

Legislative Council—No 174

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South Australia

**Electoral (Funding, Expenditure and Disclosure)
Amendment Bill 2016**

A BILL FOR

An Act to amend the *Electoral Act 1985*.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

- 5 This Act may be cited as the *Electoral (Funding, Expenditure and Disclosure) Amendment Act 2016*.

2—Commencement

This Act will come into operation on a day to be fixed by proclamation.

3—Amendment provisions

- 10 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—Amendment of section 107—Orders that the Court is empowered to make

Section 107—after subsection (6) insert:

- 5 (7) An election may be declared void on the ground of a breach of section 130ZA if the Court of Disputed Returns finds, on the balance of probabilities, that the result of the election was affected by the breach.

5—Amendment of section 130A—Interpretation

10 Section 130A(8)—delete "(with the amount so adjusted being rounded up to the nearest whole number)" and substitute:

 with the amount so adjusted being rounded up to—

- (a) in the case of an amount referred to in section 130P—the nearest whole cent; or
- (b) in any other case—the nearest whole number.

6—Repeal of section 130C

15 Section 130C—delete the section

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

- 20 (1) Section 130E(2)—delete "A" and substitute:

 Subject to subsection (4), a

- (2) Section 130E(4)—delete subsection (4) and substitute:

- (4) However, if a registered political party has endorsed—

- (a) a candidate; or
- (b) all the members of a group of candidates,

25 the agent of the party is the agent of the candidate or group (as the case requires), for the purposes of this Part, in relation to the election.

- (3) Section 130E(5)—delete "During" and substitute:

 Subject to subsection (4), during

8—Amendment of section 130Q—Payment not to be made or to be reduced in certain circumstances

30 Section 130Q(5)(a)—before "political expenditure" insert:

 combined

9—Amendment of section 130U—Entitlement to and claims for half yearly entitlement to special assistance funding

- (1) Section 130U(2)(a)—after "(indexed)" insert:
or a greater amount prescribed by regulation
- 5 (2) Section 130U(2)(b)—after "(indexed)" insert:
or a greater amount prescribed by regulation
- (3) Section 130U(3)(a)—delete "7 days" and substitute:
30 days

10—Insertion of section 130UA

10 After section 130U insert:

130UA—Entitlement to and claim for one-off payment of special assistance funding

- (1) Subject to this Division, a registered political party is entitled to a one-off payment of special assistance funding if—
- 15 (a) the party is entitled to special assistance funding under section 130U and has received a half yearly entitlement payment; and
- (b) the agent of the party submits a claim to the Electoral Commissioner, in accordance with subsection (3), setting
20 out the amount of prescribed administrative expenditure incurred by the party.
- (2) The amount to be paid to a registered political party under subsection (1) is the amount of prescribed administrative expenditure up to a maximum of—
- 25 (a) in the case of a party which has 5 or fewer members of Parliament (as at the date of the claim)—\$56 000; or
- (b) in the case of a party which has 6 or more members of Parliament (as at the date of the claim)—\$96 000.
- (3) A claim under subsection (1)(b) must—
- 30 (a) be submitted by 31 July 2017; and
- (b) be in a form determined by the Electoral Commissioner; and
- (c) be in writing and signed by the agent.
- (4) To avoid doubt, a registered political party that has received a one-off payment of special assistance funding under this Division is
35 not entitled to any further such payment.
- (5) This section expires on 31 August 2017.

(6) In this section—

prescribed administrative expenditure means administrative expenditure incurred by a registered political party for the purpose of complying with this Part that is in excess of the administrative expenditure incurred by the party in relation to which a payment of a half yearly entitlement to special assistance funding has been paid.

11—Amendment of section 130V—Making of payments

(1) Section 130V(1)—delete "section 130U" and substitute:

this Division

(2) Section 130V(1)—delete "half yearly"

12—Amendment of section 130Z—Expenditure caps

Section 130Z(1)(b)(i)—delete "as at the start of the capped expenditure period in relation to the party for the election" and substitute:

as at the hour of nomination

13—Amendment of section 130ZF—Returns by candidates and groups

Section 130ZF(5)(c)(i) and (ii)—delete subparagraphs (i) and (ii) and substitute:

(i) within 30 days of the end of the period commencing from the start of the disclosure period for the election until the start of the designated period for the election;

(ii) within 5 days of the end of the period commencing from the start of the designated period for the election until 30 days after the start of that designated period;

(iii) within 5 days of the end of each period of 7 days from the end of the period referred to in subparagraph (ii) until 30 days after polling day for the election;

(iv) if the number of days from the end of the last 7 day period referred to in subparagraph (iii) until the day falling 30 days after polling day for the election is less than 7 days—within 5 days of the end of the designated period for the election;

14—Amendment of section 130ZN—Returns by registered political parties

(1) Section 130ZN(1)—after "*political party return*" insert:

, in respect of each prescribed period

(2) Section 130ZN(2)(a)—delete "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 substitute:

during each prescribed period

(3) Section 130ZN(2)(b)—delete "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 substitute:

during each prescribed period

- (4) Section 130ZN(2)(c)—delete "the period to which the political party return relates" and substitute:

each prescribed period

- (5) Section 130ZN(2)(d)—delete "period in relation to which a political party return is required to be furnished" and substitute:

prescribed period

- (6) Section 130ZN(3)—delete subsection (3) and substitute:

(3) For the purposes of this section—

(a) each of the following periods is a *prescribed period* in respect of a political party return:

(i) if no previous political party return has been furnished to the Electoral Commissioner under this Part—the period commencing on the day on which this Part first applied to the registered political party until 30 June or 31 December (whichever is the earlier);

(ii) from 30 days after polling day in a general election until the start of the designated period for the next general election—

(A) each period from 1 January to 30 June; and

(B) each period from 1 July to 31 December;

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

(A) the period commencing from the start of the designated period until 30 days after the start of the designated period; and

(B) each period of 7 days from the end of the period referred to in subparagraph (A); and

(C) if the number of days from the end of the last period referred to in subparagraph (B) until the expiration of 30 days after the relevant polling day is less than 7 days—the period commencing from the end of the last prescribed period referred to in subparagraph (B) until the day falling 30 days after the relevant polling day;

(b) the *prescribed times* for furnishing a political party return in respect of a prescribed period are as follows:

- (i) for the prescribed periods referred to in subsection (3)(a)(i) and (ii)—within 30 days of the end of each prescribed period;
- (ii) for the prescribed periods referred to in subsection (3)(a)(iii)—within 5 days of the end of each prescribed period.

15—Amendment of section 130ZO—Returns by associated entities

- (1) Section 130ZO(1)—after "*associated entity return*" insert:

, in respect of each prescribed period

- (2) Section 130ZO(1)(a)—delete "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 substitute:

during each prescribed period

- (3) Section 130ZO(1)(b)—delete "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 substitute:

during each prescribed period

- (4) Section 130ZO(1)(c)—delete "the period to which the associated entity return relates" and substitute:

each prescribed period

- (5) Section 130ZO(1)(d)—delete "period in relation to which an associated entity return is required to be furnished" and substitute:

prescribed period

- (6) Section 130ZO(3)—delete "To avoid doubt, if" and substitute:

If

- (7) Section 130ZO(6)—delete subsection (6) and substitute:

- (6) For the purposes of this section—

- (a) each of the following periods is a *prescribed period* in respect of an associated entity return:

- (i) from 30 days after polling day in a general election until the start of the designated period for the next general election—

(A) each period from 1 January to 30 June; and

(B) each period from 1 July to 31 December;

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

(A) the period commencing at the start of the designated period until 30 days after the start of the designated period; and

(B) each period of 7 days from the end of the period referred to in subparagraph (A); and

(C) if the number of days from the end of the last period referred to in subparagraph (B) until the expiration of 30 days after the relevant polling day is less than 7 days—the period commencing from the end of the last prescribed period referred to in subparagraph (B) until the day falling 30 days after the relevant polling day;

(b) the *prescribed times* for furnishing an associated entity return in respect of a prescribed period are as follows:

(i) for the prescribed periods referred to in subsection (6)(a)(i)—within 30 days of the end of each prescribed period;

(ii) for the prescribed periods referred to in subsection (6)(a)(ii)—within 5 days of the end of each prescribed period.

16—Amendment of section 130ZP—Returns by third parties

(1) Section 130ZP(1)—after "*third party return*" insert:

, in respect of each prescribed period

(2) Section 130ZP(1)(a)—delete "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 substitute:

during each prescribed period

(3) Section 130ZP(1)(b)—delete "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 substitute:

during each prescribed period

(4) Section 130ZP(1)(c)—delete "the period to which the third party return relates" and substitute:

each prescribed period

(5) Section 130ZP(1)(d)—delete "period in relation to which a third party return is required to be furnished" and substitute:

prescribed period

(6) Section 130ZP(2)—delete subsection (2) and substitute:

(2) For the purposes of this section—

(a) each of the following periods is a *prescribed period* in respect of a third party return:

- 5 (i) if no previous third party return has been furnished to the Electoral Commissioner under this Part—the period commencing on the day on which this Part first applied to the third party until 30 June or 31 December (whichever is the earlier);
- 10 (ii) from 30 days after polling day in a general election until the start of the designated period for the next general election—
(A) each period from 1 January to 30 June; and
(B) each period from 1 July to 31 December;
- 15 (iii) from the start of the designated period for the relevant general election until the expiration of 30 days after the relevant polling day—
(A) the period commencing at the start of the designated period until 30 days after the start of the designated period; and
(B) each period of 7 days from the end of the period referred to in subparagraph (A); and
20 (C) if the number of days from the end of the last period referred to in subparagraph (B) until the expiration of 30 days after the relevant polling day is less than 7 days—the period commencing from the end of the last prescribed period referred to in subparagraph (B) until the day falling 30 days after the relevant polling day;
- 25
- 30 (b) the *prescribed times* for furnishing a third party return in respect of a prescribed period are as follows:
(i) for the prescribed periods referred to in subsection (2)(a)(i) and (ii)—within 30 days of the end of each prescribed period; and
35 (ii) for the prescribed periods referred to in subsection (2)(a)(iii)—within 5 days of the end of each prescribed period.

(7) Section 130ZP(4)—before "period" wherever occurring insert in each case:
prescribed

17—Amendment of section 130ZV—Audit certificates

- 40 (1) Section 130ZV(1)(a)—after "Part" insert:
other than a return to which subsection (2a) applies

(2) Section 130ZV(1)(b)—after "section 130U" insert:

or 130UA

(3) Section 130ZV(2)—delete "that relates to—"

(4) Section 130ZV(2)(a) and (b)—delete paragraphs (a) and (b)

5 (5) Section 130ZV—after subsection (2) insert:

(2a) If a return furnished to the Electoral Commissioner by or on behalf of a relevant entity, candidate or group under this Part relates to a designated period, an audit certificate in accordance with subsection (3) must, at the prescribed times, be furnished to the Electoral Commissioner by or on behalf of the relevant entity, candidate or group (as the case may be) in relation to all such returns furnished during each of the following periods:

(a) the period commencing at the start of the designated period for the relevant election until 7 days before the relevant polling day;

(b) the period commencing at the end of the period referred to in paragraph (a) until the expiration of 30 days after the relevant polling day.

(2b) For the purposes of subsection (2a), the *prescribed times* for furnishing an audit certificate are as follows:

(a) for the period referred to in subsection (2a)(a)—7 days before the relevant polling day;

(b) for the period referred to in subsection (2a)(b)—the day on which the last return is required to be furnished in that relevant period.

18—Amendment of section 130ZZE—Offences

Section 130ZZE—after subsection (8) insert:

(9) In proceedings against a person for an offence under this Part, it is a defence for the person to prove that the person exercised all reasonable diligence to prevent the commission of the offence.

19—Amendment of section 130ZZF—Non-compliance with Part does not affect election

Section 130ZZF—delete "A" and substitute:

Subject to section 107(7), a