

(2) The candidates who comprise a group at an election are taken to be registered under this Act as a group for the election.

(3) The Electoral Commission is to make appropriate recordings in the Register of Candidates for an election to give effect to the deemed registration of a candidate or group under this section for the election.

105 Applications for registration of candidates (cf section 33 EFED Act)

(1) An application to register a person as a candidate in the Register of Candidates for a general election is to be made to the Electoral Commission by the person.

(2) An application for registration must—

(a) be made in the manner and form approved by the Electoral Commission, and

(b) be received by the Electoral Commission on or before the day of nomination for

the general election and after the election day for the previous general election, and

- (c) set out the following particulars—
 - (i) the full name and enrolled address of the candidate,
 - (ii) the candidate's party or group affiliation (if any),
 - (iii) in the case of a State election, the House of Parliament for which the candidate is a candidate,
 - (iv) in the case of a local government election, the council for which the candidate is a candidate,
 - (v) the address of the candidate's campaign headquarters in New South Wales,
 - (vi) particulars of the platform or objectives of the candidate, if the candidate requests the Electoral Commission to include those particulars in the Register of Candidates,
 - (vii) such other particulars as may be prescribed by the regulations,
 - (viii) such other particulars as the Electoral Commission thinks fit.

106 Application for registration of groups (cf section 34 EFED Act)

- (1) An application to register a group of candidates in the Register of Candidates for a general election is to be made to the Electoral Commission by the candidates.
- (2) An application for registration must—
 - (a) be made in the manner and form approved by the Electoral Commission, and
 - (b) be received by the Electoral Commission on or before the day of nomination for the general election and after the election day for the previous general election, and
 - (c) set out the following particulars—
 - (i) the name of the group (if any),
 - (ii) the names of the candidates comprising the group,
 - (iii) the order of the names of the candidates comprising the group,
 - (iv) the party affiliation of the group (if any),
 - (v) particulars of the platform or objectives of the group, if the group requests the Electoral Commission to include those particulars in the Register of

Candidates,

- (vi) such other particulars as may be prescribed by the regulations,
- (vii) such other particulars as the Electoral Commission thinks fit.

107 Determination of application to register candidates (cf section 36 EFED Act)

- (1) The Electoral Commission may—
 - (a) register a person as a candidate in the Register of Candidates for a general election, or
 - (b) refuse to register the person.
- (2) The Electoral Commission must not register a candidate in the Register of Candidates for a general election if the application for registration of the candidate was received by the Electoral Commission after the day of nomination for the general election.
- (3) Without limiting subsection (1), the Electoral Commission may refuse to register a candidate if the Electoral Commission believes on reasonable grounds that any particulars in the application for registration of the candidate are incomplete or not correct, but may, if the Electoral Commission thinks fit, register the candidate notwithstanding any such defect.
- (4) If the Electoral Commission refuses to register a candidate under subsection (3)—
 - (a) the Electoral Commission is, as soon as is reasonably practicable, to notify the candidate of the refusal and of the reasons for the refusal, and
 - (b) the candidate may, within 30 days after the date of the notification by the Electoral Commission, amend the application for registration by substituting the relevant particulars, and
 - (c) the amended application is taken to have been received by the Electoral Commission when the original application was received by it.

108 Determination of application to register groups (cf section 37 EFED Act)

- (1) The Electoral Commission may—
 - (a) register a group in the Register of Candidates for a general election, or
 - (b) refuse to register the group.
- (2) The Electoral Commission must not register a group in the Register of Candidates for a general election if the application for registration of the group was received by the Electoral Commission after the day of nomination for the general election.
- (3) Without limiting subsection (1), the Electoral Commission may refuse to register a

group if the Electoral Commission believes on reasonable grounds that any particulars in the application for registration of the group are incomplete or not correct, but may, if the Electoral Commission thinks fit, register the group despite any such defect.

- (4) If the Electoral Commission refuses to register a group under subsection (3)—
 - (a) the Electoral Commission is, as soon as is reasonably practicable, to notify the group of the refusal and of the reasons for the refusal, and
 - (b) the group may, within 30 days after the date of the notification by the Electoral Commission, amend the application for registration by including or substituting the relevant particulars, and
 - (c) the amended application is taken to have been received by the Electoral Commission when the original application was received by it.
- (5) The Electoral Commission may refuse to register a group if, in the opinion of the Electoral Commission, the name of the group is obscene or offensive.
- (6) If the Electoral Commission refuses to register a group under subsection (5)—
 - (a) the Electoral Commission is, as soon as is reasonably practicable, to notify the group of the refusal and of the reasons for the refusal, and
 - (b) the group may, within 30 days after the date of the notification by the Electoral Commission, amend the application for registration by substituting the name of the group, and
 - (c) the amended application is taken to have been received by the Electoral Commission when the original application was received by it.

109 Requirement to notify Electoral Commission of changes in registered particulars (cf section 38 EFED Act)

- (1) If a change occurs in any of the particulars stated in the Register of Candidates in relation to a candidate or group (being particulars of the kind required to be stated in an application for registration of the candidate or group), the candidate or group must, within 30 days after the date of the change, notify the Electoral Commission of the change in the manner and form approved by the Electoral Commission.

Maximum penalty—2 penalty units.

- (2) If the Electoral Commission believes on reasonable grounds that a candidate or group has not notified the Electoral Commission of a change in particulars as referred to in subsection (1), the Electoral Commission may, by notice in writing served on the candidate or group, require the candidate or group to notify the Electoral Commission of the change before the date specified in the notice, or before the date of expiry of the period of 30 days after service of the notice, whichever is later.

- (3) If a candidate or group fails to notify the Electoral Commission in accordance with subsection (2), the Electoral Commission may cancel the registration of the candidate or group.
- (4) The regulations may provide that this section does not apply to particulars or variations of a class or description specified in the regulations for the purposes of this subsection.

110 Variation and cancellation of registration

- (1) The Electoral Commission is to vary the particulars set out in the Register of Candidates in relation to a candidate or group in accordance with a notification provided by, or in accordance with the written request of, the candidate or group, unless the Electoral Commission believes on reasonable grounds that the varied particulars are not correct.
- (2) The Electoral Commission may cancel the registration of a candidate or group at the written request of the candidate or group.
- (3) The Electoral Commission may, of its own accord or on request, omit any particulars from the Register of Candidates if it is satisfied that the particulars are not correct.
- (4) The Electoral Commission may, of its own accord or on request, include any particulars in the Register of Candidates if it is satisfied that the particulars are correct.
- (5) The Electoral Commission is to notify the relevant candidate or group of any variations made to the Register of Candidates under this section.
- (6) The regulations may provide that subsection (1) does not apply to particulars or variations of a class or description specified in the regulations for the purposes of this subsection.

Division 3 Register of Associated Entities

111 Register of Associated Entities

- (1) The Electoral Commission is to keep a register of associated entities called the ***Register of Associated Entities***.
- (2) The Register of Associated Entities is to include—
 - (a) the full name and address of the associated entity, and
 - (b) such other particulars as may be prescribed by the regulations, and
 - (c) any other particulars that the Electoral Commission thinks fit to include in the Register.

- (3) The Register of Associated Entities is to be kept on a continuous basis.
- (4) The Register of Associated Entities is to be kept in the manner and form determined by the Electoral Commission.

112 Applications for registration

- (1) An application for registration in the Register of Associated Entities may be made to the Electoral Commission by the associated entity or the associated entity's official agent.
- (2) An application for registration must—
 - (a) be made in the manner and form approved by the Electoral Commission, and
 - (b) set out the following particulars—
 - (i) the full name and address of the associated entity,
 - (ii) such other particulars as may be prescribed by the regulations, and
 - (c) be accompanied by an appointment of the official agent of the associated entity.

113 Determination of application

- (1) The Electoral Commission may—
 - (a) register the associated entity, or
 - (b) refuse to register the associated entity.
- (2) Without limiting subsection (1), the Electoral Commission may refuse to register an associated entity if the Electoral Commission is of the opinion, on reasonable grounds, that any particulars in the application for registration are incomplete or not correct, but may, if the Electoral Commission thinks fit, register the associated entity despite any such defect.
- (3) If the Electoral Commission refuses to register a person as an associated entity—
 - (a) the Electoral Commission is, as soon as is reasonably practicable, to notify the associated entity's official agent of the refusal and of the reasons for the refusal, and
 - (b) the official agent may, within 30 days after the date of the notification by the Electoral Commission, amend the application for registration by substituting the relevant particulars, and
 - (c) the amended application is taken to have been received by the Electoral Commission when the original application was received by it.

114 Requirement to notify Electoral Commission of changes in registered particulars

- (1) If a change occurs in any of the particulars stated in the Register of Associated Entities in relation to a registered associated entity (being particulars of the kind required to be stated in an application for registration of an associated entity), the associated entity's official agent must, within 30 days after the date of the change, notify the Electoral Commission of that change in the manner and form approved by the Electoral Commission.

Maximum penalty—2 penalty units.

- (2) If the Electoral Commission believes on reasonable grounds that an associated entity's official agent has not notified the Electoral Commission of a change in particulars as referred to in subsection (1), the Electoral Commission may, by notice in writing served on the official agent, require the official agent to notify the Electoral Commission of the change before the date specified in the notice, or before the date of expiry of the period of 30 days after service of the notice, whichever is later.
- (3) If an associated entity's official agent fails to notify the Electoral Commission in accordance with subsection (2), the Electoral Commission may cancel the registration of the associated entity.

115 Variation and cancellation of registration

- (1) The Electoral Commission is to vary the particulars set out in the Register of Associated Entities in relation to a registered associated entity in accordance with a notification provided by, or in accordance with the written request of, the associated entity's official agent, unless the Electoral Commission believes on reasonable grounds that the varied particulars are not correct.
- (2) The Electoral Commission may cancel the registration of an associated entity at the written request of the associated entity's official agent.
- (3) The Electoral Commission may, of its own accord or on request, omit any particulars from the Register of Associated Entities if it is satisfied that the particulars are not correct.
- (4) The Electoral Commission may, of its own accord or on request, include any particulars in the Register of Associated Entities if it is satisfied that the particulars are correct.
- (5) The Electoral Commission is to notify the relevant official agent of any variations made to the Register of Associated Entities under this section.

Division 4 Register of Third-party Campaigners

(cf Division 2A, Part 4 EFED Act)

116 Register of Third-party Campaigners (cf section 38A EFED Act)

- (1) The Electoral Commission is to keep a register of third-party campaigners for each general election to be called the **Register of Third-party Campaigners**.
- (2) The Electoral Commission is to keep separate Registers of Third-party Campaigners for State and local government elections. The register for State elections is to be called the **State Register of Third-party Campaigners** and the register for local government elections is to be called the **Local Government Register of Third-party Campaigners**.
- (3) The Register of Third-party Campaigners for a general election is to be kept as from the election day for the previous general election.
- (4) The Register of Third-party Campaigners is to include—
 - (a) the full name and address of the third-party campaigner, and
 - (b) such other particulars as may be prescribed by the regulations, and
 - (c) such other particulars as the Electoral Commission thinks fit.
- (5) Subject to this Act, the Register of Third-party Campaigners is to be kept in the form and manner determined by the Electoral Commission.

117 Applications for registration (cf section 38C EFED Act)

- (1) An application to register a person as a third-party campaigner in the Register of Third-party Campaigners for a general election may be made to the Electoral Commission by the person or the person's official agent.
- (2) An application for registration must—
 - (a) be made in the manner and form approved by the Electoral Commission, and
 - (b) be made during the period beginning on the election day for the previous general election and ending on the 7th day before the election day for the general election concerned, and
 - (c) set out the following particulars—
 - (i) the full name and address of the person,
 - (ii) such other particulars as may be prescribed by the regulations, and
 - (d) be accompanied by an appointment of the official agent of the third-party campaigner.

118 Determination of application (cf section 38E EFED Act)

- (1) The Electoral Commission may—
 - (a) register a person as a third-party campaigner in the Register of Third-party Campaigners for a general election, or
 - (b) refuse to register the person.
- (2) The Electoral Commission must not register a person if the application for registration was received by the Electoral Commission after the 7th day before the election day for the general election concerned.
- (3) Without limiting subsection (1), the Electoral Commission may refuse to register a person if the Electoral Commission believes on reasonable grounds that any particulars in the person's application for registration are incomplete or not correct, but may, if the Electoral Commission thinks fit, register the person despite any such defect.
- (4) If the Electoral Commission refuses to register a person as a third-party campaigner under subsection (3)—
 - (a) the Electoral Commission is, as soon as is reasonably practicable, to notify the person's official agent of the refusal and of the reasons for the refusal, and
 - (b) the official agent may, within 30 days after the date of the notification by the Electoral Commission, amend the application for registration by substituting the relevant particulars, and
 - (c) the amended application is taken to have been received by the Electoral Commission when the original application was received by it.

119 Requirement to notify Electoral Commission of changes in registered particulars (cf section 38F EFED Act)

- (1) If a change occurs in any of the particulars stated in the Register of Third-party Campaigners in relation to a person (being particulars of the kind required to be stated in an application for registration of the person), the person's official agent must, within 30 days after the date of the change, notify the Electoral Commission of the change in the manner and form approved by the Electoral Commission.

Maximum penalty—2 penalty units.

- (2) If the Electoral Commission believes on reasonable grounds that a third-party campaigner's official agent has not notified the Electoral Commission of a change in particulars as referred to in subsection (1), the Electoral Commission may, by notice in writing served on the official agent, require the official agent to notify the Electoral Commission of the change before the date specified in the notice, or before the date

of expiry of the period of 30 days after service of the notice, whichever is later.

- (3) If a third-party campaigner's official agent fails to notify the Electoral Commission in accordance with subsection (2), the Electoral Commission may cancel the registration of the third-party campaigner.
- (4) The regulations may provide that this section does not apply to particulars or variations of a class or description specified in the regulations for the purposes of this subsection.

120 Variation and cancellation of registration

- (1) The Electoral Commission is to vary the particulars set out in the Register of Third-party Campaigners in relation to a person in accordance with a notification provided by, or in accordance with the written request of, the person's official agent, unless the Electoral Commission believes on reasonable grounds that the varied particulars are not correct.
- (2) The Electoral Commission may cancel the registration of a third-party campaigner at the written request of the person's official agent.
- (3) The Electoral Commission may, of its own accord or on request, omit any particulars from the Register of Third-party Campaigners if it is satisfied that the particulars are not correct.
- (4) The Electoral Commission may, of its own accord or on request, include any particulars in the Register of Third-party Campaigners if it is satisfied that the particulars are correct.
- (5) The Electoral Commission is to notify the relevant official agent of any variations made to the Register of Third-party Campaigners under this section.
- (6) The regulations may provide that subsection (1) does not apply to particulars or variations of a class or description specified in the regulations for the purposes of this subsection.

Division 5 Register of Party Agents

(cf Division 3, Part 4 EFED Act)

121 Register of Party Agents (cf sections 39 and 40 EFED Act)

- (1) The Electoral Commission is to keep a register of party agents called the **Register of Party Agents**.
- (2) The Electoral Commission is to keep separate Registers of Party Agents for State and local government elections. The register for State elections is to be called the **State Register of Party Agents** and the register for local government elections is to be

called the **Local Government Register of Party Agents**.

- (3) The Register of Party Agents is to include the following particulars in relation to each party agent—
 - (a) the name of the party agent,
 - (b) the name of the party that appointed the party agent,
 - (c) the address and occupation of the party agent,
 - (d) such other particulars as the Electoral Commission thinks fit.
- (4) The Register of Party Agents is to be kept on a continuous basis.
- (5) The Register of Party Agents is to be kept in the manner and form determined by the Electoral Commission.

122 Appointment and revocation of appointment of party agents (cf section 41 EFED Act)

- (1) A party must appoint one party agent.
- (2) A party agent must be a senior office holder of the party.

Note—

See section 102 (Qualification of persons to be appointed as party or official agents), which provides that certain persons are not qualified to be appointed as party agents.

- (3) The appointment of a party agent may be revoked.
- (4) If a party agent dies or resigns or the party agent's appointment is revoked, the party that appointed the party agent must, within 30 days of the death, resignation or revocation, give notice of that fact in writing to the Electoral Commission.
- (5) If a party agent dies or resigns or the party agent's appointment is revoked, the party that appointed the party agent must, within 30 days of the death, resignation or revocation, appoint another party agent in his or her place.
- (6) If a party fails to comply with a provision of this section—
 - (a) the party is guilty of an offence and liable to a penalty not exceeding 200 penalty units, and
 - (b) each person who, at the time the failure occurred, was an officer of the party is guilty of an offence and liable to a penalty not exceeding 100 penalty units.
- (7) If at any time a party does not have a party agent appointed under this section, the party agent is the person who holds office at that time as the registered officer of the party under the *Electoral Act 2017* or under the *Local Government Act 1993*, as the case requires.

123 Procedure for appointing or revoking appointment of party agents

- (1) The appointment, or the revocation of the appointment, of a party agent is to be made by notice in writing to the Electoral Commission.
- (2) The appointment, or the revocation of the appointment, of a party agent does not take effect until the appropriate action has been taken under section 124.
- (3) The giving of notice under this Division is to be in the manner and form approved by the Electoral Commission.
- (4) A notice of the appointment of a party agent is not properly given unless it is accompanied by the signed acceptance of appointment of the person appointed.
- (5) A person appointed to any office or position under the *Electoral Act 2017* is not eligible to be a party agent.

124 Amendment of Register (cf sections 42 and 43 EFED Act)

- (1) On receipt of a notice of the appointment of a party agent provided under this Division, the Electoral Commission is to register the party agent.
- (2) On receipt of a notice of the death or resignation, or the revocation of the appointment, of a party agent, the Electoral Commission is to cancel the registration of the party agent.
- (3) The Electoral Commission may reject a notice referred to in subsection (1) or (2) if, in its opinion, the notice is not in accordance with this Act.
- (4) The Electoral Commission may amend the Register of Party Agents by—
 - (a) recording a registration of a party agent, or
 - (b) recording a cancellation of the registration of a party agent, or
 - (c) correcting a mistake or omission, or
 - (d) recording a change in the name, address or occupation of a party agent or a change in the name of the party by which a party agent was appointed.

Division 6 Register of Official Agents

(cf Division 4, Part 4 EFED Act)

125 Register of Official Agents (cf sections 44 and 45 EFED Act)

- (1) The Electoral Commission is to keep a register of official agents for each general election called the **Register of Official Agents**.
- (2) The Register of Official Agents for a general election is to be kept as from the election

day for the previous general election.

- (3) Subject to this Act, the Register of Official Agents is to be kept in the manner and form determined by the Electoral Commission.
- (4) The Register of Official Agents is to include the following particulars—
 - (a) the name, address and occupation of the official agent,
 - (b) the name of the associated entity or third-party campaigner that appointed the official agent,
 - (c) such other particulars as may be prescribed by the regulations,
 - (d) such other particulars as the Electoral Commission thinks fit.

126 Official agents of associated entities and third-party campaigners (cf section 46B EFED Act)

- (1) An associated entity or a third-party campaigner may appoint one official agent (an **appointed official agent**).

Note—

See section 102 (Qualification of persons to be appointed as party or official agents)—which provides that certain persons are not qualified to be appointed as official agents.

If an associated entity or third-party campaigner does not appoint an official agent, the Electoral Commission can designate a person as official agent. See paragraph (b) of the definition of **official agent** in section 4.

- (2) The appointment of an official agent may be revoked.
- (3) If the appointed official agent of an associated entity or a third-party campaigner dies or resigns, the associated entity or third-party campaigner must, within 30 days of the death or resignation, give notice of that fact in writing to the Electoral Commission.
- (4) If an appointed official agent of an associated entity or a third-party campaigner dies or resigns or his or her appointment is revoked, the associated entity or third-party campaigner may appoint another official agent in his or her place.

127 Procedure for appointing or revoking appointment of official agents (cf section 46C EFED Act)

- (1) The appointment, or the revocation of the appointment, of an official agent is to be made by notice in writing to the Electoral Commission.
- (2) The giving of a notice under this Division is to be in the manner and form approved by the Electoral Commission.
- (3) A notice of the appointment of an official agent is not properly given unless it is accompanied by the signed acceptance of appointment of the person appointed.

- (4) A person appointed to any office or position under the *Electoral Act 2017* is not eligible to be an official agent.

128 Entries in register (cf section 47 EFED Act)

- (1) On receipt of a notice of the appointment of an official agent under this Division, the Electoral Commission is to register the official agent.
- (2) On receipt of a notice of the death or resignation, or the revocation of the appointment, of an official agent, the Electoral Commission is to cancel the registration of the official agent.
- (3) The Electoral Commission may reject a notice referred to in subsection (1) or (2) if, in its opinion, the notice is not in accordance with this Act.
- (4) The Electoral Commission may include in the Register of Official Agents particulars of the persons who are official agents because of the office they hold and not because of an appointment under this Division.

129 Amendment of Register (cf section 48 EFED Act)

The Electoral Commission may amend the Register of Official Agents by—

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

Division 7 Registers for by-elections

(cf Division 5, Part 4 EFED Act)

130 Application of this Division (cf section 50 EFED Act)

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

131 Registers for by-elections (cf section 51 EFED Act)

- (1) The Electoral Commission is to keep 3 registers, to be called the ***Register of Candidates***, the ***Register of Third-party Campaigners*** and the ***Register of Official Agents*** respectively, for the by-election.
- (2) The registers may be established on a date determined by the Electoral Commission and published on its website but must be established by the following days—

- (a) in the case of a State election—the day of the issue of the writ for the by-election,
 - (b) in the case of a local government election—the day for the close of the roll of electors for the by-election.
- (3) Subject to this Act, the registers are to be kept in the manner and form determined by the Electoral Commission.
- (4) The provisions of Divisions 2, 4 and 6 apply to and in respect of the Register of Candidates, the Register of Third-party Campaigners and the Register of Official Agents for the by-election in the same way as they apply to and in respect of the Register of Candidates, the Register of Third-party Campaigners and the Register of Official Agents under those Divisions, and apply as if—
- (a) in the case of a State election, references to groups were omitted, and
 - (b) references to a general election were references to the by-election, and
 - (c) any other necessary adaptations were made.

Division 8 Miscellaneous

(cf Division 6, Part 4 EFED Act)

132 Public access to registers (cf section 52 EFED Act)

- (1) The registers kept under this Part are to be retained by the Electoral Commission and are to be made available for public inspection in accordance with this section.
- (2) The Electoral Commission is to—
 - (a) prepare a copy of each register that excludes the residential address of any person who is a silent elector within the meaning of the *Electoral Act 2017* (if the Electoral Commission is aware that the person is a silent elector) and make it available for public inspection at the office of the Electoral Commission during ordinary office hours, and
 - (b) prepare a copy of each register that excludes the addresses of all individuals and publish it on its website.

133 Statutory declarations (cf section 53 EFED Act)

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

Part 8 Financial provisions

(cf Part 7 EFED Act)

134 Appropriation of Consolidated Fund for electoral funding (cf section 98 EFED Act)

The Consolidated Fund is appropriated to the extent necessary for the payment of amounts in accordance with Part 4 (Public funding of State election campaigns) and Part 5 (Administrative and New Party policy development funding).

135 Money received by Electoral Commission (cf section 100 EFED Act)

Any money received or recovered by the Electoral Commission is to be paid to the Consolidated Fund.

136 Financial year of the Electoral Commission (cf section 101 EFED Act)

The financial year of the Electoral Commission is—

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

Part 9 Investigation powers

137 Inspection of documents (cf section 110 EFED Act)

- (1) For the purpose of ascertaining whether this Act is being or has been contravened, an inspector may—
 - (a) enter at any reasonable time any place at which the inspector has reasonable grounds to believe that relevant documents are kept, and
 - (b) request, by notice in writing, the owner or occupier of the place to produce for inspection any relevant documents at the place, and
 - (c) request, by notice in writing, any person employed or engaged at the place to produce for inspection any relevant documents that are in the custody or under the control of that person, and
 - (d) examine any person at a place entered with respect to matters under this Act, and
 - (e) examine and inspect any relevant documents at the place, and
 - (f) copy, or take extracts from, any relevant documents at the place, and
 - (g) make such examinations and inquiries as the inspector considers necessary.
- (2) A person being examined by an inspector under subsection (1) is entitled to be represented by an Australian legal practitioner.
- (3) A person must not—

- (a) refuse or intentionally delay the admission to any place of an inspector in the exercise of the inspector's functions under this section, or
- (b) intentionally obstruct an inspector in the exercise of the inspector's functions under this section, or
- (c) fail to comply with a request of an inspector made under this section.

Maximum penalty—200 penalty units.

(4) In this section—

relevant document means a document (whether in writing, in electronic form or otherwise) held by or on behalf of, or a financial document that relates to, any of the following—

- (a) a party, elected member, group, candidate, third-party campaigner, associated entity, party agent or official agent,
- (b) a former party, elected member, group, candidate, third-party campaigner, associated entity, party agent or official agent.

138 Power to require provision of documents and information (cf section 110A EFED Act)

- (1) The Electoral Commission may, by notice in writing to a person, require the person—
 - (a) to provide such information as the Electoral Commission reasonably requires for the purposes of the enforcement of this Act, or
 - (b) to produce to the Electoral Commission, at the place and time specified in the notice, any document that the Electoral Commission reasonably requires for the purposes of the enforcement of this Act, or
 - (c) to answer questions about any matters in respect of which information is reasonably required for the purposes of the enforcement of this Act, or
 - (d) to attend at a specified place and time to answer questions under this section if attendance at that place is reasonably required in order that the questions can be properly put and answered.
- (2) The place and time at which a person may be required to produce a document, or to attend and answer questions, is to be a place and time nominated by the Electoral Commission that is reasonable in the circumstances.
- (3) A notice under this section that requires a person to produce a document may only require a person to produce existing documents that are in the person's possession or that are within the person's power to obtain lawfully.
- (4) The Electoral Commission may take copies of any documents provided under this

section.

- (5) If the Electoral Commission has reason to believe that any documents provided under this section are evidence of an offence against this Act or the regulations, the Electoral Commission may retain the documents until proceedings for the offence have been heard and determined.
- (6) A person who, without reasonable excuse, fails to comply with a requirement made of the person under this section is guilty of an offence.

Maximum penalty—200 penalty units.

- (7) A person who provides any document or information, or answers any question, in purported compliance with a requirement made under this section, knowing that the document, information or answer is false or misleading in a material particular, is guilty of an offence.

Maximum penalty—400 penalty units or imprisonment for 2 years, or both.

- (8) A function conferred on the Electoral Commission by this section may be exercised by an inspector authorised by the Electoral Commission to exercise its functions under this section.
- (9) A notice may be given under this section to a person in respect of a matter even though the person is (or the document or information is held) outside the State or the matter occurred or is located outside the State, so long as the matter affects a matter to which this Act relates.

139 Appointment and identification of inspectors

- (1) The Electoral Commission may appoint any of the following persons as an inspector for the purposes of this Act—
 - (a) a member of staff of the Electoral Commission,
 - (b) a person belonging to a class of persons prescribed by the regulations.
- (2) The Electoral Commission is to cause each inspector to be issued with a means of identification in the form approved by the Electoral Commission.
- (3) In the course of exercising the functions of an inspector under this Act, the inspector must, if requested to do so by any person affected by the exercise of any such function, produce the inspector's identification for inspection by the person unless to do so would defeat the purpose for which the functions are to be exercised.

140 Arrangements with NSW Police Force

- (1) The Electoral Commission may enter into an arrangement with the Commissioner of Police for a police officer to exercise the functions of an inspector under this Part.

- (2) A police officer who exercises the functions of an inspector in accordance with the arrangement is taken to be an inspector for the purposes of this Act.

Part 10 Criminal and other proceedings

Division 1 Offences

141 Offences relating to disclosures of political donations and electoral expenditure (cf section 96H EFED Act)

- (1) A person who is required to lodge a declaration under Division 2 of Part 3 must do so within the time required.

Maximum penalty—200 penalty units.

- (2) A person who, without reasonable excuse, lodges an incomplete declaration under Division 2 of Part 3 is guilty of an offence.

Maximum penalty—200 penalty units.

142 Offences relating to assisting others lodging claims or disclosures

- (1) An official agent or party agent must, in relation to a matter permitted or required to be disclosed under Division 2 of Part 3 by the official agent or party agent, use his or her best endeavours to ensure that the statements in a declaration of disclosures or request under this Act by the agent are not false or misleading in a material particular.
- (2) A member of a group must, in relation to a matter permitted or required to be disclosed under Division 2 of Part 3 by the member on behalf of the group, use his or her best endeavours to ensure that the statements in a declaration of disclosures or request under this Act by the member are not false or misleading in a material particular.
- (3) An elected member, member of a group or candidate must not, in relation to a matter required to be disclosed under Division 2 of Part 3 by a party agent, give or withhold information to or from the party agent knowing that it will result in the making of a false statement in a declaration of disclosures or request under this Act by the party agent.
- (4) An associated entity or third-party campaigner must not, in relation to a matter required to be disclosed under Division 2 of Part 3 by the official agent of the associated entity or third-party campaigner, give or withhold information to or from the official agent knowing that it will result in the making of a false statement in a declaration of disclosures or request under this Act by the official agent.
- (5) A candidate must not, in relation to any matter to be included in a claim for a payment under Part 4 (Public funding of State election campaigns) or Part 5 (Administrative and New Party policy development funding), give or withhold

information to or from the party agent of the candidate knowing that it will result in the making of a false or misleading claim by the party agent.

Maximum penalty—400 penalty units or imprisonment for 2 years, or both.

143 Offences relating to caps on donations and expenditure (cf section 96HA EFED Act)

- (1) A person who does any act that is unlawful under Division 3 or 4 of Part 3 is guilty of an offence if the person was, at the time of the act, aware of the facts that result in the act being unlawful.
- (2) A person who makes a donation with the intention of causing the donation to be accepted in contravention of Division 3 of Part 3 is guilty of an offence.

Maximum penalty—400 penalty units or imprisonment for 2 years, or both.

144 Offence relating to scheme to circumvent political donation or expenditure prohibitions or restrictions (cf section 96HB EFED Act)

- (1) A person who enters into or carries out a scheme (whether alone or with others) for the purpose of circumventing a prohibition or requirement of Part 3 with respect to political donations or electoral expenditure is guilty of an offence.

Maximum penalty (on conviction on indictment): Imprisonment for 10 years.

- (2) It does not matter that the person also enters into or carries out the scheme for other purposes.
- (3) In this section—

scheme includes an arrangement, an understanding or a course of conduct.

145 Other offences relating to political donations and electoral expenditure (cf section 96I EFED Act)

- (1) A person who does any act that is unlawful under Division 5, 6 or 7 of Part 3 is guilty of an offence if the person was, at the time of the act, aware of the facts that result in the act being unlawful.

Maximum penalty—400 penalty units or imprisonment for 2 years, or both.

- (2) A person must keep the following for a period of at least 3 years—
 - (a) a record made by the person under section 45 relating to a reportable political donation,
 - (b) any other record that is required by the regulations to be kept by the person for the purposes of this subsection.

Maximum penalty—In the case of a party, 200 penalty units or in any other case, 100

penalty units.

146 False or misleading information

- (1) A person who provides information to the Electoral Commission that the person knows to be false or misleading in a material particular—
 - (a) in or in connection with any application, claim, request, notice, declaration or other disclosure under this Act, or
 - (b) in purported compliance with any requirement imposed by or under this Act,is guilty of an offence.
- (2) A person who, in a document required to be lodged by or for the purposes of this Act, makes, or causes or permits the making of, a statement that is false or misleading in a material particular, without having taken reasonable steps to ensure that the statement was not false or misleading in a material particular, is guilty of an offence.
- (3) A person who, in a document required to be lodged by or for the purposes of this Act, omits, or causes or permits the omission of, any matter or thing without which the document is misleading in a material particular, without having taken reasonable steps to ensure that the document did not omit any matter or thing without which the document would be misleading in a material particular, as the case may be, is guilty of an offence.
- (4) A person who, in relation to any matter to be included in a document required to be lodged by or for the purposes of this Act, gives or withholds giving information to the person who is to lodge the document knowing that it will result in the making of a false or misleading statement in whole or in part is guilty of an offence.

Maximum penalty—400 penalty units or imprisonment for 2 years, or both.

Division 2 Proceedings generally

147 Nature of proceedings for offences (cf section 111 EFED Act)

- (1) Proceedings for an offence against this Act or the regulations may be dealt with—
 - (a) summarily before the Local Court, or
 - (b) summarily before the Supreme Court in its summary jurisdiction.
- (2) If proceedings are brought in the Local Court, the maximum monetary penalty that the Local Court may impose for the offence is 200 penalty units, despite any higher maximum monetary penalty provided in respect of the offence.
- (3) Proceedings in respect of an offence against this Act or the regulations may only be commenced within 10 years after the offence was committed.

- (4) Proceedings in respect of an offence against this Act or the regulations may only be commenced with the consent of the Electoral Commission.
- (5) This section (other than subsection (4)) does not apply to proceedings for an offence against section 144 (Offence relating to scheme to circumvent political donation or expenditure prohibitions or restrictions).

148 Penalty notices (cf section 111A EFED Act)

- (1) An authorised officer may issue a penalty notice to a person if it appears to the officer that the person has committed a penalty notice offence.
- (2) A penalty notice offence is an offence against this Act or the regulations that is prescribed by the regulations as a penalty notice offence.
- (3) The *Fines Act 1996* applies to a penalty notice issued under this section.

Note—

The *Fines Act 1996* provides that, if a person issued with a penalty notice does not wish to have the matter determined by a court, the person may pay the amount specified in the notice and is not liable to any further proceedings for the alleged offence.

- (4) The amount payable under a penalty notice issued under this section is the amount prescribed for the alleged offence by the regulations (not exceeding the maximum amount of penalty that could be imposed for the offence by a court).
- (5) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.
- (6) In this section, **authorised officer** means an inspector within the meaning of section 139.

149 Civil and criminal proceedings against parties that are unincorporated associations (cf sections 112 and 113 EFED Act)

- (1) The following proceedings under a provision of this Act against a party that is an unincorporated association (whether the subject of the provision is described as a party or a person) may be brought against the party in its own name (and not in the name of any of its members), and, for the purposes of those proceedings, any rules of court relating to the service of documents, are taken to have effect as if the party were a corporation—
 - (a) proceedings for an offence under this Act alleged to have been committed by a party,
 - (b) proceedings for the recovery of any amount from a party under this Act.
- (2) If a fine is imposed on a party that is an unincorporated association for an offence under this Act or such a party is required in proceedings under this Act to make a

payment of an amount, the fine or amount—

- (a) is payable out of the property of the party, and
- (b) is not payable out of the property of a member or officer of the party unless the property is held for or on behalf of the party.

(3) The *Criminal Procedure Act 1986* has effect in a case in which a party that is an unincorporated association is charged with an offence under this Act in the same manner as it has effect in the case of a corporation charged with such an offence.

150 Evidence (cf section 114 EFED Act)

A certificate signed by a person authorised by the Electoral Commission for the purposes of this section certifying any one or more of the following matters is admissible in criminal or civil proceedings under this Act and (in the absence of evidence to the contrary) is evidence of the matters so certified—

- (a) that a specified group, candidate, third-party campaigner or associated entity was or was not registered in a specified register kept under this Act at a specified time or during a specified period,
- (b) that a specified party was or was not registered under the *Electoral Act 2017* or the *Local Government Act 1993* at a specified time or during a specified period,
- (c) that a specified person was or was not registered as an agent in a specified register kept under this Act at a specified time or during a specified period,
- (d) that there was no person registered at a specified time or during a specified period as the agent of a specified party, third-party campaigner or associated entity.

Part 11 Miscellaneous

(cf Part 8 EFED Act)

151 Electoral Commission may educate and inform elected members and candidates

The Electoral Commission may undertake educational and information programs to educate and inform parties, elected members, candidates, groups, third-party campaigners, associated entities, party agents, official agents and donors of their obligations under this Act.

152 Guidelines (cf section 24 EFED Act)

- (1) The Electoral Commission may, from time to time, determine and issue guidelines, not inconsistent with this Act or the regulations, for or with respect to any matters dealt with in this Act.
- (2) In the operation and application of this Act, regard is to be had not only to the

provisions of this Act and the regulations but also to the guidelines determined under subsection (1), and, in particular, the Electoral Commission is to have regard to those guidelines when dealing with applications, claims, caps and disclosures under this Act and the enforcement of this Act.

153 Extensions of time (cf section 106 EFED Act)

- (1) The Electoral Commission may, in any particular case, extend the time for doing anything under this Act, if it is satisfied that proper reasons exist justifying the extension.
- (2) This section has effect—
 - (a) despite any other provision of this Act (other than section 60), and
 - (b) whether or not the time for doing the thing under the provision has expired.

154 Reports to Parliament (cf section 107 EFED Act)

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

155 Compliance agreements (cf section 110B EFED Act)

- (1) The Electoral Commission may enter into a written agreement (a **compliance agreement**) with any person affected by this Act for the purpose of ensuring that the person complies with this Act or remedies an apparent contravention of this Act.
- (2) A person affected by this Act includes a party, a group, an elected member, a

candidate, a third-party campaigner and an associated entity.

- (3) A compliance agreement may specify the measures to be taken by the person affected by this Act to ensure that the person complies with this Act or remedies an apparent contravention of this Act.
- (4) A compliance agreement may be varied or terminated by further agreement between the parties.
- (5) The Supreme Court may, on application by the Electoral Commission, make a declaration that a person has contravened a compliance agreement, and may make ancillary orders to enforce the compliance agreement.
- (6) This section does not affect proceedings for an offence in relation to a contravention of this Act.

156 Regulations (cf section 117 EFED Act)

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) The Minister, before a regulation is made under this Act, is to certify to the Governor that the regulation is not unfairly biased against or in favour of any particular parties, elected members, groups, candidates or other persons, bodies or organisations, but nothing in this subsection affects the validity of that or any other regulation.
- (3) Without limiting subsection (1), regulations may be made for or with respect to the following—
 - (a) requiring the making, keeping and auditing of records of political donations made or received, and electoral expenditure incurred, by parties, elected members, groups, candidates and other persons, and requiring and otherwise providing for the production, examination and copying of those records,
 - (b) requiring parties, elected members, groups, candidates, associated entities, third-party campaigners, party agents and official agents to obtain valuations from a valuer approved by the Electoral Commission of political donations that are not gifts of money (or enabling the Electoral Commission to obtain any such valuations),
 - (c) requiring parties and third-party campaigners to make disclosures about the receipt of indirect campaign contributions of the kind referred to in section 47(3),
 - (d) compliance audits by or on behalf of the Electoral Commission in connection with disclosures under Part 3 (Political donations and electoral expenditure),
 - (e) matters of a savings or transitional nature consequent on elected members,

candidates or groups of candidates becoming or ceasing to be members of political parties (such as matters relating to disclosures of political donations and electoral expenditure under Division 2 of Part 3 and the application of management requirements under Division 5 of Part 3),

(f) the exemption of any class or description of persons, organisations or bodies, or of acts, matters or things, from all or any of the provisions of this Act.

(4) The regulations may create offences punishable by a penalty not exceeding 20 penalty units.

157 (Repealed)

Schedule 1 Adjustment for inflation of monetary amounts

(cf Schedule 1 EFED Act)

1 Definitions

In this Schedule—

adjustable amount means an amount that a provision of this Act provides is to be adjusted for inflation under this Schedule.

Consumer Price Index means the Consumer Price Index (All Groups Index) for Sydney published by the Australian Statistician.

Consumer Price Index number, in relation to a quarter, means the number for that quarter appearing in the Consumer Price Index.

2 Adjustment of political donation caps

- (1) Each of the adjustable amounts specified in a provision of Division 3 (Caps on political donations) of Part 3 (Political donations and electoral expenditure) and in section 47 (Prohibition on certain indirect campaign contributions) is to be adjusted for inflation for the 2018–2019 financial year and each subsequent financial year as provided by this clause.
- (2) The adjustable amounts that are to apply for the 2018–2019 financial year are to be determined by multiplying the adjustable amounts specified in Division 3 (Caps on political donations) of Part 3 (Political donations and electoral expenditure) and in section 47 (Prohibition on certain indirect campaign contributions) by the annual increase in the Consumer Price Index during the previous financial year.
- (3) The adjustable amounts that are to apply for a subsequent financial year are to be determined by multiplying the adjustable amounts that applied for the previous financial year by the annual increase in the Consumer Price Index during that previous financial year.

- (4) The annual increase in the Consumer Price Index during a financial year is to be calculated as B/A where—

A is the Consumer Price Index number for the last quarter for which such a number was published before the start of the financial year.

B is the Consumer Price Index number for the last quarter for which such a number was published before the end of the financial year.

- (5) If B/A is less than 1 (as a result of deflation), B/A is deemed to be 1.
- (6) The Electoral Commission is to publish notice on the NSW legislation website and its website of the amount of each adjustable amount for a financial year (as adjusted under this Schedule)—
- (a) in relation to the 2018–2019 financial year—as soon as possible after the commencement of this clause, and
- (b) in relation to any subsequent financial year—before the start of the financial year.

Editorial note—

For the latest notice under this subclause, see the [Electoral Funding \(Adjustable Amounts\) \(Political Donation Caps\) Notice 2021](#).

3 Adjustment of electoral expenditure caps

- (1) Each of the adjustable amounts specified in a provision of Division 4 (Caps on electoral expenditure for election campaigns) of Part 3 (Political donations and electoral expenditure) applies for the first election period that is current when the provision commences and is then to be adjusted for inflation for subsequent election periods as provided by this clause.
- (2) An **election period** is the period between the end of an election day and the end of the election day of a successive general election.

Note—

State general elections and local government general elections have different election periods.

- (3) For the purposes of subclause (2), any local government general election held on a day other than a day specified by section 287(1) of the [Local Government Act 1993](#) is to be disregarded.

Note—

The election period for local government general elections is the ordinary 4-year cycle and is to disregard early elections caused by mergers or other causes.

- (4) The adjustable amounts that are to apply for a subsequent election period are to be determined by multiplying the adjustable amounts that applied for the previous election period by the increase in the Consumer Price Index during that previous

election period.

- (5) The increase in the Consumer Price Index during an election period is to be calculated as B/A where—

A is the Consumer Price Index number for the last quarter for which such a number was published before the start of the election period.

B is the Consumer Price Index number for the last quarter for which such a number was published before the end of the election period.

- (6) If B/A is less than 1 (as a result of deflation), B/A is deemed to be 1.
- (7) Before the start of each election period after the election period that is current when this clause commences, the Electoral Commission is to publish notice on the NSW legislation website and its website of the amount of each adjustable amount for the election period that results from an adjustment under this clause.

4 Adjustment of public funding amounts

- (1) Each of the adjustable amounts specified in sections 67 and 69 is to be adjusted for inflation as provided by this clause.
- (2) An **election period** means the period between the dates of the return of the writs of successive State general elections.
- (3) The adjustable amounts that are to apply for the 2019 State general election are to be determined by multiplying the adjustable amounts specified in sections 67 and 69 by the increase in the Consumer Price Index during the election period commencing on the date of the return of the writs of the 2015 State general election and ending on the date of the return of the writs of the 2019 State general election.
- (4) The adjustable amounts that are to apply for a subsequent election period are to be determined by multiplying the adjustable amounts that applied for the previous election period by the increase in the Consumer Price Index during the previous election period.
- (5) The increase in the Consumer Price Index during an election period is to be calculated as B/A where—
- A** is the Consumer Price Index number for the last quarter for which such a number was published before the start of the election period.
- B** is the Consumer Price Index number for the last quarter for which such a number was published before the end of the election period.
- (6) If B/A is less than 1 (as a result of deflation), B/A is deemed to be 1.
- (7) The Electoral Commission is to publish notice on the NSW legislation website and its

website of the amount of each adjustable amount for a State general election (as adjusted under this Schedule) before the start of the State election period concerned.

5 Adjustment of administrative funding and new party policy development amounts

- (1) Each of the adjustable amounts specified in a provision of Divisions 2 and 3 of Part 5 is to be adjusted for inflation as provided by this clause.
- (2) The adjustable amounts that are to apply for the 2019 calendar year are to be determined by multiplying the adjustable amounts specified in a provision of Divisions 2 and 3 of Part 5 by the annual increase in the Consumer Price Index during the previous calendar year.
- (3) The adjustable amounts that are to apply for a subsequent calendar year are to be determined by multiplying the adjustable amounts that applied for the previous calendar year by the annual increase in the Consumer Price Index during that previous calendar year.
- (4) The annual increase in the Consumer Price Index during a calendar year is to be calculated as B/A where—
A is the Consumer Price Index number for the last quarter for which such a number was published before the start of the calendar year.
B is the Consumer Price Index number for the last quarter for which such a number was published before the end of the calendar year.
- (5) If B/A is less than 1 (as a result of deflation), B/A is deemed to be 1.
- (6) The Electoral Commission is to publish notice on the NSW legislation website and its website of the amount of each adjustable amount for a calendar year (as adjusted under this Schedule) before the start of the calendar year.

Editorial note—

For the latest notice under this subclause, see the [Electoral Funding \(Adjustable Amounts\) \(Administrative and New Party Policy Development Funding\) Notice 2020](#).

6 Rounding of adjustments

- (1) If the determination of an adjustable amount for a year or election period under this Schedule results in an amount that is not a whole number multiple of \$100, the amount determined is to be rounded up to the nearest whole number multiple of \$100 and that amount as so rounded is the adjustable amount for that year or election period.
- (2) Despite subclause (1), in the case of an adjustment of the amounts specified in sections 67, 69 and 93(4), the amount is to be rounded up to the nearest cent if the determination results in an amount that is not a multiple of \$0.01 and that amount as

so rounded is the adjustable amount for that year or election period.

Schedule 2 Savings, transitional and other provisions

Part 1 General

1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act or any Act that amends this Act.
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication on the NSW legislation website, the provision does not operate so as—
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.
- (4) To avoid doubt, a regulation made for the purposes of this clause may exclude or otherwise modify the operation of any provision of this Schedule as well as any other provision of this Act.
- (5) Without limiting subclause (4), a regulation made for the purposes of this clause may make separate savings and transitional provisions or amend this Schedule to consolidate the savings and transitional provisions.

Part 2 Provisions consequent on enactment of this Act

2 Definition

In this Part—

former Act means the *Election Funding, Expenditure and Disclosures Act 1981*.

3 Continuation of Funds

- (1) The Administration Fund is a continuation of the Administration Fund established under the former Act as in force immediately before the commencement of this clause.
- (2) The Election Campaigns Fund is a continuation of the Election Campaigns Fund

established under the former Act as in force immediately before the commencement of this clause.

- (3) The New Parties Fund is a continuation of the Policy Development Fund established under the former Act as in force immediately before the commencement of this clause.

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

The former Act and the *Election 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.

5 Commencement of new administrative and policy development funding provisions

- (1) **General** On and from the commencement of this clause—

- (a) Part 5 (Administrative and New Party policy development funding) of this Act is taken to have commenced on 1 January 2018, and
- (b) Part 6A (Administrative and policy development funding) of the former Act is taken to have been repealed on that date.

- (2) A claim, payment or statement made under Part 6A (Administrative and policy development funding) of the former Act in relation to the 2018 calendar year is taken to have been made under Part 5 of this Act.

- (3) Without limiting clause 1, the regulations may make further provision of a savings or transitional nature consequent on the commencement of Part 5 of this Act.

- (4) **Maximum policy development expenditure funding from New Parties Fund in 2018** For the avoidance of doubt, until the end of calendar year 2018, in the case of a party that was a registered party on 1 January 2011, the relevant maximum amount for the purposes of section 93(4) is the amount referred to in section 93(5), if the amount referred to in section 93(4) is less than that amount.

Note—

This provision saves the operation of section 97(5)(a) of the former Act until the end of 2018.

6 Timing of disclosures of reportable political donations of certain kinds: section 15(1)(a)

Despite section 15(1)(a), a regulation made under clause 1 may provide that a disclosure of a reportable political donation of a specified kind received or made during the pre-election period for an Assembly general election is to be disclosed within such other period as is specified by the regulation.

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.

17 Amount of public funding for certain by-elections

- (1) This clause applies in relation to candidates in a by-election for the Assembly for which the writ was issued during the transitional period who are (under section 68 of the Act) eligible for payments from the Election Campaigns Fund.
- (2) The amount to be distributed from the Election Campaigns Fund to any such candidate is—
 - (a) \$4 for each first preference vote received in the by-election for the Assembly by any such candidate in that election, or
 - (b) the total amount of the actual campaign expenditure of the candidate, whichever is the lesser.
- (3) In this clause, ***transitional period*** means the period beginning on the commencement of the Act (being 1 July 2018) and ending on 23 March 2019.

18 Determination of administrative expenditure funding during period of dissolution

- (1) Despite section 87(4), during the transitional period, the number of endorsed elected members of a party in relation to any quarterly payment for a quarter during which a dissolution or expiry of the Assembly occurs is to be determined as at the date that is immediately before the date of the dissolution or expiry.
- (2) In this clause, ***transitional period*** means the period beginning on the commencement of this Act (being 1 July 2018) and ending on 30 June 2019.

Part 3 Provision consequent on enactment of [Electoral Funding Amendment \(Local Government Expenditure Caps\) Act 2019](#)

19 Determination of number of enrolled electors for purposes of applicable local government expenditure caps for 2020 elections—section 31A

- (1) For the purposes of the application of Division 4 of Part 3 of this Act, as amended by the [Electoral Funding Amendment \(Local Government Expenditure Caps\) Act 2019](#), to the ordinary elections of councillors and elections of mayors by electors to be held in September 2020—
 - (a) the Electoral Commissioner is to determine the number of enrolled electors for

local government areas and wards under section 31A for those elections as soon as is reasonably practicable after 31 January 2020, and

(b) the relevant date for the purposes of those determinations is to be 31 January 2020.

(2) If—

(a) after 31 January 2020 and before 1 July 2020 a council divides its area into wards, abolishes all its wards or changes its number of wards (a **change**), and

(b) approval has been given under clause 277A(2) of the *Local Government (General) Regulation 2005* for the change to apply to the election to be held in September 2020,

the Electoral Commissioner is, before the capped local government expenditure period for the elections commences, to redetermine in accordance with section 31A the number of enrolled electors for the local government area or wards concerned.

(3) The relevant date for the purposes of the redetermination referred to in subclause (2) is to be a date fixed by the Electoral Commissioner for the area or wards concerned.

Part 4 Provision consequent on postponement of September 2020 local government elections

20 COVID-19 postponed local government elections

To avoid doubt, for the purposes of sections 28 and 31A of this Act, the local government elections to be held on 4 September 2021 are taken to be ordinary elections of councillors under section 287(1) of the *Local Government Act 1993*.

Schedule 3 (Repealed)