

Electoral Amendment Bill 2023

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Western Australia

LEGISLATIVE COUNCIL

(Introduced by Hon. Dr Bradley Pettitt, MLC)

Electoral Amendment Bill 2023

A Bill for

An Act to amend the *Electoral Act 1907*.

The Parliament of Western Australia enacts as follows:

s. 1

1 **1. Short title**

2 This is the *Electoral Amendment Act 2023*.

3 **2. Commencement**

4 This Act comes into operation as follows —

5 (a) sections 1 and 2 — on the day on which this Act
6 receives the Royal Assent;

7 (b) the rest of the Act — on the day after that day.

8 **3. Act amended**

9 This Act amends the *Electoral Act 1907*.

10 **4. Section 4 amended**

11 In section 4(1) delete the definition of *Australian citizen* and
12 insert:

13
14 *Australian citizen* has the meaning given in the
15 *Australian Citizenship Act 2007* (Commonwealth)
16 section 4;

17
18 **5. Part VI heading amended**

19 In the heading to Part VI delete “**disclosure of**”.

20 **6. Section 175 amended**

21 (1) In section 175 delete the definitions of:

22 *election period*

23 *specified amount*

1 (2) In section 175 insert in alphabetical order:
2

3 **business day** means a day other than a Saturday, a
4 Sunday or a public holiday;

5 **capped expenditure period**, in relation to an election,
6 means —

7 (a) in the case of a periodic election — the period
8 beginning on 1 October last preceding the day
9 of issue of the writ for the election and ending
10 on polling day for the election; or

11 (b) in any other case — the period beginning on the
12 day of issue of the writ for the election and
13 ending on polling day for the election;

14 **CPI** means the all groups consumer price index for
15 Perth published by the Australian Statistician referred
16 to in the *Australian Bureau of Statistics Act 1975*
17 (Commonwealth) section 5;

18 **quarter** means a period of 3 months beginning on
19 1 July, 1 October, 1 January or 1 April of any year;

20 **specified amount** means the amount of \$1 000.
21

22 (3) In section 175 in the definition of **broadcast** delete “radio or
23 televise;” and insert:
24

25 radio, television, the Internet or another form of electronic
26 communication;
27

28 (4) In section 175 in the definition of **electoral expenditure**:

29 (a) delete “election period)” and insert:
30

31 capped expenditure period)
32

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- 1 (b) in paragraphs (a), (b) and (c) delete “election period,”
2 and insert:
3
4 capped expenditure period,
5
6 (c) in paragraphs (e) and (ea) delete “election period; or”
7 and insert:
8
9 capped expenditure period; or
10
11 (d) in paragraph (f)(i) delete “election period,” and insert:
12
13 capped expenditure period,
14
15 (e) in paragraph (f)(ii) delete “election period;” and insert:
16
17 capped expenditure period;
18
19 (f) in paragraph (g) delete “election period,” and insert:
20
21 capped expenditure period,
22

23 **7. Section 175A amended**

- 24 (1) Delete section 175A(6).
25 (2) In section 175A(8) delete “Division 4,” and insert:
26
27 Divisions 4 and 4A,
28

29 **8. Section 175LC amended**

- 30 Delete section 175LC(3).

1 **9. Part VI Division 3 heading amended**

2 In the heading to Part VI Division 3 delete “**Disclosure of**
3 **gifts**” and insert:

4
5 **Gifts**
6

7 **10. Sections 175N and 175NA replaced**

8 Delete sections 175N and 175NA and insert:
9

10 **175N. Quarterly returns as to gifts and income received by**
11 **political party**

12 (1) The agent of a political party must, within 10 business
13 days after the end of each quarter, lodge a return with
14 the Electoral Commissioner in an approved form
15 setting out the following details —

16 (a) the amount or value of all gifts received by the
17 party during the quarter;

18 (b) all other income received by the party during
19 the quarter;

20 (c) the relevant details of each gift —

21 (i) received by the party during the
22 financial year in which the quarter
23 occurs; and

24 (ii) the amount or value of which equals or
25 exceeds the specified amount.

26 (2) For the purposes of subsection (1)(c), 2 or more gifts
27 made to the political party by the same person, whether
28 or not in the same quarter of the financial year, are
29 taken to be 1 gift.

s. 10

- 1 (3) The following gifts and income received by the
2 political party do not have to be included in the
3 return —
- 4 (a) gifts made to the party for a purpose related to
5 an election or by-election under the
6 *Commonwealth Electoral Act 1918*;
- 7 (b) other gifts and income which the party has
8 used, or will use, for a purpose related to an
9 election or by-election under the
10 *Commonwealth Electoral Act 1918*;
- 11 (c) income that consists of a payment received
12 under Division 2A.

13 **175NA. Quarterly returns as to gifts and income received by**
14 **associated entity**

- 15 (1) If an entity is an associated entity at any time during a
16 quarter, the financial controller of the entity must,
17 within 10 business days after the end of the quarter,
18 lodge a return with the Electoral Commissioner in an
19 approved form setting out the following details —
- 20 (a) the amount or value of all gifts received by the
21 entity during the quarter;
- 22 (b) all other income received by the entity during
23 the quarter;
- 24 (c) the relevant details of each gift —
- 25 (i) received by the entity during the
26 financial year in which the quarter
27 occurs; and
- 28 (ii) the amount or value of which equals or
29 exceeds the specified amount.
- 30 (2) For the purposes of subsection (1)(c), 2 or more gifts
31 made to the entity by the same person, whether or not

1 in the same quarter of the financial year, are taken to be
2 1 gift.

3 (3) Gifts and income received by the entity at a time when
4 it was not an associated entity do not have to be
5 included in the return.
6

7 **11. Section 175RA inserted**

8 After section 175R insert:
9

10 **175RA. Gifts not to be received from foreign donors**

11 (1) In this section —

12 *foreign donor* means —

13 (a) an individual who is not —

14 (i) an Australian citizen; or

15 (ii) an Australian resident as defined in the
16 *Social Security Act 1991*
17 (Commonwealth) section 7(2);

18 or

19 (b) an entity that does not have —

20 (i) an Australian Business Number; or

21 (ii) any other number allocated or
22 recognised by the Australian Securities
23 and Investments Commission for the
24 purpose of identifying a business.

25 (2) This section does not apply to a gift that is returned
26 within 6 weeks after it is received.

27 (3) It is unlawful for —

28 (a) a political party or a person acting on behalf of
29 a political party to receive a gift made to or for
30 the benefit of the party by a foreign donor; or

s. 11

- 1 (b) a candidate in an election (including a person
2 included in a group) or a person acting on
3 behalf of a candidate in an election to receive a
4 gift made to or for the benefit of the candidate
5 by a foreign donor; or
- 6 (c) a person included in a group in an election or a
7 person acting on behalf of a group in an
8 election to receive a gift made to or for the
9 benefit of the group by a foreign donor; or
- 10 (d) a person (not being a political party, a candidate
11 or a group) to receive a gift made to or for the
12 benefit of the person by a foreign donor for the
13 purpose of the incurring of expenditure for a
14 political purpose.
- 15 (4) For the purposes of subsection (3) —
- 16 (a) a person who is a candidate in an election is
17 taken to remain a candidate for 30 days after
18 polling day in the election; and
- 19 (b) a person included in a group in an election is
20 taken to continue to be included in the group
21 for 30 days after polling day in the election; and
- 22 (c) the reference in paragraph (d) to a gift made for
23 the purpose of the incurring of expenditure for
24 a political purpose includes a reference to a gift
25 the whole or part of which is used for that
26 purpose; and
- 27 (d) the reference in paragraph (d) to the incurring
28 of expenditure for a political purpose is to be
29 read in accordance with section 175Q(5).
- 30 (5) If a person receives a gift and, by virtue of
31 subsection (3), it is unlawful for the person to receive
32 the gift, an amount equal to the amount or value of the
33 gift is payable by the person to the State and may be

- 1 recovered by the State as a debt due to the State by
2 action, in a court of competent jurisdiction, against —
- 3 (a) in the case of a gift to or for the benefit of a
4 political party —
- 5 (i) if the party is a body corporate, the
6 party; or
- 7 (ii) in any other case, the agent of the party;
8 or
- 9 (b) in the case of a gift to or for the benefit of a
10 candidate, the candidate or the agent of the
11 candidate; or
- 12 (c) in the case of a gift to or for the benefit of a
13 group, a person included in the group or the
14 agent of the group; or
- 15 (d) in the case of a gift to a person (not being a
16 political party, a candidate or a group), the
17 person.
18

19 **12. Section 175S amended**

- 20 (1) In section 175S(1):
- 21 (a) after “section 175N,” insert:
22
23 175NA,
24
- 25 (b) after “no gifts” insert:
26
27 or income
28

s. 13

1 (2) In section 175S(2) after “section 175N,” insert:

2

3 175NA,

4

5 Note: The heading to amended section 175S is to read:

6 **Additional requirements for returns under s. 175N, 175NA, 175O**
7 **and 175P**

8 **13. Part VI Division 4A inserted**

9 After section 175SF insert:

10

11 **Division 4A — Caps on electoral expenditure**

12 **175SG. Terms used**

13 In this Division —

14 ***adjusted amount***, in relation to a cap amount, means
15 the cap amount adjusted in accordance with
16 section 175SM;

17 ***applicable expenditure cap*** means —

18 (a) for a political party — the expenditure cap that
19 applies to the political party under
20 section 175SI in relation to an election; or

21 (b) for a candidate (other than an endorsed
22 candidate or a candidate included in a
23 group) — the expenditure cap that applies to
24 the candidate under section 175SJ in relation to
25 an election; or

26 (c) for a group (other than a party group) — the
27 expenditure cap that applies to the group under
28 section 175SK in relation to an election; or

1 (d) for a person (other than a political party,
2 candidate or group) — the expenditure cap that
3 applies to the person under section 175SL in
4 relation to an election;

5 **cap amount** means —

- 6 (a) the party amount; or
7 (b) an expenditure cap referred to in
8 section 175SI(5), 175SJ, 175SK or 175SL;

9 **endorsed candidate** means a candidate in an election
10 who has been endorsed by a registered political party;

11 **party amount**, in relation to an election, means —

- 12 (a) if polling day for the election is before
13 1 July 2021 — \$125 000; or
14 (b) in any other case — the adjusted amount for the
15 financial year in which polling day for the
16 election occurs;

17 **party group** has the meaning given in
18 section 175LA(1).

19 **175SH. Certain expenditure taken to be incurred by or with**
20 **authority of political party or group**

21 (1) For the purposes of this Division, electoral expenditure
22 incurred in relation to an election by or with the
23 authority of an endorsed candidate (other than a
24 candidate included in a group) is taken to have been
25 incurred by or with the authority of the political party
26 that endorsed the candidate.

27 (2) For the purposes of this Division, electoral expenditure
28 incurred in relation to an election by or with the
29 authority of a party group is taken to have been
30 incurred by or with the authority of the political party
31 that endorsed the candidates included in the group.

s. 13

- 1 (3) For the purposes of this Division, electoral expenditure
2 incurred in relation to an election by or with the
3 authority of a candidate included in a group is taken to
4 have been incurred by or with the authority of the
5 group.

6 **175SI. Expenditure caps for political party**

- 7 (1) The expenditure caps that apply to a political party for
8 electoral expenditure incurred by or with the authority
9 of the party in relation to an election are as set out in
10 this section.
- 11 (2) In the case of a conjoint election, the expenditure cap is
12 an amount equal to the sum of —
- 13 (a) the party amount multiplied by the number of
14 regions in which the party endorses 1 or more
15 candidates in the election; and
- 16 (b) the party amount multiplied by the number of
17 districts in which the party endorses a candidate
18 in the election.
- 19 (3) In the case of a general election for the Council other
20 than an election held as part of a conjoint election, the
21 expenditure cap is an amount equal to the party amount
22 multiplied by the number of regions in which the party
23 endorses 1 or more candidates in the election.
- 24 (4) In the case of a general election for the Assembly other
25 than an election held as part of a conjoint election, the
26 expenditure cap is an amount equal to the party amount
27 multiplied by the number of districts in which the party
28 endorses a candidate in the election.
- 29 (5) In the case of an election other than an election held as
30 part of a general election, the expenditure cap is —
- 31 (a) if polling day for the election is before
32 1 July 2021 — \$300 000; or

- 1 (b) in any other case — the adjusted amount for the
2 financial year in which polling day for the
3 election occurs.

4 **175SJ. Expenditure caps for candidate (other than**
5 **endorsed candidate or candidate in group)**

- 6 (1) The expenditure caps that apply to a candidate in an
7 election (other than an endorsed candidate or a
8 candidate included in a group) for electoral expenditure
9 incurred by or with the authority of the candidate in
10 relation to the election are as set out in this section.

- 11 (2) In the case of an election held as part of a general
12 election, the expenditure cap is —

- 13 (a) if polling day for the election is before
14 1 July 2021 — \$125 000; or
15 (b) in any other case — the adjusted amount for the
16 financial year in which polling day for the
17 election occurs.

- 18 (3) In the case of an election other than an election held as
19 part of a general election, the expenditure cap is —

- 20 (a) if polling day for the election is before
21 1 July 2021 — \$300 000; or
22 (b) in any other case — the adjusted amount for the
23 financial year in which polling day for the
24 election occurs.

25 **175SK. Expenditure caps for group (other than party**
26 **group)**

- 27 (1) The expenditure caps that apply to a group (other than
28 a party group) for electoral expenditure incurred by or
29 with the authority of the group in relation to an election
30 are as set out in this section.

s. 13

- 1 (2) In the case of an election held as part of a general
2 election, the expenditure cap is —
- 3 (a) if polling day for the election is before
4 1 July 2021 — \$125 000; or
- 5 (b) in any other case — the adjusted amount for the
6 financial year in which polling day for the
7 election occurs.
- 8 (3) In the case of an election other than an election held as
9 part of a general election, the expenditure cap is —
- 10 (a) if polling day for the election is before
11 1 July 2021 — \$300 000; or
- 12 (b) in any other case — the adjusted amount for the
13 financial year in which polling day for the
14 election occurs.

15 **175SL. Expenditure caps for person (other than political**
16 **party, candidate or group)**

- 17 (1) The expenditure caps that apply to a person (other than
18 a political party, candidate or group) for electoral
19 expenditure incurred by or with the authority of the
20 person in relation to an election are as set out in this
21 section.
- 22 (2) In the case of a conjoint election or general election,
23 the expenditure cap is —
- 24 (a) if polling day for the election is before
25 1 July 2021 — \$2 000 000; or
- 26 (b) in any other case — the adjusted amount for the
27 financial year in which polling day for the
28 election occurs.
- 29 (3) In the case of an election other than an election held as
30 part of a general election, the expenditure cap is —
- 31 (a) if polling day for the election is before
32 1 July 2021 — \$50 000; or

- 1 (b) in any other case — the adjusted amount for the
2 financial year in which polling day for the
3 election occurs.

4 **175SM. Adjustment of cap amounts**

- 5 (1) For the financial year beginning on 1 July 2021 and
6 each subsequent financial year each cap amount is to
7 be adjusted on 1 July of that financial year using the
8 formula —

9
$$\frac{A \times B}{C}$$

10 where —

- 11 A is the cap amount immediately before 1 July in a
12 year;
13 B is the CPI number published for the March quarter
14 in the year;
15 C is the CPI number published for the March quarter
16 in the previous year.

- 17 (2) If, for a particular financial year, adjustment of a cap
18 amount would reduce the amount, the amount is not to
19 be adjusted.
20 (3) If the adjustment of a cap amount for a financial year
21 results in an amount that is not a whole number
22 multiple of \$100, the amount is to be rounded up to the
23 nearest whole number multiple of \$100 and the amount
24 as rounded is, subject to subsection (2), the cap amount
25 for the financial year.

26 **175SN. Recovery of amount in excess of expenditure cap**

- 27 (1) This section applies if the electoral expenditure
28 incurred by or with the authority of a political party,
29 candidate, group or other person in relation to an

s. 13

- 1 election exceeds the applicable expenditure cap for the
2 party, candidate, group or person.
- 3 (2) An amount equal to twice the amount by which the
4 electoral expenditure exceeds the applicable
5 expenditure cap is payable to the State by the political
6 party, candidate, group or person and may be recovered
7 by the State as a debt due to the State by action, in a
8 court of competent jurisdiction, against —
- 9 (a) in the case of a political party —
- 10 (i) if the party is a body corporate, the
11 party; or
- 12 (ii) in any other case, the agent of the party;
- 13 or
- 14 (b) in the case of a candidate, the candidate or an
15 agent of the candidate; or
- 16 (c) in the case of a group, a candidate included in
17 the group or an agent of the group; or
- 18 (d) in the case of a person (other than a political
19 party, candidate or group), the person.
- 20 (3) Nothing in this section affects the liability of a person
21 to be convicted of an offence against section 175SO or
22 the penalty that can be imposed for such an offence.

23 **175SO. Offence if applicable expenditure cap exceeded**

- 24 (1) If the electoral expenditure incurred by or with the
25 authority of a political party in relation to an election
26 exceeds the applicable expenditure cap for the party,
27 the agent of the party commits an offence.
- 28 (2) If the electoral expenditure incurred by or with the
29 authority of a candidate (other than an endorsed
30 candidate or a candidate included in a group) in
31 relation to an election exceeds the applicable

-
- 1 expenditure cap for the candidate, the agent of the
2 candidate commits an offence.
- 3 (3) If the electoral expenditure incurred by or with the
4 authority of a group (other than a party group) in
5 relation to an election exceeds the applicable
6 expenditure cap for the group, the agent of the group
7 commits an offence.
- 8 (4) If the electoral expenditure incurred by or with the
9 authority of a person (other than a political party,
10 candidate or group) in relation to an election exceeds
11 the applicable expenditure cap for the person, the
12 person commits an offence.
- 13 (5) An offence under this section is an aggravated offence
14 if the amount by which the electoral expenditure
15 exceeds the applicable expenditure cap is greater than
16 20% of the applicable expenditure cap.
- 17 (6) A person who commits an offence under this section is
18 liable to —
- 19 (a) in the case of an aggravated offence,
20 imprisonment for 2 years and a fine of —
- 21 (i) an amount equal to 3 times the amount
22 by which the electoral expenditure
23 exceeds the applicable expenditure cap;
24 or
- 25 (ii) if the amount worked out under
26 subparagraph (i) is less than \$36 000 —
27 \$36 000;
- 28 or
- 29 (b) in any other case, a fine of —
- 30 (i) an amount equal to twice the amount by
31 which the electoral expenditure exceeds
32 the applicable expenditure cap; or

s. 14

- 1 (ii) if the amount worked out under
2 subparagraph (i) is less than \$24 000 —
3 \$24 000.
4

5 **14. Section 175V amended**

6 In section 175V(1) delete “175LI(2) or 175R(5)” and insert:

7

8 175LI(2), 175R(5), 175RA(5) or 175SN(2)
9

10 **15. Section 175W amended**

11 In section 175W(4), (8)(a), (9)(b) and (12)(a) after “section”
12 insert:

13

14 175SO or
15

16 **16. Section 175Y deleted**

17 Delete section 175Y.

18 **17. Section 175ZC amended**

19 (1) After section 175ZC(1) insert:
20

21 (1A) The Electoral Commissioner must, as soon as
22 practicable after a claim is lodged under Division 2A or
23 a return is lodged under Division 3 or 4, publish the
24 claim or return on the Commission website.
25

1 (2) In section 175ZC(2) delete “end of 4 weeks after the end of the
2 period during which the claim or return was required to be
3 lodged.” and insert:

4
5 claim or return is published on the Commission website.
6

7 **18. Section 175ZCA inserted**

8 After section 175ZC insert:
9

10 **175ZCA. Amounts to be published on Commission website**

11 The Electoral Commissioner must, as soon as
12 practicable after 1 July in each financial year, publish
13 notice of the following on the Commission website —

- 14 (a) the election funding reimbursement amount
15 under section 175LC for the financial year;
16 (b) each cap amount, as defined in section 175SG,
17 for the financial year.
18

19 **19. Section 175ZD amended**

20 (1) In section 175ZD(1) delete “corporate, or in respect of any
21 amount recoverable from such a party under section 175LH(4),
22 175LI(2) or 175R(5),” and insert:

23
24 corporate
25

26 (2) Delete section 175ZD(2).

1 **20. Section 175ZF amended**

2 (1) Delete section 175ZF(1)(a), (ab) and (ba).

3 (2) Delete section 175ZF(2).

4 **21. Section 175ZG amended**

5 (1) Delete section 175ZG(1) and insert:

6

7 (1) As soon as practicable after the end of a financial year,
8 the Electoral Commissioner must prepare and submit to
9 the Minister an annual report on the operation of this
10 Part in relation to that financial year.

11

12 (2) In section 175ZG(2) delete “each” (1st occurrence) and insert:

13

14 the

15

16 **22. Section 175ZH inserted**

17 At the end of Part VI insert:

18

19 **175ZH. Transitional provisions for *Electoral Amendment***
20 ***Act 2023***

21 (1) In this section —

22 ***2019/20 year*** means the financial year ending on
23 30 June 2020;

24 ***transition day*** means the day on which the *Electoral*
25 *Amendment Act 2023* section 22 comes into operation.

26 (2) Section 175N, as in force immediately before transition
27 day, continues to apply to the agent of a political party
28 in respect of gifts and income received by the political
29 party during the 2019/20 year.

- 1 (3) Section 175NA, as in force immediately before
 2 transition day, continues to apply to an associated
 3 entity in respect of gifts and income received by the
 4 associated entity during the 2019/20 year.
- 5 (4) For the purposes of the application of sections 175N(1)
 6 and 175NA(1), as inserted by the *Electoral Amendment*
 7 *Act 2023* section 10 —
- 8 (a) the references in those provisions to a quarter
 9 include the quarter beginning on 1 July 2020;
 10 and
- 11 (b) the returns required under those provisions in
 12 relation to that quarter must be lodged before
 13 the end of 15 January 2021 instead of within
 14 10 business days after the end of that quarter.
- 15 (5) Section 175ZG, as in force immediately before
 16 transition day, continues to apply for the purpose of
 17 requiring the preparation, submission, and laying
 18 before each House of Parliament, of a report on the
 19 operation of this Part in relation to the 2019/20 year.
 20

21 **23. Various references to “15 weeks” amended**

22 In the provisions listed in the Table delete “15 weeks” and
 23 insert:

24
 25 12 weeks
 26

27 **Table**

s. 175O(1)	s. 175P(1)
s. 175Q(1)	s. 175SA

s. 23

s. 175SB	s. 175SC(1)
s. 175SD(1)	

1
2

Note: The heading to section 175R is to read:

Gifts not to be received from unidentified donors

=====