Electoral Funding Amendment (Local Government Expenditure Caps) Act 2019 No 18

[2019-18]

New South Wales

Status Information

Currency of version

Repealed version for 21 November 2019 to 21 November 2019 (accessed 28 December 2024 at 20:21)

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Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Notes—

- **Repeal**
  This Act was repealed by sec 30C of the *Interpretation Act 1987* No 15 with effect from 22.11.2019.

Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the Interpretation Act 1987.

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New South Wales

Contents

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New South Wales

An Act to amend the *Electoral Funding Act 2018* to make further provision regarding caps on electoral expenditure for local government election campaigns; and for related purposes.

1 Name of Act

This Act is the *Electoral Funding Amendment (Local Government Expenditure Caps) Act 2019*.

2 Commencement

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

Schedule 1 Amendment of Electoral Funding Act 2018 No 20

[1] Section 4 Definitions

Insert in alphabetical order—

Electoral Commissioner means the person for the time being holding or acting in the office of Electoral Commissioner under the *Electoral Act 2017*.

[2] Sections 31 and 31A

Omit section 31. Insert instead—

31 Applicable caps on electoral expenditure for local government election campaigns

(1) **General** The applicable caps on electoral expenditure for a local government election campaign are as provided by this section, as modified by section 32 (Aggregation of applicable caps—local government election campaigns).

Note—

This Act does not apply to an election of mayor by councillors—see the definition of **local government election** in section 4.

(2) **Parties with candidates** For a local government general election or by-election for a local government area or ward, the applicable cap for a party that endorses a candidate for the election (including a candidate for mayor) or a group of candidates for election as councillor (including a group that includes a candidate for mayor) for electoral expenditure for the candidate or group is the amount of the applicable cap for the candidate or group.

(3) **Candidates and groups (other than groups including mayoral candidates)** For a local government general election or by-election for a local government area or ward, the applicable cap for a candidate (other than a candidate for mayor) or a group of candidates for election as councillor (other than a group that includes a candidate for mayor), whether or not endorsed by any party, is—

  (a) $6,000—where the number of enrolled electors for the local government area or ward concerned for the election is 5,000 or fewer, and

  (b) $10,000—where the number of enrolled electors for the local government area or ward concerned for the election is more than 5,000 but fewer than 10,001, and

  (c) $18,000—where the number of enrolled electors for the local government area or ward concerned for the election is more than 10,000 but fewer than 20,001, and

  (d) $25,000—where the number of enrolled electors for the local government area or ward concerned for the election is more than 20,000 but fewer than 30,001, and

  (e) $36,000—where the number of enrolled electors for the local government area or ward concerned for the election is more than 30,000 but fewer than 50,001, and

  (f) $46,000—where the number of enrolled electors for the local government area or ward concerned for the election is more than 50,000 but fewer than 75,001, and

  (g) $63,500—where the number of enrolled electors for the local government area or ward concerned for the election is more than 75,000 but fewer than 125,001, and

  (h) $72,000—where the number of enrolled electors for the local government area or ward concerned for the election is more than 125,000.

(4) **Mayoral candidates (and groups including mayoral candidates)** For a local government general election or by-election, the applicable cap for a candidate for mayor or a group of candidates that includes a candidate for mayor is—

      (a) where the local government area concerned is divided into wards—the sum of the following—

          (i) 100% of the applicable cap for a candidate for election as councillor in a ward of the local government area,

          (ii) 25% of the applicable cap for a candidate for election as councillor in each of the other wards of the local government area, and

Note—

See section 31A(5) regarding the determination of the **number of enrolled electors for a ward** and, in particular, section 31A(5)(b) which provides that the number of enrolled electors for a ward in a local government area is the highest number of enrolled electors in any ward in that area.

      (b) where the local government area concerned is not divided into wards—125% of the applicable cap for a candidate for election as a councillor of the local government area (other than a candidate for mayor).

(5) **Third-party campaigners** For a local government general election or by-election for a local government area or ward, the applicable cap for a third-party campaigner is the amount that is one-third of the applicable cap for a candidate for election as councillor (other than mayor) for the local government area or ward election concerned, but if the amount is not a whole number multiple of $10, the amount is to be rounded up to the nearest whole number multiple of $10.

(6) **Candidate running for mayor and councillor at same time** For the avoidance of doubt, if a person is a candidate for mayor and a candidate for councillor (other than mayor) at the same general election (or a simultaneous by-election for mayor and by-election for councillor (other than mayor)), the applicable cap for the person is the relevant applicable cap for a candidate for mayor.

(7) **Indexation of capped amounts** Each of the amounts referred to in this section is an adjustable amount that is to be adjusted for inflation as provided by Schedule 1.

31A   Meaning of "number of enrolled electors for local government area or ward"

(1) For the purposes of section 31, the **number of enrolled electors for a local government area or ward** for an election for a local government area or ward is the number determined by the Electoral Commissioner in accordance with this section.

(2) **Timing of determination** The Electoral Commissioner is to make the determination as soon as is reasonably practicable after the following date in relation to an election for a local government area or ward—

(a) in the case of an ordinary election of councillors under section 287(1) of the *Local Government Act 1993* and any election of a mayor by the electors held on the same day—the date that is 12 months before the election day for the election,

(b) in relation to any other election—the date that the election day for the election is first determined or specified by proclamation.

(3) **"Relevant date" for determination** The *relevant date* for an election for a local government area or ward is—

(a) in the case of an ordinary election of councillors under section 287(1) of the *Local Government Act 1993* and any election of a mayor by the electors held on the same day—the date that is 12 months before the election day for the election, or

(b) in relation to any other election—

(i) the date of the previous general election for the local government area concerned, or

(ii) if no general election for the local government area concerned has previously been held—the date that the election day for the election is first specified by proclamation.

(4) The *number of enrolled electors for a local government area* for an election is the sum of the following as at the relevant date—

(a) the number of electors on the residential roll for the area,

(b) the number of electors on the non-residential roll and the roll of occupiers and ratepaying lessees for the area who must vote at the election if the election is contested.

Note—

See section 286 of the *Local Government Act 1993* and section 22 of the *City of Sydney Act 1988* regarding compulsory voting at local government elections.

(5) The *number of enrolled electors for a ward* for an election is to be determined as follows—

(a) the sum of the following for each ward in the local government area concerned as at the relevant date is to be calculated—

(i) the number of electors on the residential roll for the ward,

(ii) the number of electors on the non-residential roll and the roll of occupiers and ratepaying lessees for the ward who must vote at the election if the election is contested,

Note—

> See section 286 of the *Local Government Act 1993* and section 22 of the *City of Sydney Act 1988* regarding compulsory voting at local government elections.

   (b) the number of enrolled electors for each ward in that local government area is the highest number calculated under paragraph (a).

(6) The general manager of a local council is, on request, to provide the Electoral Commissioner with the latest copy of the non-residential roll and of the roll of occupiers and ratepaying lessees for the purposes of this section.

(7) **Electoral Commission to publish number of enrolled electors for elections** The Electoral Commission must, before the commencement of the capped local government expenditure period for an election for a local government area or ward, publish on its website the following information in relation to the election—

   (a) the number of enrolled electors for the local government area or ward determined in accordance with this section,

   (b) the corresponding applicable caps that apply to the local government area or ward.

(8) **Electoral Commission to notify candidates of number of enrolled electors for elections** The Electoral Commission, as soon as is reasonably practicable after the later of the following occurs—

   (a) the registration of a person as a candidate on a Local Government Register of Candidates for an election under Part 7,

   (b) the determination of a number of enrolled electors at the election for a local government area or ward for which a person is registered as a candidate,

is to provide the person with the following information in relation to the election—

   (c) the number of enrolled electors for the local government area or ward determined in accordance with this section,

   (d) the corresponding applicable caps that apply to the local government area or ward.

(9) **Regulations may deal with determinations and redeterminations in certain circumstances** The regulations may deal with the following—

   (a) failures by general managers of local councils to comply with requests for copies of rolls under this section,

   (b) the redetermination of the number of enrolled electors for a local

government area or ward if the local council concerned divides its area into wards, abolishes all its wards, changes its number of wards or alters its ward boundaries,

(c) the provision of information to the Electoral Commissioner by general managers of local councils,

(d) the determination or redetermination of the number of enrolled electors for a local government area or ward for an election if the election is delayed or postponed (including, without limitation, a delay or postponement of an election under section 288 or Part 6A of Chapter 10 of the *Local Government Act 1993*).

[3] Section 32 Aggregation of applicable caps—local government election campaigns

Insert "for a candidate or group of candidates" after "an elected member" in section 32(1).

[4] Section 32(1)

Insert "for the candidate or group" after "or elected member" where firstly occurring.

[5] Section 32(2)

Omit "(other than a member of the group who is a candidate for mayor)".

Insert instead "(including a member of the group who is a candidate for mayor)".

[6] Section 32(2A)

Insert after section 32(2)—

(2A) For the avoidance of doubt, for the purposes of subsection (2), electoral expenditure incurred by a candidate includes electoral expenditure incurred for the candidate by a party that endorsed the candidate as referred to in subsection (4).

[7] Section 32(3)

Insert "for a candidate or group of candidates" after "a local government election campaign".

[8] Section 32(3)(a)

Insert "for the candidate or group" after "the local government election campaign".

[9] Section 32(3)(b)

Insert "for the candidate or group" after "elected member".

[10]   Section 32(4)–(7)

Insert after section 32(3)—

(4) **Aggregation of expenditure of candidates, groups, parties and associated entities**
Electoral expenditure incurred by a candidate or a group of candidates that is of or less than the amount specified in section 31 for the candidate or group is to be treated as expenditure that exceeds the applicable cap if that expenditure and electoral expenditure for the candidate or group by a party that endorsed the candidate or group exceed the applicable cap specified for the candidate or group.

(5) Electoral expenditure incurred by a party for a candidate or group of candidates endorsed by the party that is of or less than the amount specified in section 31 for the party is to be treated as expenditure that exceeds the applicable cap if that expenditure and electoral expenditure that is incurred by the candidate or group exceed the applicable cap specified for the party.

(6) For the purposes of subsections (4) and (5), electoral expenditure incurred by a party for an election for a candidate or group of candidates includes electoral expenditure incurred by the following persons or bodies for the election for the candidate or group—

(a) an associated entity of the party,

(b) an associated entity of an elected member who is a member of the party.

(7) The regulations may make provision for or with respect to the apportionment of electoral expenditure incurred by a party for candidates or groups of candidates endorsed by the party among those candidates or groups for the purposes of this section.

[11]   Schedule 2 Savings, transitional and other provisions

Insert after Part 2 of the Schedule—

Part 3 Provision consequent on enactment of Electoral Funding Amendment (Local Government Expenditure Caps) Act 2019

19   Determination of number of enrolled electors for purposes of applicable local government expenditure caps for 2020 elections—section 31A

(1) For the purposes of the application of Division 4 of Part 3 of this Act, as amended by the *Electoral Funding Amendment (Local Government Expenditure Caps) Act 2019*, to the ordinary elections of councillors and elections of mayors

by electors to be held in September 2020—

(a) the Electoral Commissioner is to determine the number of enrolled electors for local government areas and wards under section 31A for those elections as soon as is reasonably practicable after 31 January 2020, and

(b) the relevant date for the purposes of those determinations is to be 31 January 2020.

(2) If—

(a) after 31 January 2020 and before 1 July 2020 a council divides its area into wards, abolishes all its wards or changes its number of wards (a **change**), and

(b) approval has been given under clause 277A(2) of the *Local Government (General) Regulation 2005* for the change to apply to the election to be held in September 2020,

the Electoral Commissioner is, before the capped local government expenditure period for the elections commences, to redetermine in accordance with section 31A the number of enrolled electors for the local government area or wards concerned.

(3) The relevant date for the purposes of the redetermination referred to in subclause (2) is to be a date fixed by the Electoral Commissioner for the area or wards concerned.