



New South Wales

# Election Funding, Expenditure and Disclosures Amendment Bill 2014

## Explanatory note

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

## Overview of Bill

The object of this Bill is to amend the *Election Funding, Expenditure and Disclosures Act 1981* (*the principal Act*) to make special provisions in relation to the 2015 State general election and to make other provisions in relation to that and other elections.

In relation to the 2015 State general election only, the Bill:

- (a) requires a one-off disclosure of political donations received by parties, elected members, candidates or third-party campaigners during the period from 1 July 2014 to 1 February 2015 that is to be lodged and made publicly available about 4 weeks before the general election is held, and
- (b) reduces the caps on political donations, and the caps on electoral campaign expenditure, to the levels that applied to the 2011 State general election (before their annual indexation for inflation), and
- (c) further reduces the electoral campaign expenditure caps for third-party campaigners from \$1,050,000 to \$250,000 (for registered campaigners) and from \$525,000 to \$125,000 (for non-registered campaigners) and from \$20,000 to \$15,000 (for expenditure in each Assembly electorate within the overall cap), and
- (d) retains the eligibility for public campaign funding for parties having candidates elected or receiving at least 4% of the overall first preference votes in contested seats in the Assembly election or in the Council election, and retains eligibility for that funding of independent candidates who are elected or receive at least 4% of the first preference votes in the Assembly or Council election, but removes eligibility for that funding of party endorsed candidates, and

- (e) replaces the existing scheme for public funding of election campaigns of parties and candidates based on a sliding scale of actual expenditure with a scheme under which parties and independent candidates are funded (within the limits of their actual capped expenditure) at the rate of:
  - (i) in the case of a party—\$4 for each first preference vote received by party candidates in the Assembly election and \$3 for each first preference vote received by party candidates in the Council election, or
  - (ii) in the case of a party that does not have any candidates elected in the Assembly election—\$4.50 for each first preference vote received by party candidates in the Council election, or
  - (iii) in the case of an independent candidate in an Assembly election—\$4 for each first preference vote received by the candidate, or
  - (iv) in the case of an independent candidate in a Council election—\$4.50 for each first preference vote received by the candidate.

In relation to the 2015 State general election and other elections, the Bill:

- (a) makes it a separate indictable offence (with a maximum penalty of imprisonment for 10 years) to enter into or carry out a scheme for the purpose of circumventing political donations or electoral expenditure prohibitions or requirements, and
- (b) increases the maximum penalty for existing summary offences under the principal Act relating to political donations and electoral expenditure, and
- (c) extends the limitation period for commencing proceedings for summary offences under the principal Act from 3 years to 10 years, and
- (d) makes expenditure associated with campaign research or travel costs electoral communication expenditure that is to be taken into account in determining expenditure caps and public campaign funding, and
- (e) increases the amount of annual public funding from the Administration Fund for parties with more than 3 elected members from the current rate of \$86,800 per member to \$100,000 per member, and
- (f) doubles the amount of annual public funding from the Policy Development Fund for parties without elected members (and therefore without an entitlement to funding from the Administration Fund).

## 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      Amendment of principal Act relating to 2015 State general election**

The Schedule amends the principal Act to give effect to the amendments outlined above relating to the 2015 State general election only.

### **Schedule 2      Amendment of principal Act generally**

The Schedule amends the principal Act to give effect to the amendments outlined above relating to the 2015 State general election and other elections.



New South Wales

# Election Funding, Expenditure and Disclosures Amendment Bill 2014

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New South Wales

# Election Funding, Expenditure and Disclosures Amendment Bill 2014

No. , 2014

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## **A Bill for**

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.

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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 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>Amendment of Election Funding, Expenditure and Disclosures Act 1981 No 78—2015 State general election</b>	1
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		3
<b>[1] Section 54A Application to State elections only</b>		4
Insert at the end of the section:		5
(3) The application of this Part in relation to the 2015 State general election is modified by Part 7A.		6
		7
<b>[2] Section 83 Application</b>		8
Insert at the end of the section (and before the note to the section):		9
(2) The application of this Part in relation to the 2015 State general election is modified by Part 7A.		10
		11
<b>[3] Section 98 Appropriation of Consolidated Fund for election funding</b>		12
Insert “or Part 7A” after “Part 5 or 6A”.		13
<b>[4] Part 7A</b>		14
Insert after Part 7:		15
	<b>Part 7A Special provisions for 2015 State general election</b>	16
<b>103A Application to 2015 State general election only</b>		17
(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.		18
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(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.		20
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<b>103B Definitions</b>		24
In this Part:		25
<b>2015 State general election</b> means the Assembly general election and the periodic Council election to which this Part applies.		26
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<b>actual campaign expenditure</b> 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 October 2014 to the end of polling day for the election (being expenditure that is within the applicable campaign expenditure cap for the party or candidate).		28
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<b>applicable campaign expenditure cap</b> 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)).		34
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<b>candidate</b> , 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.		39
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	<i>first preference votes</i> means the first preference votes recorded for a candidate that are not rejected as informal at the election.	1 2
<b>103C</b>	<b>Amount of public campaign funding for eligible parties</b>	3
(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.	4 5 6
(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)):	7 8
(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	9 10 11 12
(b)	the total amount of the actual campaign expenditure of the party and of those endorsed candidates of the party, whichever is the lesser.	13 14 15
(3)	If no endorsed candidate of any such party in the Assembly general election was elected, the amount to be distributed under subsection (2) is to be calculated at the rate of \$4.50 (instead of \$3) for each first preference vote received by an endorsed candidate of the party in the periodic Council election (and by excluding any votes received in the Assembly general election).	16 17 18 19 20
(4)	This section applies to the exclusion of section 58.	21
(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.	22 23 24
<b>103D</b>	<b>Amount of public campaign funding for eligible independent candidates (or eligible candidates of parties not eligible for public campaign funding)</b>	25 26
(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.	27 28 29 30
(2)	The amount to be distributed from the Election Campaigns Fund to any such candidate in respect of the 2015 State general election is:	31 32
(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	33 34 35 36
(b)	the total amount of the actual campaign expenditure of the candidate, whichever is the lesser.	37 38
(3)	This section applies to the exclusion of section 60.	39
<b>103E</b>	<b>No public campaign funding for endorsed candidates of eligible parties</b>	40
(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.	41 42 43
(2)	Payments from the Election Campaigns Fund are not to be made to any such candidate in respect of the 2015 State general election.	44 45
(3)	This section applies despite section 59.	46

<b>103F</b>	<b>Special additional disclosure by recipients of political donations before 2015 election</b>	1 2
(1)	There is to be an additional <i>relevant disclosure period</i> for the purposes of Part 6 of the period from 1 July 2014 to 1 February 2015, but only for political donations received during that period in relation to State elections or elected members of Parliament.	3 4 5 6
(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.	7 8 9
(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.	10 11 12 13
(4)	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.	14 15 16
(5)	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. However, those disclosures may be made by adopting (with or without variation) the disclosures made for the additional relevant disclosure period.	17 18 19 20 21
(6)	This section applies in addition to the requirements of Division 2 of Part 6.	22
<b>103G</b>	<b>Indexation after 2011 State general election not to apply to political donation caps and electoral communication expenditure caps</b>	23 24
(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.	25 26 27 28
(2)	The applicable caps under Division 2B of Part 6 on electoral communication expenditure for the 2015 State general election campaign are (subject to section 103H) the amounts referred to in that Division and not those amounts as adjusted for inflation as provided by Schedule 1.	29 30 31 32
<b>103H</b>	<b>Reduced electoral communication expenditure caps for third-party campaigners</b>	33 34
(1)	The applicable cap under Division 2B of Part 6 on electoral communication expenditure incurred by a third-party campaigner for the 2015 State general election campaign is the following:	35 36 37
(a)	\$250,000 if the third-party campaigner was registered under this Act before 1 January 2015,	38 39
(b)	\$125,000 in any other case.	40
	That applicable cap for any such third-party campaigner is subject to an additional cap (within that overall applicable cap) in relation to the 2015 State general election for electoral communication expenditure incurred substantially for the purposes of the election in a particular electorate of \$15,000 for each such electorate.	41 42 43 44 45
(2)	This section applies to the exclusion of the caps provided by section 95F (10) and (12) and Schedule 1.	46 47



<b>Schedule 2</b>	<b>Amendment of Election Funding, Expenditure and Disclosures Act 1981 No 78—General</b>	1
		2
[1]	<b>Section 75 False statements</b>	3
	Omit “200 penalty units”. Insert instead “400 penalty units”.	4
[2]	<b>Section 87 Meaning of “electoral expenditure” and “electoral communication expenditure”</b>	5
	Insert after section 87 (2) (e):	6
	(e1) expenditure on travel and travel accommodation for candidates and staff engaged in electoral campaigning,	7
	(e2) expenditure on research associated with election campaigns (other than in-house research),	8
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[3]	<b>Section 87 (2) (g) and (h)</b>	12
	Omit the paragraphs.	13
[4]	<b>Section 96GE Determination by Authority that person not a prohibited donor</b>	14
	Omit the maximum penalty from section 96GE (7). Insert instead:	15
	Maximum penalty: 400 penalty units or imprisonment for 2 years, or both.	16
[5]	<b>Section 96H Offences relating to disclosures</b>	17
	Omit the maximum penalty from section 96H (2). Insert instead:	18
	Maximum penalty: 400 penalty units or imprisonment for 2 years, or both.	19
[6]	<b>Section 96H (3)</b>	20
	Omit the maximum penalty. Insert instead:	21
	Maximum penalty: 400 penalty units or imprisonment for 2 years, or both.	22
[7]	<b>Section 96HA Offences relating to caps on donations and expenditure</b>	23
	Omit the maximum penalty. Insert instead:	24
	Maximum penalty: 400 penalty units or imprisonment for 2 years, or both.	25
[8]	<b>Section 96HB</b>	26
	Insert after section 96HA:	27
<b>96HB</b>	<b>Offence relating to scheme to circumvent the donation or expenditure prohibitions or restrictions</b>	28
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(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.	30
	Maximum penalty (on conviction on indictment): Imprisonment for 10 years.	31
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(2)	It does not matter that the person also enters into or carries out the scheme for other purposes.	35
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(3)	In this section:	37
	<i>scheme</i> includes an arrangement, an understanding or a course of conduct.	38

<b>[9] Section 96I Other offences</b>	1
Insert at the end of section 96I (1):	2
Maximum penalty: 400 penalty units or imprisonment for 2 years, or both.	3
<b>[10] Section 97E Public funding of eligible parties for administrative expenditure</b>	4
Omit “\$83,000” from section 97E (3) (d). Insert instead “\$100,000”.	5
<b>[11] Section 97I Public funding of eligible parties for policy development expenditure</b>	6
Omit “25 cents” from section 97I (4). Insert instead “56 cents”.	7
<b>[12] Section 97I (5)</b>	8
Omit “\$5,000” wherever occurring. Insert instead “\$11,200”.	9
<b>[13] Section 97M False statements</b>	10
Omit the maximum penalty. Insert instead:	11
Maximum penalty: 400 penalty units or imprisonment for 2 years, or both.	12
<b>[14] Section 110 Inspection</b>	13
Omit the penalty at the end of section 110 (4). Insert instead:	14
Maximum penalty: 200 penalty units.	15
<b>[15] Section 110A Power to require provision of documents and information</b>	16
Omit the maximum penalty at the end of section 110A (6). Insert instead:	17
Maximum penalty: 200 penalty units.	18
<b>[16] Section 110A (7)</b>	19
Omit the maximum penalty. Insert instead:	20
Maximum penalty: 400 penalty units or imprisonment for 2 years, or both.	21
<b>[17] Section 111 Proceedings for offences</b>	22
Omit “3 years” from section 111 (4). Insert instead “10 years”.	23
<b>[18] Section 111 (5)</b>	24
Omit “(section 102 excepted)”.	25
<b>[19] Section 111 (6)</b>	26
Insert after section 111 (5):	27
(6) This section (other than subsection (5)) does not apply to proceedings for an offence against section 96HB.	28
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<b>[20] Schedule 2 Savings, transitional and other provisions</b>	1
Insert at the end of the Schedule with appropriate Part and clause numbering:	2
<b>Part Provisions consequent on enactment of Election Funding, Expenditure and Disclosures Amendment Act 2014</b>	3
	4
	5
<b>Application and future indexation of increased amount of party administration funding under section 97E (3) (d)</b>	6
	7
The amendment made to section 97E (3) (d) by the <i>Election Funding, Expenditure and Disclosures Amendment Act 2014</i> 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.	8
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<b>Application and future indexation of increased amount of party policy development funding under section 97I (4) and (5)</b>	13
	14
The amendments made to section 97I (4) and (5) by the <i>Election Funding, Expenditure and Disclosures Amendment Act 2014</i> 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.	15
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<b>Application of amendment of section 111 (4) relating to period within which proceedings for offences may be commenced</b>	20
	21
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 <i>Election Funding, Expenditure and Disclosures Amendment Act 2014</i> ) applies to offences committed after the commencement of that Act.	22
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