

# Deed for Candidates

## **NICK XENOPHON'S SA-BEST INCORPORATED**

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**NICK XENOPHON'S SA-BEST INCORPORATED  
INCORPORATION NO. A43253**

**DEED FOR CANDIDATES**

**THIS DEED APPLIES ONLY IN RELATION TO THE  
ELECTION SPECIFIED BELOW:**

**South Australian State election - 17 March 2018**

# Details

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## Date

## Deed:

Between:

Name	<b>NICK XENOPHON'S SA-BEST INCORPORATED</b>
Short form name	<b>Association</b>
Notice details	PO Box 3015 UNLEY SA 5061 Telephone: 08 8545 0400 Email: <a href="mailto:nx@sa-best.org.au">nx@sa-best.org.au</a> Website: <a href="http://sa-best.org.au">sa-best.org.au</a>

Name	<b>The person named in Item 1 of the Schedule</b>
Short form name	<b>Candidate</b>
Notice details	Notice details specified in <b>Item 2</b> of the <b>Schedule</b>

## Background

- A. The Association is a registered political party under the Electoral Act.
- B. The Candidate is a member of the Association.
- C. The Candidate wishes to be endorsed by the Association for election to the House of Assembly of the Parliament of South Australia or the Legislative Council for the State of South Australia for the election specified in **Item 4** of the **Schedule** ('**Election**').
- D. This Deed records an agreement between the Association and the Candidate relating to possible endorsement of the Candidate for election to Parliament at the Election.

# Deed

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## 1. Definitions and Interpretation

In this Deed:

- (a) **Application Fee** means the amount payable by a Candidate upon application for endorsement in accordance with clause 5.2.
- (b) **Campaign Co-ordinator** means the person(s) notified by the Association as holding that position in the Association.
- (c) **Confidential Information** means information described in clause 4.3(a).
- (d) **Constitution** means the constitution of the Association, as amended.
- (e) **Election** means:
  - (i) the election of members of the House of Assembly; or
  - (ii) the election of members of the Legislative Councilspecified in **Item 4** of the Schedule for which the Candidate is nominated, and the name and address of the Candidate is declared, in accordance with the Electoral Act.
- (f) **Election Expenditure Statement** means a statement of expenditure on the Candidate under clause 5.2.
- (g) **Electoral Act** means the *Electoral Act 198* of South Australia, as amended.
- (h) **Key Policies** means the policies of the Association described in clause 4.1 as amended.
- (i) **Management Committee** has the meaning given in the Constitution.
- (j) **Parliament** means the House of Assembly or the Legislative Council of the Parliament of South Australia.
- (k) **person** includes a corporation, firm, political party and association.
- (l) **State Campaign Fund Contribution** means the amount payable by a Candidate upon endorsement in accordance with clause 5.3.
- (m) **Term** has the meaning in clause 2.2.
- (n) Words or expressions defined in the Constitution have the same meaning in this Deed.

## 2. Application of this Deed

### 2.1 Term

Subject to clause 2.3, this Deed applies during the Term.

### 2.2 Period of the Term

The Term starts on the date of execution of this Deed and ends on either:

- (a) if the Candidate is elected to be a member of Parliament at the Election – the date (if any) on which Candidate ceases to be:
  - (i) a member of Parliament; or
  - (ii) a member of the Association,

for any reason (whichever is the later); or

- (b) if the Candidate is not elected as a member of Parliament at the Election – the expiry of 30 days after the date of the Election.

### **2.3 Survival**

Clauses 5, 6 and 7 are continuing obligations and survive the Term.

## **3. Selection for Endorsement**

### **3.1 Political Affiliations**

At all times during the Term the Candidate must:

- (a) be and remain a member of the Association; and
- (b) not be or become a member, or apply for membership, of any other political party (whether or not registered under the Electoral Act or the Commonwealth Electoral Act or any legislation of a State or Territory).

### **3.2 Accuracy of Information**

- (a) The Candidate declares that all information given by the Candidate to the Association is truthful, accurate and complete to the best of the Candidate's knowledge at the time of giving that information to the Association, and remains truthful, accurate and complete on the date of this Deed.
- (b) The Candidate acknowledges that the Association has relied upon the truthfulness, accuracy and completeness of all information given by the Candidate to the Association in determining whether to endorse the Candidate for election to Parliament.
- (c) The Candidate must immediately notify the Convener and Campaign Co-ordinator if any information given by the Candidate to the Association ceases to be truthful, accurate and complete.

## **4. Policies of the Association**

### **4.1 Support Key Policies**

- (a) The Candidate must support the Key Policies as defined by the Management Committee at all times during the Term.
- (b) If the Candidate is elected to Parliament at the Election, but ceases to be a member of the Association prior to the following Election, the Candidate should continue to support the Key Policies at all times until the date of that following Election.

### **4.2 Key Policies**

The Key Policies include, but are not limited to:

- (a) Predatory Gambling;
- (b) Government Transparency & Accountability;
- (c) Australian Made;
- (d) Foreign Investment; and
- (e) Drug Rehabilitation.

### **4.3 Policy Development**

Development of policy is governed by the Constitution and the rules of the Association.

## 5. Financial Matters

### 5.1 Public Statements

The Candidate acknowledges that the Association will incur financial costs to support and promote the Candidate if the Candidate is endorsed for election to Parliament.

### 5.2 Application Fee

- (a) Upon lodgement of an application for endorsement by the Association for election to Parliament at the Election, the Candidate must pay to the Association an application fee of \$1,000.00 (**'Application Fee'**).
- (b) The Application Fee is a contribution to costs of administration and review of the Candidate's application including interviews and training.
- (c) Payment of the Application Fee does not guarantee or imply that a Candidate's application for endorsement will be accepted or that the Candidate will, or may be, endorsed for election to Parliament.
- (d) The Application Fee is non-refundable and may be used by the Association upon receipt.

### 5.3 State Campaign Fund Contribution

- (a) If the Candidate is endorsed by the Association for election to Parliament at the Election, the Candidate must pay to the Association a state campaign fund contribution of \$20,000.00 (**'State Campaign Fund Contribution'**).
- (b) The State Campaign Fund Contribution is intended to assist the Association with costs of campaigning for the Election.
- (c) The Candidate must pay, or provide security for, the State Campaign Fund Contribution prior to endorsement by any of the following means:
  - (i) payment of the State Campaign Fund Contribution to the Association (which funds will be held by the Association in a bank account of the Association used only for receipt of such funds from Candidates pending endorsement);
  - (ii) payment of the State Campaign Fund Contribution into the trust account of a solicitor with an irrevocable direction to the solicitor to pay that amount to the Association upon notice by the Association to that solicitor that the Candidate has been endorsed for election to the Parliament at the Election);
  - (iii) provision of a bank guarantee for the State Campaign Fund Contribution which is payable upon notice by the Association to the bank that the Candidate has been endorsed for election to the Parliament at the Election); or
  - (iv) any other means acceptable to the Management Committee.
- (d) The date by which the Candidate must pay or provide security for the State Campaign Fund Contribution, and any other terms of payment or security for the State Campaign Fund Contribution, are determined by the Management Committee at its discretion and will be notified to the Candidate before the Candidate pays or provides security for the State Campaign Fund Contribution.
- (e) If the Candidate is not endorsed by the Association for election to Parliament at the Election, the Association must repay or direct repayment of the State Campaign Fund Contribution to the Candidate, or cause security for the State Campaign Fund Contribution

to be released and returned to the Candidate, within 7 days after its decision not to endorse the Candidate.

- (f) If the Candidate is endorsed by the Association for election to Parliament at the Election, the Association becomes beneficially entitled to the State Campaign Fund Contribution immediately upon endorsement and is entitled to use, pay and apply the State Campaign Fund Contribution for the purposes of campaigning for the Election that the manner determined by the Management Committee.
- (g) The State Campaign Fund Contribution of a Candidate endorsed by the Association is non-refundable.

#### **5.4 Incurring Costs**

- (a) The Candidate must not incur any costs, expenses or liabilities for, or in the name of, the Association, or otherwise represent to any person that the Association will pay, authorise or guarantee payment of any costs, expenses or liabilities, unless authorised in writing by the Campaign Co-ordinator.
- (b) Any authorisation by the Campaign Co-ordinator under clause 5.4(a) is limited to the specific cost, expense or liability described in that authorisation and is not deemed to authorise additional or future costs, expenses or liabilities of the same or similar kind (unless expressly stated to do so).

#### **5.5 Donations**

- (a) All donations, gifts, benefits and other forms of funding and financial assistance relating to the Association or the Election (including funding of the Association by legislation) is the property of the Association, not the Candidate.
- (b) The Candidate holds all such donations, gifts, benefits and other forms of funding and financial assistance for the benefit of the Association, and must pay and account to the Association for the full amount and value of such donations, gifts, benefits and other forms of funding and financial assistance.

#### **5.6 Election Expenditure Statement**

- (a) If the Candidate is elected to Parliament at the Election, the Association will give to the Candidate, within 90 days of the Election, a statement specifying the amount of financial costs incurred by the Association to promote the Candidate for election to Parliament at that Election (**‘Election Expenditure Statement’**).
- (b) The Association may make an estimate in good faith of any amounts included in the Election Expenditure Statement.
- (c) If the Candidate disagrees with the Election Expenditure Statement, the Candidate may give written notice to that fact to the Convener within 14 days after receipt of the Election Expenditure Statement. In that event, the Association and the Candidate must act reasonably and in good faith to agree upon the amount of the Election Expenditure Statement. If they are unable to agree within 14 days, the amount of the Election Expenditure Statement shall be determined by an independent chartered accountant nominated by the Convener (**‘Expert’**) who shall act as an expert and not as an arbitrator, and whose decision shall be final and binding. The Association and the Candidate must provide to the Expert all information requested for that purpose and must pay the costs of the Expert in equal shares.
- (d) If the Candidate agrees with the Election Expenditure Statement, or does not give a notice of disagreement within 14 days under clause 5.2(c), then the financial costs incurred by

the Association to promote the Candidate for election to Parliament shall be the amount stated on that Election Expenditure Statement.

## **5.7 Reimbursement of Financial Costs to Promote Candidate**

- (a) If the Candidate is elected to Parliament at the Election, but ceases for any reason to be a member of Parliament or a member of the Association prior to the following Election (otherwise than due to death, illness, injury or disability), then the Candidate must, upon written notice from the Association, pay to the Association within 60 days the amount stated in the Election Expenditure Statement less the State Campaign Fund Contribution paid by that Candidate.
- (b) The Association and the Candidate agree that the Election Expenditure Statement (after deducting the State Campaign Fund Contribution paid by that Candidate) represents a genuine pre-estimate of financial loss suffered by the Association as a consequence of promoting for election a candidate who subsequently ceases to be a member of Parliament or a member of the Association.
- (c) The Candidate must pay the amount of the Election Expenditure Statement (after deducting the State Campaign Fund Contribution paid by that Candidate) by way of reimbursement or compensation for such loss suffered by the Association.

## **5.8 Contribution from Base Parliamentary Salary**

- (a) If the Candidate is elected to Parliament at the Election, the Candidate must pay an amount or proportion of his or her base Parliamentary salary to the Association to be applied towards administration and operation of the Association's campaign office.
- (b) The amount or proportion will be determined by the Management Committee taking into account funding requirements, the level of income received by the Association (including from donations) and the number of Parliamentary Members of the Association. The amount or proportion will not exceed 10% of his or her base Parliamentary salary.

# **6. Public Statements and Authority**

## **6.1 Public Statements**

In accordance with clause 5.10 of the Constitution, the Candidate undertakes that he or she must not make public statements (including press releases and other formal and informal statements to the media) for or on behalf of the Association, or representing Objects or policies of the Association, unless the Candidate is expressly authorised in writing by the Convener (or by the Campaign Co-ordinator on behalf of the Convener) to make such statements.

## **6.2 Authority**

The Candidate has no authority, actual or ostensible, to bind or act on behalf of a Parliamentary Member or the Association, or to represent to any person (including a media representative) that he or she has such authority.

## **6.3 Confidential Information**

- (a) The Candidate must keep confidential all information disclosed or communicated in confidence to the Candidate by the Association or by Members of the Association including, without limitation:
  - (i) conduct of meetings of the Association;
  - (ii) business and resolutions proposed, considered, discussed and transacted at meetings of the Association (including formulation of policy and contribution to policy development);

- (iii) disciplinary matters, fees and subscriptions, management and governance of the Association;
  - (iv) communication and negotiation with third parties (including other members of Parliament and political parties) in relation to the Association or its policies; and
  - (v) databases of information created, compiled, stored or used by the Association, whether or not the Candidate assisted in the creation, compilation, storage or use of that database or the information in that database (which remains owned by the Association .
- (b) The Candidate must not create, use, publish, broadcast or disseminate marketing or promotional material unless that material has been approved in writing by the Campaign Co-ordinator.
  - (c) The Candidate must not use or disclose Confidential Information except with written authorisation of the Convener (or of the Campaign Co-ordinator on behalf of the Convener), or as required by law.
  - (d) The Candidate must immediately inform the Convener (or of the Campaign Co-ordinator on behalf of the Convener) if the Candidate becomes aware of any unauthorised use or disclosure of Confidential Information.

#### **6.4 Cessation of use of election material and confidential information**

If the Candidate is not elected to Parliament at the Election, the Candidate must within fourteen days after the Election:

- (a) cease using the name, logos, acronyms and other representations of the Association;
- (b) cease using and destroy all materials (including posters, flyers, marketing materials, documents and other media and publications) supplied or approved by the Association in relation to the Election;
- (c) cease using and destroy all material supplied by, or obtained from, the Association in relation to the Election;
- (d) deactivate all media referring to or depicting the Candidate and the Association (including campaign social media accounts);
- (e) cease using any Confidential Information (including Confidential Information that the Candidate was authorised to use under clause 6.3) except as required by law;
- (f) cease using all databases of the Association (and the Candidate agrees that all databases are owned by the Association); and
- (g) indemnify the Association and keep it indemnified from and against all costs, expenses, losses and liabilities suffered or incurred by the Association directly or indirectly as a consequence of any failure by the Candidate to comply with this clause 6.4, including costs incurred by the Association to do, or attempt to do, anything required of the Candidate under this clause 6.4.

## **7. General**

### **7.1 No Employment Relationship**

Nothing in this Deed is intended to create or record an employment relationship between the Association and the Candidate. The Candidate acknowledges, as a condition of endorsement, that he or she is not an employee of the Association and is not entitled to any salary, wages, fees or other remuneration for services provided as a Candidate.



## **7.2 Declaration of Gifts**

The Candidate must immediately notify the Campaign Co-ordinator in writing within 7 days of receiving or benefitting from any gift, donation, payment or other benefit made or given to that Candidate, or to any other person with the knowledge of that Candidate, where it is objectively reasonable to conclude that such gift, donation, payment or other benefit was made or given because of the position or influence of the Candidate as a Member of the Association or as a Member of Parliament (if elected to the Parliament).

## **7.3 Constitution and Rules**

This Deed is to be interpreted in conjunction with the Constitution and the rules from time to time communicated to Members in accordance with clause 30 of the Constitution.

## **7.4 No Assurance of Endorsement**

Execution of this Deed does not constitute endorsement of the Candidate, or any warranty, assurance or representation by the Association that the Candidate will be endorsed for election to Parliament.

## **7.5 Amendment**

This Deed may be amended, added to or revoked by the parties by further deed.

## **7.6 Severance**

Any provision of this Deed that is void, illegal or unenforceable will be severed from this Deed and shall not affect the validity and continued operation of the remaining provisions of this Deed.

## **7.7 Costs**

Each party must pay its own costs of and relating to preparation, execution and performance of this Deed.

## **7.8 Jurisdiction**

This Deed is governed by the laws, and jurisdiction of the Courts, of South Australia and the Commonwealth of Australia.

# Signing page

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Executed as a Deed:

**EXECUTED** by:  
**NICK XENOPHON'S SA-BEST INC.:**

\_\_\_\_\_ ← \_\_\_\_\_

**SIGNED** by the person named below who accepts and agrees to be bound by this Deed:

**Signed** by:

in the presence of:

\_\_\_\_\_ ← \_\_\_\_\_ ←  
Signature of witness

\_\_\_\_\_  
Name of witness (print)

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## SCHEDULE

<b>Item 1:</b>	
<b>Name of Candidate:</b>	
<b>Item 2:</b>	
<b>Contact details for Candidate:</b>	<i>Address:</i> _____ <i>Telephone:</i> _____ <i>Email:</i> _____ <i>Facsimile:</i> _____
<b>Item 3:</b>	
<b>State/Territory:</b>	<i>Insert State/Territory:</i>
<b>Item 4:</b>	
<b>Election</b>	<b>South Australian State election - 17 March 2018</b>