



New South Wales

# Election Funding, Expenditure and Disclosures Consequential Amendment Bill 2014

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

## Overview of Bill

The High Court of Australia in the case of *Unions NSW & Ors v State of New South Wales* [2013] HCA 58 declared that certain provisions of the *Election Funding, Expenditure and Disclosures Act 1981* (being provisions that were inserted into that Act by the *Election Funding, Expenditure and Disclosures Amendment Act 2012*) are invalid. The provisions that were declared invalid:

- (a) prohibited political donations from corporations or other entities, and
- (b) required electoral communication expenditure incurred for a State election campaign by an affiliated organisation of a party to be combined with the expenditure of the party for the purposes of the applicable cap on expenditure by the party.

The objects of this Bill are:

- (a) to remove the text of the invalid provisions from the *Election Funding, Expenditure and Disclosures Act 1981* (and to restore provisions that were replaced by those invalid provisions), and
- (b) to reverse a number of consequential amendments that were made to that Act by the *Election Funding, Expenditure and Disclosures Amendment Act 2012* relating to the prohibition of political donations from corporations or other entities (so as to restore the operation of provisions of that Act that regulated political donations from corporations or other entities).

## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on the date of assent to the proposed Act.

### **Schedule 1      Consequential amendment of Election Funding, Expenditure and Disclosures Act 1981 No 78**

**Schedule 1** gives effect to the objects of this Bill as set out in the Overview above.

The Schedule also inserts a transitional provision to ensure that the amendments made by this Bill operate, as far as possible, from 18 December 2013 (being the date of the High Court's decision).



New South Wales

# **Election Funding, Expenditure and Disclosures Consequential Amendment Bill 2014**

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New South Wales

# **Election Funding, Expenditure and Disclosures Consequential Amendment Bill 2014**

No. , 2014

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## **A Bill for**

An Act to make consequential amendments to the *Election Funding, Expenditure and Disclosures Act 1981* following the High Court's decision in *Unions NSW & Ors v State of New South Wales*.

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<b>The Legislature of New South Wales enacts:</b>	1
<b>1 Name of Act</b>	2
This Act is the <i>Election Funding, Expenditure and Disclosures Consequential Amendment Act 2014</i> .	3 4
<b>2 Commencement</b>	5
This Act commences on the date of assent to this Act.	6

<b>Schedule 1</b>	<b>Consequential amendment of Election Funding, Expenditure and Disclosures Act 1981 No 78</b>	1 2
<b>[1] Section 84 Definitions—general</b>		3
	Omit “individual (not being an elected member or candidate)” from the definition of <i>major political donor</i> in section 84 (1).	4 5
	Insert instead “entity or other person (not being a party, elected member, group or candidate)”.	6 7
<b>[2] Section 84 (5)</b>		8
	Insert after section 84 (4):	9
	(5) A reference in this Part to the name and address of a person making a donation or loan is:	10 11
	(a) in the case of a donation or loan made by an unincorporated association—a reference to the name of the association and the names and addresses of the members of the executive committee (however described) of the association, and	12 13 14 15
	(b) in the case of a donation or loan purportedly made out of a trust fund or out of the funds of a foundation—a reference to the names and addresses of the trustees of the fund or of the funds of the foundation and the title or other description of the trust fund or the name of the foundation.	16 17 18 19 20
<b>[3] Section 86 Meaning of “reportable political donation”</b>		21
	Omit “individual” wherever occurring in section 86 (2) and (3).	22
	Insert instead “entity or other person”.	23
<b>[4] Section 92 Political donations required to be disclosed</b>		24
	Insert “(in the case of an individual) or the address of the registered or other official office of the donor (in the case of an entity)” after “donor” in section 92 (2) (d).	25 26
<b>[5] Section 92 (2) (f)</b>		27
	Insert after section 92 (2) (e):	28
	(f) in the case of a donor that is an entity and not an individual—the relevant business number of the entity referred to in section 96D.	29 30
<b>[6] Section 95A Applicable cap on political donations</b>		31
	Omit “individual” wherever occurring in section 95A (2) and (3).	32
	Insert instead “entity or other person”.	33
<b>[7] Section 95B Prohibition on political donations that exceed applicable cap</b>		34
	Insert after section 95B (5):	35
	(6) <b>Donors required to disclose related corporation donors</b>	36
	It is unlawful for an individual to make a political donation on behalf of a corporation that is related to another corporation (referred to in section 84 (6)) that has made a political donation to the same party, elected member, group, candidate or third-party campaigner in the same financial year unless the individual complies with the requirements of the regulations relating to the	37 38 39 40 41

	disclosure to the person accepting the donation of particulars of the other corporation and its political donations.	1 2
<b>[8]</b>	<b>Section 95G Aggregation of applicable caps</b>	3
	Omit section 95G (6) and (7).	4
<b>[9]</b>	<b>Section 96D</b>	5
	Omit the section. Insert instead:	6
<b>96D</b>	<b>Restrictions on persons from whom donations can be accepted</b>	7
	(1) It is unlawful for a political donation to a party, elected member, group, candidate or third-party campaigner to be accepted unless the donor is:	8 9
	(a) an individual who is enrolled on the roll of electors for State elections, on the roll of electors for federal elections, or on the roll of electors for a local government election, or	10 11 12
	(b) an entity that has a relevant business number.	13
	(2) A relevant business number is:	14
	(a) an Australian Business Number (ABN), or	15
	(b) any other number allocated or recognised by the Australian Securities and Investments Commission for the purposes of identifying the entity.	16 17
<b>[10]</b>	<b>Section 96E Prohibition on certain indirect campaign contributions</b>	18
	Omit the note after section 96E (3).	19
<b>[11]</b>	<b>Section 96G Prohibition on receiving loans unless details recorded</b>	20
	Insert “entity or other” before “person” in section 96G (1) (b) and where firstly occurring in section 96G (3) (a).	21 22
<b>[12]</b>	<b>Section 96GAB Superseded provision of Division relating to corporate donations</b>	23
	Omit the section.	24
<b>[13]</b>	<b>Schedule 2 Savings, transitional and other provisions</b>	25
	Omit Part 6 (Provisions consequent on enactment of <i>Election Funding, Expenditure and Disclosures Amendment Act 2012</i> ).	26 27
<b>[14]</b>	<b>Schedule 2, Part 9</b>	28
	Insert at the end of the Schedule:	29
<b>Part 9</b>	<b>Provisions consequent on enactment of Election Funding, Expenditure and Disclosures Consequential Amendment Act 2014</b>	30 31 32
<b>26</b>	<b>Application of amendments</b>	33
	(1) This Act is taken to operate, after the commencement of the <i>Election Funding, Expenditure and Disclosures Consequential Amendment Act 2014</i> , as if the amendments made by that Act had commenced on 18 December 2013 (being the date of the High Court’s decision in <i>Unions NSW &amp; Ors v State of New South Wales</i> [2013] HCA 58).	34 35 36 37 38

- (2) Any act, matter or thing that was required by or under this Act to have been done after 18 December 2013 and before the commencement of the *Election Funding, Expenditure and Disclosures Consequential Amendment Act 2014* (if that Act had commenced on 18 December 2013) is required to be done within 28 days after the commencement of that Act or such longer period as the Electoral Commissioner may allow.
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