

House of Assembly—No 147A

As reported with amendments, report agreed to and passed remaining stages,
14 October 2021

South Australia

**Electoral (Funding, Expenditure and Disclosure)
Amendment Bill 2021**

A BILL FOR

An Act to amend the *Electoral Act 1985*.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Electoral (Funding, Expenditure and Disclosure) Amendment Act 2021*.

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2—Commencement

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

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*

5 4—Amendment of section 130A—Interpretation

- (1) Section 130A(1), definition of *capped expenditure period*, (b)—delete "the vacancy giving rise to the election is announced in the House of Assembly" and substitute:

notice of the vacancy giving rise to the election is published in the Gazette

- 10 (2) Section 130A(1), definition of *designated period*, (b)—delete "the vacancy giving rise to the election is announced in the House of Assembly" and substitute:

notice of the vacancy giving rise to the election is published in the Gazette

- (3) Section 130A(1)—after the definition of *journal* insert:

loan means any of the following:

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

- (4) Section 130A(1), definition of *third party*, (f)—delete "or intends to incur"

- (5) Section 130A(1), definition of *third party*, (f)— after "\$10 000" insert:

(indexed)

- (6) Section 130A(1), definition of third party, (g)—after "\$10 000" insert:

25 (indexed)

- (7) Section 130A(1), definition of *third party*, (g)—delete "(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*)"

- 30 (8) Section 130A—after subsection (8) insert:

- (9) For the purposes of this Part, if a candidate endorsed by a registered political party in relation to an election ceases to be so endorsed—

- 35 (a) prescribed party expenditure and prescribed candidate expenditure (both within the meaning of section 130Z(3d)) will not be regarded as political expenditure of the party; and

- (b) prescribed candidate expenditure (within the meaning of section 130Z(3d)) will not be regarded as political expenditure of the candidate.

5—Amendment of section 130C—Application of Part

5 Section 130C—delete "registered political party" and substitute:
 candidate, group or relevant entity

6—Amendment of section 130F—Third parties and associated entities may appoint agents

- (1) Section 130F(1)—after "third party" first occurring insert:
10 or associated entity
- (2) Section 130F(1)—after "third party" second occurring insert:
 or associated entity (as the case may be)
- (3) Section 130F—after subsection (2) insert:
15 (3) During any period during which there is no appointment in force of
 an agent of an associated entity, the financial controller of the
 associated entity is taken to be the associated entity's agent for the
 purposes of this Part.

7—Amendment of section 130H—Registration of agents

- Section 130H(5)—delete subsection (5) and substitute:
- 20 (5) If the agent of a registered political party dies or resigns, the
 registered political party must, within 28 days after the death or
 resignation, give to the Electoral Commissioner—
 - (a) written notice of the death or resignation; and
 - 25 (b) notice under this Part of the appointment of another person
 as its agent.

8—Amendment of section 130I—Termination of appointment of agent

- (1) Section 130I(1)—delete "or a third party" and substitute:
 , a third party or associated entity
- (2) Section 130I(1)—delete "or third party" and substitute:
30 , third party or associated entity
- (3) Section 130I(2)—delete "or the third party" and substitute:
 , third party or associated entity
- (4) Section 130I(3)—delete "or third party" and substitute:
 , third party or associated entity
- 35 (5) Section 130I(3)—delete "or the third party" and substitute:
 , the third party or associated entity

(6) Section 130I(3)—delete "without delay" and substitute:

within 7 days of the death or resignation

(7) Section 130I—after subsection (3) insert:

(4) If a candidate endorsed by a registered political party in relation to an election ceases to be so endorsed, the agent's appointment as agent of the candidate is taken to be revoked on the date of the disendorsement.

9—Amendment of section 130K—Requirement to keep single State campaign account

Section 130K(1)—delete subsection (1) and substitute:

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

10—Substitution of section 130L

Section 130L—delete the section and substitute:

130L—Gifts to be paid directly into State campaign account

(1) Subject to this section, 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, as soon as is reasonably practicable after receipt of the gift, paid directly into the State campaign account kept by the agent of the registered political party, third party, candidate or group.

(2) The agent of a registered political party, third party, candidate or group must ensure that the following gifts are not paid into the State campaign account of the registered political party, third party, candidate or group:

(a) a gift made or received in contravention of this Part;

(b) a gift that otherwise must not be paid into such an account in accordance with this Division.

(3) In addition, the agent of a registered political party must ensure that the following gifts are not paid into the State campaign account of the registered political party:

(a) a gift received by or on behalf of the registered political party that is not intended by the registered political party to be used for State electoral purposes;

(b) a gift received by or on behalf of the registered political party that has been paid into an account kept by or on behalf of the registered political party for federal electoral purposes.

11—Substitution of section 130U

Section 130U—delete the section and substitute:

130U—Entitlement to and claims for half yearly entitlement to special assistance funding

- 5 (1) Subject to this Division, a registered political party is to be paid its half yearly entitlement to special assistance funding if—
- (a) the party—
- (i) was a registered political party on polling day for the last preceding general election; and
- 10 (ii) continued to be a registered political party for all of the half yearly period; and
- (b) the agent of the party submits a claim to the Electoral Commissioner, in accordance with subsection (3)—
- (i) in the case of a party whose half yearly entitlement is of a kind referred to in subsection (2)(a) or (b)—for payment of its half yearly entitlement; or
- 15 (ii) in the case of a party whose half yearly entitlement is of a kind referred to in subsection (2)(c)—for payment of its half yearly entitlement and setting out the amount of expenditure of a prescribed kind incurred by the party during that period.
- 20 (2) The amount to be paid to a registered political party under this Division for a half yearly period (a *half yearly entitlement*) is—
- (a) in the case of a party where none of the members of the party is a member of the Parliament of South Australia—the amount prescribed by regulation for the purposes of this paragraph; or
- 25 (b) in the case of a party where at least 1 but less than 6 members of the party are members of the Parliament of South Australia—the amount prescribed by regulation for the purposes of this paragraph; or
- 30 (c) in the case of a party where 6 or more members of the party are members of the Parliament of South Australia—the amount of expenditure of a prescribed kind incurred by the party during that period up to a maximum amount prescribed by regulation.
- 35 (3) A claim under subsection (1)(b) must—
- (a) be submitted within 30 days after the end of the half yearly period to which it relates; and
- 40 (b) be in a form determined by the Electoral Commissioner; and
- (c) be in writing and signed by the agent.

12—Amendment of section 130Y—Application of Division

(1) Section 130Y(2)(b)—delete paragraph (b) and substitute:

(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))—

(i) if the capped expenditure period in relation to the candidate or group for the election commences later than the disclosure period referred to in subparagraph (ii) for that candidate or group—on or before 5 pm on the day on which that capped expenditure period commences; or

(ii) if the disclosure period for a return required to be furnished under this Part by the candidate or group in relation to the election commences later than the capped expenditure period referred to in subparagraph (i) for that candidate or group—within 7 days after the commencement of that disclosure period; or

(2) Section 130Y(3)—delete "a general" and substitute:

an

(3) Section 130Y(5)—delete subsection (5) and substitute:

(5) If, after a certificate has been lodged by the agent of a party in accordance with this section, a candidate 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)(a) 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).

13—Amendment of section 130Z—Expenditure caps

Section 130Z(2a) to (3a)—delete subsections (2a) to (3a) (inclusive) and substitute:

(3) Despite the preceding provisions and section 130A(9), if a candidate endorsed by a registered political party in relation to an election ceases to be so endorsed during the capped expenditure period for the election, the following provisions apply:

(a) if—

(i) a candidate ceases to be endorsed after the hour of nomination; and

(ii) the party does not endorse another candidate in the relevant electoral district,

any amount allocated by the party to the candidate under subsection (2) prior to the disendorsement is, for the purposes of determining the party's applicable expenditure cap under subsection (1)(b)(i), to be included in the calculation of the sum of the amounts allocated to candidates in accordance with subsection (2);

- 5
- (b) if the candidate who has ceased to be endorsed subsequently—
- 10
- (i) lodges (or is taken for the purposes of this Part to have lodged) a certificate under section 130Y; or
- (ii) forms part of a group of candidates that has lodged a certificate under section 130Y; or
- 15
- (iii) is endorsed in relation to the election by another registered political party that has lodged a certificate under section 130Y,

the applicable expenditure cap under subsection (1) that applies to the candidate, group or party (as the case requires) is reduced by the sum of the prescribed party expenditure and the prescribed candidate expenditure;

- 20
- (c) if paragraph (b)(iii) applies, the maximum amount that the other registered political party may allocate to the candidate under subsection (2) in relation to the election is \$100 000 (indexed) less the sum of the prescribed party expenditure and the prescribed candidate expenditure.

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(3a) For the purposes of the preceding provisions, if a candidate endorsed by a registered political party in relation to an election ceases to be so endorsed during the capped expenditure period for the election—

- 30
- (a) the agent of a registered political party must, as soon as is reasonably practicable after the disendorsement (and in any event no later than 7 days after the disendorsement), furnish a return to the Electoral Commissioner setting out—
- 35
- (i) the name of the candidate; and
- (ii) the amount of prescribed party expenditure; and
- (iii) the amount agreed between the candidate and the agent of the party (if any) under section 130Z(2)(a) of the Act; and
- 40
- (b) the agent of the candidate must, as soon as is reasonably practicable after the disendorsement (and in any event no later than 7 days after the disendorsement), furnish a return to the Electoral Commissioner setting out—
- (i) the name of the candidate; and
- (ii) the amount of prescribed candidate expenditure.

(3b) The agent of the registered political party must, so far as is reasonably practicable, make available to the agent of the candidate any records or information in the possession of the party relevant to a return under subsection (3a)(b).

5 (3c) The agent of the registered political party must give the agent of the candidate a copy of the return under subsection (3a)(a), and the agent of the candidate must give the agent of the party a copy of the return under subsection (3a)(b), on the same day on which the agent furnishes the relevant return to the Electoral Commissioner.

10 (3d) In this section—

prescribed candidate expenditure, in relation to a candidate disendorsed by a registered political party, means political expenditure incurred (prior to the disendorsement) by the candidate (as set out in a return under subsection (3a)(b)) during the capped expenditure period for the election;

15 *prescribed party expenditure*, in relation to a candidate disendorsed by a registered political party, means political expenditure incurred (prior to the disendorsement) by the party (as set out in a return under subsection (3a)(a)) during the capped expenditure period for the election that—

- (a) in the case of a House of Assembly election—related to the election of the candidate in the relevant electoral district; or
- (b) in the case of a Legislative Council election—was for electoral matter that—

25 (i) expressly mentioned the name or displayed the image of the candidate; and

(ii) did not expressly mention the name or display the image of any other candidate endorsed by the party in relation to the Legislative Council election;

30 *related to the election of the candidate* has the same meaning as in section 130ZB(3).

14—Amendment of section 130ZF—Returns by certain candidates and groups

(1) Section 130ZF(5)(a)(i)—delete subparagraph (i) and substitute:

35 (i) in relation to a new candidate in an election (other than a candidate referred to in subparagraph (ii))—on the earliest of the following days:

(A) the day on which the person announced that they would be a candidate in the election;

40 (B) the day on which the person was nominated as a candidate in the election;

(C) the day on which the person received their first gift for State electoral purposes in relation to the election; or

- (2) Section 130ZF(5a)—delete "by the agent of a candidate or group of candidates endorsed by a registered political party, the return need not be furnished to the Electoral Commissioner as required by this section." and substitute:

by—

- 5 (a) the agent of a candidate or group of candidates endorsed by a registered political party; or
- (b) the agent of a member of a group of candidates not endorsed by a registered political party,

10 the return need not be furnished to the Electoral Commissioner as required by this section.

- (3) Section 130ZF—after subsection (5a) insert:

- (6) For the purposes of this section, a reference to an amount received is a reference to the amount received excluding GST.

15—Repeal of sections 130ZG and 130ZH

15 Sections 130ZG and 130ZH—delete the sections

16—Amendment of section 130ZI—Special reporting of large gifts

- (1) Section 130ZI(1)(c)—delete "relevant entity" and substitute:

 person who made the gift

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

20 (2) A return is not required to be furnished under subsection (1) during the designated period in relation to an election.

 (3) For the purposes of this section, a reference to an amount received is a reference to the amount received excluding GST.

17—Amendment of section 130ZJ—Certain gifts not to be received

- 25 (1) Section 130ZJ(3)(b)—delete "out of" second occurring

- (2) Section 130ZJ(3)(b)(i)—delete "of the funds"

18—Amendment of section 130ZK—Certain loans not to be received

- (1) Section 130ZK(3)(d)—delete "out of" second occurring

- (2) Section 130ZK(8), definition of *loan*—delete the definition

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

30 Section 130ZN—after subsection (4) insert:

- (5) For the purposes of this section, a reference to an amount received is a reference to the amount received excluding GST.

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

- 35 (1) Section 130ZO(1)—delete "financial controller" and substitute:

 agent

(2) Section 130ZO—after subsection (7) insert:

(8) For the purposes of this section, a reference to an amount received is a reference to the amount received excluding GST.

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

5 (1) Section 130ZP(1)(a)—after "period" insert:

that is intended by the third party to be used for political expenditure

(2) Section 130ZP(1)(b)—after "period" insert:

that is intended by the third party to be used for political expenditure

(3) Section 130ZP(1)(c)—after "party" insert:

10 for the purposes of incurring political expenditure

(4) Section 130ZP(1)(d)—after "organisation" insert:

for the purposes of incurring political expenditure

(5) Section 130ZP(3)—after "year" insert:

that are intended by the third party to be used for political expenditure

15 (6) Section 130ZP—after subsection (3) insert:

(3a) For the purposes of this section, a reference to an amount received is a reference to the amount received excluding GST.

22—Amendment of section 130ZR—Annual returns relating to political expenditure

20 (1) Section 130ZR(1)(b)—delete paragraph (b) and substitute:

(b) the amount of the expenditure was more than \$5 000 (indexed); and

(2) Section 130ZR(3)—delete subsection (3)

(3) Section 130ZR—after subsection (5) insert:

(6) This section does not apply to a third party.

25 **23—Amendment of section 130ZV—Audit certificates**

(1) Section 130ZV(1)(b)—delete "or 130UA" and substitute:

of a kind referred to in section 130U(1)(b)(ii)

(2) Section 130ZV(2a) and (2b)—delete "7" wherever occurring and substitute in each case:

30 8

24—Insertion of section 130ZWA

After section 130ZW insert:

130ZWA—Registered political party to provide details of associated entities

5 The agent of each registered political party must, within 30 days after 30 June in each year, furnish to the Electoral Commissioner, in a form approved by the Electoral Commissioner, details of each entity that the agent knows, or ought reasonably to know, is an associated entity in relation to the registered political party.

10 **25—Amendment of section 130ZZB—Investigation etc**

(1) Section 130ZZB(1)—after the definition of *authorised officer* insert:

designated entity means a candidate, group, registered political party, third party or associated entity.

(2) Section 130ZZB(3) and (4)—delete subsections (3) and (4) and substitute:

15 (3) An authorised officer may, for the purpose of finding out whether the agent of a designated entity has complied with this Part, by notice served personally or by post on the agent or (in the case of a registered political party, third party or associated entity) any officer of the registered political party, third party or associated entity (as the case may be), require the agent or officer—

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

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

- (a) to attend at the proceeding under subsection (3)(b); or
- (b) to nominate another person in writing to attend on behalf of the agent.

30 (3) Section 130ZZB(5)—delete "subsection (3)(d)" and substitute:
subsection (3)(b)

26—Amendment of section 130ZZH—Regulations

Section 130ZZH(3)—after "section 130ZO" insert:
40 or 130ZP (or both)

27—Amendment of section 139—Regulations

Section 139(2)(h)—delete "Part 13A" and substitute:

any amendments to this Act or on the commencement of specified provisions
of this Act