

Electoral Amendment Bill 2020

Contents

1.	Short title	2
2.	Commencement	2
3.	Act amended	2
4.	Section 4 amended	2
5.	Section 87 amended	2
6.	Section 99A amended	3
7.	Part VI heading amended	3
8.	Section 175 amended	3
9.	Section 175A amended	5
10.	Section 175LC amended	5
11.	Part VI Division 3 heading amended	5
12.	Sections 175N and 175NA replaced	6
	175N. Quarterly returns as to gifts and income received by political party	6
	175NA. Quarterly returns as to gifts and income received by associated entity	7
13.	Section 175RA inserted	8
	175RA. Gifts not to be received from foreign donors	8
14.	Section 175S amended	10
15.	Part VI Division 4A inserted	11
	Division 4A — Caps on electoral expenditure	
	175SG. Terms used	11
	175SH. Certain expenditure taken to be incurred by or with authority of political party or group	12
	175SI. Expenditure caps for political party	12
	175SJ. Expenditure caps for candidate (other than endorsed candidate or candidate in group)	13
	175SK. Expenditure caps for group (other than party group)	14
	175SL. Expenditure caps for person (other than political party, candidate or group)	15

Electoral Amendment Bill 2020

Contents

	175SM. Adjustment of cap amounts	16	
	175SN. Recovery of amount in excess of expenditure cap	16	
	175SO. Offence if applicable expenditure cap exceeded	17	
16.	Section 175V amended		19
17.	Section 175W amended		19
18.	Section 175Y deleted		19
19.	Section 175ZC amended		19
20.	Section 175ZCA inserted		20
	175ZCA. Amounts to be published on Commission website	20	
21.	Section 175ZD amended		20
22.	Section 175ZF amended		20
23.	Section 175ZG amended		20
24.	Section 175ZH inserted		21
	175ZH. Transitional provisions for <i>Electoral Amendment Act 2020</i>	21	
25.	Various references to “15 weeks” amended		22

Western Australia

LEGISLATIVE ASSEMBLY

(As amended during consideration in detail)

Electoral Amendment Bill 2020

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 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;

- 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

s. 14

- 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**

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.

s. 15

- 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

s. 15

- 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 (1) In section 175ZD(1) delete “corporate, or in respect of any
15 amount recoverable from such a party under section 175LH(4),
16 175LI(2) or 175R(5),” and insert:

17

18 corporate

19

- 20 (2) Delete section 175ZD(2).

21 **22. Section 175ZF amended**

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

- 23 (2) Delete section 175ZF(2).

24 **23. Section 175ZG amended**

- 25 (1) Delete section 175ZG(1) and insert:

26

- 27 (1) As soon as practicable after the end of a financial year,
28 the Electoral Commissioner must prepare and submit to

1 the Minister an annual report on the operation of this
2 Part in relation to that financial year.

3

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

5

6 the

7

8 **24. Section 175ZH inserted**

9 At the end of Part VI insert:

10

11 **175ZH. Transitional provisions for *Electoral Amendment***
12 ***Act 2020***

13 (1) In this section —

14 ***2019/20 year*** means the financial year ending on
15 30 June 2020;

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

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

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

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

29 (a) the references in those provisions to a quarter
30 include the quarter beginning on 1 July 2020;
31 and

s. 25

1 (b) the returns required under those provisions in
2 relation to that quarter must be lodged before
3 the end of 15 January 2021 instead of within
4 10 business days after the end of that quarter.

5 (5) Section 175ZG, as in force immediately before
6 transition day, continues to apply for the purpose of
7 requiring the preparation, submission, and laying
8 before each House of Parliament, of a report on the
9 operation of this Part in relation to the 2019/20 year.
10

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

12 In the provisions listed in the Table delete “15 weeks” and
13 insert:
14

15 12 weeks
16

17 **Table**

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

18 Note: The heading to section 175R is to read:
19 **Gifts not to be received from unidentified donors**
20