

Passed by both Houses



New South Wales

Election Funding, Expenditure and Disclosures Amendment Bill 2014

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I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.

*Clerk of the Legislative Assembly,
Legislative Assembly,
Sydney,*

, 2014



New South Wales

Election Funding, Expenditure and Disclosures Amendment Bill 2014

Act No , 2014

An Act to amend the *Election Funding, Expenditure and Disclosures Act 1981* to make special provision with respect to the 2015 State general election and to make further provision with respect to election funding, expenditure and disclosures generally.

I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.

Assistant Speaker of the Legislative Assembly.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Election Funding, Expenditure and Disclosures Amendment Act 2014*.

2 Commencement

This Act commences on the date of assent to this Act.

Schedule 1 Amendment of Election Funding, Expenditure and Disclosures Act 1981 No 78—2015 State general election

[1] Section 54A Application to State elections only

Insert at the end of the section:

- (3) The application of this Part in relation to the 2015 State general election is modified by Part 7A.

[2] Section 83 Application

Insert at the end of the section (and before the note to the section):

- (2) The application of this Part in relation to the 2015 State general election is modified by Part 7A.

[3] Section 98 Appropriation of Consolidated Fund for election funding

Insert “or Part 7A” after “Part 5 or 6A”.

[4] Part 7A

Insert after Part 7:

Part 7A Special provisions for 2015 State general election

103A Application to 2015 State general election only

- (1) This Part applies only in relation to the Assembly general election and the periodic Council election held or to be held concurrently in 2015.
- (2) This Act applies as if the provisions of this Part relating to payments from the Election Campaigns Fund were contained in Part 5 and as if the provisions of this Part relating to political donations or electoral communication expenditure were contained in the relevant Division of Part 6.

103B Definitions

In this Part:

2015 State general election means the Assembly general election and the periodic Council election to which this Part applies.

actual campaign expenditure of a party or candidate means the total actual electoral communication expenditure incurred by the party or candidate in connection with the 2015 State general election during the period from and including 1 July 2014 to the end of polling day for the election (and in the case of expenditure from and including 1 October 2014, being expenditure that is within the applicable campaign expenditure cap for the party or candidate).

applicable campaign expenditure cap for a party or candidate means the applicable cap on electoral communication expenditure for the party or candidate determined under Division 2B of Part 6 in relation to the 2015 State general election (other than the additional cap for the party arising under section 95F (12) (Additional cap for individual Assembly seats)).

candidate, in relation to the 2015 State general election, means a candidate who is duly nominated for the election and who is registered as such a candidate in the Register of Candidates for the election on polling day for the election.

Note. An individual who accepts donations for his or her proposed candidacy at a future election, or who makes a payment for electoral expenditure for the future election, is taken to be a candidate when accepting the donation or making the payment (see section 84 (2) and (2A)).

first preference votes means the first preference votes recorded for a candidate that are not rejected as informal at the election.

103C Amount of public campaign funding for eligible parties

- (1) This section applies in relation to parties that are (under section 57) eligible for payment from the Election Campaigns Fund in respect of the 2015 State general election.
- (2) The amount to be distributed from the Election Campaigns Fund to any such party in respect of the 2015 State general election is (subject to subsection (3)):
 - (a) \$4 for each first preference vote received by an endorsed candidate of the party in the Assembly general election and \$3 for each first preference vote received by an endorsed candidate of the party in the periodic Council election, or
 - (b) the total amount of the actual campaign expenditure of the party and of those endorsed candidates of the party,
whichever is the lesser.
- (3) If a party is under section 57 eligible for payment from the Election Campaign Fund because it meets the eligibility criteria in the periodic Council election but not the Assembly general election:
 - (a) in the case of a party that had 10 or more endorsed candidates in the Assembly general election—the amount distributed under subsection (2) is to include \$4 for each first preference vote in relation to the Legislative Assembly general election (in addition to \$3 for each first preference vote in relation to the periodic Council election), or
 - (b) in any other case—the amount distributed under subsection (2) is to be calculated at the rate of \$4.50 (instead of \$3) for each first preference vote in relation to the periodic Council election (and by excluding any votes received in the Assembly general election).
- (4) This section applies to the exclusion of section 58.
- (5) Section 62 applies in relation to so much of the amount to be distributed under this section as relates to the first preference votes received by candidates who are endorsed by 2 or more registered parties.

103D Amount of public campaign funding for eligible independent candidates (or eligible candidates of parties not eligible for public campaign funding)

- (1) This section applies in relation to candidates who are (under section 59) eligible for payment from the Election Campaigns Fund in respect of the 2015 State general election, other than endorsed candidates of a party excluded by section 103E.
- (2) The amount to be distributed from the Election Campaigns Fund to any such candidate in respect of the 2015 State general election is:
 - (a) \$4 for each first preference vote received in the Assembly general election by any such candidate in that election or \$4.50 for each first

preference vote received in the periodic Council election by any such candidate in that election, or

(b) the total amount of the actual campaign expenditure of the candidate, whichever is the lesser.

(3) This section applies to the exclusion of section 60.

103E No public campaign funding for endorsed candidates of eligible parties

(1) This section applies in relation to candidates who are duly nominated for the 2015 State general election and who are endorsed by a party that is eligible for payment from the Election Campaigns Fund under section 103C.

(2) Payments from the Election Campaigns Fund are not to be made to any such candidate in respect of the 2015 State general election.

(3) Despite subsection (2), a party may direct in writing that a part of the amount that is to be distributed to the party under section 103C be paid to any such candidate.

(4) This section applies despite section 59.

103F Special additional disclosure by recipients of political donations before 2015 election

(1) There is to be an additional *relevant disclosure period* for the purposes of Part 6 of the period from 1 July 2014 to 1 March 2015, but only for political donations received during that period in relation to State elections or elected members of Parliament.

(2) Disclosures of those political donations under Part 6 are to be made by any party, elected member, group, candidate or third-party campaigner that receives those political donations.

(3) Disclosures of those political donations under Part 6 are to be made within 7 days after the end of the additional relevant disclosure period. Disclosures of those political donations must be published in accordance with section 95 (1) within 7 days after they are made.

(4) The following provisions of this Act and the regulations do not apply to the disclosures made under this section for the additional relevant disclosure period:

(a) sections 92 (3)–(6), 96K and 96L and any other provision of this Act prescribed by the regulations,

(b) clauses 8A and 8B of the *Election Funding, Expenditure and Disclosures Regulation 2009*.

(5) Section 96H (Offences relating to disclosures) extends to political donations received during the additional relevant disclosure period and the additional disclosures required by this section.

(6) Disclosures of political donations under Part 6 for the relevant disclosure period of 1 July 2014 to 30 June 2015 are to include political donations received during the additional relevant disclosure period.

(7) This section applies in addition to the requirements of Division 2 of Part 6.

103G Indexation after 2011 State general election not to apply to political donation caps and electoral communication expenditure caps

- (1) The applicable caps under Division 2A of Part 6 on political donations for the period between the commencement of this section and 30 June 2015 are the amounts referred to in that Division and not those amounts as adjusted for inflation as provided by Schedule 1.
- (2) The applicable caps under Division 2B of Part 6 on electoral communication expenditure for the 2015 State general election campaign are the amounts referred to in that Division and not those amounts as adjusted for inflation as provided by Schedule 1.

Schedule 2 Amendment of Election Funding, Expenditure and Disclosures Act 1981 No 78—General

[1] Section 75 False statements

Omit “200 penalty units”. Insert instead “400 penalty units”.

[2] Section 87 Meaning of “electoral expenditure” and “electoral communication expenditure”

Insert after section 87 (2) (e):

- (e1) expenditure on travel and travel accommodation for candidates and staff engaged in electoral campaigning,
- (e2) expenditure on research associated with election campaigns (other than in-house research),

[3] Section 87 (2) (g) and (h)

Omit the paragraphs.

[4] Section 96D Identification of persons from whom donations can be accepted

Insert “or, if not so enrolled, who has supplied to the Commissioner identification that is acceptable to the Commissioner showing the individual’s full name and an Australian residential address” after “government election” in section 96D (1) (a).

[5] Section 96D (1) (b)

Insert “or a principal or executive officer of which has supplied to the Commissioner identification that is acceptable to the Commissioner showing the principal or officer’s full name and an Australian residential address” after “number”.

[6] Section 96D (3) and (4)

Insert after section 96D (2):

- (3) The regulations may make provision as to what identification is acceptable for the purposes of this section.
- (4) The objects of this section are:
 - (a) to create certainty about who is making a political donation, by requiring the donor to be properly identified, and
 - (b) to remove a perception that certain foreign donors could exert influence over the Australian political process, by requiring a donor to have a legitimate link with Australia, either through residence of the donor or its officer or by being registered in Australia.

[7] Section 96GE Determination by Authority that person not a prohibited donor

Omit the maximum penalty from section 96GE (7). Insert instead:

Maximum penalty: 400 penalty units or imprisonment for 2 years, or both.

[8] Section 96H Offences relating to disclosures

Omit the maximum penalty from section 96H (2). Insert instead:

Maximum penalty: 400 penalty units or imprisonment for 2 years, or both.

[9] Section 96H (3)

Omit the maximum penalty. Insert instead:

Maximum penalty: 400 penalty units or imprisonment for 2 years, or both.

[10] Section 96HA Offences relating to caps on donations and expenditure

Omit the maximum penalty. Insert instead:

Maximum penalty: 400 penalty units or imprisonment for 2 years, or both.

[11] Section 96HB

Insert after section 96HA:

96HB Offence relating to scheme to circumvent the donation or expenditure prohibitions or restrictions

- (1) A person who enters into or carries out a scheme (whether alone or with others) for the purpose of circumventing a prohibition or requirement of this Part with respect to political donations or electoral expenditure is guilty of an offence.

Maximum penalty (on conviction on indictment): Imprisonment for 10 years.

- (2) It does not matter that the person also enters into or carries out the scheme for other purposes.

- (3) In this section:
scheme includes an arrangement, an understanding or a course of conduct.

[12] Section 96I Other offences

Insert at the end of section 96I (1):

Maximum penalty: 400 penalty units or imprisonment for 2 years, or both.

[13] Section 97E Public funding of eligible parties for administrative expenditure

Omit section 97E (3) (a)–(d). Insert instead:

- (a) \$250,800 if there is only one elected member endorsed by the party, or
(b) \$450,000 if there are only 2 elected members endorsed by the party, or
(c) \$600,000 if there are only 3 elected members endorsed by the party, or
(d) \$600,000 if there are more than 3 elected members endorsed by the party plus \$100,000 for each such member in excess of 3 up to a maximum of 22 members in excess of 3.

[14] Section 97GB

Insert after section 97GA:

97GB Quarterly advance payments

- (1) A party or elected member is, subject to and in accordance with this Act, eligible for a quarterly advance payment from the Administration Fund in respect of each quarter of a calendar year (a *relevant quarter*) of an amount determined in accordance with this section.

- (2) The amount payable, by way of a quarterly advance payment in respect of a relevant quarter, is payable at the beginning of the relevant quarter and is:
 - (a) in respect of the first 3 quarters of a year—an amount equal to 50% of the total amount to which the party or elected member would be entitled under section 97GA in respect of that relevant quarter, or
 - (b) in respect of the fourth quarter of the year—an amount equal to 50% of the total amount to which the party or elected member would be entitled under this Part in respect of that year (after deducting any quarterly payments paid in that year under section 97GA).
- (3) The amount is to be determined on the assumption that:
 - (a) in the case of a party, the number of elected members endorsed by the party at the end of the calendar year will be the same as the number of elected members endorsed by the party at the date on which the claim for the quarterly advance payment is determined, and
 - (b) in the case of a person who is an elected member, the person will continue to be an elected member at the end of the calendar year,and on the assumption that the party or elected member will incur in the calendar year the maximum amount that can be payable to the party or member from the Administration Fund for the calendar year based on those assumptions.
- (4) Any amount paid to a party or elected member by way of a quarterly advance payment under this section in respect of a relevant quarter is to be deducted from any amount payable under section 97GA to the party or elected member from the Administration Fund in respect of that quarter.
- (5) If a party or elected member receives amounts by way of a quarterly advance payment under this section in respect of a relevant quarter in excess of the amount (if any) to which the party or member becomes entitled under section 97GA from the Administration Fund in respect of that quarter, the amount of the excess must be deducted from any amount payable in respect of the next quarter under section 97GA.
- (6) Any balance of quarterly advance payments at the end of the calendar year that is in excess of the amount payable to the party or elected member under this Part in respect of the calendar year is to be repaid within 60 days after the Authority notifies the party or elected member that the amount is repayable.
- (7) A claim for a quarterly advance payment under this section is to be made in the manner determined by the Authority and payment is to be made to the agent of the party or elected member. Section 97J does not apply to any such advance payment.
- (8) This section applies in the 2015 calendar year and subsequent calendar years.

[15] Section 97I Public funding of eligible parties for policy development expenditure

Omit “25 cents” from section 97I (4). Insert instead “56 cents”.

[16] Section 97I (5)

Omit “\$5,000” wherever occurring. Insert instead “\$11,200”.

[17] Section 97J Claims for payment

Omit “6 weeks” from section 97J (5). Insert instead “30 days”.

[18] Section 97M False statements

Omit the maximum penalty. Insert instead:

Maximum penalty: 400 penalty units or imprisonment for 2 years, or both.

[19] Section 110 Inspection

Omit the penalty at the end of section 110 (4). Insert instead:

Maximum penalty: 200 penalty units.

[20] Section 110A Power to require provision of documents and information

Omit the maximum penalty at the end of section 110A (6). Insert instead:

Maximum penalty: 200 penalty units.

[21] Section 110A (7)

Omit the maximum penalty. Insert instead:

Maximum penalty: 400 penalty units or imprisonment for 2 years, or both.

[22] Section 111 Proceedings for offences

Omit “3 years” from section 111 (4). Insert instead “10 years”.

[23] Section 111 (5)

Omit “(section 102 excepted)”.

[24] Section 111 (6)

Insert after section 111 (5):

(6) This section (other than subsection (5)) does not apply to proceedings for an offence against section 96HB.

[25] Schedule 2 Savings, transitional and other provisions

Insert at the end of the Schedule with appropriate Part and clause numbering:

Part Provisions consequent on enactment of Election Funding, Expenditure and Disclosures Amendment Act 2014

Application and future indexation of increased amount of party administration funding under section 97E (3) (a)–(d)

The amendment made to section 97E (3) (a)–(d) by the *Election Funding, Expenditure and Disclosures Amendment Act 2014* applies to payments from the Administration Fund for the 2014 calendar year and subsequent calendar years. The amount inserted by that Act is subject to adjustment for inflation under Schedule 1 for subsequent calendar years.

Application and future indexation of increased amount of party policy development funding under section 97I (4) and (5)

The amendments made to section 97I (4) and (5) by the *Election Funding, Expenditure and Disclosures Amendment Act 2014* apply to payments from the Policy Development Fund for the 2014 calendar year and subsequent calendar years. The amounts inserted by that Act are subject to adjustment for inflation under Schedule 1 for subsequent calendar years.

Application of amendment of section 111 (4) relating to period within which proceedings for offences may be commenced

The extension from 3 years to 10 years of the period within which summary proceedings for offences against this Act or the regulations may be commenced (as a consequence of the amendment made to section 111 (4) by the *Election Funding, Expenditure and Disclosures Amendment Act 2014*) applies to offences committed after the commencement of that Act.