

EXPLANATORY MEMORANDUM

ELECTORAL AMENDMENT BILL 2024

Overview of the Bill

The Electoral Amendment Bill 2024 (Bill) will amend the *Electoral Act 1907 (WA)* (Act) in four main respects.

Firstly, it will ensure that where a political entity receives from a person a political contribution the amount or value of which exceeds the specified amount, or when combined with previous political contributions by the same person in the same financial year exceeds the specified amount, the responsible person for that political entity will be required to lodge a notice with the Western Australian Electoral Commission (Commission) disclosing the contribution and including relevant details. Further, the political entity must lodge a notice in relation to any subsequent political contribution by that same person in the same financial year, regardless of amount or value. The required timeframe for lodging the notice in each case is within seven days of receipt of the political contribution, except during the capped expenditure period when the notice must be lodged by the end of the next business day following receipt.

Secondly, the Bill will provide for a responsible person to meet their obligation to lodge a notice disclosing a political contribution by having another person lodge the notice on their behalf.

Thirdly, the Bill will amend the Electoral Commissioner's obligations to publish the information contained in the notice, as well as certain claims and disclosure documents, on the Commission's website. The Bill will prohibit the Electoral Commissioner publishing a person's address other than their postcode, and if the person has informed the Electoral Commissioner that they are a silent elector, any part of their address including their postcode. The Bill also amends the Electoral Commissioner's obligation to make certain claims and disclosure documents available for perusal and copying.

Fourthly, the Bill will make it unlawful for a political entity or person acting on their behalf to receive any political contribution, regardless of the amount or value, unless they know the name and address of the donor, or are given these details and have no reason to believe they are not true. A responsible person for a political entity who, without reasonable excuse, fails to ensure the political entity does not receive such an unlawful political contribution will commit an offence, unless they take all reasonable steps to return it or transfer an equivalent amount to the State or the donor (or a person acting on their behalf) within 7 days after the day it was received.

Clause 1 Short Title

Clause 1 provides that the Bill, once enacted, will be known as the *Electoral Amendment Act 2024*.

Clause 2 Commencement

Clause 2 provides for the commencement of the Act.

Sections 1 and 2 will come into operation on the day the Act receives Royal Assent.

The rest of the provisions will come into operation immediately after the *Electoral Amendment (Finance and Other Matters) Act 2023* sections 112, 130, 131, 132, 136, 147 and 153 come into operation.

Clause 3 Act amended

Clause 3 provides that the Act amends the *Electoral Act 1907*.

Clause 4 Part 6 heading amended

Clause 4 amends the heading to Part 6 by replacing the reference to “gifts” with “political contributions”.

Clause 5 Sections 175MA and 175MB replaced

Clause 5 deletes sections 175MA and 175MB, and inserts new section 175MA dealing with disclosure of political contributions that are, or that are in combination, more than the specified amount.

Proposed subsection 175MA(1) sets out two ways that section 175MA is enlivened. Firstly, if a political entity receives a political contribution of an amount or value which is more than the specified amount. Secondly, if a political entity receives a political contribution the amount or value of which is, in combination with all previous political contributions received by the political entity from the same person in the same financial year, more than the specified amount. In some cases, both preconditions will be met.

Proposed subsection 175MA(2) provides that the responsible person for the political entity must lodge a notice with the Electoral Commissioner, and sets out the timeframes for doing so both where the contribution is received during the capped expenditure period for an election, and otherwise.

Proposed subsection 175MA(3) provides that the notice must be in writing and state that the political entity has received a political contribution the amount or value of which is more than the specified amount; or which is, in combination with all previous political contributions by the same person in the same financial year, more than the specified amount.

Proposed subsection 175MA(4) provides that the notice must also state the relevant details of the political contribution and each political contribution from the same person in the same financial year for which the responsible person has not previously lodged a notice.

Note: subsection 175M(1) lists the relevant details of a political contribution.

Proposed subsection 175MA(5) provides that the responsible person is taken to have lodged a notice if another person lodges the notice on their behalf. This allows the responsible person to instruct another person to lodge a notice they are required to lodge under this section, while ensuring they remain liable for doing so in accordance with the provisions.

Clause 6 Section 175MC amended

Clause 6 amends section 175MC.

Subsection 175MC(1) is replaced with proposed subsection 175MC(1) which provides that if the Electoral Commissioner receives a notice under section 175MA, they must publish the information in the notice on the Commission website as soon as practicable.

Subsection 175MC(3) is amended to remove references to subsections 175MA(1) and 175MB(2) and (4), and to add “a person’s address other than their postcode” to the types of information the Electoral Commissioner must ensure is not published under subsection 175MC(1).

Subsection 175MC(4) is amended to replace references to subsections 175MA(1) and 175MB(2) and (4) with a reference to proposed section 175MA in its entirety, and to clarify that in the case of a person who informs the Electoral Commissioner that they are a silent elector, the Electoral Commissioner must not publish the person’s address including their postcode.

Clause 7 Section 175N amended

Clause 7 amends subsection 175N(3) to put beyond doubt that political parties lodging an annual return under section 175N must report the combined amount or value of all political contributions received, as well as the relevant details of each individual political contribution for which a notice must be lodged under proposed new section 175MA.

Clause 8 Section 175NA amended

Clause 8 amends subsection 175NA(2) to put beyond doubt that associated entities lodging an annual return under section 175NA must report the combined amount or value of all political contributions received, as well as the relevant details of each

individual political contribution for which a notice must be lodged under proposed new section 175MA.

Clause 9 Section 175R amended

Clause 9 amends section 175R which provides that political contributions must not be accepted unless the identity of the donor is known or believed to be known.

Subsection 175R(1) is deleted and replaced with proposed subsections 175R(1AA), 175R(1), 175R(1A) and 175R(1B). Proposed subsection 175R(1) makes it unlawful for a political entity, or a person acting on their behalf, to receive a political contribution of any amount or value for the benefit of that political entity unless they know the name and address of the donor, or the name and address of the donor are given to them and they have no grounds to believe they are not true. This alters the existing position whereby it is only unlawful under section 175R to receive a political contribution from an unidentified donor if the amount or value of the contribution exceeds the specified amount.

Subsection 175R(3) is amended, replacing a reference to subsection 175R(1) with a reference to the section as a whole, and deleting subsection 175R(3)(c) which required multiple political contributions by the same person in the same financial year to be taken together, because the section will now apply to all political contributions not just those that exceed the specified amount.

Subsections 175R(4) and 175R(5) are deleted and replaced with proposed subsections 175R(4), 175R(4A) and 175R(5).

Proposed subsection 175R(4) provides that a responsible person for a political entity must, unless they have a reasonable excuse, ensure that neither the political entity or a person acting on behalf of that entity receive a political contribution that would be unlawful under proposed subsection 175R(1). The penalty for failing to comply is, if the responsible person is the agent of a political party, a fine of \$36,000, and otherwise a fine of \$24,000.

Proposed subsection 175R(4A) provides the responsible person for a political entity does not commit an offence under proposed subsection 175R(4) if they, or another person acting on their behalf, take all reasonable steps to ensure acceptable action is taken in relation to the political contribution within 7 days after the day it was received. Acceptable action is defined in proposed subsection 175R(1AA) to mean that the political contribution is returned to the donor or another person acting on their behalf, or an amount equal to the amount or value of the political contribution is transferred to the State, the donor or another person acting on behalf of the donor.

Proposed subsection 175R(5) provides that if a political contribution is received unlawfully under proposed subsection 175R(1) and acceptable action is not taken by

the end of 7 days after the day it was received, an amount equal to the amount or value of the political contribution must be transferred to the State.

Subsection 176R(6) is amended for clarity with no substantive change.

Clause 10 Section 175T amended

Clause 10 amends the definition of “disclosure document” in subsection 175T(1) by replacing the reference to a notice under subsections 175MA(1) or 175MB(2) or (4) with reference to a notice under proposed new section 175MA.

Clause 11 Section 175ZC amended

Clause 11 amends section 175ZC, which deals with public availability of claims and disclosure documents lodged under Part 6 of the Act.

Proposed subsection 175ZC(4)(aa) is inserted, adding “a person’s address other than their postcode” to the types of information that the Electoral Commissioner must ensure is not published on the Commission’s website under subsection 175ZC(2), or made available for perusal or copying under subsection 175ZC(3).

Subsection 175ZC(5) is amended to clarify that in the case of a person who informs the Electoral Commissioner that they are a silent elector, the Electoral Commissioner must ensure the person’s address including their postcode, is not published under subsection 175ZC(2) or made available for perusal or copying under subsection 175ZC(3).