

## Electoral Amendment Bill 2020

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Western Australia

LEGISLATIVE ASSEMBLY

## **Electoral Amendment Bill 2020**

**A Bill for**

**An Act to amend the *Electoral Act 1907*.**

The Parliament of Western Australia enacts as follows:

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1   **1.     Short title**

2           This is the *Electoral Amendment Act 2020*.

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.     Section 87 amended**

19           In section 87(8) delete “Subject to section 88(1) the” and insert:

20

21           The

22

1 **6. Section 99A amended**

2 In section 99A(2) delete “87(4) or 88(1) or section 86(2aa).”  
3 and insert:

4  
5 86(2aa) or 87(4).  
6

7 **7. Part VI heading amended**

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

9 **8. Section 175 amended**

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

11 *election period*

12 *specified amount*

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

14

15 *business day* means a day other than a Saturday, a  
16 Sunday or a public holiday;

17 *capped expenditure period*, in relation to an election,  
18 means —

19 (a) in the case of a periodic election — the period  
20 beginning on 1 October last preceding the day  
21 of issue of the writ for the election and ending  
22 on polling day for the election; or

23 (b) in any other case — the period beginning on the  
24 day of issue of the writ for the election and  
25 ending on polling day for the election;

26 *CPI* means the all groups consumer price index for  
27 Perth published by the Australian Statistician referred  
28 to in the *Australian Bureau of Statistics Act 1975*  
29 (Commonwealth) section 5;

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- 1                    **quarter** means a period of 3 months beginning on  
2                    1 July, 1 October, 1 January or 1 April of any year;  
3                    **specified amount** means the amount of \$1 000.  
4
- 5            (3) In section 175 in the definition of **broadcast** delete “radio or  
6            televise;” and insert:  
7
- 8                    radio, television, the Internet or another form of electronic  
9                    communication;  
10
- 11           (4) In section 175 in the definition of **electoral expenditure**:  
12                    (a) delete “election period)” and insert:  
13                                    capped expenditure period)  
14  
15                    (b) in paragraphs (a), (b) and (c) delete “election period,”  
16                    and insert:  
17                                    capped expenditure period,  
18  
19                    (c) in paragraphs (e) and (ea) delete “election period; or”  
20                    and insert:  
21                                    capped expenditure period; or  
22  
23                    (d) in paragraph (f)(i) delete “election period,” and insert:  
24                                    capped expenditure period,  
25  
26  
27  
28  
29

- 1 (e) in paragraph (f)(ii) delete “election period;” and insert:  
2  
3 capped expenditure period;  
4
- 5 (f) in paragraph (g) delete “election period,” and insert:  
6  
7 capped expenditure period,  
8

9 **9. Section 175A amended**

- 10 (1) Delete section 175A(6).  
11 (2) In section 175A(8) delete “Division 4,” and insert:  
12  
13 Divisions 4 and 4A,  
14

15 **10. Section 175LC amended**

- 16 Delete section 175LC(3).

17 **11. Part VI Division 3 heading amended**

- 18 In the heading to Part VI Division 3 delete “**Disclosure of**  
19 **gifts**” and insert:  
20

21 **Gifts**  
22

1 **12. Sections 175N and 175NA replaced**

2 Delete sections 175N and 175NA and insert:

3

4 **175N. Quarterly returns as to gifts and income received by**  
5 **political party**

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

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

12 (b) all other income received by the party during  
13 the quarter;

14 (c) the relevant details of each gift —

15 (i) received by the party during the  
16 financial year in which the quarter  
17 occurs; and

18 (ii) the amount or value of which equals or  
19 exceeds the specified amount.

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

24 (3) The following gifts and income received by the  
25 political party do not have to be included in the  
26 return —

27 (a) gifts made to the party for a purpose related to  
28 an election or by-election under the  
29 *Commonwealth Electoral Act 1918*;

30 (b) other gifts and income which the party has  
31 used, or will use, for a purpose related to an



- 1 election or by-election under the  
2 *Commonwealth Electoral Act 1918*;  
3 (c) income that consists of a payment received  
4 under Division 2A.

5 **175NA. Quarterly returns as to gifts and income received by**  
6 **associated entity**

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

1   **13.     Section 175RA inserted**

2           After section 175R insert:

3

4           **175RA. Gifts not to be received from foreign donors**

5           (1) In this section —

6               *foreign donor* means —

7               (a) an individual who is not —

8                     (i) an Australian citizen; or

9                     (ii) an Australian resident as defined in the  
10                        *Social Security Act 1991*  
11                        (Commonwealth) section 7(2);

12                     or

13               (b) an entity that does not have —

14                     (i) an Australian Business Number; or

15                     (ii) any other number allocated or  
16                        recognised by the Australian Securities  
17                        and Investments Commission for the  
18                        purpose of identifying a business.

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

21           (3) It is unlawful for —

22               (a) a political party or a person acting on behalf of  
23                     a political party to receive a gift made to or for  
24                     the benefit of the party by a foreign donor; or

25               (b) a candidate in an election (including a person  
26                     included in a group) or a person acting on  
27                     behalf of a candidate in an election to receive a  
28                     gift made to or for the benefit of the candidate  
29                     by a foreign donor; or

30               (c) a person included in a group in an election or a  
31                     person acting on behalf of a group in an

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

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- 1                                   (ii) in any other case, the agent of the party;  
2                                   or  
3                                   (b) in the case of a gift to or for the benefit of a  
4                                   candidate, the candidate or the agent of the  
5                                   candidate; or  
6                                   (c) in the case of a gift to or for the benefit of a  
7                                   group, a person included in the group or the  
8                                   agent of the group; or  
9                                   (d) in the case of a gift to a person (not being a  
10                                   political party, a candidate or a group), the  
11                                   person.  
12

13 **14. Section 175S amended**

- 14       (1) In section 175S(1):  
15               (a) after “section 175N,” insert:  
16                                   175NA,  
17                                   18  
19               (b) after “no gifts” insert:  
20                                   21  
21                                   or income  
22  
23       (2) In section 175S(2) after “section 175N,” insert:  
24                                   25  
25                                   175NA,  
26

27       Note: The heading to amended section 175S is to read:  
28                                   **Additional requirements for returns under s. 175N, 175NA, 175O**  
29                                   **and 175P**

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1 **15. Part VI Division 4A inserted**

2 After section 175SF insert:

3

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

5 **175SG. Terms used**

6 In this Division —

7 ***adjusted amount***, in relation to a cap amount, means  
8 the cap amount adjusted in accordance with  
9 section 175SM;

10 ***applicable expenditure cap*** means —

- 11 (a) for a political party — the expenditure cap that  
12 applies to the political party under  
13 section 175SI in relation to an election; or
- 14 (b) for a candidate (other than an endorsed  
15 candidate or a candidate included in a  
16 group) — the expenditure cap that applies to  
17 the candidate under section 175SJ in relation to  
18 an election; or
- 19 (c) for a group (other than a party group) — the  
20 expenditure cap that applies to the group under  
21 section 175SK in relation to an election; or
- 22 (d) for a person (other than a political party,  
23 candidate or group) — the expenditure cap that  
24 applies to the person under section 175SL in  
25 relation to an election;

26 ***cap amount*** means —

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

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

- 1                    *party amount*, in relation to an election, means —  
2                    (a) if polling day for the election is before  
3                    1 July 2021 — \$125 000; or  
4                    (b) in any other case — the adjusted amount for the  
5                    financial year in which polling day for the  
6                    election occurs;
- 7                    *party group* has the meaning given in  
8                    section 175LA(1).

9                    **175SH. Certain expenditure taken to be incurred by or with**  
10                    **authority of political party or group**

- 11                    (1) For the purposes of this Division, electoral expenditure  
12                    incurred in relation to an election by or with the  
13                    authority of an endorsed candidate (other than a  
14                    candidate included in a group) is taken to have been  
15                    incurred by or with the authority of the political party  
16                    that endorsed the candidate.
- 17                    (2) For the purposes of this Division, electoral expenditure  
18                    incurred in relation to an election by or with the  
19                    authority of a party group is taken to have been  
20                    incurred by or with the authority of the political party  
21                    that endorsed the candidates included in the group.
- 22                    (3) For the purposes of this Division, electoral expenditure  
23                    incurred in relation to an election by or with the  
24                    authority of a candidate included in a group is taken to  
25                    have been incurred by or with the authority of the  
26                    group.

27                    **175SI. Expenditure caps for political party**

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

- 
- 1 (2) In the case of a conjoint election, the expenditure cap is  
2 an amount equal to the sum of —
- 3 (a) the party amount multiplied by the number of  
4 regions in which the party endorses 1 or more  
5 candidates in the election; and
- 6 (b) the party amount multiplied by the number of  
7 districts in which the party endorses a candidate  
8 in the election.
- 9 (3) In the case of a general election for the Council other  
10 than an election held as part of a conjoint election, the  
11 expenditure cap is an amount equal to the party amount  
12 multiplied by the number of regions in which the party  
13 endorses 1 or more candidates in the election.
- 14 (4) In the case of a general election for the Assembly other  
15 than an election held as part of a conjoint election, the  
16 expenditure cap is an amount equal to the party amount  
17 multiplied by the number of districts in which the party  
18 endorses a candidate in the election.
- 19 (5) In the case of an election other than an election held as  
20 part of a general election, the expenditure cap is —
- 21 (a) if polling day for the election is before  
22 1 July 2021 — \$300 000; or
- 23 (b) in any other case — the adjusted amount for the  
24 financial year in which polling day for the  
25 election occurs.

26 **175SJ. Expenditure caps for candidate (other than**  
27 **endorsed candidate or candidate in group)**

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

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- 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           **175SK. Expenditure caps for group (other than party**  
16           **group)**

- 17           (1) The expenditure caps that apply to a group (other than  
18           a party group) for electoral expenditure incurred by or  
19           with the authority of the group in relation to an election  
20           are as set out in this section.
- 21           (2) In the case of an election held as part of a general  
22           election, the expenditure cap is —
- 23               (a) if polling day for the election is before  
24               1 July 2021 — \$125 000; or
- 25               (b) in any other case — the adjusted amount for the  
26               financial year in which polling day for the  
27               election occurs.
- 28           (3) In the case of an election other than an election held as  
29           part of a general election, the expenditure cap is —
- 30               (a) if polling day for the election is before  
31               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 **175SL. Expenditure caps for person (other than political**  
5 **party, candidate or group)**

- 6 (1) The expenditure caps that apply to a person (other than  
7 a political party, candidate or group) for electoral  
8 expenditure incurred by or with the authority of the  
9 person in relation to an election are as set out in this  
10 section.
- 11 (2) In the case of a conjoint election or general election,  
12 the expenditure cap is —
- 13 (a) if polling day for the election is before  
14 1 July 2021 — \$2 000 000; 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 — \$50 000; or
- 22 (b) in any other case — the adjusted amount for the  
23 financial year in which polling day for the  
24 election occurs.

1           **175SM. Adjustment of cap amounts**

2           (1) For the financial year beginning on 1 July 2021 and  
3           each subsequent financial year each cap amount is to  
4           be adjusted on 1 July of that financial year using the  
5           formula —

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

6           where —

7           A    is the cap amount immediately before 1 July in a  
8           year;

9           B    is the CPI number published for the March quarter  
10          in the year;

11          C    is the CPI number published for the March quarter  
12          in the previous year.

13          (2) If, for a particular financial year, adjustment of a cap  
14          amount would reduce the amount, the amount is not to  
15          be adjusted.

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

22           **175SN. Recovery of amount in excess of expenditure cap**

23          (1) This section applies if the electoral expenditure  
24          incurred by or with the authority of a political party,  
25          candidate, group or other person in relation to an  
26          election exceeds the applicable expenditure cap for the  
27          party, candidate, group or person.

28          (2) An amount equal to twice the amount by which the  
29          electoral expenditure exceeds the applicable

1 expenditure cap is payable to the State by the political  
2 party, candidate, group or person and may be recovered  
3 by the State as a debt due to the State by action, in a  
4 court of competent jurisdiction, against —

- 5 (a) in the case of a political party —  
6 (i) if the party is a body corporate, the  
7 party; or  
8 (ii) in any other case, the agent of the party;  
9 or  
10 (b) in the case of a candidate, the candidate or an  
11 agent of the candidate; or  
12 (c) in the case of a group, a candidate included in  
13 the group or an agent of the group; or  
14 (d) in the case of a person (other than a political  
15 party, candidate or group), the person.

- 16 (3) Nothing in this section affects the liability of a person  
17 to be convicted of an offence against section 175SO or  
18 the penalty that can be imposed for such an offence.

19 **175SO. Offence if applicable expenditure cap exceeded**

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

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

1 **16. Section 175V amended**

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

3

4 175LI(2), 175R(5), 175RA(5) or 175SN(2)

5

6 **17. Section 175W amended**

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

9

10 175SO or

11

12 **18. Section 175Y deleted**

13 Delete section 175Y.

14 **19. Section 175ZC amended**

15 (1) After section 175ZC(1) insert:

16

17 (1A) The Electoral Commissioner must, as soon as  
18 practicable after a claim is lodged under Division 2A or  
19 a return is lodged under Division 3 or 4, publish the  
20 claim or return on the Commission website.

21

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

25

26 claim or return is published on the Commission website.

27

1   **20.     Section 175ZCA inserted**

2           After section 175ZC insert:

3

4           **175ZCA. Amounts to be published on Commission website**

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

- 8                   (a)   the election funding reimbursement amount  
9                            under section 175LC for the financial year;
- 10                   (b)   each cap amount, as defined in section 175SG,  
11                            for the financial year.

12

13   **21.     Section 175ZD amended**

14           In section 175ZD(1) delete “175LI(2) or 175R(5),” and insert:

15

16                   175LI(2), 175R(5), 175RA(5) or 175SN(2),

17

18   **22.     Section 175ZF amended**

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

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

21   **23.     Section 175ZG amended**

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

23

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

28

1 (2) In section 175ZG(2) delete “each” (1<sup>st</sup> occurrence) and insert:

2

3 the

4

5 **24. Section 175ZH inserted**

6 At the end of Part VI insert:

7

8 **175ZH. Transitional provisions for *Electoral Amendment***  
9 ***Act 2020***

10 (1) In this section —

11 ***2019/20 year*** means the financial year ending on  
12 30 June 2020;

13 ***transition day*** means the day on which the *Electoral*  
14 *Amendment Act 2020* section 24 comes into operation.

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

19 (3) Section 175NA, as in force immediately before  
20 transition day, continues to apply to an associated  
21 entity in respect of gifts and income received by the  
22 associated entity during the 2019/20 year.

23 (4) For the purposes of the application of sections 175N(1)  
24 and 175NA(1), as inserted by the *Electoral Amendment*  
25 *Act 2020* section 12 —

26 (a) the references in those provisions to a quarter  
27 include the quarter beginning on 1 July 2020;  
28 and

29 (b) the returns required under those provisions in  
30 relation to that quarter must be lodged before  
31 the end of 15 January 2021 instead of within  
32 10 business days after the end of that quarter.

**s. 25**

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1           (5) Section 175ZG, as in force immediately before  
2           transition day, continues to apply for the purpose of  
3           requiring the preparation, submission, and laying  
4           before each House of Parliament, of a report on the  
5           operation of this Part in relation to the 2019/20 year.  
6

7   **25.    Various references to “15 weeks” amended**

8           In the provisions listed in the Table delete “15 weeks” and  
9           insert:

10  
11           12 weeks  
12

13   **Table**

s. 175O(1)	s. 175P(1)
s. 175Q(1)	s. 175SA
s. 175SB	s. 175SC(1)
s. 175SD(1)	

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

15                                   **Gifts not to be received from unidentified donors**

16   