

# ELECTION FUNDING (AMENDMENT) ACT 1991 No. 13

NEW SOUTH WALES



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# 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]

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

*Election Funding (Amendment) 1991*

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**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.

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**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

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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.



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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.

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





