



New South Wales

# Election Funding, Expenditure and Disclosures Amendment Bill 2011

## 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*:

- (a) to provide that electoral communication expenditure incurred by a party for a State election campaign is to be treated as expenditure that exceeds the applicable cap if that expenditure and any other electoral communication expenditure incurred by an affiliated organisation exceed the applicable cap for the party, and
- (b) to prohibit 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 a day or days to be appointed by proclamation.

## **Schedule 1      Principal amendments to Election Funding, Expenditure and Disclosures Act 1981 No 78**

**Schedule 1 [1]** provides that electoral communication expenditure incurred by a party is to be treated as expenditure that exceeds the applicable cap if that expenditure and any other electoral communication expenditure incurred by an affiliated organisation exceed the applicable cap for the party. The applicable cap for the party is both the overall cap (generally \$100,000 multiplied by the number of Assembly electorates contested) and the separate cap for expenditure in each electorate (\$50,000). An *affiliated organisation* of a party means a body or other organisation, whether incorporated or unincorporated, that is authorised under the rules of that party to appoint delegates to the governing body of that party or to participate in pre-selection of candidates for that party (or both).

**Schedule 1 [2]** prohibits political donations from corporations or other entities so that political donations may only be made by individuals on the electoral roll. An offence is committed under section 96I of the Act if a donation from a corporation or other entity is accepted, if an individual makes a political donation on behalf of a corporation or an entity or if a corporation or other entity makes a gift to an individual for the purpose of the individual making a political donation. As a result of the amendments, it will be unlawful for a corporation or other entity (including an industrial organisation) to pay annual or other subscriptions to a party for affiliation with the party. The prohibition will not extend to transfers between branches of parties or between associated parties.

## **Schedule 2      Consequential amendments to Election Funding, Expenditure and Disclosures Act 1981 No 78**

**Schedule 2 [1]–[9]** are minor amendments consequent on the prohibition on political donations from corporations and other entities made by Schedule 1 [2]. **Schedule 2 [10]** makes it clear that a person cannot be punished twice for an offence under the Act that constitutes a breach of the proposed prohibition on political donations by corporations and a breach of the existing prohibition on political donations by property developers and tobacco and liquor or gambling industry business entities, their directors and other associates.

**Schedule 2 [11]** enables savings and transitional regulations to be made as a consequence of the proposed Act. **Schedule 2 [12]** contains transitional provisions. The prohibition on political donations from corporations will apply to political donations made after the commencement of the proposed Act. The amendment relating to the aggregation of expenditure of parties and affiliated organisations will apply to elections held after the commencement of the proposed Act.



New South Wales

# Election Funding, Expenditure and Disclosures Amendment Bill 2011

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New South Wales

# **Election Funding, Expenditure and Disclosures Amendment Bill 2011**

No. , 2011

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## **A Bill for**

An Act to amend the *Election Funding, Expenditure and Disclosures Act 1981* in relation to caps on electoral communication expenditure and prohibitions on political donations.

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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 2011</i> .	3 4
<b>2 Commencement</b>	5
This Act commences on a day or days to be appointed by proclamation.	6

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<b>Schedule 1</b>	<b>Principal amendments to Election Funding, Expenditure and Disclosures Act 1981 No 78</b>	1
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<b>[1]</b>	<b>Section 95G Aggregation of applicable caps</b>	4
	Insert at the end of the section:	5
	(6) <b>Aggregation of expenditure of parties and affiliated organisations</b>	6
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	Electoral communication expenditure incurred by a party that is of or less than the amount specified in section 95F for the party (as modified by subsection (2) in the case of associated parties) is to be treated as expenditure that exceeds the applicable cap if that expenditure and any other electoral communication expenditure by an affiliated organisation of that party exceed the applicable cap so specified for the party.	8
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	(7) In subsection (6), an <i>affiliated organisation</i> of a party means a body or other organisation, whether incorporated or unincorporated, that is authorised under the rules of that party to appoint delegates to the governing body of that party or to participate in pre-selection of candidates for that party (or both).	15
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<b>[2]</b>	<b>Section 96D</b>	20
	Omit the section. Insert instead:	21
	<b>96D Prohibition on political donations other than by individuals on the electoral roll</b>	22
		23
	(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 an individual who is enrolled on the roll of electors for State elections, the roll of electors for federal elections or the roll of electors for local government elections.	24
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	(2) It is unlawful for an individual to make a political donation to a party, elected member, group, candidate or third-party campaigner on behalf of a corporation or other entity.	29
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	(3) It is unlawful for a corporation or other entity to make a gift to an individual for the purpose of the individual making a political donation to a party, elected member, group, candidate or third-party campaigner.	32
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	(4) Annual or other subscriptions paid to a party by a person or entity (including an industrial organisation) for affiliation with the party that are, by the operation of section 85 (3), taken to be gifts (and	36
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Election Funding, Expenditure and Disclosures Amendment Bill 2011

Schedule 1 Principal amendments to Election Funding, Expenditure and Disclosures Act 1981 No 78

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- political donations to the party) are subject to this section. 1  
Accordingly, payment of any such subscription by an industrial 2  
organisation or other entity is unlawful under this section. 3
- (5) Dispositions of property between branches of parties or between 4  
associated parties that are, by the operation of section 85 (3A), 5  
taken to be gifts (and political donations to the parties) are not 6  
subject to this section. 7



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<b>Schedule 2</b>	<b>Consequential amendments to Election Funding, Expenditure and Disclosures Act 1981 No 78</b>	1 2 3
<b>[1] Section 84 Definitions—general</b>		4
	Omit “entity or other person (not being a party, elected member, group or candidate)” from the definition of <i>major political donor</i> in section 84 (1).	5 6
	Insert instead “individual (not being an elected member or candidate)”.	7
<b>[2] Section 84 (5)</b>		8
	Omit the subsection.	9
<b>[3] Section 86 Meaning of “reportable political donation”</b>		10
	Omit “entity or other person” and “entity or person” wherever occurring in section 86 (2) and (3).	11 12
	Insert instead “individual”.	13
<b>[4] Section 92 Political donations required to be disclosed</b>		14
	Omit “(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)” from section 92 (2) (d).	15 16
<b>[5] Section 92 (2) (f)</b>		17
	Omit the paragraph.	18
<b>[6] Section 95A Applicable cap on political donations</b>		19
	Omit “entity or other person” and “entity or person” wherever occurring in section 95A (2) and (3).	20 21
	Insert instead “individual”.	22
<b>[7] Section 95B Prohibition on political donations that exceed applicable cap</b>		23 24
	Omit section 95B (6).	25
<b>[8] Section 96E Prohibition on certain indirect campaign contributions</b>		26
	Insert after section 96E (3):	27
	<b>Note.</b> An indirect campaign contribution that is a political donation as a gift (although excluded from the operation of this section if its value as a gift does not exceed \$1,000) cannot be made by a corporation because of section 96D.	28 29 30 31

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Schedule 2 Consequential amendments to Election Funding, Expenditure and Disclosures Act 1981 No 78

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<b>[9] Section 96G Prohibition on receiving loans unless details recorded</b>	1
Omit “entity or other” wherever occurring in section 96G (1) (b) and (3) (a).	2
<b>[10] Section 96GAB</b>	3
Insert after section 96GAA:	4
<b>96GAB Superseded provision of Division relating to corporate donations</b>	5
After the commencement of Schedule 1 [2] to the <i>Election Funding, Expenditure and Disclosures Amendment Act 2011</i> ,	6
section 96D makes it unlawful for a political donation to be made	7
other than by an individual. Accordingly, a person cannot be	8
punished twice for an offence arising under section 96I for a	9
single act that is unlawful under both this Division and	10
section 96D.	11
<b>[11] Schedule 2 Transitional provisions</b>	13
Insert at the end of clause 1A (1):	14
<i>Election Funding, Expenditure and Disclosures Amendment Act 2011</i>	15
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<b>[12] Schedule 2</b>	17
Insert after Part 5:	18
<b>Part 6 Provisions consequent on enactment of Election Funding, Expenditure and Disclosures Amendment Act 2011</b>	19
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<b>20 Definition</b>	22
In this Part, <i>amending Act</i> means the <i>Election Funding, Expenditure and Disclosures Amendment Act 2011</i> .	23
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<b>21 Application of amendments</b>	25
(1) The amendment made by Schedule 1 [1] to the amending Act	26
applies to elections held after the commencement of that	27
amendment.	28

Election Funding, Expenditure and Disclosures Amendment Bill 2011

Consequential amendments to Election Funding, Expenditure and  
Disclosures Act 1981 No 78

Schedule 2

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- (2) The amendment made by Schedule 1 [2] to the amending Act  
applies to political donations made after the commencement of  
that amendment.

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