

House of Assembly—No 150

As laid on the table and read a first time, 19 October 2005

South Australia

**Electoral (Campaign Donations) Amendment
Bill 2005**

A BILL FOR

An Act to amend the *Electoral Act 1985*.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Electoral (Campaign Donations) Amendment Act 2005*.

2—Commencement

This Act will come into operation 2 months after assent.

3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Electoral Act 1985*

4—Insertion of Part 13A

After Part 13 insert:

Part 13A—Disclosure of campaign donations

Division 1—Preliminary

130A—Interpretation

(1) In this Part—

associated entity means an entity that—

- (a) is controlled by 1 or more registered political parties; or
- (b) operates wholly or mainly for the benefit of 1 or more registered political parties;

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

election means an election of members of the Legislative Council or an election of a member of the House of Assembly;

entity means—

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

financial controller, in relation to an entity, means—

- 5 (a) if the entity is a company—the secretary of the company;
- (b) if the entity is the trustee of a trust—the trustee;
- (c) in other cases—the person responsible for maintaining the financial records of the entity;

10 **gift** means any disposition of property made by a person to another person, otherwise than by will, being a disposition made without consideration in money or money's worth or with inadequate consideration, and includes the provision of a service (other than volunteer labour) for no consideration or for inadequate consideration, but does not include an annual subscription paid to a

15 political party by a person in respect of the person's membership of the party;

group means a group of 2 or more candidates nominated for election to the Legislative Council who have their names grouped together on ballot papers in accordance with section 58;

20 **property** includes money;

registered industrial organisation means an organisation registered under the *Industrial Law Reform (Fair Work) Act 2005* or under a law of the Commonwealth or another State or a Territory concerning the registration of industrial organisations.

25 (2) For the purposes of this Part, the amount or value of a gift consisting of or including a disposition of property other than money is, if the regulations so provide, to be determined in accordance with principles set out or referred to in the regulations.

(3) For the purposes of this Part—

- 30 (a) a body corporate and any other body corporate that is related to the first-mentioned body corporate is to be taken to be the same person; and
 - (b) the question whether a body corporate is related to another body corporate is to be determined in the same manner as the question whether a corporation is related to another corporation is determined under the *Corporations Act 2001* of the Commonwealth.
- 35

(4) For the purposes of this Part—

- 40 (a) a gift made to a candidate who is a member of a group is made to the group (and not to the candidate) if it is made to the candidate for the benefit of all members of the group; and

- 5
- (b) a gift made to a group all of whose members are endorsed as candidates by the same registered political party is to be treated as a gift made to the party (and not to the group); and
- (c) a gift made to a candidate who is endorsed as a candidate by a registered political party and who is not a member of a group is to be treated as a gift made to the party (and not to the candidate).
- 10
- (5) For the purposes of this Part, a campaign committee appointed or formed to assist the campaign of a candidate or group in an election is, if the candidate is endorsed as a candidate by a registered political party, or all members of the group are endorsed as candidates by the same registered political party, to be treated as a part of the party.

Division 2—Agents

130B—Appointment of agents by parties, candidates and groups

- 15
- (1) A registered political party must appoint a person to be the agent of the party for the purposes of this Part.
- (2) A candidate in an election (including a member of a group of candidates) may appoint a person to be the agent of the candidate, for the purposes of this Part, in relation to the election.
- 20
- (3) Subject to subsection (4), the members of a group of candidates in an election may appoint a person to be the agent of the group, for the purposes of this Part, in relation to the election.
- (4) If all the members of a group of candidates have been endorsed by the same registered political party, the agent of the party is the agent of the group, for the purposes of this Part, in relation to the election.
- 25
- (5) During any period during which there is no appointment in force under subsection (2) of an agent of a candidate, the candidate is to be taken to be his or her own agent for the purposes of this Part.
- (6) Subject to subsection (4), during any period during which there is no appointment in force under subsection (3) of an agent of a group, the candidate whose name is to appear first in the group on the ballot papers is to be taken to be the agent of the group for the purposes of this Part.
- 30

130C—Requisites for appointment

- 35
- (1) An appointment of an agent under this Part has no effect unless—
- (a) the person appointed is an elector and is eligible for appointment; and
- (b) written notice of the appointment is given to the Electoral Commissioner—
- 40
- (i) if the appointment is made by a political party—by the party; and

(ii) in any other case—by the candidate, or each member of the group, making the appointment; and

(c) the name and address of the person appointed are set out in the notice; and

5 (d) the person appointed has signed a form of consent to the appointment.

(2) A consent under subsection (1) may be incorporated in, or written on the same paper as, a notice under that subsection.

10 (3) If a person who is the agent of a political party, of a candidate or of a group is convicted of an offence against this Part or Part 20 of the *Commonwealth Electoral Act 1918* in relation to a particular State or Commonwealth election, the person is not eligible to be appointed or to hold office as an agent for the purposes of this Part for the purposes of any subsequent election.

15 (4) An appointment (other than an appointment by a political party) is not effective in relation to anything required by this Part to be done—

(a) in respect of a return under this Part in relation to an election; or

20 (b) during a specified period after polling day for an election,

if notice of the appointment was given to the Electoral Commissioner after the close of nominations for the election.

130D—Registration of party agents

25 (1) The Electoral Commissioner must establish and maintain a register, to be known as the *Register of Party Agents*.

(2) The Register must contain the name and address of every person appointed to be an agent of a political party for the purposes of this Part.

(3) The appointment of an agent by a political party—

30 (a) takes effect on the entry of the name and address of the agent in the Register; and

(b) ceases to have effect if the name and address of the agent are removed from the Register.

35 (4) The name and address of a person may not be removed from the Register unless—

(a) the person gives to the Electoral Commissioner written notice that he or she has resigned the appointment as agent; or

- 5
- (b) the political party that appointed the person gives to the Electoral Commissioner written notice that the person has ceased to be an agent of the party and also gives notice under this Part of the appointment of another person as agent of the party; or
- (c) the person is convicted of an offence against this Part or Part 20 of the *Commonwealth Electoral Act 1918*.
- 10 (5) If a person who is an agent of a political party dies, the party by which the person was appointed must, within 28 days after the death of the person, give to the Electoral Commissioner—
- (a) written notice of the death; and
- (b) notice under this Part of the appointment of another person as agent of the party.
- 15 (6) If a person who is an agent of a political party is convicted of an offence against this Part or Part 20 of the *Commonwealth Electoral Act 1918*, the party must give notice under this Part of a fresh appointment within 28 days after the conviction or, if an appeal against the conviction is instituted and the conviction is affirmed, within 28 days after the appeal is determined.
- 20 (7) An entry in the Register of Party Agents is, for all purposes, conclusive evidence that the person described in the entry is the agent, for the purposes of this Part, of the political party named in the entry.

25 **130E—Termination of appointment of agent of candidate or group**

- (1) A candidate or the members of a group may, by giving written notice to the Electoral Commissioner, revoke the appointment of a person as the agent of the candidate or group, as the case may be.
- 30 (2) A notice under subsection (1) has no effect unless it is signed by the candidate or by each member of the group, as the case requires.
- (3) If the agent of a candidate or group dies or resigns, the candidate or the member of the group whose name is to appear first in the group on the ballot papers must, without delay, give to the Electoral Commissioner notice in writing of the death or resignation.

35 **130F—Responsibility for action in case of political parties**

If this Part imposes an obligation—

- (a) on a political party; or
- (b) on the agent of a political party and there is no agent of the party,
- 40 the obligation rests on each member of the executive committee of the party, and this Part applies to each such member as if the obligation rested on that member alone.

Division 3—Disclosure of donations

130G—Campaign donations returns for candidates or groups

- 5
- (1) The agent of each person (including a member of a group) who was a candidate in an election must, within 15 weeks after the polling day for the election, furnish to the Electoral Commissioner a ***campaign donations return*** for that candidate, in a form approved by the Electoral Commissioner.
- 10
- (2) The agent of each group must, within 15 weeks after the polling day for an election in relation to which the members of the group had their names grouped together on the ballot papers for the election, furnish to the Electoral Commissioner a ***campaign donations return*** for that group, in a form approved by the Electoral Commissioner.
- 15
- (3) Subject to this section, a campaign donations return for a candidate or a group of candidates in an election must set out—
- (a) the total amount or value of all gifts received by the candidate or group, as the case may be, during the disclosure period; and
- (b) the number of persons who made such gifts; and
- (c) the amount or value of each such gift; and
- 20
- (d) the date on which each such gift was made; and
- (e) in the case of each such gift made on behalf of the members of an unincorporated association, other than a registered industrial organisation—
- (i) the name of the association; and
- 25
- (ii) the names and addresses of the members of the executive committee (however described) of the association; and
- (f) in the case of each such gift purportedly made out of a trust fund or out of the funds of a foundation—
- 30
- (i) the names and addresses of the trustees of the fund or of the funds of the foundation; and
- (ii) the title or other description of the trust fund or the name of the foundation, as the case requires; and
- 35
- (g) in the case of each other such gift—the name and address of the person who made the gift.
- (4) A campaign donations return need not set out—
- (a) any details required to be furnished to the Australian Electoral Commission under Part 20 of the *Commonwealth Electoral Act 1918*; or
- 40
- (b) any details in respect of a private gift made to a candidate (including a member of a group); or

(c) any details required by subsection (3)(c) to (g) in respect of a gift if—

(i) in the case of a gift made to a candidate (including a member of a group)—the amount or value of the gift is less than \$200; or

(ii) in the case of a gift made to a group—the amount or value of the gift is less than \$1 000.

(5) For the purposes of this section—

(a) the disclosure period is the period that commenced—

(i) in relation to a candidate in an election who was a new candidate (other than a candidate referred to in subparagraph (ii))—on the day on which the person announced that he or she would be a candidate in the election or on the day on which the person was nominated as a candidate, whichever was the earlier;

(ii) in relation to a candidate in an election who was a new candidate and when he or she became a candidate in the election, was a member of Parliament chosen by an assembly of members of both Houses of Parliament under the *Constitution Act 1934* to fill a casual vacancy—on the day on which the person was so chosen to be a member of Parliament;

(iii) in relation to a candidate in an election who was not a new candidate—at the end of 30 days after polling day for the last preceding election in which the person was a candidate;

(iv) in relation to a group of candidates in an election—on the day on which the members of the group applied under section 58 to have their names grouped together on the ballot papers for the election,

and that ended, in any case, at the end of 30 days after polling day for the election; and

(b) a candidate is a new candidate, in relation to an election, if the candidate had not been a candidate in an earlier election the polling day for which was within 5 years before the polling day for the election; and

(c) 2 or more gifts (excluding private gifts) made by the same person to a candidate or group during the disclosure period are to be treated as one gift; and

- 5
- (i) publication by any means (including radio or television) of electoral matter; or
- (ii) by any other means publicly expressing views on an issue in an election; or
- 10 (iii) the making of a gift to a political party, a candidate in an election or a group; or
- (iv) the making of a gift to a person on the understanding that that person or another person will apply, either directly or indirectly, the whole or a part of the gift as mentioned in subparagraph (i), (ii) or (iii); and
- (b) expenditure of a prescribed class is to be taken not to be political expenditure if the regulations so provide; and
- 15 (c) the disclosure period is the period that commenced at the end of 30 days after polling day for the last general election preceding the current election and that ended at the end of 30 days after polling day for the current election; and
- (d) 2 or more gifts made by the same person to another person during the disclosure period are to be treated as one gift.

20 **130I—Returns by persons making gifts to parties or candidates**

- (1) A person (other than a registered political party, an associated entity, a candidate or a member of a group) must, within 15 weeks after the polling day for an election ("the current election"), furnish to the Electoral Commissioner a *campaign donations return*, in a form approved by the Electoral Commissioner, if the person—
- 25
- (a) made a gift to a political party during the disclosure period the amount or value of which is not less than the amount prescribed for the purposes of this paragraph or, if no amount is prescribed, \$5 000; or
- 30 (b) made a gift to a candidate in the current election or any other election during the disclosure period the amount or value of which is not less than the amount prescribed for the purposes of this paragraph or, if no amount is prescribed, \$500; or
- 35 (c) made a gift to a person or organisation prescribed by regulation.
- (2) A campaign donations return under this section must set out—
- 40
- (a) the amount and value of each gift referred to in subsection (1) made by the person during the disclosure period; and
- (b) the date on which each such gift was made; and
- (c) in the case of each such gift made to an unincorporated association, other than a registered industrial organisation—

- (i) the name of the association; and
- (ii) the names and addresses of the members of the executive committee (however described) of the association; and

5 (d) in the case of each such gift purportedly made to a trust fund or paid into the funds of a foundation—

(i) the names and addresses of the trustees of the fund or of the foundation; and

10 (ii) the title or other description of the trust fund, or the name of the foundation, as the case requires; and

(e) in the case of each other such gift—the name and address of the person or organisation to whom the gift was made.

(3) A campaign donations return need not set out—

15 (a) any details required to be furnished to the Australian Electoral Commission under Part 20 of the *Commonwealth Electoral Act 1918*; or

(b) any details in respect of a private gift made to a candidate (including a member of a group).

(4) For the purposes of this section—

20 (a) the disclosure period is the period that commenced at the end of 30 days after polling day for the last general election preceding the current election and that ended at the end of 30 days after polling day for the current election; and

25 (b) 2 or more gifts made by the same person to another person or organisation during the disclosure period are to be treated as one gift; and

30 (c) a gift made to a candidate is a private gift if it is made in a private capacity to the candidate for his or her personal use and the candidate has not used, and will not use, the gift solely or substantially for a purpose related to an election.

130J—Certain gifts not to be received

(1) It is unlawful for a political party or a person acting on behalf of a political party to receive a gift made to or for the benefit of the party the amount or value of which is not less than \$1 000, unless—

35 (a) the name and address of the person making the gift are known to the person receiving the gift; or

40 (b) at the time when the gift is made, the person making the gift gives to the person receiving the gift his or her name and address and the person receiving the gift has no grounds to believe that the name and address so given are not the true name and address of the person making the gift.

(2) It is unlawful for a candidate or a member of a group or a person acting on behalf of a candidate or group to receive a gift made to or for the benefit of the candidate or the group, as the case may be, the amount or value of which is not less than—

(a) in the case of a gift made to a candidate—\$200; or

(b) in the case of a gift made to a group—\$1 000,

unless—

(c) the name and address of the person making the gift are known to the person receiving the gift; or

(d) at the time when the gift is made, the person making the gift gives to the person receiving the gift his or her name and address and the person receiving the gift has no grounds to believe that the name and address so given are not the true name and address of the person making the gift.

(3) For the purposes of this section—

(a) a reference to a gift made by a person includes a reference to a gift made on behalf of the members of an unincorporated association; and

(b) a reference to the name and address of a person making a gift is—

(i) in the case of a gift made on behalf of the members of an unincorporated association, other than a registered industrial organisation—a reference to—

(A) the name of the association; and

(B) the names and addresses of the members of the executive committee (however described) of the association; and

(ii) in the case of a gift purportedly made out of a trust fund or out of the funds of a foundation—a reference to—

(A) the names and addresses of the trustees of the fund or of the funds of the foundation; and

(B) the title or other description of the trust fund or the name of the foundation, as the case requires; and

(c) a person who is a candidate in an election is to be taken to remain a candidate for 30 days after the polling day for the election; and

(d) persons who constituted a group in an election are to be taken to continue to constitute the same group for 30 days after the polling day for the election; and

(e) 2 or more gifts made by the same person to or for the benefit of a political party, a candidate or a group are to be treated as one gift.

5 (4) If a person receives a gift that, by virtue of this section, it is unlawful for the person to receive, an amount equal to the amount or value of the gift is payable by that person to the Crown and may be recovered by the Crown as a debt by action, in a court of competent jurisdiction, against—

(a) in the case of a gift to or for the benefit of a political party—

10 (i) if the party is a body corporate—the party; or

(ii) in any other case—the agent of the party; or

(b) in any other case—the candidate or a member of the group or the agent of the candidate or of the group, as the case may be.

15 **130K—Certain loans not to be received**

(1) It is unlawful for a political party or a person acting on behalf of a political party to receive a loan of \$1 500 or more from a person or entity other than a financial institution unless the loan is made in accordance with subsection (3).

20 (2) It is unlawful for a candidate or a member of a group or a person acting on behalf of a candidate or group to receive a loan of \$1 500 or more from a person or entity other than a financial institution unless the loan is made in accordance with subsection (3).

(3) The receiver of the loan must keep a record of the following:

25 (a) the terms and conditions of the loan; and

(b) if the loan was received from a registered industrial organisation, other than a financial institution—

(i) the name of the organisation; and

30 (ii) the names and addresses of the members of the executive committee (however described) of the organisation; and

(c) if the loan was received from an unincorporated association, other than a registered industrial association—

(i) the name of the association; and

35 (ii) the names and addresses of the members of the executive committee (however described) of the association; and

(d) if the loan was paid out of a trust fund or out of the funds of a foundation—

40 (i) the names and addresses of the trustees of the fund or of the foundation; and

(ii) the title or other description of the trust fund, or the name of the foundation, as the case requires; and

(e) unless paragraph (b), (c) or (d) applies—the name and address of the person or entity from whom the loan was received.

(4) For the purpose of subsection (2), a person who is a candidate in an election is taken to remain a candidate for 30 days after the polling day in the election.

(5) For the purpose of subsection (2), persons who constituted a group in an election are taken to continue to constitute the same group for 30 days after the polling day in the election.

(6) If a person receives a loan that, by virtue of this section, it is unlawful for the person to receive, an amount equal to the amount or value of the loan is payable by that person to the Crown and may be recovered by the Crown as a debt by action, in a court of competent jurisdiction, against—

(a) in the case of a loan to or for the benefit of a political party—

(i) if the party is a body corporate—the party; or

(ii) in any other case—the agent of the party; or

(b) in any other case—the candidate or a member of the group or the agent of the candidate or of the group, as the case may be.

(7) For the purposes of this section, if credit is provided on a credit card in respect of card transactions, the credit is to be treated as a separate loan for each transaction.

(8) In this section—

credit card means—

(a) any article of a kind commonly known as a credit card; or

(b) any similar article intended for use in obtaining cash, goods or services on credit,

and includes any article of a kind that persons carrying on business commonly issue to their customers or prospective customers for use in obtaining goods or services from those persons on credit;

financial institution means an entity which carries on a business that consists of, or includes, the provision of financial services or financial products and which is—

(a) an ADI; or

(b) an entity prescribed by the regulations for the purposes of this paragraph;

loan means any of the following:

(a) an advance of money;

- 5
- (b) a provision of credit or any other form of financial accommodation;
 - (c) a payment of an amount for, on account of, on behalf of or at the request of, an entity, if there is an express or implied obligation to repay the amount;
 - (d) a transaction (whatever its terms or form) which in substance effects a loan of money.

130L—Nil returns

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- (1) If no details are required to be included in a campaign donations return under this Division for a candidate, the return must nevertheless be lodged and must include a statement to the effect that no gifts of a kind required to be disclosed were received.
 - (2) If no details are required to be included in a campaign donations return under this Division for a group, the return must nevertheless be lodged and must include a statement to the effect that no gifts were received.

Division 4—Annual financial returns by registered political parties and associated entities

130M—Annual financial returns by registered political parties

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- (1) The agent of each registered political party must, within 16 weeks after the end of each financial year, furnish to the Electoral Commissioner an *annual financial return* in respect of the financial year, in a form approved by the Electoral Commissioner.
 - (2) Subject to this section, an annual financial return in respect of a financial year must set out—
 - (a) the total amount received by, or on behalf of, the party during the financial year; and
 - (b) if the sum of the amounts received by or on behalf of the party during the financial year from the same person or organisation is not less than \$1 500—
 - (i) the amount of the sum; and
 - (ii) in the case of a sum received from an unincorporated association, other than a registered industrial organisation—
 - (A) the name of the association; and
 - (B) the names and addresses of the members of the executive committee (however described) of the association; and
 - (iii) in the case of a sum purportedly paid out of a trust fund or out of the funds of a foundation—

- 5
- (A) the names and addresses of the trustees of the fund or of the foundation; and
- (B) the title or other description of the trust fund or the name of the foundation, as the case requires; and
- 10
- (iv) if the sum was received as a result of a loan—the information required to be kept under section 130K(3), or the name of the financial institution, as the case requires; and
- (v) in any other case—the name and address of the person or organisation.
- (3) For the purposes of subsection (2)(b), in calculating the sum of the amounts received by or on behalf of the party from the same person or organisation, an amount of less than \$1 500 need not be counted.
- 15
- (4) An annual financial return need not set out any details required to be furnished to the Australian Electoral Commission under Part 20 of the *Commonwealth Electoral Act 1918*.
- (5) For the purposes of this section—
- 20
- (a) a reference to an amount includes a reference to the value of a gift, loan or bequest; and
- (b) returns are not to include lists of party membership; and
- (c) the regulations may require greater detail to be provided in returns than is otherwise required by this section, including further breaking down of the total amounts of receipts.

25 **130N—Annual returns by associated entities**

- (1) If an entity is an associated entity at any time during a financial year, the financial controller of the entity must, within 16 weeks after the end of the financial year, furnish to the Electoral Commissioner an **annual financial return** in respect of the financial year, in a form approved by the Electoral Commissioner.
- 30
- (2) Subject to this section, an annual financial return in respect of a financial year must set out—
- (a) the total amount received by, or on behalf of, the entity during the financial year; and
- 35
- (b) if the sum of the amounts received by or on behalf of the entity during the financial year from the same person or organisation is not less than \$1 500—
- (i) the amount of the sum; and
- (ii) in the case of a sum received from an unincorporated association, other than a registered industrial organisation—
- 40
- (A) the name of the association; and

(B) the names and addresses of the members of the executive committee (however described) of the association; and

(iii) in the case of a sum purportedly paid out of a trust fund or out of the funds of a foundation—

(A) the names and addresses of the trustees of the fund or of the foundation; and

(B) the title or other description of the trust fund or the name of the foundation, as the case requires; and

(iv) in any other case—the name and address of the person or organisation.

(3) For the purposes of subsection (2)(b), in calculating the sum of the amounts received by or on behalf of the entity from the same person or organisation, an amount of less than \$1 500 need not be counted.

(4) An annual financial return need not set out any details required to be furnished to the Australian Electoral Commission under Part 20 of the *Commonwealth Electoral Act 1918*.

(5) For the purposes of this section—

(a) a reference to an amount includes a reference to the value of a gift, loan or bequest; and

(b) amounts received at a time when an entity was not an associated entity are not be counted; and

(c) returns are not to include lists of party membership; and

(d) the regulations may require greater detail to be provided in returns than is otherwise required by this section, including further breaking down of the total amounts of receipts.

Division 5—Related matters

1300—Public inspection of returns

(1) The Electoral Commissioner must keep at his or her principal office each return furnished to the Commissioner under this Part.

(2) Subject to this section, a person is entitled to inspect a copy of a return, without charge, during ordinary business hours at the principal office of the Electoral Commissioner.

(3) Subject to this section, a person is entitled, on payment of a fee determined by the Electoral Commissioner to be the cost of copying, to obtain a copy of a return.

(4) A person is not entitled to inspect or obtain a copy of a return until the end of 8 weeks after the day before which the return was required to be furnished to the Electoral Commissioner.

130P—Records to be kept

If—

- 5
- (a) a person makes or obtains a document or other thing that is or includes a record relating to a matter particulars of which are or could be required to be set out in a return under this Part relating to an election; and
 - (b) the record is not a record that, in the normal course of business or administration, would be transferred to some other person,

10 the person must retain that record for at least 5 years commencing on the polling day for that election.

130Q—Investigation etc

- (1) In this section—

15 *authorised officer* means a person authorised by the Electoral Commissioner under subsection (2).

- (2) The Electoral Commissioner may, by instrument in writing signed by the Electoral Commissioner, authorise a person or a person included in a class of persons to perform duties under this section.

- 20 (3) If an authorised officer has reasonable grounds to believe that a person is capable of producing documents or other things or giving evidence relating to a contravention, or possible contravention, of this Part, or relating to matters that are set out in, or are required to be set out in, a return, the authorised officer may, by notice served personally or by post on that person, require that person—

- 25
- (a) to produce, within the period and in the manner specified in the notice, such documents or other things as are referred to in the notice; or
 - (b) to appear, at a time and place specified in the notice, before the authorised officer to give evidence, either orally or in writing, and to produce such documents or other things as are referred to in the notice.
- 30

- (4) An authorised officer may require any evidence that is to be given to him or her in compliance with a notice under subsection (3) to be given on oath or affirmation and for that purpose the authorised officer may administer an oath or affirmation.
- 35

- (5) A person must not, without reasonable excuse, refuse or fail to comply with a notice under subsection (3) to the extent that the person is capable of complying with the notice.

(6) If—

(a) an authorised officer has reasonable grounds for suspecting that there may be, at any time within the next following 24 hours, on any land or on or in any premises, vessel, aircraft or vehicle, a document or other thing that may afford evidence relating to a contravention of this Part; and

(b) the authorised officer has reasonable grounds to believe that, if a notice under this section were issued for the production of the document or other thing, the document or other thing might be concealed, lost, mutilated or destroyed,

the authorised officer may make an application to a magistrate for the issue of a warrant under subsection (7).

(7) Subject to subsection (8), if an application under subsection (6) is made by an authorised officer to a magistrate, the magistrate may issue a warrant authorising the authorised officer or any other person named in the warrant, with such assistance as the officer or person thinks necessary and if necessary by force—

(a) to enter on the land or on or into the premises, vessel, aircraft or vehicle;

(b) to search the land, premises, vessel, aircraft or vehicle for documents or other things that may afford evidence relating to a contravention of this Part, being documents or other things of a kind described in the warrant; and

(c) to seize any documents or other things of the kind referred to in paragraph (b).

(8) A magistrate may not issue a warrant under subsection (7) unless—

(a) an affidavit has been furnished to the magistrate setting out the grounds on which the issue of the warrant is being sought; and

(b) the authorised officer applying for the warrant or some other person has given to the magistrate, either orally or by affidavit, such further information (if any) as the magistrate requires concerning the grounds on which the issue of the warrant is being sought; and

(c) the magistrate is satisfied that there are reasonable grounds for issuing the warrant.

(9) If a magistrate issues a warrant under subsection (7), the magistrate must state on the affidavit furnished in accordance with subsection (8) which of the grounds specified in that affidavit he or she has relied on to justify the issue of the warrant and particulars of any other grounds so relied on.

- (10) A warrant issued under subsection (7) must—
- (a) include a statement of the purpose for which the warrant is issued, which must include a reference to the contravention of this Part in relation to which the warrant is issued; and
 - (b) state whether entry is authorised to be made at any time of the day or night or during specified hours of the day or night; and
 - (c) include a description of the kind of documents or other things authorised to be seized; and
 - (d) specify a date, not being later than one month after the date of issue of the warrant, on which the warrant ceases to have effect.

- (11) If a document or other thing is seized by a person pursuant to a warrant issued under subsection (7)—
- (a) the person may retain the document or other thing for so long as is reasonably necessary for the purposes of the investigation to which the document or other thing is relevant; and
 - (b) when the retention of the document or other thing by the person ceases to be reasonably necessary for those purposes, the person must cause the document or other thing to be delivered to the person who appears to be entitled to possession of it.

130R—Inability to complete returns

- (1) If a person who is required to furnish a return under this Part considers that it is impossible to complete the return because he or she is unable to obtain particulars that are required for the preparation of the return, the person may—
- (a) prepare the return to the extent that it is possible to do so without those particulars;
 - (b) furnish the return so prepared; and
 - (c) give to the Electoral Commissioner notice in writing—
 - (i) identifying the return; and
 - (ii) stating that the return is incomplete by reason that he or she is unable to obtain certain particulars; and
 - (iii) identifying those particulars; and
 - (iv) setting out the reasons why he or she is unable to obtain those particulars; and

- (v) if the person believes, on reasonable grounds, that another person whose name and address he or she knows can give those particulars—stating that belief and the reasons for it and the name and address of that other person,

and a person who complies with this subsection is not, by reason of the omission of those particulars, to be taken, for the purposes of this Part, to have furnished a return that is incomplete.

- (2) If the Electoral Commissioner has been informed under subsection (1) or (3) that a person can supply particulars that have not been included in a return, the Electoral Commissioner may, by notice in writing served on that person, require the person to furnish to the Electoral Commissioner, within the period specified in the notice and in writing, those particulars and, subject to subsection (3), the person must comply with that requirement.
- (3) If a person who is required to furnish particulars under subsection (2) considers that he or she is unable to obtain some or all of the particulars, the person must give to the Electoral Commissioner a written notice—
- (a) setting out the particulars (if any) that the person is able to give; and
 - (b) stating that the person is unable to obtain some or all of the particulars; and
 - (c) identifying the particulars the person is unable to obtain; and
 - (d) setting out the reasons why the person considers he or she is unable to obtain those particulars; and
 - (e) if the person believes, on reasonable grounds, that another person whose name and address he or she knows can give those particulars—setting out the name and address of that other person and the reasons why he or she believes that that other person is able to give those particulars.

130S—Amendment of returns

- (1) If the Electoral Commissioner is satisfied that a return under this Part contains a formal error or is subject to a formal defect, the Electoral Commissioner may amend the return to the extent necessary to correct the error or remove the defect.
- (2) A person who has furnished a return may request the permission of the Electoral Commissioner to make a specified amendment of the return for the purpose of correcting an error or omission.
- (3) A request under subsection (2) must—
- (a) be by notice in writing signed by the person making the request; and
 - (b) be lodged with the Electoral Commissioner.

- (4) If—
- (a) a request has been made under subsection (2); and
 - (b) the Electoral Commissioner is satisfied that there is an error in, or omission from, the return to which the request relates,
- 5 the Electoral Commissioner must permit the person making the request to amend the return in accordance with the request.
- (5) If the Electoral Commissioner decides to refuse a request under subsection (2), the Electoral Commissioner must give to the person making the request written notice of the reasons for the decision and
- 10 the decision is reviewable under Part 12 Division 1.
- (6) The amendment of a return under this section does not affect the liability of a person to be convicted of an offence against this Part arising out of the furnishing of the return.

130T—Offences

- 15 (1) A person who fails to furnish a return that the person is required to furnish under this Part within the time required by this Part is guilty of an offence.
- Maximum penalty:
- (a) in the case of a return required to be furnished by the agent
 - 20 of a political party—\$10 000;
 - (b) in any other case—\$2 500.
- (2) A person who furnishes a return or other information—
- (a) that the person is required to furnish under this Part; and
 - (b) that contains a statement that is, to the knowledge of the
 - 25 person, false or misleading in a material particular,
- is guilty of an offence.
- Maximum penalty: \$5 000.
- (3) A person who furnishes to another person who is required to furnish a return information—
- (a) that the person knows is required for the purposes of that
 - 30 return; and
 - (b) that is, to that person's knowledge, false or misleading in a material particular,
- is guilty of an offence.
- 35 Maximum penalty: \$5 000.
- (4) A person who, otherwise than as referred to in this section, contravenes, or fails to comply with, a provision of this Part is guilty of an offence.
- Maximum penalty: \$5 000.

(5) If a person commits an offence against another provision of this section by reason of the failure to furnish a return or other information, or to do any other thing, within a particular period as required under this Part—

- 5 (a) the obligation to furnish the return or other information, or to do the other thing, continues despite the expiration of the period; and
- 10 (b) the person is liable, in addition to the penalty otherwise applicable to the offence, to a penalty for each day during which the failure continues of not more than an amount equal to one-fifth of the maximum penalty prescribed for the offence; and
- 15 (c) if the failure continues after the person is convicted of the offence, the person is guilty of a further offence against that provision and liable, in addition to the penalty otherwise applicable to the offence, to a penalty for each day during which the failure continues after the conviction of not more than an amount equal to one-fifth of the maximum penalty prescribed for the offence.

20 (6) An allegation in a complaint that a specified person had not furnished a return of a specified kind as at a specified date will be taken to have been proved in the absence of proof to the contrary.

130U—Non-compliance with Act does not affect election

25 A failure of a person to comply with a provision of this Part in relation to an election does not invalidate that election.

Schedule 1—Transitional provisions

1—Interpretation

In this Schedule—

principal Act means the *Electoral Act 1985*.

2—Requirements for returns

- 30 (1) No return required to be furnished under Part 13A of the principal Act (as inserted by this Act) need contain any details relating to any gifts made or received, or any expenditure incurred, before the commencement of this subclause.
- 35 (2) No return is required to be furnished under Part 13A Division 4 of the principal Act (as inserted by this Act) in respect of a financial year commencing before the commencement of this subclause.