

FIRST PRINT

ELECTION FUNDING (AMENDMENT) BILL 1991

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The Parliamentary Electorates and Elections (Amendment) Bill 1991 is cognate with this Bill.

The object of this Bill is to amend the Election Funding Act 1981 so as:

- (a) to provide that a party is eligible for election funding for a general election if:
 - a member of the group endorsed by the party for election to the Legislative Council is elected; or
 - the group receives at least 4% of all first preference votes at the periodic Council election; and
- (b) to provide that an independent group is eligible for election funding for a general election if:
 - a member of the group is elected to the Legislative Council; or
 - the group receives at least 4% of all first preference votes at the periodic Council election; and
- (c) to provide that an independent candidate for the Legislative Council at a general election is eligible for election funding if:
 - the candidate is elected to the Legislative Council; or
 - the candidate receives at least 4% of all first preference votes at the periodic Council election; and
- (d) to provide that a candidate for the Legislative Assembly at a general election is eligible for election funding if:
 - the candidate is elected to the Legislative Assembly; or
 - the candidate receives at least 4% of all first preference votes in the electoral district; and
- (e) to provide for advance payments to parties for each of three years before a general election, at the rate of 10% of the amount paid to the party for the previous general election; and

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- (f) to enable parties to be eligible for election funding at by-elections, but on a limited basis; and
- (g) to require the Election Funding Authority to pay 70% of a claim for election funding made by a party (less any advance payments), within 14 days after the claim was lodged with the Authority; and
- (h) to empower the Election Funding Authority to waive the audit requirement for a declaration of political contributions and expenditure to be lodged by a group or candidate, if:
 - contributions were not received and expenditure was not incurred; or
 - the group or candidate is not eligible for election funding; and
- (i) to make other provisions of a minor, consequential or ancillary nature.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the proposed Act to commence on assent.

Clause 3 is a formal provision giving effect to the Schedule of amendments.

SCHEDULE 1—AMENDMENTS

Eligibility for election funding

Schedule 1 (2) amends section 59 to give effect to the purpose mentioned in paragraph (a) above. At present, a party is eligible for election funding if the number of first preference votes received by the group endorsed by it exceeds half a quota (3.125% of first preference votes).

Schedule 1 (3) amends section 60 to give effect to the purpose mentioned in paragraph (b) above. At present, an independent group is eligible for election funding if the number of first preference votes received by the group exceeds half a quota.

Schedule 1 (4) amends section 61 to give effect to the purpose mentioned in paragraph (c) above. At present, an independent candidate at a Legislative Council election is eligible for election funding if the candidate is elected or the number of first preference votes received by the candidate exceeds half a quota.

Schedule 1 (5) amends section 65 to give effect to the purpose mentioned in paragraph (d) above. At present, a candidate at a Legislative Assembly election is eligible for election funding if the candidate is elected or the number of first preference votes received by the candidate exceeds half a quota.

Advance payments

Schedule 1 (6) amends section 69 to give effect to the purpose mentioned in paragraph (e) above. At present, a party is eligible for advance payments for each of two years before a general election, at the rate of 10% and 20% respectively of the amount paid to the party for the previous general election.

Entitlement of parties at by-elections

Schedule 1 (7) inserts a new section 73A to give effect to the purpose mentioned in paragraph (f) above. At present, parties are not eligible for election funding at

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by-elections. Under the new scheme, parties may be eligible to participate in payments from the By-election Constituency Fund. However, the maximum payable to both a party and the candidate endorsed by the party will not exceed the amount that would otherwise have been payable to the candidate alone.

Prepayment on lodgment of claims

Schedule 1 (8) inserts a new section 77A to give effect to the purpose mentioned in paragraph (g) above. At present, there is no provision for payment of claims for election funding by instalments. Under the new scheme, the Election Funding Authority is required to pay 70% of the amount claimed (reduced by any advance payments) within 14 days after a claim is lodged with it.

Schedule 1 (10) is a consequential amendment of section 112. The amendment extends the provisions of the section to amounts recoverable under the new section 77A from an unincorporated party. The result is that the recovery of any excess payments by way of prepayments to an unincorporated party is facilitated.

Audit of declarations of political contributions and expenditure

Schedule 1 (9) amends section 93 to give effect to the purpose mentioned in paragraph (h) above. At present, a declaration is required to be audited even though a group or candidate received no political contributions and incurred no political expenditure of the kind required to be disclosed, or even though the group or candidate is not eligible to receive election funding.

Transitional and other provisions

Schedule 1 (11) amends Schedule 2 to insert transitional provisions consequent on the enactment of the Bill. The general result of the provisions is that the amendments apply to future elections, but that the new arrangements for advance payments will not apply until after the next general election.

Schedule 1 (1) omits section 3, which shows the arrangement of the Act. Such arrangements are now replaced by more comprehensive tables of provisions.

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ELECTION FUNDING (AMENDMENT) BILL 1991

NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Election Funding Act 1981 No. 78

SCHEDULE 1—AMENDMENTS

ELECTION FUNDING (AMENDMENT) BILL 1991

NEW SOUTH WALES



No. , 1991

A BILL FOR

An Act to amend the Election Funding Act 1981 in relation to eligibility to receive election funding for general elections, the making of advance payments and prepayments of election funding, the eligibility of parties to receive election funding for by-elections, and the audit of declarations of political contributions and electoral expenditure; and for other purposes.

Election Funding (Amendment) 1991

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Election Funding (Amendment) Act 1991.

Commencement

2. This Act commences on the date of assent.

Amendment of Election Funding Act 1981 No. 78

3. The Election Funding Act 1981 is amended as set out in Schedule 1.

SCHEDULE 1—AMENDMENTS

(Sec. 3)

- (1) Section 3 (**Arrangement**):

Omit the section.

- (2) Section 59 (**General entitlements of parties**):

Omit section 59 (2) (e), insert instead:

(e) either or both of the following occur:

- (i) at least one of the members of the group is elected at the periodic Council election; or
- (ii) the total number of first preference votes polled in favour of the members of the group at the periodic Council election is at least 4 per cent of the total number of first preference votes polled in the election.

- (3) Section 60 (**General entitlements of independent groups in Council elections**):

Omit section 60 (2) (d), insert instead:

(d) either or both of the following occur:

- (i) at least one of the members of the group is elected at the periodic Council election; or

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SCHEDULE 1—AMENDMENTS—*continued*

- (ii) the total number of first preference votes polled in favour of the members of the group at the periodic Council election is at least 4 per cent of the total number of first preference votes polled in the election.
- (4) Section 61 (**General entitlements of independent candidates in Council elections**):
 - Omit section 61 (2) (c), insert instead:
 - (c) either or both of the following occur:
 - (i) the candidate is elected at the periodic Council election; or
 - (ii) the total number of first preference votes polled in favour of the candidate at the periodic Council election is at least 4 per cent of the total number of first preference votes polled in the election.
- (5) Section 65 (**General entitlements of candidates in Assembly elections**):
 - Omit section 65 (2) (b), insert instead:
 - (b) either or both of the following occur:
 - (i) the candidate is elected at the election; or
 - (ii) the total number of first preference votes polled in favour of the candidate at the election is at least 4 per cent of the total number of first preference votes polled in favour of all candidates for election for the electoral district concerned.
- (6) Section 69 (**Entitlements to advance payments**):
 - Omit section 69 (1)–(3), insert instead:
 - (1) A party is, subject to and in accordance with this Act, eligible for the payment, as an advance payment for expenditure incurred for election campaign purposes for a general election, of an amount, ascertained in accordance with subsection (2), for each of the first 3 complete years after the day for the return of the writs for the previous general election.

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SCHEDULE 1—AMENDMENTS—*continued*

(2) The amount payable, by way of advance payment, for a complete year after the day for the return of the writs for the previous general election is an amount equal to 10 per cent of the total amount to which the party was entitled under this Part for that previous general election.

(7) Section 73A:

After section 73, insert:

Entitlement of parties at by-elections

73A. (1) Parties are, subject to and in accordance with this Act, eligible for payment from the By-election Constituency Fund for a by-election.

(2) A party is eligible to participate in the distribution of the fund if:

- (a) it was a registered party as at the polling day for the by-election; and
- (b) the Authority is satisfied that a candidate for the by-election claims to be endorsed by the party (and by no other party); and
- (c) either or both of the following occur:
 - (i) the candidate is elected at the by-election; or
 - (ii) the total number of first preference votes polled in favour of the candidate at the by-election is at least 4 per cent of the total number of first preference votes polled in favour of all candidates for election for the electoral district concerned.

(3) The amount that a party is eligible to receive under this section is however limited to the maximum amount that is available for distribution to the candidate endorsed by the party. That maximum amount is determined under the provisions referred to in section 73 (6).

(4) If the amounts payable to the candidate and the party endorsing the candidate together would exceed that maximum amount, those amounts are to be reduced proportionately, so that they together equal (as closely as possible) that maximum amount.

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SCHEDULE 1—AMENDMENTS—*continued*

(8) Section 77A:

After section 77, insert:

Prepayment on lodgment of claims

77A. (1) If the Authority is unable to finalise a claim for payment lodged on behalf of a party within 14 days, the Authority is required to make a preliminary payment within that period of 14 days.

(2) The preliminary payment is to be of an amount equal to 70 per cent of the total amount estimated by the Authority to be payable to the party, reduced by the amount of any advance payments made for the election concerned.

(3) In making an estimate under this section, the Authority may, but need not, rely on information contained in the claim lodged by the party.

(4) Preliminary payments are available only for amounts payable under Divisions 3 and 6.

(5) If a party receives a preliminary payment in excess of the amount (if any) to which it becomes entitled under a claim for payment, the amount of the excess must be repaid to the Authority within 60 days after the Authority notifies the party.

(6) The amount of any such excess may be recovered by the Authority as a debt in any court of competent jurisdiction or may be deducted from any other money owing to the party from the Authority.

(9) Section 93 (**Audit of declaration**):

Insert at the end of the section:

(2) Subsection (1) does not apply to a declaration made in relation to a group or candidate, if the Authority waives compliance with the audit requirement for the declaration.

(3) The Authority may waive compliance with the audit requirement in either of the following cases:

- (a) where the declaration contains a statement to the effect that no contributions were received and no expenditure was incurred; or

Election Funding (Amendment) 1991

SCHEDULE 1—AMENDMENTS—*continued*

(b) where the group or candidate to whom the declaration relates is not eligible to receive a payment under Part 5.

(4) Such a waiver is at the discretion of the Authority, and may be made before or after the declaration is received by the Authority.

(5) The Authority may revoke a waiver at any time. Revocation does not affect the validity of the lodgment of a declaration already made, unless the required certificate of an auditor is not forwarded to the Authority within the time specified by the Authority.

(10) Section 112 (**Prosecution of unincorporated parties**):

Omit “section 71 or 77”, insert instead “section 71, 77 or 77A”.

(11) Schedule 2 (**Transitional Provisions**):

- (a) Before clause 1, insert “Part 1—Provisions consequent on enactment of this Act”.
- (b) Before clause 5, insert “Part 2—Provisions consequent on enactment of Election Funding (Amendment) Act 1987”.
- (c) At the end of the Schedule, insert:

**Part 3—Provisions consequent on enactment of
Election Funding (Amendment) Act 1991**

Operation of amendments

7. (1) In this clause, “the amendments” means the amendments made by the Election Funding (Amendment) Act 1991, other than the amendments made to this Schedule.

(2) The amendments apply to elections held after the date of assent to the Election Funding (Amendment) Act 1991.

(3) This Act as in force before the date of assent to that Act continues to apply to elections held before that date.

(4) However, if the date of assent to that Act is later than the day of issue of the writ or writs for the next election held after that day, the amendments do not apply to that election and this Act as in force before the date of assent to that Act applies to it.

(5) This clause has effect subject to clause 8.

Election Funding (Amendment) 1991

SCHEDULE 1—AMENDMENTS—*continued***Advance payments**

8. (1) The amendment made to section 69 by the Election Funding (Amendment) Act 1991 does not apply to advance payments calculated by reference to any previous general election held before the date of assent to that Act.

(2) Section 69 as in force before the date of assent to the Election Funding (Amendment) Act 1991 continues to apply to advance payments calculated by reference to any such previous general election.

ELECTION FUNDING (AMENDMENT) ACT 1991 No. 13

NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Election Funding Act 1981 No. 78

SCHEDULE 1—AMENDMENTS



ELECTION FUNDING (AMENDMENT) ACT 1991 No. 13

NEW SOUTH WALES



Act No. 13, 1991

An Act to amend the Election Funding Act 1981 in relation to eligibility to receive election funding for general elections, the making of advance payments and prepayments of election funding, the eligibility of parties to receive election funding for by-elections, and the audit of declarations of political contributions and electoral expenditure; and for other purposes.
[Assented to 3 May 1991]

See also Parliamentary Electorates and Elections (Amendment) Act 1991.

Election Funding (Amendment) 1991

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Election Funding (Amendment) Act 1991.

Commencement

2. This Act commences on the date of assent.

Amendment of Election Funding Act 1981 No. 78

3. The Election Funding Act 1981 is amended as set out in Schedule 1.

SCHEDULE 1—AMENDMENTS

(Sec. 3)

- (1) Section 3 (**Arrangement**):

Omit the section.

- (2) Section 59 (**General entitlements of parties**):

Omit section 59 (2) (e), insert instead:

(e) either or both of the following occur:

- (i) at least one of the members of the group is elected at the periodic Council election; or
- (ii) the total number of first preference votes polled in favour of the members of the group at the periodic Council election is at least 4 per cent of the total number of first preference votes polled in the election.

- (3) Section 60 (**General entitlements of independent groups in Council elections**):

Omit section 60 (2) (d), insert instead:

(d) either or both of the following occur:

- (i) at least one of the members of the group is elected at the periodic Council election; or

Election Funding (Amendment) 1991

SCHEDULE 1—AMENDMENTS—*continued*

- (ii) the total number of first preference votes polled in favour of the members of the group at the periodic Council election is at least 4 per cent of the total number of first preference votes polled in the election.

(4) Section 61 (**General entitlements of independent candidates in Council elections**):

Omit section 61 (2) (c), insert instead:

(c) either or both of the following occur:

- (i) the candidate is elected at the periodic Council election; or
- (ii) the total number of first preference votes polled in favour of the candidate at the periodic Council election is at least 4 per cent of the total number of first preference votes polled in the election.

(5) Section 65 (**General entitlements of candidates in Assembly elections**):

Omit section 65 (2) (b), insert instead:

(b) either or both of the following occur:

- (i) the candidate is elected at the election; or
- (ii) the total number of first preference votes polled in favour of the candidate at the election is at least 4 per cent of the total number of first preference votes polled in favour of all candidates for election for the electoral district concerned.

(6) Section 69 (**Entitlements to advance payments**):

Omit section 69 (1)–(3), insert instead:

(1) A party is, subject to and in accordance with this Act, eligible for the payment, as an advance payment for expenditure incurred for election campaign purposes for a general election, of an amount, ascertained in accordance with subsection (2), for each of the first 3 complete years after the day for the return of the writs for the previous general election.

Election Funding (Amendment) 1991

SCHEDULE 1—AMENDMENTS—*continued*

(2) The amount payable, by way of advance payment, for a complete year after the day for the return of the writs for the previous general election is an amount equal to 10 per cent of the total amount to which the party was entitled under this Part for that previous general election.

(7) Section 73A:

After section 73, insert:

Entitlement of parties at by-elections

73A. (1) Parties are, subject to and in accordance with this Act, eligible for payment from the By-election Constituency Fund for a by-election.

(2) A party is eligible to participate in the distribution of the fund if:

- (a) it was a registered party as at the polling day for the by-election; and
- (b) the Authority is satisfied that a candidate for the by-election claims to be endorsed by the party (and by no other party); and
- (c) either or both of the following occur:
 - (i) the candidate is elected at the by-election; or
 - (ii) the total number of first preference votes polled in favour of the candidate at the by-election is at least 4 per cent of the total number of first preference votes polled in favour of all candidates for election for the electoral district concerned.

(3) The amount that a party is eligible to receive under this section is however limited to the maximum amount that is available for distribution to the candidate endorsed by the party. That maximum amount is determined under the provisions referred to in section 73 (6).

(4) If the amounts payable to the candidate and the party endorsing the candidate together would exceed that maximum amount, those amounts are to be reduced proportionately, so that they together equal (as closely as possible) that maximum amount.

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SCHEDULE 1—AMENDMENTS—*continued*

(8) Section 77A:

After section 77, insert:

Prepayment on lodgment of claims

77A. (1) If the Authority is unable to finalise a claim for payment lodged on behalf of a party within 14 days, the Authority is required to make a preliminary payment within that period of 14 days.

(2) The preliminary payment is to be of an amount equal to 70 per cent of the total amount estimated by the Authority to be payable to the party, reduced by the amount of any advance payments made for the election concerned.

(3) In making an estimate under this section, the Authority may, but need not, rely on information contained in the claim lodged by the party.

(4) Preliminary payments are available only for amounts payable under Divisions 3 and 6.

(5) If a party receives a preliminary payment in excess of the amount (if any) to which it becomes entitled under a claim for payment, the amount of the excess must be repaid to the Authority within 60 days after the Authority notifies the party.

(6) The amount of any such excess may be recovered by the Authority as a debt in any court of competent jurisdiction or may be deducted from any other money owing to the party from the Authority.

(9) Section 93 (**Audit of declaration**):

Insert at the end of the section:

(2) Subsection (1) does not apply to a declaration made in relation to a group or candidate, if the Authority waives compliance with the audit requirement for the declaration.

(3) The Authority may waive compliance with the audit requirement in either of the following cases:

- (a) where the declaration contains a statement to the effect that no contributions were received and no expenditure was incurred; or

Election Funding (Amendment) 1991

SCHEDULE 1—AMENDMENTS—*continued*

- (b) where the group or candidate to whom the declaration relates is not eligible to receive a payment under Part 5.
 - (4) Such a waiver is at the discretion of the Authority, and may be made before or after the declaration is received by the Authority.
 - (5) The Authority may revoke a waiver at any time. Revocation does not affect the validity of the lodgment of a declaration already made, unless the required certificate of an auditor is not forwarded to the Authority within the time specified by the Authority.
- (10) Section 112 (**Prosecution of unincorporated parties**):
Omit “section 71 or 77”, insert instead “section 71, 77 or 77A”.
- (11) Schedule 2 (**Transitional Provisions**):
 - (a) Before clause 1, insert “Part 1—Provisions consequent on enactment of this Act”.
 - (b) Before clause 5, insert “Part 2—Provisions consequent on enactment of Election Funding (Amendment) Act 1987”.
 - (c) At the end of the Schedule, insert:

**Part 3—Provisions consequent on enactment of
Election Funding (Amendment) Act 1991**

Operation of amendments

7. (1) In this clause, “**the amendments**” means the amendments made by the Election Funding (Amendment) Act 1991, other than the amendments made to this Schedule.

(2) The amendments apply to elections held after the date of assent to the Election Funding (Amendment) Act 1991.

(3) This Act as in force before the date of assent to that Act continues to apply to elections held before that date.

(4) However, if the date of assent to that Act is later than the day of issue of the writ or writs for the next election held after that day, the amendments do not apply to that election and this Act as in force before the date of assent to that Act applies to it.

(5) This clause has effect subject to clause 8.

Election Funding (Amendment) 1991

SCHEDULE 1—AMENDMENTS—*continued***Advance payments**

8. (1) The amendment made to section 69 by the Election Funding (Amendment) Act 1991 does not apply to advance payments calculated by reference to any previous general election held before the date of assent to that Act.

(2) Section 69 as in force before the date of assent to the Election Funding (Amendment) Act 1991 continues to apply to advance payments calculated by reference to any such previous general election.

*[Minister's second reading speech made in—
Legislative Assembly on 10 April 1991
Legislative Council on 17 April 1991]*



