

Electoral Amendment Bill 2023

Explanatory Memorandum

GENERAL INFORMATION

This Bill will amend the *Electoral Act 1907* (the Act). It contains provisions that will give effect to the government's clear election commitments to improve disclosure laws around political donations, introduce expenditure caps for election campaigns and ban foreign political donations.

Note: This Bill and Explanatory Memorandum are reproductions of the Electoral Amendment Bill 2020 and associated Explanatory Memorandum which were introduced into the Legislative Council (and passed by the Legislative Assembly) on 13 August 2020, with only the following minor administrative updates:

- References to 2020 have been updated to 2023.
- Deletion of clauses five and six as the minor administrative updates to the Act proposed by those clauses have since been addressed by the Constitutional and Electoral Legislation Amendment (Electoral Equality) Act 2021. Subsequent clauses have been renumbered accordingly.

CLAUSE 1 – SHORT TITLE

The short title of this amendment is the *Electoral Amendment Bill 2020*.

CLAUSE 2 – COMMENCEMENT

Sections 1 and 2 come into operation on the day this Bill receives Royal Assent. The rest of the Bill commences the day after Royal Assent.

CLAUSE 3 – ACT AMENDMENT

This Bill amends the Act.

CLAUSE 4

The definition of Australian citizenship is updated from the *Australian Citizenship Act of 1948* to the *Australian Citizenship Act of 2007*.

CLAUSE 5- NEW HEADING

The heading of Part VI is amended to *Electoral funding and gifts, income and expenditure*.

CLAUSE 6 – SPECIFIED AMOUNT, QUARTERLY RETURNS AND EXPENDITURE PERIOD

The new capped expenditure period for State elections will commence on the 1st October before the election is held the following March. The expenditure period will conclude on polling day. For a by-election the capped expenditure period will commence on the issue of the writ and conclude on polling day. The expenditure

period will apply to expenditure such as television, radio, internet electoral advertising, opinion polling, consulting and advertising agent's fees.

The specified amount is reduced from \$1,500 linked to CPI to \$1,000 with no link to CPI. The specified amount is the term used to describe the political donation threshold. The Electoral Commissioner will no longer determine the specified amount.

Section 175 is also amended to take account of the new requirement (in sections 175N and 175NA) for quarterly disclosure returns. The quarters commence on 1 July, 1 October, 1 January and 1 April each year.

The definition for Perth CPI is inserted in section 175.

CLAUSE 7 – SPECIFIED AMOUNT

As the Electoral Commissioner is no longer responsible for determining the specified amount section 175A(6) is deleted and reference to the new Division 4A that deals with expenditure caps is included in section 175A.

CLAUSE 8 AND 9 NEW HEADING AND CPI

Part VI Division 3 has a new heading of *Gifts and other income*. The definition of CPI has been moved to section 175 of the Electoral Act.

CLAUSE 10 – QUARTERLY RETURNS and COMMONWEALTH RETURNS

Political parties and associated entities will have to lodge quarterly returns to the Electoral Commission within 10 business days at the end of each quarter. Further, all donations from an individual or corporation that reach the specified amount of \$1,000 or more accumulatively in the financial year will be disclosed in the quarter they reach \$1,000.

Currently political parties and their associated entities can satisfy the Electoral Act by lodging a return under the Commonwealth Electoral Act. The Commonwealth disclosure threshold is \$14,000 and the State disclosure threshold is \$2,500. The option of lodging a Commonwealth return to satisfy State threshold requirements will no longer be an option.

CLAUSE 11 – BAN ON FOREIGN DONATIONS

This clause will introduce a complete on ban foreign donations. It will be unlawful to accept a political donation unless the donor is an Australian resident or citizen, or has a relevant Australian Business. Recipients of a banned foreign donation will have six weeks to return it.

CLAUSE 12 – NIL RETURNS

Currently, political parties, candidates and Legislative Council Groups have to lodge a return even if no gifts in kind were received. Associated Entities will also now have to lodge a quarterly return if no donations were received.

CLAUSE 13 – NEW DIVISION 4A - CAPS ON ELECTORAL EXPENDITURE

Caps for a political party

For the next State election political parties will have electoral expenditure capped at \$125,000 for every Legislative Assembly district and \$125,000 for every Legislative Council region contested. However, political parties may spend over the capped amount in a particular district or region, although overspends would need to be balanced by a reduction in other districts or regions. This provision allows parties to determine how resources are allocated during the election campaign. For a by-election a party can spend \$300,000 in a district and a region.

Expenditure for an independent candidate

Independent candidates can spend \$125,000 in a State election and \$300,000 in a by-election.

Expenditure caps for Groups

Legislative Council Groups can spend \$125,000 in a State election and \$300,000 in a by-election.

Expenditure caps for others

The expenditure cap will be \$2 million for individuals and organisations that wish to campaign in a State election and are not a political party, candidate or a Legislative Council group. These individuals or organisations will be capped at \$50,000 for a by-election.

Indexation

The expenditure cap will be indexed to CPI from 1 July 2021 and each subsequent financial year.

Recovery amount

Any organisation, political party, Legislative Council Group, or candidate that exceeds the cap is liable to pay the State twice the amount they exceeded the cap.

Offences if the cap is exceeded

This clause ensures that it is the party agent, agent of a candidate, agent of a Legislative Council Group, or a person representing an individual or organisation that is responsible for any breach of the cap. A serious breach of the cap could make the agent liable to a two year prison sentence plus a severe financial penalty. A body corporate that breaches the cap could face a fine that is five times the maximum fine that could be imposed on a natural person because of the operation of section 40(5) of the *Sentencing Act 1995 (WA)*.

CLAUSE 14 and 15 – CONSEQUENTIAL AMENDMENTS

Section 175V deals with payments due to the State and section 175W deals with the Electoral Commission's powers of investigation. Both sections are amended to reflect the new offence provisions relating to a breach of the expenditure cap and accepting banned foreign donations

CLAUSE 16 – EXTENSION OF TIME FOR ANNUAL RETURNS

Before the introduction of a fixed date election in Western Australia, if an election was held during June and November the Electoral Commissioner could extend the deadline for annual returns. With the move to a fixed date election and the introduction of quarterly returns section 175Y is deleted.

CLAUSE 17 – PUBLICATION OF QUARTERLY RETURNS

The Electoral Commission, as soon as practicable after a quarterly return is lodged, is to publish the return on the Commission's website.

CLAUSE 18 – COMMISSION TO PUBLISH AMOUNT

The Electoral Commission, as soon as practicable, after 1 July each year is to publish on its website the dollar amount in relation to public funding and the indexed capped amount.

CLAUSE 19 – CONSEQUENTIAL AMENDMENTS

Civil proceedings in respect of amounts recoverable under sections 175LH(4), 175LI(2) and 175R(5) are instituted against the agent of a party that is not a body corporate and not the party. There is no room for the operation of section 175ZD(1) or (2) in respect of such proceedings, hence the amendments to section 175ZD.

CLAUSE 20 – AMENDMENTS TO REGULATIONS

Section 175ZF is amended so the *Electoral (Political Finance) Regulations 1996* will no longer require the Electoral Commissioner to adjust the specified amount and remove the option for the political parties and their associated entities to lodge a return under the Commonwealth Electoral Act to satisfy State requirements.

CLAUSE 21 – ANNUAL REPORT

The Electoral Commissioner must submit an annual report to the Minister on Political Finance and Disclosure matters at the end of the financial year.

CLAUSE 22 – TRANSITIONAL PROVISIONS

The last annual return period will end on 30 June 2020. Political parties and associated entities will disclose the last annual return by 30 November 2020. The first quarterly returns to include the July and October quarters of 2020 must be lodged by 15 January 2021.

CLAUSE 23 – POST ELECTION DISCLOSURE

To further increase transparency of disclosures after an election, the timeframe for lodging election returns will be reduced from 15 weeks to 12 weeks after election day. Therefore, all references of 15 weeks will be changed to 12 week