

Legislative Council—No 186A

As reported with amendments, report adopted, Standing Orders suspended and passed remaining stages, 17 October 2013

South Australia

**Electoral (Funding, Expenditure and Disclosure)
Amendment Bill 2013**

A BILL FOR

An Act to amend the *Electoral Act 1985*.

Contents

Part 1—Preliminary

- 1 Short title
- 2 Commencement
- 3 Amendment provisions

Part 2—Amendment of *Electoral Act 1985*

- 4 Insertion of Part 13A

Part 13A—Election funding, expenditure and disclosure

Division 1—Preliminary

- 130A Interpretation
- 130B Objects of Part
- 130C Exclusion of details disclosed under Commonwealth law

Division 2—Agents

- 130D Interpretation
- 130E Appointment of agents by parties, candidates and groups
- 130F Third parties may appoint agents
- 130G Requisites for appointment
- 130H Registration of agents
- 130I Termination of appointment of agent
- 130J Responsibility for action in case of political parties

Division 3—State campaign accounts

- 130K Requirement to keep State campaign account
- 130L Gifts to be paid into State campaign account
- 130M Payments into State campaign account
- 130N State campaign account to be used for political expenditure

Division 4—Public funding of candidates and groups for elections

- 130O Interpretation
- 130P General entitlement to funds
- 130Q Payment not to be made or to be reduced in certain circumstances
- 130R Making of payments
- 130S Death of candidate

Division 5—Special assistance funding for political parties

- 130T Preliminary
- 130U Entitlement to and claims for special assistance funding
- 130V Making of payments
- 130W Special assistance funding not to be used for political expenditure

Division 6—Limitations on political expenditure

- 130X Interpretation
- 130Y Application of Division
- 130Z Expenditure caps
- 130ZA Prohibition on political expenditure in excess of expenditure cap during capped expenditure period
- 130ZB Regulation of political expenditure by parties and candidates endorsed by parties
- 130ZC Prohibition on arrangements to avoid applicable expenditure cap

Division 7—Disclosure of donations

- 130ZD Interpretation
- 130ZE Division not to apply to gifts returned within 6 weeks
- 130ZF Returns by candidates and groups
- 130ZG Gifts, loans to candidates etc
- 130ZH Gifts to relevant entities
- 130ZI Special reporting of large gifts
- 130ZJ Certain gifts not to be received

- 130ZK Certain loans not to be received
 130ZL Limitation on entry fees for certain events

Division 8—Returns

- 130ZM Interpretation
 130ZN Returns by registered political parties
 130ZO Returns by associated entities
 130ZP Returns by third parties
 130ZQ Returns relating to political expenditure during capped expenditure period
 130ZR Annual returns relating to political expenditure
 130ZS Annual returns relating to gifts received for political expenditure
 130ZT Related matters
 130ZU Regulations

Division 9—Related matters

- 130ZV Audit certificates
 130ZW Auditor to give notice of contravention
 130ZX Electoral Commissioner to determine manner in which returns to be furnished
 130ZY Public inspection of returns
 130ZZ Nil returns
 130ZZA Records to be kept
 130ZZB Investigation etc
 130ZZC Inability to complete returns
 130ZZD Amendment of returns
 130ZZE Offences
 130ZZF Non-compliance with Part does not affect election
 130ZZG Appropriation

- 5 Amendment of section 139—Regulations

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Electoral (Funding, Expenditure and Disclosure) Amendment Act 2013*.

5 2—Commencement

This Act will come into operation on 1 July 2015.

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—Election funding, expenditure and disclosure

Division 1—Preliminary

130A—Interpretation

(1) In this Part, unless the contrary intention appears—

administrative expenditure means expenditure relating to the administration and operation of a registered political party;

agent means a person appointed under Division 2;

applicable expenditure cap—see section 130Z;

associated entity means—

- (a) an entity that is controlled by 1 or more registered political parties; or
- (b) an entity that operates wholly, or to a significant extent, for the benefit of 1 or more registered political parties; or
- (c) an entity that is a financial member of a registered political party; or
- (d) an entity on whose behalf another person is a financial member of a registered political party; or
- (e) an entity that has voting rights in a registered political party; or
- (f) an entity on whose behalf another person has voting rights in a registered political party;

auditor means a person who—

- (a) has the qualifications or experience prescribed for the purposes of this definition; and
- (b) is not, and has not been within the period of 10 years immediately before acting as an auditor for the purposes of this Part, a member of a registered political party;

capped expenditure period means (subject to subsection (9))—

- (a) in the case of a general election—the period commencing at the start of the financial year in which polling day for the election is to occur and ending 30 days after that polling day; or

- (b) in the case of any other election—the period commencing on the day on which the vacancy giving rise to the election is announced in the House of Assembly by, or on behalf of, the Speaker and ending 30 days after polling day for that election;

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CPI means the Consumer Price Index (All groups index for Adelaide);

designated period means (subject to subsection (10))—

- (a) in the case of a general election—the period commencing on 1 January in the year in which the election is to be held and ending 30 days after polling day for that election; or
- (b) in the case of any other election—the period commencing on the day on which the vacancy giving rise to the election is announced in the House of Assembly by, or on behalf of, the Speaker and ending 30 days after polling day for that election;

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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, easement, 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;

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

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entity means—

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

financial controller, in relation to an entity, means—

- (a) if the entity is a company—the secretary of the company;
- (b) if the entity is the trustee of a trust—the trustee;

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- (c) in other cases—the person responsible for maintaining the financial records of the entity;

financial member, in relation to a registered political party, means a person—

- (a) who pays an annual subscription to the party; or
(b) who is defined by the party's constitution, or treated by the party, as a financial member;

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—

- (a) an annual subscription or compulsory levy paid to a political party by a person in respect of the person's membership of the party; or
(b) a payment under Division 4 or Division 5; or
(c) a disposition of a prescribed kind;

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;

GST means the tax payable under the GST law;

GST law means—

- (a) *A New Tax System (Goods and Services Tax) Act 1999* (Commonwealth); and
(b) the related legislation of the Commonwealth dealing with the imposition of a tax on the supply of goods, services and other things;

journal means a newspaper, magazine or other periodical;

person to whom Division 6 applies—see section 130X;

political expenditure means expenditure incurred for any of the following purposes:

- (a) the public expression of views on a political party, a candidate in an election or a member of the House of Assembly or the Legislative Council by any means;
(b) the public expression of views on an issue in an election by any means;

(c) the production of any political material (not being material referred to in paragraph (a) or (b) that is required under section 112 or 116 to include the name and address of the author of the material or of the person who takes responsibility for the publication of the material, as the case requires);

(d) the carrying out of an opinion poll, or other research, relating to an election or the voting intentions of electors;

(e) any purpose of a prescribed kind,

but does not include—

(f) expenditure that is a GST payment; or

(g) expenditure of an electorate allowance or another allowance, expense or benefit (as determined by the Remuneration Tribunal) under section 4(1)(c) of the *Parliamentary Remuneration Act 1990*; or

(h) administrative expenditure;

property includes money;

registered industrial organisation means an organisation registered under the *Fair Work Act 1994* or under a law of the Commonwealth or another State or a Territory concerning the registration of industrial organisations;

relevant entity means any of the following:

(a) a registered political party;

(b) an associated entity;

(c) a third party;

State campaign account—see Division 3;

third party means a person, other than—

(a) a member of the House of Assembly or Legislative Council; or

(b) the Crown (including a public sector agency (within the meaning of the *Public Sector Act 2009*)); or

(c) a registered political party, group or candidate; or

(d) a person engaged in a broadcasting service (within the meaning of the *Broadcasting Services Act 1992* of the Commonwealth) or a datacasting service; or

(e) the publisher of a journal (including a journal published in electronic form on the Internet),

who—

(f) incurs or intends to incur more than \$10 000 in political expenditure during the designated period in relation to an election; or

- 5 (g) incurred more than \$10 000 in political expenditure during the designated period in relation to the last preceding general election (other than where the last preceding general election was the first general election occurring after the commencement of section 4 of the *Electoral (Funding, Expenditure and Disclosure) Amendment Act 2013*).
- 10 (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 will, if the regulations so provide, be determined in accordance with principles set out or referred to in the regulations.
- (3) For the purposes of this Part—
- 15 (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 will 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.
- 20 (4) For the purposes of this Part, a reference to person includes a reference to an unincorporated association.
- (5) For the purposes of this Part (other than Division 3)—
- 25 (a) a gift or loan 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
- 30 (b) a gift or loan 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 or loan made to the party (and not to the group); and
- (c) a gift or loan 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 or loan made to the party (and not to the candidate).
- 35 (6) For the purposes of this Part, political 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.
- 40 (7) 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.

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- (8) For the purposes of this Part, if a monetary amount is followed by the word (*indexed*), the amount is to be adjusted on 1 July of each financial year by multiplying the stated amount by a proportion obtained by dividing the CPI for the March quarter of the immediately preceding financial year by the CPI for the March quarter 2014 (with the amount so adjusted being rounded up to the nearest whole number).
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- (9) For the purposes of this Part, if the disclosure period for a return commences on a day that falls—
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- (a) in the case of a general election—less than 6 months before polling day for the election; or
- (b) in the case of any other election—after the day on which the vacancy giving rise to the election is announced in the House of Assembly by, or on behalf of, the Speaker,
- (the *relevant day*, as the case requires), the capped expenditure period in relation to that candidate or group is to be taken to commence on the relevant day.
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- (10) For the purposes of this Part, if the disclosure period for a return required to be furnished under this Part by a candidate or group commences in relation to that candidate or group on a day that falls—
- 25
- (a) in the case of a general election—after 1 January in the year in which the election is to be held; or
- (b) in the case of any other election—after the day on which the vacancy giving rise to the election is announced in the House of Assembly by, or on behalf of, the Speaker,
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- (the *relevant day*, as the case requires), the designated period in relation to that candidate or group is to be taken to commence on the relevant day.

130B—Objects of Part

The objects of this Part are as follows:

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- (a) to enhance public confidence in the electoral process by fairly and effectively regulating matters relating to electoral funding, expenditure and disclosure;
- (b) to promote integrity and accountability in the electoral process by providing for—
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- (i) public funding of elections; and
- (ii) caps on political expenditure;
- (c) to ensure transparency in political donations;
- (d) to promote participation in the electoral process by any elector (including an elector of limited means).

130C—Exclusion of details disclosed under Commonwealth law

Nothing in this Part requires the disclosure of any details required to be furnished to the Australian Electoral Commission under Part 20 of the *Commonwealth Electoral Act 1918*.

Division 2—Agents

130D—Interpretation

In this Division—

appointing person or body means the registered political party, candidate, group, or third party that appoints a person to be its agent under this Division.

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

- (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.
- (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.
- (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.

130F—Third parties may appoint agents

- (1) A third party may appoint a person to be the agent of the third party for the purposes of this Part.
- (2) During any period during which there is no appointment in force of an agent of a third party—
 - (a) if the third party is a natural person, the third party; or
 - (b) in any other case—each member of the executive committee of the third party,

is taken to be the third party's own agent for the purposes of this Part (and, in the case referred to in paragraph (b) above, this Part applies to each such member as if the obligation rested on that member alone).

5 **130G—Requisites for appointment**

- (1) An appointment of an agent under this Division has no effect unless—
- (a) the person appointed is a natural person who has attained the age of 18 years; and
 - 10 (b) written notice of the appointment is given to the Electoral Commissioner by the appointing person or body; and
 - (c) the name and address of the person appointed are set out in the notice; and
 - (d) the person appointed—
 - 15 (i) has signed a form of consent to the appointment; and
 - (ii) has signed a declaration that he or she is eligible for appointment.
- (2) A consent or declaration under subsection (1) may be incorporated in, or written on the same paper as, a notice under that subsection.
- (3) If a person who is the agent of an appointing person or body 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.
- (4) An appointment (other than an appointment by a registered political party) is not effective in relation to anything required by this Part to be done—
- 30 (a) in respect of a return under this Part in relation to an election; or
 - (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.

35 **130H—Registration of agents**

- (1) The Electoral Commissioner must establish and maintain a register, to be known as the *Register of Agents* (the **Register**).
- (2) The Register must contain the name and address of every person appointed to be an agent for the purposes of this Part.

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- (3) The appointment of an agent—
- (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.
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- (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
 - (b) the appointing person or body gives to the Electoral Commissioner—
 - 15 (i) written notice that the person has ceased to be its agent; and
 - (ii) in the case of an appointing person or body that is required under this Part to have an agent—also gives notice under this Part of the appointment of another person as its agent; or
 - (c) the person is convicted of an offence against this Part or Part 20 of the *Commonwealth Electoral Act 1918*.
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- (5) If a person who is an agent dies, the appointing person or body must, within 28 days after the death of the person, give to the Electoral Commissioner—
- 25 (a) written notice of the death; and
 - (b) notice under this Part of the appointment of another person as its agent.
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- (6) If a person who is an agent of an appointing person or body that is required under this Part to have an agent is convicted of an offence against this Part or Part 20 of the *Commonwealth Electoral Act 1918*, the appointing person or body 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.
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- (7) An entry in the Register is, for all purposes, conclusive evidence that the person described in the entry is the agent, for the purposes of this Part, of the appointing person or body named in the entry.

130I—Termination of appointment of agent

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- (1) A candidate, the members of a group or a third party may, by giving written notice to the Electoral Commissioner, revoke the appointment of a person as the agent of the candidate, group or third party as the case may be.

(2) A notice under subsection (1) has no effect unless it is signed by the candidate, by each member of the group or the third party (as the case requires).

(3) If the agent of a candidate, group or third party dies or resigns, the candidate, the member of the group whose name is to appear first in the group on the ballot papers or the third party (as the case requires) must, without delay, give to the Electoral Commissioner notice in writing of the death or resignation.

130J—Responsibility for action in case of political parties

If—

(a) this Part imposes an obligation on the agent of a registered political party; and

(b) there is no agent of the party,

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—State campaign accounts

130K—Requirement to keep State campaign account

(1) The agent of a registered political party, third party, candidate or group must keep a separate account (a *State campaign account*) with an ADI for State electoral purposes.

(2) Subsection (1) does not apply to a third party if the third party does not receive any amounts of a kind required to be paid into a State campaign account under this Act.

130L—Gifts to be paid into State campaign account

An agent of a registered political party, third party, candidate or group must ensure each gift that is an amount of money received by or on behalf of the registered political party, third party, candidate or group (as the case may be) is paid into the State campaign account kept by the agent of the registered political party, third party, candidate or group, unless the gift is made or received in contravention of this Part or is otherwise a gift that must not be paid into such an account in accordance with this Division.

130M—Payments into State campaign account

(1) The regulations may make provision in relation to amounts that the agent of a registered political party, candidate or group must, or must not, pay into the State campaign account kept by the agent.

(2) The agent of a third party must ensure the following are not paid into the third party's State campaign account:

(a) a gift that is not intended by the third party to be used for political expenditure;

- (b) a gift that is made or received in contravention of this Part;
 - (c) any other amount of a kind prescribed by regulation.
- (3) A person does not commit an offence against this Part for a contravention of, or failure to comply with a provision of this section (or the regulations) if the person, on becoming aware that an amount of money was paid into the State campaign account in contravention of the relevant provision, takes all reasonable steps to immediately withdraw the amount from the account.

130N—State campaign account to be used for political expenditure

An agent required to keep a State campaign account under this Division must ensure that the registered political party, third party, candidate or group on behalf of which the State campaign account is kept does not pay an amount of money for political expenditure unless the amount is paid from its State campaign account.

Division 4—Public funding of candidates and groups for elections

130O—Interpretation

In this section—

eligible vote means a first preference vote on a formal ballot paper in an election;

total primary vote means the total number of eligible votes cast in favour of all of the candidates in an election by electors for the relevant electoral district.

130P—General entitlement to funds

- (1) Subject to this Division, the amount of election funding payable for each eligible vote given for—
- (a) each candidate in a House of Assembly election or Legislative Council election endorsed by a registered political party at least 1 member of which—
 - (i) in the case of a general election—was a member of Parliament at the time of the dissolution of the Parliament in relation to the election; or
 - (ii) in any other case—is a member of Parliament; and
 - (b) each candidate in a House of Assembly election or Legislative Council election (other than a candidate of a kind referred to in paragraph (a)) who—
 - (i) in the case of a general election—was a member of Parliament at the time of the dissolution of the Parliament in relation to the election; or

- (ii) in any other case—was a member of Parliament at the time of the event that resulted in the vacancy that gave rise to the election; and
- (c) each group in a Legislative Council election endorsed by a registered political party at least 1 member of which—
- (i) in the case of a general election—was a member of Parliament at the time of the dissolution of the Parliament in relation to the election; or
- (ii) in any other case—is a member of Parliament,
- is \$3.00 (indexed).

(2) Subject to this Division, the amount of election funding payable for each eligible vote given for each candidate in a House of Assembly election or each candidate or group in a Legislative Council election (other than a candidate or group of a kind referred to in subsection (1)) is as follows:

- (a) for each eligible vote given to the candidate or group that falls within the range of 0% to 10% of the total primary vote—\$3.50 (indexed);
- (b) for each eligible vote given to the candidate or group that falls within the range of 10.01% to 100% of the total primary vote—\$3.00 (indexed).

130Q—Payment not to be made or to be reduced in certain circumstances

- (1) A payment under this Division will not be made in respect of votes given in an election for a candidate unless—
- (a) the total number of eligible votes cast in favour of the candidate is at least 4% of the total primary vote; or
- (b) the candidate is elected.
- (2) A payment under this Division will not be made in respect of votes given in an election for a group unless—
- (a) the total number of eligible votes cast in favour of the group is at least 4% of the total primary vote; or
- (b) a member of the group is elected.
- (3) A payment under this Division will not be made in respect of votes given in an election for a candidate or group unless the agent of the candidate or group has lodged a certificate under section 130Y to receive funding in respect of the election.

(4) If the agent of a person to whom Division 6 applies fails to ensure that the person does not incur political expenditure in excess of the person's applicable expenditure cap during the capped expenditure period in relation to an election—

5 (a) the amount payable under this Division to that agent is reduced by an amount equal to 20 times the excess amount; or

10 (b) if the excess amount is greater than the amount payable under this Division—a payment under this Division will not be made to the relevant agent.

(5) If, in relation to a payment to be made under this Division to an agent, the Electoral Commissioner is not satisfied, based on an expenditure return under section 130ZQ furnished by the relevant agent, that—

15 (a) in the case of a payment to be made to the agent of a registered political party—the political expenditure of the party and candidates endorsed by the party; or

20 (b) in the case of a payment to be made to the agent of a candidate not endorsed by a registered political party or a group whose members are not endorsed by a registered political party—the political expenditure of the candidate or group (as the case requires),

exceeds the amount that would, apart from this subsection, be payable under this Division to the relevant agent—

25 (c) in a case where there is no satisfactory evidence of political expenditure—a payment under this Division will not be made to the relevant agent; or

30 (d) in a case where there is satisfactory evidence of political expenditure but the total of that expenditure is less than the amount that would otherwise be payable under this Division to the relevant agent—the amount payable under this Division is reduced to an amount equal to the amount of that expenditure.

(6) In this section—

35 **excess amount** means the amount by which—

(a) the political expenditure of the person; and

(b) any political expenditure of a third party incurred under an agreement or arrangement with the person in contravention of section 130ZC,

40 exceed the applicable expenditure cap.

130R—Making of payments

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- (1) Subject to this Division, an amount payable under this Division will be paid by the Electoral Commissioner within a period, and in a manner, prescribed by the regulations.
 - (2) If an amount is payable under this Division in respect of votes given in an election or elections for a candidate, the Electoral Commissioner must (subject to section 130S) pay the amount to the agent of the candidate.
 - (3) If an amount is payable under this Division in respect of votes given in a Legislative Council election for a group, the Electoral Commissioner must (subject to section 130S) pay the amount to the agent of the group.
 - (4) A notice may be lodged with the Electoral Commissioner for the purposes of this section requesting that, in the case of payments in respect of a group whose members were endorsed by 2 or more registered political parties, the payments be divided into such shares as agreed by the relevant agents and the shares paid to those agents in accordance with the agreement (or, in the absence of an agreement, in such shares as the Electoral Commissioner determines).
 - (5) A notice under subsection (4)—
 - (a) must be signed by the agent of each of the parties specified in the notice; and
 - (b) can only be withdrawn by a notice lodged with the Electoral Commissioner and signed by the agent of each of those parties.
 - (6) If a notice is lodged under subsection (4), payments under this section must be made in accordance with the notice for any election for which the polling day is—
 - (a) after the day on which the notice was lodged; and
 - (b) before the day (if any) on which the notice is withdrawn.
 - (7) If a payment is made under this section and the recipient is not entitled to receive the whole or a part of the amount paid, that amount or that part of that amount may be recovered by the Crown as a debt due to the Crown by action against the person in a court of competent jurisdiction.

130S—Death of candidate

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- (1) If a candidate for whom eligible votes were given in an election dies, a payment under this Division in respect of the eligible votes given for the candidate may be made despite the death of the candidate.
 - (2) If a candidate referred to in subsection (1) was not endorsed by a registered political party, any amount payable to the candidate may be paid to the legal personal representative of the candidate.

(3) If a member of a group for whom eligible votes were given in a Legislative Council election dies, a payment under this Division in respect of the eligible votes given for the group may be made notwithstanding the death of the member and, if—

- 5 (a) the group was not a group the members of which were endorsed by a registered political party or by registered political parties; and
- (b) the candidate was the agent of the group for the purposes of this Part,

10 the payment may be made to another member of the group as if the other member were the agent of the group for the purposes of this Part.

Division 5—Special assistance funding for political parties

130T—Preliminary

15 (1) In this Division—

half yearly entitlement—see section 130U(2).

(2) For the purposes of this Division, a person is taken to have been a member of the Parliament of South Australia between the dissolution of the Parliament of which the person was a member and the sitting of the next Parliament if the person—

- 20 (a) was a member of the Parliament of South Australia at the time of the dissolution; and
- (b) is a member of the next Parliament at the first sitting of that Parliament.

25 (3) For the purposes of this Division—

- (a) 2 or more registered political parties cannot rely on the same person in relation to the entitlement to, and payment of, special assistance funding; and
- 30 (b) a person who is relied on by 2 or more registered political parties may nominate the party entitled to rely on the person, but if a party is not nominated after the Electoral Commissioner has, in accordance with the regulations, given the person an opportunity to do so, the person is not entitled to be relied on by any of those parties.

130U—Entitlement to and claims for special assistance funding

35 (1) Subject to this Division, a registered political party is to be paid its half yearly entitlement to special assistance funding if—

- 40 (a) for all or part of the half yearly period, at least 1 member of the party is a member of the Parliament of South Australia; and
- (b) the party—

- (i) was a registered political party on polling day for the last preceding general election; and
- (ii) continued to be a registered political party for all of the half yearly period; and

5 (c) the agent of the party submits a claim to the Electoral Commissioner, in accordance with subsection (3), setting out the amount of administrative expenditure incurred by the party during that period.

10 (2) The amount to be paid to a registered political party under this Division for a half yearly period is the amount of administrative expenditure incurred by the party during that period up to a maximum of—

15 (a) in the case of a party which has 5 or fewer members of Parliament (as at the last day of the relevant period)—\$7 000 (indexed); or

(b) in the case of a party which has 6 or more members of Parliament (as at the last day of the relevant period)—\$12 000 (indexed),

(the *half yearly entitlement*).

20 (3) A claim under subsection (1)(c) must—

(a) be submitted within 7 days after the end of the half yearly period to which it relates; and

(b) be in a form determined by the Electoral Commissioner; and

(c) be in writing and signed by the agent.

25 **130V—Making of payments**

(1) The Electoral Commissioner must, within 28 days after receipt of a claim under section 130U from the agent of a registered political party, pay to the agent the half yearly entitlement of the party.

(2) A payment under this section may be made electronically.

30 **130W—Special assistance funding not to be used for political expenditure**

If an amount is paid to a registered political party for special assistance funding under this Division, the agent of the party must ensure that no part of the amount—

35 (a) is deposited in a State campaign account kept under this Part; or

(b) is used for political expenditure in relation to an election (whether held under this Act or any other Act or law relating to elections).

Division 6—Limitations on political expenditure

130X—Interpretation

(1) In this Division—

person to whom this Division applies means—

- (a) a registered political party; or
- (b) a candidate; or
- (c) a group,

that has lodged a certificate under section 130Y.

(2) If—

- (a) 2 or more registered political parties are associated in respect of an election; or
- (b) a registered political party and a candidate not endorsed by a registered political party are associated in respect of an election,

the regulations may prescribe modifications to this Division so that the applicable expenditure caps will be shared between the associated parties and candidates.

(3) For the purposes of subsection (2)—

- (a) registered political parties are *associated* in respect of an election if—
 - (i) they endorse the same candidate for the election; or
 - (ii) they endorse candidates included in the same group in a Legislative Council election; or
 - (iii) they form a recognised coalition and endorse different candidates for the election or endorse candidates in different groups in a Legislative Council election; and
- (b) a registered political party and a candidate not endorsed by a registered political party are *associated* in respect of an election if they form, or have formed, a recognised coalition, or if the candidate is, or has been, a member of Cabinet in a government formed by members of the party.

130Y—Application of Division

(1) This Division applies to a registered political party, candidate or group whose agent lodges a certificate, in relation to an election, certifying that the relevant party, candidate or group is—

- (a) to be subject to the limitations on political expenditure set out in this Division for the election; and
- (b) —

- 5
- (i) in the case of a party—to receive election funding under Division 4 for the election on behalf of candidates or groups of candidates endorsed by the party for that election; or
- (ii) in any other case—to receive election funding under Division 4 for the election.
- (2) A certificate under subsection (1) must be lodged with the Electoral Commissioner by the agent of the relevant party, candidate or group, in accordance with any requirements of the Electoral Commissioner—
- 10
- (a) in the case of a certificate lodged by the agent of—
- (i) a candidate who—
- (A) is not endorsed by a party; and
- (B) is a member of Parliament; or
- 15
- (ii) a group—
- (A) that is not endorsed by a party; and
- (B) a member of which is a member of Parliament,
- at least 24 months before polling day for the election; or
- 20
- (b) in the case of a certificate lodged by the agent of a candidate or group not endorsed by a party (other than a candidate or group referred to in paragraph (a))—on or before 5 pm on the day on which the capped expenditure period commences in relation to the candidate or group for the election; or
- 25
- (c) in the case of a certificate lodged by the agent of a registered political party—
- (i) in the case of a general election—
- (A) in the case of a party registered 24 months or less before polling day for the election—within 1 month after registration as a registered political party; or
- 30
- (B) in any other case—at least 24 months before polling day for the election; or
- (ii) in the case of any other election—on or before 5 pm on the day on which the capped expenditure period commences in relation to the party for the election.
- 35
- (3) The agent of a registered political party may lodge a certificate under this section in relation to candidates or groups of candidates that are to be endorsed by the party in a general election, even though the identity of the candidates or groups are not determined at the time of lodgement.
- 40
- (4) A certificate lodged under this section cannot be withdrawn.

- (5) If, after a certificate has been lodged by the agent of a party in accordance with this section, a candidate who—
- (a) is a member of Parliament; or
 - (b) is a member of a group a member of which is a member of Parliament,

ceases to be endorsed by the party in relation to the relevant election, the agent of the candidate will be taken, for the purposes of this Part, to have lodged a certificate in accordance with this section at the time specified in subsection (2)(aa) unless the candidate, within 48 hours after ceasing to be so endorsed notifies the Electoral Commissioner (in a manner determined by the Electoral Commissioner) that he or she does not wish to be taken to have lodged a certificate in accordance with this section (in which case the agent of the candidate may not lodge a certificate in relation to the relevant election).

130Z—Expenditure caps

- (1) The *applicable expenditure cap* on political expenditure of a person to whom this Division applies is as follows:
- (a) for a registered political party that endorses candidates for election in the Legislative Council district only—the cap is \$500 000 (indexed);
 - (b) for a registered political party that endorses candidates for election in 1 or more House of Assembly districts—the cap is—
 - (i) \$75 000 (indexed) multiplied by the number of electoral districts in which the party endorses a candidate (as at the start of the capped expenditure period in relation to the party for the election) less the sum of the amounts allocated to candidates in accordance with subsection (3) (as at the end of the capped expenditure period in relation to the party for the election); plus
 - (ii) if the party also endorses candidates for election in the Legislative Council district, \$100 000 (indexed) multiplied by the number of candidates endorsed (as at the end of the capped expenditure period in relation to the party for the election but only up to a maximum of 5);
 - (c) for a candidate for election in a House of Assembly district who is endorsed by a registered political party—the cap is an amount allocated to the candidate in accordance with subsection (3) (or, if different amounts are so allocated to the candidate at different times, the amount so allocated at the end of the capped expenditure period);

- 5
- (d) for a candidate for election in a House of Assembly district not endorsed by a registered political party—the cap is \$100 000 (indexed);
- (e) for a group of candidates in a Legislative Council election whose members are not endorsed by a registered political party—the cap is \$500 000 (indexed);
- (f) for a candidate in a Legislative Council election not endorsed by a registered political party—the cap is \$125 000 (indexed).
- 10
- (3) For the purposes of subsection (1)(c), a registered political party must allocate an amount to each candidate for election in a House of Assembly district endorsed by the party, being—
- (a) the amount agreed between the candidate and the agent of the party (being not more than \$100 000); or
- 15
- (b) if no amount is so agreed—\$40 000.
- (4) The agent of a registered political party who agrees to an amount under subsection (3)(a) must ensure that written notice of the agreement, specifying the amount agreed, is given to the Electoral Commissioner within 3 days of the agreement.
- 20
- (5) For the purposes of this Part, a candidate for election to the Legislative Council who is endorsed by a registered political party does not have an applicable expenditure cap but political expenditure incurred by the candidate will be taken to be political expenditure incurred by the registered political party.

25

130ZA—Prohibition on political expenditure in excess of expenditure cap during capped expenditure period

The agent of a person to whom this Division applies must ensure that the person does not incur political expenditure in excess of the applicable expenditure cap during the capped expenditure period in relation to an election.

30

130ZB—Regulation of political expenditure by parties and candidates endorsed by parties

- 35
- (1) The agent of a person to whom this Division applies that is a registered political party must ensure that the party does not incur political expenditure for an election that relates to the election of a candidate endorsed by the party in an electoral district such that the applicable expenditure cap for the candidate is exceeded.
- (2) The agent of a person to whom this Division applies who is a candidate endorsed by a registered political party must ensure that the political expenditure of the candidate for an election only relates to the election of the candidate to the relevant electoral district.
- 40

(3) For the purposes of this section, political expenditure *relates to the election of a candidate* in an electoral district if the expenditure relates to an electoral district in a House of Assembly election and is for electoral matter that—

- 5
- (a) expressly mentions the name or displays the image of a candidate seeking to be elected in the district or expressly mentions the name of the district; and
 - (b) is communicated to electors in the district; and
 - (c) is not mainly communicated to electors outside the district.

10 **130ZC—Prohibition on arrangements to avoid applicable expenditure cap**

15 If a person to whom this Division applies enters into an agreement or arrangement with a third party such that the third party will incur political expenditure in relation to an election during the capped expenditure period for the purpose of the person to whom this Division applies avoiding its applicable expenditure cap for the election, the person to whom this Division applies is guilty of an offence.

Maximum penalty: \$25 000.

20 **Division 7—Disclosure of donations**

130ZD—Interpretation

In this Division—

campaign donations return means a return under section 130ZF.

130ZE—Division not to apply to gifts returned within 6 weeks

- 25
- (1) Subject to subsection (2), this Division does not apply to a gift that is returned within 6 weeks after its receipt.
 - (2) If the gift is returned within 6 weeks after its receipt, any return under this Division that includes the amount or value of the gift must also include a statement to the effect that the gift was returned.

30 **130ZF—Returns by candidates and groups**

- 35
- (1) The agent of each person (including a member of a group) who is a candidate in an election must, at the prescribed times, furnish to the Electoral Commissioner a campaign donations return for that candidate, in a form approved by the Electoral Commissioner.
 - (2) The agent of each group must, at the prescribed times, furnish to the Electoral Commissioner a campaign donations return for that group, in a form approved by the Electoral Commissioner.
 - (3) A campaign donations return for a candidate or group of candidates in an election must set out the details prescribed by the regulations in relation to gifts and loans received during the disclosure period.
- 40

- (4) A campaign donations return under this section need not set out any details of a gift or loan if—
- (a) in all cases—the amount or value of the gift or loan is \$5 000 (indexed) or less; or
 - (b) in the case of a gift or loan made to a candidate (including a member of a group)—the gift or loan was made in a private capacity to the candidate for his or her personal use and the candidate has not used, and will not use, the gift or loan solely or substantially for a purpose related to an election.
- (5) For the purposes of this section—
- (a) the *disclosure period*, in relation to a campaign donations return, is the period commencing—
 - (i) in relation to a new candidate in an election (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; or
 - (ii) in relation to a new candidate in an election who was, when he or she became a candidate in the election, 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; or
 - (iii) in relation to a candidate in an election who is 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; or
 - (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 ending 30 days after polling day for the election; and
 - (b) a candidate is a *new candidate*, in an election if the candidate was not a candidate in an earlier election the polling day for which was—
 - (i) in the case of a candidate for a House of Assembly election—within 5 years before polling day for the election; or
 - (ii) in the case of a candidate for a Legislative Council election—within 9 years before polling day for the election; and

(c) the *prescribed times* for furnishing a campaign donations return are as follows:

(i) within 30 days after the start of the designated period; and

(ii) every 7 days after the campaign donations referred to in subparagraph (i) is furnished until the end of the designated period for the election.

(d) 2 or more gifts with an amount or value of more than \$200 (excluding private gifts) or 2 or more loans of more than \$1000 (excluding private loans) made by the same person to a candidate or group during the disclosure period are to be treated as 1 gift or loan (as the case requires).

130ZG—Gifts, loans to candidates etc

(1) A person must provide a return in accordance with this section if—

(a) the person makes a gift or gifts, or a loan or loans, during the disclosure period in relation to an election, to any candidate in the election or a member of a group; and

(b) the total amount or value of the gift or gifts, or the loan or loans, is more than \$5 000 (indexed); and

(c) at the time the person makes the gift or gifts, or loan or loans, the person is not—

(i) a registered political party; or

(ii) an associated entity; or

(iii) a candidate in an election; or

(iv) a member of a group.

(2) A person must provide a return in accordance with this section if—

(a) the person makes a gift or gifts, or a loan or loans, during the disclosure period in relation to an election, to a person or body (whether incorporated or not) specified by the Electoral Commissioner by notice in the Gazette; and

(b) the total amount or value of the gift or gifts, or loan or loans, is more than \$5 000 (indexed); and

(c) at the time the person makes the gift or gifts, or loan or loans, the person is not—

(i) a registered political party; or

(ii) an associated entity; or

(iii) a candidate in an election; or

(iv) a member of a group.

- (3) The person must provide to the Electoral Commissioner a return setting out the required details of—
- (a) all gifts and loans covered by subsections (1) and (2) made during the disclosure period; and
 - 5 (b) all gifts and loans of more than \$5 000 (indexed), received by the person at any time, that the person used during the period (either wholly or partly)—
 - (i) to enable the person to make the gifts or loans mentioned in paragraph (a); or
 - 10 (ii) to reimburse the person for making such gifts or loans.
- (4) A return must be provided to the Electoral Commissioner, in a form approved by the Electoral Commissioner—
- 15 (a) if the gift or loan is made during the period commencing at the start of the disclosure period and ending at the start of the designated period for the relevant election—within 30 days of the start of the designated period for the relevant election; or
 - 20 (b) if the gift or loan is made during the designated period for the relevant election—at the end of the designated period.
- (5) For the purposes of this section, the required details of a gift or loan are its amount or value, the date on which it was made and any other details prescribed by the regulations.
- 25 (6) For the purposes of this section, the *disclosure period*, in relation to an election, is the period that commenced at the end of 30 days after polling day for the last general election preceding the election and that ended at the end of 30 days after polling day for the election.
- 30 (7) If the agent of a candidate, group or specified person or body knows that the candidate, group or specified person or body (as the case may be) has received a gift or loan requiring a return to be furnished under this section, the agent must inform the person who gave the gift or loan of the requirement that the person furnish a return in relation to the gift or loan under this Part.

130ZH—Gifts to relevant entities

- 35 (1) If a person makes gifts with amounts or values totalling more than \$5 000 (indexed) to the same relevant entity in a disclosure period, the person must furnish a return to the Electoral Commissioner in accordance with this section.
- 40 (2) If a person makes a gift to any person or body with the intention of benefiting a particular relevant entity, the person is taken for the purposes of subsection (1) to have made that gift directly to that relevant entity.

- (3) For each gift, the return must set out the following:
- (a) the amount or value of the gift;
 - (b) the date on which it was made;
 - (c) the name and address of the relevant entity.
- 5 (4) The return must also set out the details prescribed by the regulations in relation to all gifts of more than \$5 000 (indexed), received by the person at any time, that the person used (either wholly or partly) during the period—
- 10 (a) to enable the person to make the gifts to which the return relates; or
 - (b) to reimburse the person for making such gifts.
- (5) A return must be in a form approved by the Electoral Commissioner and furnished at the prescribed times.
- (6) This section does not apply to gifts made by any of the following:
- 15 (a) a relevant entity;
 - (b) a candidate in an election;
 - (c) a member of a group.
- (7) For the purposes of this section—
- 20 (a) the ***disclosure period***, in relation to an election, is the period that commenced at the end of 30 days after polling day for the last general election preceding the election and that ended at the end of 30 days after polling day for the election; and
 - (b) the ***prescribed times*** for furnishing a return are as follows:
 - 25 (i) in relation to a gift made between the start of the disclosure period until the start of the designated period for the relevant election—
 - 30 (A) if the gift was made after 1 January in a year—within 30 days of 1 July in that year; or
 - (B) if the gift was made after 1 July in a year—within 30 days of 1 January in the next year;
 - 35 (ii) in relation to a gift made during the designated period for the relevant election—at the end of the designated period.
- (8) If the agent of a relevant entity knows that the entity has received a gift requiring a return to be furnished under this section, the agent must inform the person who gave the gift of the requirement that the person furnish a return in relation to the gift under this Part.
- 40

130ZI—Special reporting of large gifts

- 5 (1) If a registered political party receives a gift the amount or value of which is more than \$25 000, the agent of the party must, within 7 days of receiving the gift, furnish a return to the Electoral Commissioner, in a form determined by the Electoral Commissioner, setting out the following:
- (a) the amount or value of the gift;
 - (b) the date on which it was made;
 - (c) the name and address of the relevant entity;
 - 10 (d) other details relating to the gift prescribed by the regulations.
- 15 (2) If the agent of a registered political party knows that the party has received a gift requiring a return to be furnished under this section, the agent must inform the person who gave the gift of the requirement that the person furnish a return in relation to the gift under this Part.

130ZJ—Certain gifts not to be received

- 20 (1) It is unlawful for—
- (a) a relevant entity; or
 - (b) a person acting on behalf of a relevant entity,
- to receive a gift made to or for the benefit of the relevant entity by another person, being a gift the amount or value of which is at least \$200 or a greater amount prescribed by regulation, unless—
- 25 (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—
 - 30 (i) the person making the gift gives to the person receiving the gift his or her name and address; and
 - (ii) 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—
- 35 (a) a candidate; or
 - (b) a member of a group; or
 - (c) 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, being a gift the amount or value of which is at least \$200 or a greater amount prescribed by regulation, unless—
- 40

- 5
- (d) the name and address of the person making the gift are known to the person receiving the gift; or
- (e) at the time when the gift is made—
- (i) the person making the gift gives to the person receiving the gift his or her name and address; and
- (ii) 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.
- 10 (3) A reference in subsection (1) or (2) to the name and address of a person making a gift is—
- (a) in the case of a gift made on behalf of the members of an incorporated or unincorporated association—a reference to—
- 15 (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
- (b) in the case of a gift purportedly made out of a trust fund or out of the funds of a foundation—a reference to—
- 20 (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
- (c) in the case of a gift made by or on behalf of a body corporate—a reference to—
- 25 (i) the name of the body corporate; and
- (ii) the names and addresses of the members of the board of the body corporate; and
- 30 (iii) the name of any parent, subsidiary or related body corporate of the body corporate; and
- (d) in any other case—the name and address of the person or organisation.
- (4) For the purposes 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 for the election.
- 35 (5) For the purposes 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 for the election.

- 5 (6) If a relevant entity or other person receives a gift that, by virtue of this section, it is unlawful for the relevant entity or person to receive, an amount equal to the amount or value of the gift is payable to the Crown (and may be recovered by the Crown as a debt by action, in a court of competent jurisdiction) by the relevant entity or person, or, in the case of a relevant entity that is an unincorporated body, each member of the executive committee (who are, for the purposes of this subsection, jointly and severally liable for the debt).

130ZK—Certain loans not to be received

- 10 (1) It is unlawful for a relevant entity or a person acting on behalf of a relevant entity to receive a loan of \$1000 or more from a person other than a financial institution unless the loan is made in accordance with subsection (3).
- 15 (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 \$1000 or more from a person 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:
- 20 (a) the terms and conditions of the loan;
- (b) if the loan was received from a registered industrial organisation other than a financial institution—
- 25 (i) the name of the organisation; and
- (ii) the names and addresses of the members of the executive committee (however described) of the organisation;
- (c) if the loan was received from an incorporated or unincorporated association—
- 30 (i) the name of the organisation or association; and
- (ii) the names and addresses of the members of the executive committee (however described) of the association or organisation;
- (d) if the loan was paid out of a trust fund or out of the funds of a foundation—
- 35 (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;
- (e) if the loan was received from a body corporate—
- 40 (i) the name of the body corporate; and
- (ii) the names and addresses of the members of the board of the body corporate; and

(iii) the name of any parent, subsidiary or related body corporate of the body corporate;

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

5 (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.

10 (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.

15 (6) If a relevant entity or other person receives a loan that, by virtue of this section, it is unlawful for the registered political party or person to receive, an amount equal to the amount or value of the loan is payable to the Crown (and may be recovered by the Crown as a debt by action, in a court of competent jurisdiction) by the relevant entity or person, or, in the case of a relevant entity that is an unincorporated body, each member of the executive committee (who are, for the purposes of this subsection, jointly and severally liable for the debt).

20 (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—

25 (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;

30 *financial institution* means a body 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

35 (b) a body prescribed by the regulations for the purposes of this paragraph;

loan means any of the following:

(a) an advance of money;

(b) a provision of credit or any other form of financial accommodation;

40 (c) a payment of an amount for, on account of, on behalf of or at the request of, a person, 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.

130ZL—Limitation on entry fees for certain events

- 5 (1) It is unlawful for a registered political party to receive an amount of money of more than \$500 for entry to a relevant event.

- (2) In this section—

relevant event means an event that—

- (a) is intended to raise money for the benefit of a registered political party; and

- 10 (b) is advertised or promoted as an event at which, or in connection with which, attendees will be given access to—

- (i) a Minister of the Crown or a Member of the Parliament of South Australia; or

- 15 (ii) a member of staff of a Minister of the Crown or a Member of the Parliament of South Australia.

Division 8—Returns

130ZM—Interpretation

In this Division—

amount includes the value of a gift, loan or bequest.

130ZN—Returns by registered political parties

- 20 (1) Subject to this Division, the agent of each registered political party must, at the prescribed times, furnish to the Electoral Commissioner a *political party return*, in a form approved by the Electoral Commissioner.

- 25 (2) A political party return must set out—

- (a) the total amount received by, or on behalf of, the party since the last political party return was furnished or, if no previous political party return has been furnished, since this Part first applied to the party; and

- 30 (b) the particulars prescribed by the regulations in relation to each amount of more than \$5 000 (indexed) received by, or on behalf of, the party from a person or organisation since the last political party return was furnished or, if no previous political party return has been furnished, since this Part first applied to the party; and

- 35 (c) the total outstanding amount, as at the end of the period to which the political party return relates, of all debts incurred by, or on behalf of, the party; and

(d) if the sum of all outstanding debts incurred by, or on behalf of, the party to a person or organisation during a period in relation to which a political party return is required to be furnished is more than \$5 000 (indexed), the particulars prescribed by the regulations in relation to each such sum.

(3) For the purposes of this section, the *prescribed times* for furnishing a political party return are as follows:

(a) from 30 days after polling day in a general election until the start of the designated period for the next general election—within 30 days of 1 January and 1 July; and

(b) from the start of the designated period for the relevant general election until the expiration of 30 days after the relevant polling day—

(i) within 30 days of the start of the designated period; and

(ii) every 7 days after the return referred to in subparagraph (i) was furnished.

(4) For the purposes of this section, 2 or more amounts of more than \$200 received by a registered political party from the same person during a financial year are to be treated as 1 amount received by the political party.

130ZO—Returns by associated entities

(1) The financial controller of an associated entity must, at the prescribed times, furnish to the Electoral Commissioner an *associated entity return*, in a form approved by the Electoral Commissioner, setting out—

(a) the total amount received by, or on behalf of, the entity since the last associated entity return was furnished or, if no previous associated entity return has been furnished, since this Part first applied to the entity; and

(b) the particulars prescribed by the regulations in relation to each amount of more than \$5 000 (indexed) received by, or on behalf of, the entity from a person or organisation since the last associated entity return was furnished or, if no previous associated entity return has been furnished, since this Part first applied to the entity; and

(c) the total outstanding amount, as at the end of the period to which the associated entity return relates, of all debts incurred by, or on behalf of, the entity; and

(d) if the sum of all outstanding debts incurred by, or on behalf of, the entity to a person or organisation during a period in relation to which an associated entity return is required to be furnished is more than \$5 000 (indexed), the particulars prescribed by the regulations in relation to each such sum.

- 5
- (2) Amounts received or paid at a time when the entity was not an associated entity are not to be counted for the purposes of subsection (1).
- (3) To avoid doubt, if an entity is not an associated entity for an entire period for which a return is required to be furnished under subsection (1), the entity is not required to furnish a return for that period.
- 10
- (4) If any amount required to be set out under subsection (1)(c) or (d)—
- (a) was paid to or for the benefit of one or more registered political parties; and
- (b) was paid out of funds generated from capital of the associated entity,
- the associated entity return must also set out the following details about each person who contributed to that capital after the commencement of this section:
- 15
- (c) the name and address of the person;
- (d) the total amount of the person's contributions to that capital, up to the end of the period to which the associated entity return relates.
- 20
- (5) Subsection (4) does not apply to contributions that have been set out in a previous associated entity return under this section.
- (6) For the purposes of this section, the *prescribed times* for furnishing an associated entity return are as follows:
- 25
- (a) from 30 days after polling day in a general election until the start of the designated period for the next general election—within 30 days of 1 July and 1 January; and
- (b) from the start of the designated period for the relevant general election until the expiration of 30 days after the relevant polling day—
- 30
- (i) within 30 days of the start of the designated period; and
- (ii) every 7 days after the return referred to in subparagraph (i) was furnished.
- 35
- (7) For the purposes of this section, 2 or more amounts of more than \$200 received by an associated entity from the same person during a financial year are to be treated as 1 amount received by the entity.

130ZP—Returns by third parties

(1) The agent of a third party must, at the prescribed times, furnish to the Electoral Commissioner a *third party return*, in a form approved by the Electoral Commissioner, setting out—

5 (a) the total amount received by, or on behalf of, the third party since the last third party return was furnished or, if no previous third party return has been furnished, since this Part first applied to the third party; and

10 (b) the particulars prescribed by the regulations in relation to each amount of more than \$5 000 (indexed) received by, or on behalf of, the third party from a person or organisation since the last third party return was furnished or, if no previous third party return has been furnished, since this Part first applied to the third party; and

15 (c) the total outstanding amount, as at the end of the period to which the third party return relates, of all debts incurred by, or on behalf of, the third party; and

20 (d) if the sum of all outstanding debts incurred by, or on behalf of, the third party to a person or organisation during a period in relation to which a third party return is required to be furnished is more than \$5 000 (indexed), the particulars prescribed by the regulations in relation to each such sum.

(2) For the purposes of this section, the *prescribed times* for furnishing a third party return are as follows:

25 (a) from 30 days after polling day in a general election until the start of the designated period for the next general election—within 30 days of 1 July and 1 January; and

30 (b) from the start of the designated period for the relevant general election until the expiration of 30 days after the relevant polling day—

(i) within 30 days of the start of the designated period; and

(ii) every 7 days after the return referred to in subparagraph (i) was furnished.

35 (3) For the purposes of this section, 2 or more amounts of more than \$200 received by a third party from the same person during a financial year are to be treated as 1 amount received by the third party.

40 (4) A third party is not required to furnish a return under this section in respect of a period if the third party furnished an associated entity return under section 130ZO in respect of the period.

130ZQ—Returns relating to political expenditure during capped expenditure period

- 5
- (1) This section applies to a registered political party, candidate, group or third party that, during the capped expenditure period for an election, incurs political expenditure of an amount of more than \$5 000 (indexed).
- 10
- (2) The agent of a person or body to which this section applies must furnish to the Electoral Commissioner an *expenditure return* setting out the details of political expenditure for the election incurred by the person or body.
- (3) The agent of a third party to which this section applies must set out in the return whether any political expenditure was incurred under an agreement or arrangement with a person to whom Division 6 applies, and, if so, details of the expenditure.
- 15
- (4) The expenditure return must—
- (a) be provided within 60 days after polling day for the election; and
 - (b) be in a form approved by the Electoral Commissioner.

130ZR—Annual returns relating to political expenditure

- 20
- (1) A person must provide a return for a financial year in accordance with this section if—
- (a) the person incurred political expenditure during the year, by or with his or her own authority; and
 - (b) the amount of the expenditure was—
- 25
- (i) in the case of a third party—more than \$10 000 (indexed); or
 - (ii) in any other case—more than \$5 000 (indexed); and
- (c) at the time that the person gave the authority the person was not—
- 30
- (i) the Crown (including a public sector agency (within the meaning of the *Public Sector Management Act 1995*)); or
 - (ii) a member of the House of Assembly or Legislative Council; or
- 35
- (2) The person must provide to the Electoral Commissioner a return for the financial year setting out the details of the expenditure incurred.
- (3) The agent of a third party required to provide a return under this section must set out in the return whether any political expenditure
- 40
- was incurred under an agreement or arrangement with a person to whom Division 6 applies, and, if so, details of the expenditure.

(4) However, nothing in this section requires the disclosure of any details required to be furnished in an expenditure return under section 130ZQ.

(5) The return must—

(a) be provided before the end of 12 weeks after the end of the financial year; and

(b) be in a form approved by the Electoral Commissioner.

130ZS—Annual returns relating to gifts received for political expenditure

(1) A person must provide a return for a financial year in accordance with this section if—

(a) the person is required to provide a return for the year under section 130ZQ or section 130ZR (or both); and

(b) the person received a gift or gifts, at any time, that the person used during the year (either wholly or partly)—

(i) to enable the person to incur political expenditure; or

(ii) to reimburse the person for incurring political expenditure; and

(c) the amount of at least 1 such gift was more than \$5 000 (indexed); and

(d) at the time that the person received the gift, the person was not—

(i) a relevant entity; or

(ii) a candidate in an election; or

(iii) a member of a group.

(2) The person must provide to the Electoral Commissioner a return for the financial year setting out the following details in respect of each gift of more than \$5 000 (indexed) that is mentioned in subsection (1)(b):

(a) the amount of the gift;

(b) the date on which the gift was made;

(c) in the case of a gift made on behalf of the members of an unincorporated association—

(i) the name of the association; and

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

(d) in the case of a gift purportedly made out of a trust fund, or out of the funds of a foundation—

- (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;

5 (e) in any other case—the name and address of the person who made the gift.

(3) The return must—

(a) be provided before the end of 12 weeks after the end of the financial year; and

10 (b) be in a form approved by the Electoral Commissioner.

(4) For the purposes of subsection (2), 2 or more gifts of more than \$200 made, during the financial year, by the same person to another person are taken to be 1 gift.

130ZT—Related matters

15 Returns provided in accordance with this Division are not to include lists of party membership.

130ZU—Regulations

(1) The regulations may require greater detail to be provided in returns than is required by this Division.

20 (2) Without limiting subsection (1), the regulations may require that the total amounts referred to in section 130ZN be broken down in the way specified in the regulations.

(3) The regulations may reduce the amount of information to be provided in returns under section 130ZO.

Division 9—Related matters

130ZV—Audit certificates

(1) A—

(a) return under this Part; or

(b) claim for special assistance funding under section 130U,

30 furnished to the Electoral Commissioner by or on behalf of a relevant entity, candidate or group must, subject to subsection (2), be accompanied by a certificate from an auditor in accordance with subsection (3).

(2) An audit certificate that would, but for this subsection, be required to accompany a return that relates to—

35 (a) a period that immediately precedes the commencement of a designated period; or

(b) the designated period,

may instead be furnished at such later date as is determined by the Electoral Commissioner (provided that the later date is within 30 days after the date on which the return is required to be furnished under this Part).

- 5 (3) A certificate from an auditor under this section must state that the auditor—
- 10 (a) was given full and free access at all reasonable times to the accounts and documents of the agent responsible for giving the return or claim and of the relevant entity, candidate or group (as the case requires) relating directly or indirectly to a matter required to be disclosed in the return or claim; and
- 15 (b) examined the accounts and documents referred to in paragraph (a) that the auditor considered material for giving the certificate; and
- (c) received all the information and explanations the auditor asked for in relation to any matter required to be stated in the certificate, subject to the qualifications, if any, stated in the certificate; and
- 20 (d) has no reason to think any statement in the declaration is not correct.
- (4) The Electoral Commissioner may waive compliance with the requirement to give an audit certificate if—
- (a) in the case of a return—the return is a nil return provided in accordance with section 130ZZ; or
- 25 (b) in any case—the Electoral Commissioner considers the cost of compliance with the requirement would be unreasonable.
- (5) A return or claim required to be accompanied by a certificate from an auditor is taken not to have been provided in accordance with the requirements of this Part if it is not accompanied by the certificate.

30 **130ZW—Auditor to give notice of contravention**

If, in carrying out an audit to prepare an audit certificate for the purposes of this Part, an auditor becomes aware of a matter that is reasonably likely to constitute a contravention of this Part by a relevant entity, candidate or group, the auditor must, within 7 days after becoming aware of the matter, give the Electoral Commissioner written notice of the matter.

130ZX—Electoral Commissioner to determine manner in which returns to be furnished

40 A return under this Part must be furnished in a manner determined by the Electoral Commissioner.

130ZY—Public inspection of returns

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

- (2) The Electoral Commissioner must, at the end of the period prescribed for the purposes of subsection (5), make a copy of each return available on a website maintained by the Electoral Commissioner.
- 5 (3) 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.
- (4) 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.
- 10 (5) A person is not entitled to inspect or obtain a copy of a return until the end of the prescribed period after the day before which the return was required to be furnished to the Electoral Commissioner.

130ZZ—Nil returns

15 If no details are required to be included in a return required under this Part, the return must nevertheless be lodged and must include a statement to the effect that no gifts or, if relevant, loans of a kind required to be disclosed were received.

130ZZA—Records to be kept

20 If—

- (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
- 25 (b) the record is not a record that, in the normal course of business or administration, would be transferred to some other person,

the person must retain that record for at least 4 years commencing on the polling day for that election.

130ZZB—Investigation etc

- (1) In this section—
- 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.
- 35 (3) An authorised officer may, for the purpose of finding out whether the financial controller of an associated entity or the agent of a registered political party or third party has complied with this Part, by notice served personally or by post on—
- 40 (a) the agent or any officer of the—
- (i) registered political party; or

(ii) third party; or

(b) the financial controller or any officer of the associated entity,

as the case may be, require the agent, financial controller or officer—

5 (c) to produce, within the period and in the manner specified in the notice, the documents or other things referred to in the notice; or

10 (d) 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 the documents or other things referred to in the notice.

15 (4) If a notice under subsection (3)(a) requires an officer of a registered political party or third party (other than the agent) to appear before an authorised officer under subsection (3)(d), then the agent of the registered political party or third party (as the case may be) is entitled—

(a) to attend at the proceeding under subsection (3)(d); or

(b) to nominate another person in writing to attend on behalf of the agent.

20 (5) Failure of the agent or nominee to attend under subsection (4) does not affect the powers of the authorised officer to conduct the proceeding under subsection (3)(d).

25 (6) 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 under this Part, the authorised officer may, by notice served personally or by post on that person, require that person—

30 (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;

35 (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.

(7) If—

40 (a) an authorised officer has reasonable grounds to believe that a person is capable of producing documents or other things, or giving evidence, relating to whether an entity is, or was at a particular time, an associated entity; and

(b) the person is, or has at any time been, the financial controller or an officer of the entity,

the authorised officer may, by notice served personally or by post on the person, require the person—

- 5
- (c) to produce, within the period and in the manner specified in the notice, such documents or other things as are specified in the notice; or
 - (d) to appear, at a time and place specified in the notice, before the authorised officer to give evidence, whether orally or in writing, and to produce the documents or other things specified in the notice.
- 10
- (8) The notice must not require the person to produce documents, or to appear, until after the end of the period of 14 days beginning on the day on which the notice was received, and must set out the person's right to request a review under subsection (9).
- 15
- (9) A person who is given a notice under subsection (7) may request that the Electoral Commissioner review the decision to issue the notice.
- (10) The request must be—
- (a) in writing; and
 - (b) given to the Electoral Commissioner during the period of 14 days beginning on the day on which the notice was received.
- 20
- (11) The Electoral Commissioner must—
- (a) review the decision as soon as practicable after receiving a request under subsection (9); and
 - (b) affirm, vary or set aside the decision; and
 - (c) notify the person in writing of his or her decision on the review.
- 25
- (12) If a person requests a review of a decision, the person is not taken to have refused or failed to comply with the notice to which the review relates at any time before the Electoral Commissioner has notified the person of his or her decision on the review.
- 30
- (13) An authorised officer may require any evidence that is to be given to him or her in compliance with a notice under subsection (3), (6) or (7) to be given on oath or affirmation and for that purpose the authorised officer may administer an oath or affirmation.
- 35
- (14) A person must not, without reasonable excuse, refuse or fail to comply with a notice under this section to the extent that the person is capable of complying with the notice.
Maximum penalty: \$5 000.
- 40
- (15) A person must not, in purported compliance with a notice under this section, give evidence that is, to the knowledge of the person, false or misleading in a material particular.
Maximum penalty: \$5 000.

(16) If—

- 5 (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
- 10 (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 (17).

15 (17) Subject to subsection (18), if an application under subsection (16) 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—

- 20 (a) to enter on the land or on or into the premises, vessel, aircraft or vehicle; and
- (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
- 25 (c) to seize any documents or other things of the kind referred to in paragraph (b).

(18) A magistrate may not issue a warrant under subsection (17) unless—

- 30 (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
- 35 (c) the magistrate is satisfied that there are reasonable grounds for issuing the warrant.

40 (19) If a magistrate issues a warrant under subsection (17), the magistrate must state on the affidavit furnished in accordance with subsection (18) 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.

(20) A warrant issued under subsection (17) 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 1 month after the date of issue of the warrant, on which the warrant ceases to have effect.

(21) If a document or other thing is seized by a person pursuant to a warrant issued under subsection (17)—

- (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.

130ZZC—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; and
- (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 (and the return may accordingly have effect for the purposes of this Part).

- (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 the other person is able to give those particulars.

130ZZD—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) If the return was furnished by a person as the agent of a registered political party, the request under subsection (2) may be made either by—
- (a) the person who lodged the claim or return; or

(b) the person who is currently registered as the agent of the political party.

(4) 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.

(5) 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,

the Electoral Commissioner must permit the person making the request to amend the return in accordance with the request.

(6) 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 the decision is reviewable under Part 12 Division 1.

(7) 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.

130ZZE—Offences

(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 of a political party—\$10 000;

(b) in any other case—\$5 000.

(2) A person who furnishes a return under this Part that is incomplete is guilty of an offence.

Maximum penalty: \$1 500.

(3) 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 person, false or misleading in a material particular,

is guilty of an offence.

Maximum penalty: \$10 000.

(4) 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 return; and

- (b) that is, to that person's knowledge, false or misleading in a material particular,

is guilty of an offence.

Maximum penalty: \$10 000.

- 5 (5) A person who contravenes, or fails to comply with, a provision of this Part is guilty of an offence.
- (6) A person who is guilty of an offence against this Part for which no penalty is specifically provided is liable to a penalty not exceeding \$7 500.
- 10 (7) If a person commits an offence by reason of a failure to furnish a return or other information, or to do any other thing, within a particular period as required under this Part—
- (a) the obligation to furnish the return or other information, or to do the other thing, continues despite the expiration of the period; and
- 15 (b) if the person is convicted of the offence and the failure continues after conviction, 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.
- (8) 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.
- 25

130ZZF—Non-compliance with Part does not affect election

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

130ZZG—Appropriation

30 Amounts of funding payable under this Part are payable out of the Consolidated Account (which is appropriated to the necessary extent).

5—Amendment of section 139—Regulations

Section 139(2)—delete subsection (2) and substitute:

- 35 (2) Without limiting the generality of subsection (1), the regulations may—
- (a) prescribe forms for the purposes of this Act; and
- (b) prescribe fines (not exceeding \$5 000) for offences against the regulations; and

- 5
- 10
- 15
- (c) prescribe fees or charges in respect of matters under this Act, and provide for the waiver or refund of such fees or charges; and
 - (d) be of general application or vary in their application according to prescribed factors; and
 - (e) provide that a matter or thing in respect of which regulations may be made is to be determined according to the discretion of the Electoral Commissioner; and
 - (f) refer to or incorporate, wholly or partially and with or without modification, any standard or other document prepared or published by a body referred to in the regulation, as is in force from time to time or as in force at a particular time; and
 - (g) modify the application of Part 13A, or a provision of that Part, where there has been a disendorsement of a candidate by a registered political party; and
 - (h) make provisions of a savings or transitional nature consequent on the enactment of Part 13A.