

ELECTORAL AMENDMENT (FINANCE AND OTHER MATTERS) BILL 2023

Consideration in Detail

Resumed from 12 October.

Debate was adjourned after clause 113 had been agreed to.

Clause 114: Sections 175AA to 175AC inserted —

Ms M.J. DAVIES: My understanding of this clause is that it goes to quite an important part of the legislation around the definition of gifts and electoral expenditure when it is incurred in relation to the election and the new capped expenditure period being introduced. Could the Attorney General clarify whether proposed section 175AA(2) will prevent the loading up of expenditure outside the capped expenditure period to avoid the cap? As I understand it, if any of the material defined in proposed section 175AA(1) is used during that capped period, it is deemed to have been incurred during that period for the purposes of the cap. Therefore, a whole raft of money cannot be spent prior to the capped period, such as loading it up with broadcasting or Facebook spend, and then say that that does not go towards the expenditure cap. Could the Attorney General confirm that?

Mr J.R. QUIGLEY: That is correct; otherwise, it would subvert the expenditure caps.

Ms M.J. DAVIES: I go to my experience of having booked television advertisements, programming and things like that. Obviously, campaign directors, candidates and parties will have to be mindful of that date when the writs are called when they program their expenditure. I imagine that block bookings will straddle the capped expenditure period and the period prior to it. I imagine that parties and candidates will have to be very precise with their requests for invoices and issues like that with this new provision.

Mr J.R. QUIGLEY: That is correct. One would expect the media companies to be helpful in that regard and tell the customer the actual expense incurred after the writ.

Ms M.J. DAVIES: Could the Attorney General give us an understanding of the advice provided to him about the management of this clause when he was speaking to other jurisdictions? I note that he spoke to other electoral commissions that have introduced the way election caps are managed. I also seek an understanding of the advice that the Attorney General received from the Western Australian Electoral Commission in his consultation with it for the drafting of the bill. Was it a decision of government to introduce the cap? I think we have already determined that there really is no restriction on political parties, candidates or third-party campaigners from spending anything that they like prior to the day the writs are called. There can be an enormous amount of expenditure right up to the day of the writs. When the writs are called, people then will be in the capped expenditure period. I wonder about the practicalities of how the Attorney General has seen that work. What advice was provided about the management of this clause when the Attorney General was having these discussions with other electoral commissions and, indeed, the WA Electoral Commission?

Mr J.R. QUIGLEY: I do not recall having conferred with other jurisdictions on this particular point. The categories of expenditure will not be altered, of course; they will remain the same as they are in the current act. What is made clear is that the cap will apply to the capped expenditure period. I have not had any discussions with any other jurisdictions about how the invoicing by the media companies ought to be done, but I would have thought it was pretty basic.

Ms M.J. DAVIES: Thank you, Attorney General. The expenditure, as the Attorney General said, will be no different. Everything that is defined as “electoral expenditure” in proposed section 175AA(1) is something that most candidates, parties and third-party campaigners will be familiar with. Do these capped expenditure periods exist in other jurisdictions; and, if so, which ones?

Mr J.R. QUIGLEY: Currently there are none in Western Australia, as the member knows. In New South Wales, the capped expenditure period is 1 October, prior to the election date. Victoria does not have a capped expenditure period. In Queensland, it is the first business day after the last Saturday in March by 6.00 pm, with the election being the last Saturday in October. I have a hole punched in South Australia! In South Australia, the capped expenditure period is a year prior to the polling day and 30 days after the polling day. Tasmania does not have a capped expenditure period. In the ACT, the capped expenditure period is 1 January until after the election date, being October. In the Northern Territory, the capped expenditure period is 1 January to 30 days after the election.

Ms M.J. DAVIES: I note from the Attorney General’s answer that there is capacity in other jurisdictions to include expenditure after the election day.

Mr J.R. Quigley interjected.

Ms M.J. DAVIES: Why is that? Obviously, people could potentially book and pay for things that run—no. I am thinking on my feet.

Mr J.R. Quigley: You might be billed after the election.

Ms M.J. DAVIES: Yes. Why was that not included in our legislation? Was it considered and why was it discounted as inappropriate?

Mr J.R. QUIGLEY: I am sure that the member got that the right way around. It does not matter. If the invoice for goods provided during the election is billed 30 days after the election, that is within the cap. Some traders might invoice 30 or 60 days later, although I cannot imagine it. These days that is unusual, but it could happen with a printing house.

Ms M.J. DAVIES: Thank you, Attorney General. My last question is on proposed section 175AA(2). Was any analysis done on the spending patterns in other jurisdictions about what parties or candidates spent up to the expenditure cap and during the campaign? Did the Electoral Commission see a significant increase in the funding in the run-up to an election outside of a campaign period? That might be a bit of a challenging question because the Electoral Commission would not necessarily analyse that, but I think that it would have put its mind to it because we are setting a hard date. Electoral campaigns are run quite differently from the way they used to be when a lot of the expenditure was incurred in the last two weeks. Now, because we have pre-polling and people have the opportunity to vote early, the key campaign messages and expenditure are typically run a lot earlier. The campaigns are not necessarily longer. It may not occur from the time the writs are issued. There is a risk that all of that expenditure will be loaded up prior to the start date of the expenditure cap. Were any patterns identified or was any analysis done that the Attorney General or the Electoral Commission came across when putting all this together?

Mr J.R. QUIGLEY: The commission has not undertaken that work. In the other states, it varies. There are so many variances between the states. No, we have not undertaken that work. Victoria, for example, has donation caps. There are two ways to go around it. With the donations cap, Victoria has a workaround that every party could nominate one organisation—the Five Hundred Club or whatever—that were not capped, so there was a workaround. We have not sought to cap the donations because that seems to be a little irrelevant; how much public spending was spent is relevant. The only pattern that I have observed is not from the commission but from 23 years as a member of this chamber.

This is what drove it all: in Western Australia, we all go to our graduations and Christmas functions and the whole shop seems to close down at the end of the year, and there is little advertising and little movement during January. I think that is to do with the timing of our election in March. I do not know about the member, but from my observation, the community does not want to know about politics until Australia Day. They want a break. They go on their holidays to Rotto or Bali or wherever. As far as I am concerned, any money spent before 26 January is just burnt. We have said that is when it gets going and everyone wants to get out their materials and grab the public's attention. The public turn on and the media is back at it after Australia Day. The Australia Day test match is a slight interruption, but it is nothing much. After Australia Day, it enlivens and that is why we chose that particular period.

Ms M.J. DAVIES: Thank you, Attorney General. I tend to agree with the Attorney General. We are very circumspect with the advertising we do during that period. Nevertheless, there is a particular individual who, I think, some of this legislation has been geared towards preventing his expenditure. We have seen that individual spend inordinate amounts in other jurisdictions and he, or the party, probably does not have the same considerations. Significant expenditure could be expended during the run-up to the writs being issued. That could be to the party's detriment, but it could still be spent. I guess the Electoral Commission will analyse that after the next election to see whether the legislation has had the desired outcome.

Mr J.R. QUIGLEY: Having brought in this legislation, I will be very nervous at the next election, for numerous reasons, to see that a fair and good election is run. Yes, we can look at this ex post facto. As the member said, money spent on advertising before Christmas or 26 January might be ineffective. The nurses, for example, are out there advertising heavily at the moment, but that is probably more to do with its wages campaign than the election campaign.

Ms M.J. DAVIES: I will deal with proposed section 175AB, "Gifts". It is the next proposed section under clause 114. Can the minister advise whether this has been rewritten for the purposes of this clause or is a redefinition of what a gift is?

Mr J.R. QUIGLEY: No consideration is given by a party when a person pays their subscription. Without this clarification, every member subscription could have been regarded as a gift. We want to encourage membership of parties and participation in the body politic. I looked around to see what the various parties were charging for a normal membership and this seemed to adequately cover it. Parties will not have to declare a group of subscriptions. I wanted to make that clear. It was just for the purposes of clarification.

Ms M.J. DAVIES: Proposed subsection (2) is the clarification or new part. We have already spoken about fundraising dinners; I imagine they will fall under proposed subsection (1)(b). A party might hold a fundraising dinner

and it might cost \$50 to put on a meal for each person, but people will be charged \$1 500 to attend. Will fundraising dinners fall under the definition of a gift or be in the donation pile, or is it one and the same?

Mr J.R. QUIGLEY: It will really be in the donation part, but we will come to that in a moment. I have an amendment to put forward to section 175A, which is under clause 115, which is the next clause. The Solicitor-General was in the back of the chamber when he heard the discourse, and he came up with a suggestion that will clarify that for the member and the public.

Ms M.J. DAVIES: Perhaps we will move to the amendment; I just did not want to miss the opportunity to have that clarified under this clause if we are going to move past it. All parties do it. There certainly has been some media around the Labor Party's roundtable functions and things that the Premier has attended. I think all political parties do it at particular points in time, but it depends on whether a party is in government or opposition as to whether it can charge \$1 500 or \$50 for those tickets. I just want to be really clear, for the state directors and those who will have to administer it, about where that will fall so that there is no grey area. If a fundraising dinner is held, it will be disclosed as a gift. Will that then need to be disclosed as a donation as part of the return?

Mr J.R. QUIGLEY: That is right. As the member correctly pointed out, it will be covered by proposed section 175AB(1)(b), to which she earlier referred, which states —

the provision of a service by a person to another person without consideration in money or money's worth or for inadequate consideration if the service is one that would normally only be provided in return for adequate consideration.

In that situation—the provision of a service—the person has given money in excess of the cost of their dinner. That is what the definition section will make clear under clause 115. The profit on the dinner is that for which no adequate consideration has been given, because the party has not given the person \$1 500 worth of service. It is the profit. We will get to that in a moment at clause 115.

Ms M.J. DAVIES: I refer to proposed section 175AC. I imagine that this is the CPI calculation in relation to expenditure caps, because they are defined in the bill. My understanding is that they can only ratchet up and that we will never see a reduction in the expenditure cap outlined in this bill; it will only ever increase in line with the CPI.

Mr J.R. QUIGLEY: It would be wonderful if the CPI started going down. That would solve the cost-of-living crisis! I think it would be a historical first. What the member said is probably right.

Dr D.J. HONEY: What about the provision of physical gifts? I will use a specific example. A union decides to support a candidate in a seat and the campaign is run out of the union office and union workers work as campaigners for that campaign. They will not be running a union campaign; they will be campaigning for a particular member. Would those things be captured? Firstly, would the provision of an office to run a campaign out of be a gift that would be captured by this proposed section? Secondly, would the provision of physical labour to the campaign also be recorded as a gift?

Mr J.R. QUIGLEY: If the worker was volunteering, it would not be a gift. Many unionists volunteer their time, to both doorknock and man booths. That will not be a gift. As soon as employed labour is donated, the party will not be giving valuable consideration in return; it will be getting a gift of the wages but not giving consideration in return. That will be captured.

Dr D.J. Honey: What about the provision of an office or a building?

Mr J.R. QUIGLEY: I am not aware of union offices being used as campaign headquarters.

Dr D.J. Honey: Or any other building.

Mr J.R. QUIGLEY: If a union pays for accommodation and then donates that to a party, the party will not be giving valuable consideration for the space that the union has hired and, therefore, it will be a gift. This is aimed at getting within the cap anything of value that is donated. We are not trying to do it by trickery; we are trying to do it transparently.

Dr D.J. HONEY: I just want to clarify the provision of volunteers. If a person takes leave from their work in a union office—I am being specific—and works on a campaign during their holiday, they will be considered to be a person who is volunteering their time, but if that person is not on leave and is working full-time on the campaign, will that be regarded as a gift or in-kind expenditure?

Mr J.R. QUIGLEY: That is correct, because it will be the provision of a service by a person to another person. It will be the provision of a service and the service is the paid employee. However, if they take annual leave, and that is how they want to spend their spare time, good luck to them.

Clause put and passed.

Clause 115 put and negatived.

New clause 115 —

Mr J.R. QUIGLEY: I move —

Page 232, after line 5 — To insert —

115. Section 175A amended

(1) Delete section 175A(2) and (3).

(2) After section 175A(4) insert:

(4A) For the purposes of this Part, the amount or value of a gift for which inadequate consideration is provided is the difference between the consideration provided and the value of the gift.

(3) Delete section 175A(6).

Ms M.J. DAVIES: I understand the premise of this. We are trying to be very clear about fundraising dinners or events that have a minimal cost that people come to because it is an opportunity to assist in fundraising.

Mr J.R. Quigley: A rubber chook.

Ms M.J. DAVIES: Yes, or a meat tray or a bottle of wine that costs \$10 and goes for \$1 000.

Mr J.R. Quigley: We all do the same.

Ms M.J. DAVIES: Correct. It is a tried and true opportunity for people to engage in the political process. It is just how that information is captured. Determining the cost of a bottle of wine will be very easy. If it is something like a sausage sizzle, how will we analyse the cost of it? What will the party or candidate have to provide to determine the exact cost, because sometimes that is not always easy to do? Will it be a Coles docket or will the restaurant that is providing the meal have to say, “Here’s the cost of what we are providing to you at cost” or will it be the normal set price for meals at the restaurant, including service and those sorts of things? What will be the easiest way to make sure that this is not overly cumbersome but captures the intent of what we are saying, which is that there is a disparity between something that costs very little and what people will pay for it as a political donation?

Mr J.R. QUIGLEY: I suppose if the member and I spent the afternoon trying to work through hypotheticals, we could probably occupy the whole afternoon.

Ms M.J. Davies: I have some state directors who are very keenly watching, Attorney General, because they want to know how they’re going to have to do it.

Mr J.R. QUIGLEY: We could go through hypotheticals all afternoon. What we are looking at is the sensible price of putting on the function. If it is a sausage sizzle involving 200 snaggers, 200 rolls and three or four bottles of tomato sauce, I would not think the state director would have too much trouble working out from his docket what 200 snaggers, 200 rolls from Tip Top and a couple of bottles of tomato sauce cost and deducting that. Why should a party have to declare that as part of its donation when it has nothing to do with the party and is going to a third-party provider? That is what we want to exclude. It is just going to have to be common sense. I have held functions at licensed premises—restaurants that are licensed—and, at the end, I get a total ticket for what it cost for 15 people to attend. I will put that in my file for expenses and deduct it from the amount.

Ms M.J. DAVIES: I have just one more on this. The restaurant would need to charge as per usual. All I am trying to say is that sometimes a vendor will knock off the price. Will it need to be a receipt? We will have to get an invoice from the vendor and they will have to be very clear that it will be used in a declaration to the Western Australian Electoral Commission. There will be a requirement for the vendor to understand that they need to be clear about their costs and it cannot be about getting around those issues in an effort to minimise what is being declared.

Mr J.R. QUIGLEY: I can give the member another example. I have put on dinners for 15 or 20 people and one of the attendees—I am not going to tell members which one—donated the wine.

Dr D.J. Honey: We know who it is.

Mr J.R. QUIGLEY: No; the member thinks he does. He has Mr Satterley on his mind, but he is wrong. One of my friends who has a little vineyard will donate the wine. I am not at the Penfolds level, member; my level is more modest. He will donate the wine for the dinner. That is something that I will have to declare, because I am not giving consideration for the wine. I cannot deduct that from the cost of the dinner. I can deduct from the cost of the dinner what the Whale & Ale in Clarkson or the Cornerstone Ale House in Butler charges me, but I will have to declare the donation of the wine. It would be wrong to deduct the cost of the wine, which is a donation, from the cost of the dinner. We are trying to do this fairly and openly for all parties.

New clause put and passed.

Clauses 116 to 118 put and passed.

Clause 119: Section 175DA inserted —

Ms M.J. DAVIES: I am trying to understand the purpose of this clause. I think it means that for every third-party campaigner, someone the Electoral Commission can deal with must be responsible for reporting or managing the campaign. If it was GetUp, it would be the CEO. If it was the Australian Nursing Federation, it would be its secretary. If it was the Widgiemooltha Parents and Citizens Association, it appears to me that it would be the entire executive if it had not nominated someone specifically. Could the Attorney General provide some clarity about the clause and why it is required?

Mr J.R. QUIGLEY: The member is right again. If it is an incorporated body and it does not nominate an agent or a particular member, it will be all the directors. They can just nominate someone to be in charge. There is no doubt that the state executive of the Nationals WA will nominate the state director, rather than everyone being under that obligation. We want to make that clear for the convenience of all parties.

Ms M.J. DAVIES: Proposed section 175DA(2)(b) states “in any other case — the third-party campaigner.” Can I presume that that is in the event of an individual who is campaigning?

Mr J.R. QUIGLEY: Yes.

Clause put and passed.

Clauses 120 and 121 put and passed.

Clause 122: Section 175LA amended —

Ms M.J. DAVIES: My understanding is that this clause relates to electoral funding, specifically electoral expenditure in relation to an election by or with the authority of the candidate. My reading is that the purpose of this is to make sure that a political party cannot say, “We didn’t know the candidate was making the expenditure” and the candidate cannot say the same, which would create a he-said, she-said situation. Having been a campaign director, I know that can happen when getting to the washout of an election. Everybody gets a little bit of white-line fever and off they go spending willy-nilly. The party either gets left with the bill or there is no way of delineating who is responsible for it. I would have thought that this was something that would have already been clear in the act. Is it a rewrite of another section or will it be a new section? I am just looking for some clarity on my reading that the party will be deemed to know of and be responsible for all expenditure of any of their endorsed candidates.

Mr J.R. QUIGLEY: Yes. I invite the member to turn to page 323 of the blue bill. She will see the strikeout of subsection (3). We have tried to clarify that and apply it to all candidates, including groups. The member should not forget that the Council will now have groups. There will not be parties, but if candidates want to go in as “Group A”, they can go in as Group A. It will all apply to them.

Clause put and passed.

Clause 123: Sections 175LB and 175LC replaced —

Ms M.J. DAVIES: As I understand it, this clause relates to the higher reimbursement rate of \$4.40. This is up from \$2.26. There is also an opt-in clause. I remain very interested about who the minister anticipates may not opt in for the higher amount, given the argument that he has made about increased expenditure, the fact that it has not been reviewed for some time and that election costs have escalated since it was set—I am not sure how long ago. I cannot actually recall when it was first set; I remember having the debate, but not the date. Can the minister advise how he arrived at the figure of \$4.40?

Mr J.R. QUIGLEY: It was a torturous process. There were those in my ear saying that we should return to 2003 or 2004 when the Liberals, Labor and Nationals had a multipartisan agreement on a Friday to public funding. As a result of media attention over the weekend, that all fell apart by the Monday. If we had publicly funded elections, we would know they were clean because no-one would be allowed to spend a dollar and no-one else would be able to influence them. The problem is that, as I think I said before, it would come out at about \$8 or \$9 a vote minimum. It could be \$10 a vote, but all fundraising would have been cut out. That had some initial appeal, but how would new players enter the field? They do not have a historical vote, so they would have to fund themselves in the election when all the other parties were getting money from their last go.

I then had to come up with what a reasonable return would be, so I looked around Australia. I looked at Sydney, which allocates just over \$6 a vote, with an admin fund of \$6 million on top of that. If that is divided very roughly by three to account for population variation—it is not exactly a third—that would be over \$2 a vote, just for the admin fund. There is merit in that, but given the economic times we find ourselves in and the regard that we must have for all our constituents, that was not acceptable in my opinion.

I looked around Australia for what was acceptable. New South Wales allocates \$5.30 in the Legislative Assembly and \$5.97 in the Council. Victoria, which has workaround provisions for donations, nonetheless allocates \$7.01 in the Assembly and \$3.50 in the Council. It has a ratio of 50 per cent of the count of the Assembly return for the Council; I will come to that in a moment. Queensland allocates \$6.45.

The ACTING SPEAKER (Mrs L.A. Munday): Members, can you please move quietly. Thank you.

Mr J.R. QUIGLEY: South Australia allocates \$4.41, the Australian Capital Territory allocates \$9.80 and Tasmania will allocate \$6 in its proposed legislation. Federally, \$3.23 is allocated, with an uplift coming. Leaving aside the federal sphere for a moment and looking at all the other states, I asked: what will keep us the cheapest and how do we compare with other states? South Australia was next to us at \$4.41, but it is looking at total public funding, so the \$4.41 is not even going to hold it. I want to be on my feet here and be able to look at the member and say, “I looked around Australia, and in these straightened economic times, I have come in with—by the thickness of an angel’s wing—the cheapest in Australia.”

Ms M.J. DAVIES: I might get one more question in before question time. I think I recall the Attorney General saying something about a level playing field in terms of the model that he chose—trying to find a balance between the reimbursement rate as opposed to the administrative funding. I still argue that his argument around the administration fund does not quite hold water, given that it is still difficult for parties without an existing structure to get in, because it is a reimbursement. The \$4.40, or the \$2.26 as it is now, is a reimbursement for money spent. Whether or not they will get admin really makes no difference to independent or smaller political parties, particularly new parties. I understand that the minister is saying that parties would have an added advantage, but the other way of looking at it is that this will be just a reimbursement for money spent. If we are seeking to create a level playing field, it will still be a challenge for smaller parties.

Debate interrupted, pursuant to standing orders.

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