ELECTORAL AMENDMENT (FINANCE AND OTHER MATTERS) BILL 2023

Committee

Resumed from an earlier stage of the sitting. The Deputy Chair of Committees (Hon Dr Sally Talbot) in the chair; Hon Matthew Swinbourn (Parliamentary Secretary) in charge of the bill.

Clause 1: Short title —

Committee was interrupted after the clause had been partly considered.

Hon TJORN SIBMA: It is nice to have the parliamentary secretary back. No doubt, the very capable and professional Leader of the House, who sat in for the parliamentary secretary, would have briefed him on some of the inquiry that he missed out on. To assist him I will recap, if he does not mind. That is not to chew into clause 1 time, but I think it is helpful in assisting with context. My friend and colleague Hon Martin Aldridge asked about the process of consultation and the fact that there was effectively no consultation with other political parties, other than the Labor Party at an indeterminate date. I will let my colleague pursue that if he wishes. The focus of my questioning so far, to put the parliamentary secretary in the frame of mind, was the helpful precis he gave of the origin of certain provisions that are embedded in this 199-clause bill. The parliamentary secretary was helpful in demarcating origins between the government, the Parliamentary Counsel's Office to a degree and the Electoral Commission. I think the parliamentary secretary referred in his abbreviated but pithy second reading reply to the contributions made or advice provided by the Electoral Commission as effectively forming the rump of the bill. What I will attempt to do now, so that we can direct our inquiries at later stages of the bill to the appropriate spot, is to understand the contours, shape and weight of the rump.

Articulated from pages 10 onwards in my copy of the second reading speech given by the parliamentary secretary are a range of modernisation provisions. It might be easier to go to the second reading speech rather than *Hansard* for the parliamentary secretary's reference. We have ascertained and satisfied ourselves that the establishment and maintenance of an electoral register upon which an electoral roll will later be formed was a request of the commission. It was not the Attorney General; this came from the ground up, if you like. Likewise, arrangements around the commission's internal processes and the need to give them some statutory weight also originated from the commission, as we would expect. We have established, for example, that the proposal permitting 16-year-old people to provisionally enrol did not come from the government. This apparently originated from the Electoral Commission.

The next point we have established is the capacity for the commissioner or, presumably, the commission to extract data or information from other agencies to presumably formulate a contemporary register upon which a roll will be established. The commission has asked for that. We may get to this point later, but it might be worthwhile stopping here and asking which particular agencies maintain datasets of information that are of value to the commission to establish or maintain an accurate register and roll.

Hon MATTHEW SWINBOURN: The most obvious agency is the Department of Transport. It will be the information associated with people's licences and, I suspect, their registration as well for a motor vehicle. I do not know whether one can have a registration for a motor vehicle and not hold a licence. In any event, it is the Department of Transport but also ServiceWA—I do not think it is its own agency—because that app still exists and data might sit behind that in relation to this.

Hon TJORN SIBMA: Would it also be envisioned that the commission would potentially seek access to local government information about rates notices and the like to establish residential addresses? Has that been contemplated by the commission?

Hon MATTHEW SWINBOURN: No, that has not been contemplated.

Hon TJORN SIBMA: Has it been contemplated that it might be helpful if the commission had access to information from utility providers, such as the government trading enterprise accounts held by Synergy or the Water Corporation and the like? Would that information be useful or beneficial to the commission? Has it contemplated that?

Hon MATTHEW SWINBOURN: We are just trying to establish something in relation to this because it might be a moot point with respect to the way this works. The Electoral Commission mostly works in cooperation with the other agencies to have access to the data. We are just trying to establish whether there are any compulsion powers on the part of the commission to require the production of those sorts of things. It is our feeling that there are not, but I want to be more certain about that advice.

Hon TJORN SIBMA: Unless there is another line of inquiry on this particular matter, I suppose my question is, firstly: what kind of information is considered valuable by the Electoral Commission in this regard and what purpose is there to facilitate greater access? Secondly, other than potentially giving the commission the right to ask, what provisions or protocols are in place that provide for that information sharing to be conducted in an appropriate way, noting that there is an absence of an information sharing or privacy act, which has been the commitment of this government? The three lines are: what information is being sought and for what purpose, and, presently speaking,

is there any statutory cover to facilitate what is being sought within this bill or will another act or another set of agreements made under this act be required to permit that?

Hon MATTHEW SWINBOURN: I take the member to the foundation in the current act. There are amendments around that. I refer to the second version of the blue bill and what is now section 35, currently titled "Public officers to give Electoral Commissioner etc. information", so there is already a provision there. It currently provides —

> All public officers in the service of the State, and all officers in the service of any local government are hereby authorised and required to furnish to the Electoral Commissioner or any of his officers all such information as he requires to enable him to prepare or to revise the rolls.

That is being amended by virtue of clause 27 of this bill, which will provide a new title for that particular section. The amended heading to section 35 will be "Public officers to give particular persons information to revise register of electors". Section 35 contains one sentence; the last part will be deleted and words inserted to read —

> … officers information the Electoral Commissioner requires to prepare or to revise the register of electors.

That amendment will not substantially change what is already in the existing act per se; that language is being altered to reflect the moving away from the term "rolls" to "register of electors". The member's more specific question was: what kind of information is being contemplated in terms of that sort of thing? That information is essentially the addresses of people already on the roll to be compared with information that might be held. People are much more likely to update their address with the Department of Transport, for example, when they change their licensing details. The consequences for them not doing that are, I think, much more serious than they are for not updating their enrolment information.

The purpose of this is to keep the register as up to date as possible. In terms of statutory cover, there is a range of obligations that exist upon the commission and others that have access to the roll to keep that information—I am not going to use the word "private" because it is not private as such—but not use it for improper purposes. For the obligations on those other entities, that issue about their information does not arise under this particular regime. I cannot give more specific advice, as some entities will be dealing with information according to whether they are covered by commonwealth privacy principles, whether they have their own internal policies or whether their own legislative provisions provide for how they can use and distribute information. To provide additional context, most of this information is currently coming from the Australian Electoral Commission. It is using its very significant databases to provide information back to the commission, again, so that the federal roll and the state register are as close as possible to each other. The commission gets a weekly data dump from the commonwealth.

Hon TJORN SIBMA: Not to verbal the parliamentary secretary, but the way I phrased the question possibly magnified the materiality of this matter. What significant advantage is the commission seeking, considering we have been advised that there is a monthly automatic transfer of almost like-for-like data between the Australian Electoral Commission and the Western Australian Electoral Commission?

Hon Matthew Swinbourn: Weekly.

Hon TJORN SIBMA: Sorry. Weekly. It being the case that it is updated 52 times a year, what further information from state government agencies would further finesse the register?

Hon MATTHEW SWINBOURN: For example, some people with a Western Australian driver's licence might not receive commonwealth benefits, so their information would not be captured if they are changing their circumstances. I am trying to think whether we have that information with the ATO and Medicare as well. I suppose it would be a small circumstance, but it is probably our end of the bargain as well, if I can describe it that way. The information goes to the commonwealth and back so, again, it is all about ensuring the roll is as accurate as it can possibly be. It is to ensure that people are enrolled where they live rather than where they might have given an address. In some circumstances, people might have given information to commonwealth agencies and it is not their primary residential address, so that might not match up for those particular purposes. This could give an open line of inquiry for the state commission to say that the commonwealth information says "X", but the state information from the state agency says "Y", when establishing whether the person's residential address is the information we have as opposed to an address given to the commonwealth for some other particular purpose. It is all about that system being—I want to use the word "veracity" of that system, the robustness of that system in ensuring that it is as —

Hon Tjorn Sibma: You've got a feedback loop.

Hon MATTHEW SWINBOURN: Yes. That is right.

Hon MARTIN ALDRIDGE: I will jump in on this issue. It might help later on. The parliamentary secretary mentioned two examples of primary data sources—the Department of Transport and ServiceWA—that might be useful from an Electoral Commission perspective. My first question is probably more about policy than legislation. How does the WAEC receive this? For example, does it receive information from the Department of Transport that Martin Aldridge has updated the registration for all his motor vehicles? I may have done that because I want

all of my registrations to now go to my business address because that is where I am sitting down and paying my bills, but my primary residential address has not changed. If that is flagged as a potential address update, is something triggered that sends Martin Aldridge a letter to say that the Electoral Commission has become aware that he may have changed address, and asks whether this is his primary residence or not, or is it just assumed and updated? I think there are some risks in that approach if there is not an opportunity for the voter to determine for themselves whether that address is, indeed, correct.

Hon MATTHEW SWINBOURN: I am advised that if they get the kind of information the member talks about, when there is a conflict between the data on the present roll and the information that is received, the commission will write a letter to the person concerned, asking them for confirmation, or indicate that it has information that their address may have changed, and ask them to confirm that. I asked the adviser what happens if there is no response, and he said the commission would write another letter. I asked what happens after that, and he said we are not at that stage at the moment, so there is no decision as to how they will deal with that particular point.

Hon MARTIN ALDRIDGE: I think the other primary data source is the Office of Births, Deaths and Marriages, one would think, for removing people from the roll.

Hon Matthew Swinbourn: By way of interjection, I am advised they get that through the AEC.

Hon MARTIN ALDRIDGE: The parliamentary secretary may have to assist me here, but I think this was a creature formed out of COVID-19. The parliamentary secretary may recall the situation when the government said, "Never fear, your data is safe. We will only use it for a COVID-19-response public health purpose." The police commissioner went rogue and out of control, and the government could not deal with it. It had to bring urgent legislation in to bring the police commissioner back under control. I recall the amending bill providing quite strict data requirements to effectively arrest the police in their hunger for data, and made it explicitly clear that it could be used only for a public health COVID-19-response purpose. I am generalising here because I do not have the specific information in front of me. Is there a conflict between the primary legislation that might provide for that data collection and for this provision, which effectively states that the Electoral Commissioner can require the information from any public officer?

Hon MATTHEW SWINBOURN: To clarify, I said the ServiceWA app, not the SafeWA app.

Hon Martin Aldridge interjected.

Hon MATTHEW SWINBOURN: I think there has been movement with that process. It is very ingrained from the first bill I dealt with and I recall the circumstances. The ServiceWA platform is still under development, as I understand it. The app's terms and conditions on the ServiceWA website state —

> By using ServiceWA, your information is made available to the WA Government (and the WA Government can use it in accordance with the relevant privacy policies).

SafeWA used the tag-in stuff, and the app is much broader than that now. We do not use the tag-in, or anything that I am aware of, at this particular point in time. I do not know whether I can take it much further than that, because that is not the government or the advisers at the table, if I can put it that way. If there are explicit provisions in that act that we did—I cannot recall its name—way back in 2021, that specifically lock in these provisions here, they would not necessarily override these particular provisions, because they are explicit and these ones are general.

Hon TJORN SIBMA: I have another question to round out, or perhaps foreshadow, an inquiry during the later stages of the bill. Since we are talking about maintaining registers obtaining information as one of the objects of the bill and one that was sought explicitly by the commission itself, in general terms, what information security principles apply at the Western Australian Electoral Commission? For example, at the moment the roll is maintained and what is being proposed here is the capacity to create a register from which a roll will be generated. I am not necessarily sure of the utility of that, but I will take the Electoral Commission's advice that there is some. How will that information be maintained in physical and digital format? Particularly in relation to the digital format, will the servers be located and maintained in Western Australia? Will there be any involvement in the maintenance or back-end support from either a commonwealth entity, a third party private entity or a non-Australian resident service provider?

Hon MATTHEW SWINBOURN: I can assure the member that the Electoral Commission takes very seriously, obviously, the veracity of the data that it keeps. Somewhat of a paradox, of course, is that the electoral roll is in and of itself a public document, so some information does not necessarily have the same level of concern as with health records, police records and those sorts of things because they are not public documents or public information. However, the servers are based here in Western Australia. They do not use any external agencies like—what is the Amazon one? That was the one that came up during the debate about the SafeWA app. There are no overseas agencies involved. Only Western Australian Electoral Commission staff will have access to those servers. The register is extracted from that dataset and then the roll. We have already acknowledged that, in effect, the commission already

has a register that it uses to create the roll. With this legislation, we are trying to catch up the legislative framework to the commission's current practices.

Hon TJORN SIBMA: I might just put that particular matter to rest for the moment. The purpose of my line of questioning at the outset remains establishing where the rump of the bill begins and ends. I refer to the second reading speech and the proposal to allow eligible voters who have lived in a district for more than one month but are not on the register or have not updated their details by the close of the roll at an election to attend a polling place on the day they intend to vote and be enrolled to provisionally vote. Is it correct that that suggestion, or recommendation, originates from the Electoral Commission rather than the government?

Hon MATTHEW SWINBOURN: Yes, that is correct. That came from the commission.

I need to make an addition rather than a correction to something that I do not think I covered in my second reading speech. This is something that came from the government rather than the commission itself. The reduction in the early voting period came from the government and not from the commissioner. I think the member reflected in the second reading debate that the commissioner previously said that it would remain that length of time, but that suggestion came from the government rather than the commissioner. I think that probably fills in a few blanks for the member.

Hon TJORN SIBMA: It does. That is happy news. I do not think that the reduction in the pre-poll period has caused any sadness among any of the participants at an election, including candidates, parties, volunteers, workers, the WAEC staff or the shop owners around the places where pre-polls are established. Those car parks can get pretty fraught. That is a good one.

I want some clarification around the consecutive days leading up to the pre-poll because I count 10 when I factor a Labour Day public holiday Monday into the pre-poll. I prefer 10 days, but I assume that the accurate number is 10 consecutive days before the polling day rather than 11, but I might have miscounted. Not a great deal rests on this matter but I would prefer to maintain my volunteer list a day shorter than a day extra if necessary. I think it is worth clarifying that point. I am glad that is something the government claims. Well done, government. That is a good one. It would have been unanimously supported if we had engaged in the consultation process.

I turn to another matter, which is the provisions around the management of postal-vote applications. I presume this originated from the Electoral Commission rather than the government. Is that a correct assumption?

Hon MATTHEW SWINBOURN: Yes, member, that is correct.

Hon TJORN SIBMA: I think, then, largely, with the one important exception, we have determined which author is responsible for which provisions in the bill so that we now know where to direct our rage and fury and lines of questioning—or perhaps the tone of the question, more fairly. However, owing to the shared ownership of a number of these provisions, upon whose advice was the creation of new offences and, indeed, new and increased penalties for the conduct of those offences? Was that based on advice from the Electoral Commission, the government or the Solicitor-General? I have not really gone into the now recently resigned Solicitor-General's involvement in this bill. Can the parliamentary secretary fill us in on who drafted the offences and penalties in the bill? That would be very useful. The parliamentary secretary may have to demarcate the different offences and penalties.

Hon MATTHEW SWINBOURN: I will answer this question in probably a bit of a broad sense. In the first instance, we think about some of the government initiatives that have been raised. By way of example, the requirement to register how-to-vote cards was something that the government said it wanted; it did not come from the Western Australian Electoral Commission. Having set that as a framework of something we want to do, it is consequential that penalties for noncompliance would then come into it. We looked at what other jurisdictions have done and where their penalties sit, and that guided us. Penalties, in and of themselves, are not an exact science, and setting them is not an exact science. In Western Australia, we do not use penalty units, as they do in the commonwealth and in some other jurisdictions, but guidance comes from other things. It is not very satisfactory, I suppose, but it is a bit about where they appropriately sit and whether there are any particular circumstances.

A lot of it also comes from advice that is given to us by the Parliamentary Counsel's Office when it is preparing the drafting of the bill. Perhaps the member's last point was about who drafted them. Of course, PCO drafted them, and PCO gives feedback on the drafting based on the drafting instructions it has, but it will also look at how things are drafted in other jurisdictions and the penalties that are associated with comparable things, and give advice back to government about those things.

Conversely, when it came to new matters the Electoral Commission pursued that might give rise to some sort of obligatory circumstances in which people would need to be punished if they did not do it, of course, those offences flowed from where the Electoral Commission came from. We have been through that list of things. I do not have an exhaustive list, but I think that gives the member an idea, in a thematic sense, of how we got to each one.

Obviously, as we go through them after the clause 1 debate, if the member wants to, we will be in a better position to give more specific things about where each one has come from.

I refer, for example, to the increase in the rate for failing to vote; the rate and many other penalty rates were set many years ago. They have not been indexed, and the current bill has no indexation provision. Obviously, regard was had to the fact that it has fallen behind contemporary rates. The penalty is currently $20 for failure to participate in a Western Australian election or referendum, and it is $50 in the commonwealth. Is that correct? Yes. We are raising our penalty from $20 to $50, but it has been $20 for many, many years. I am not sure what it would be if we had indexed it. If $20 does not encourage people to vote, $50 might. That regime has never been about imposing a significant harm on a person. Post-election, a series of dog-ate-my-homework responses always come through about why people missed voting and why they should not pay. People get quite upset, of course, when they have quite earnestly not been able to vote for a particular reason and then had a penalty imposed. They will raise that with the Electoral Commission in the first instance and with the Minister for Electoral Affairs. I remember some letters presented by people who wanted to avoid the penalty. It was not because the amount was something that they could not afford to pay but because it was an affront to their civic pride.

Hon MARTIN ALDRIDGE: I take the parliamentary secretary's point about specific questions about offences as we move through. I want to flag that I have an interest in the offence and penalties relating to expenditure caps and their disclosure. There will probably be various clauses in which we continue this discussion.

I want to ask a question at this point, during the clause 1 debate. Prior to a penalty being applied, there is the issue of the investigation and prosecution of alleged offences. I think it is fair to say that I have routinely offered gentle criticism of the Electoral Commission for its lack of willingness to prosecute offences under the Electoral Act. In my view, it takes an overly educative approach to people who find themselves in breach of the act. I learnt at my briefing a couple of things about electoral investigations that I would like to elaborate on here. One was that investigations are conducted for the Electoral Commission by a third party. I understand that it uses a contractor, pursuant to a common use agreement. I would like to try to get a better understanding. Is it some sort of private investigative firm or private contractor that provides this service? I also wanted to get an understanding of whether the commission has any powers of investigation. I think in the briefing there was talk about utilising the services of the Western Australia Police Force to investigate offences. I suspect that I know what the Commissioner of Police will say to the Electoral Commissioner if the commission makes routine referrals to the police force about electoral offences. They would probably have to be high crimes for police to contemplate an investigation. I want to understand whether there are any powers. Does the commissioner have the power, now or in the future, to have documents produced? Does he have powers to search, to enter premises or to enter party offices, or does he have no powers of investigation?

Hon MATTHEW SWINBOURN: I want to answer that question in two different ways. Just to clear up the matter, the private security firm that the Electoral Commission currently uses to conduct its investigations is called the Gold Security Group. I will talk about what that means practically in more detail shortly. Breaches of the act could be minor or something more serious. For example, a minor breach might be a failure to vote. That is the most common circumstance in which the commission uses its powers.

The commission gathers data after it has compiled the electoral roll and checked it twice, which is what Santa does, though I do not want to be flippant. The commission then has a list of people who did not participate in the election, as required. It will write to those individuals, serving them with an "apparent failure to vote notice", which invites that person to provide a response to the commission. For example, they might say that they voted at a particular place and time, and those sorts of things. On that basis, the commission might say, "Yes, you have satisfied us that you did participate, and the error is on our part." The person might say that they were involved in a traffic incident on the way to the polling place and ended up in a coma. The commission might say, "Yes, you failed to vote but you have a satisfactory explanation as to why you were unable to do that, and no further action will be taken." If the person says they do not care and they did not want to vote—"screw you all" kind of thing—or, alternatively, they were living under a rock and did not vote or did not respond to the notice, the commission will then issue an infringement notice and the arrangements for them to pay the appropriate modified penalty. If the person fails to pay the fine, the commission will send an additional final demand notice to the individual. If they still fail to pay the penalty within the required time frame, the commission will refer the matter to the Fines Enforcement Registry, which will follow through with its processes. It is very similar to receiving a speeding ticket and not paying the fine within the required time. That matter would be referred to the Fines Enforcement Registry and it will deal with the individual. If a person wants to challenge the infringement notice because it thinks the commission is wrong and they do not consider themselves to be liable, they will be able to take the matter to court because the mere issuing of the infringement is not proof that a person has failed to vote. The state would still have an obligation to prove the offence against the individual if the individual takes the registry to task.

In the instance of a more serious offence such as committing electoral fraud and those sorts of things—perhaps the member is more interested in this situation—the commission would gather its own information. If it were apparent

that there was a prima facie case for an offence having been committed, it would take it to the commissioner. The commissioner would then satisfy himself whether there was sufficient material to go forward. If the commission forms that view, it will engage the investigator—the private firm that I mentioned previously. It does not have any powers of compulsion or those sorts of things. It cannot force somebody to do anything. It does not have the power to arrest somebody, like the police do. The commission will just gather information that is made available to it. The commission may ask questions of witnesses or people who have made complaints about that sort of thing and collect that information in a manner that can be presented at a later date. As I said, it does not have the investigative powers of the police.

Once the commissioner receives the investigator's report and is of the view that an offence is likely to have happened, the commissioner must refer the matter to the police because the commissioner does not have the power to prosecute. The commissioner would say that he is of the view that an offence has occurred. Presumably, the Western Australia Police Force would conduct its own investigation. If it was satisfied that elements of the offence can be prosecuted through the court, the police would take action. It is not up to the Electoral Commissioner to decide whether to take action. I think the commissioner would be able to say that he does not want to pursue the matter any further, although I doubt that the police are bound to follow that because the police can obviously enforce the laws of Western Australia. I suspect that the commissioner's view would be highly influential in those circumstances. If the police do not want to take action, the commissioner does not have the right to proceed without the assistance of a prosecuting agency.

Hon MARTIN ALDRIDGE: I thank the parliamentary secretary for that quite detailed answer. At what point would the Director of Public Prosecutions be involved?

Hon Matthew Swinbourn: It depends on the offence, I think.

Hon MARTIN ALDRIDGE: Would it occur only if a crime was committed?

Hon Matthew Swinbourn: If the matter had to go to the District Court or the Supreme Court, the DPP would likely be involved. If it were before the Magistrates Court, it would undoubtedly be the police who were the prosecutors.

Hon MARTIN ALDRIDGE: We might unpack this a bit more. I think I flagged in my second reading contribution the powers of the commission and others, particularly with respect to third-party campaigners—those people who sit outside our ordinary political regulatory environment. We may well be dealing with third-party campaigners—who discover after the fact that they have obligations under state law, just like the Chamber of Minerals and Energy, which spent $4.3 million over about five and a half weeks and realised that it broke the law of Western Australia by not disclosing that to the commission. I suspect we will see more of that, keeping in mind that the threshold for third-party campaigners is expenditure greater than $500. It would be more useful for us to unpack that a bit more.

My concern is the enforceability of the expenditure caps, particularly when we are dealing with the commission, which is in effect powerless to even compel somebody to provide information on their expenditure campaign or election return—I am probably using the wrong terminology—to compel them to produce one or to even determine the veracity of one that has been submitted. I think that is best dealt with when we get to the relevant area.

Hon MATTHEW SWINBOURN: By way of clarification, there are some investigative powers in section 175W of the existing act. It is a comprehensive section. Our only interference with these particular provisions is a change to the title of the section, which does not carry any particular weight, and a change to the penalties in that section. They are the existing investigative powers and relate to part VI of the act, "Electoral funding and disclosure of gifts, income and expenditure". There are some compulsion powers in terms of investigation under there. But, as I said, the bill that is before the house will not substantially or meaningfully interfere with that existing power.

Hon TJORN SIBMA: I think we need to explore the full extent of the commission's investigative powers in more detail, potentially at the appropriate stage of the bill and possibly on an offence-by-offence basis. I may concentrate more on the retail end of the infringement space. The parliamentary secretary very helpfully outlined the stepped process by which an apparent failure to vote precipitates a stream of escalating correspondence; I will put it that way. It might be useful to have a baseline of voter attendance and note that there are particular peculiarities around by-elections. Since the 2021 state election, we have had the by-elections for North West Central and, more recently, Rockingham. In respect of each of those, is the parliamentary secretary able to advise how many first apparent failure-to-vote notices were mailed out?

Hon Matthew Swinbourn: Member, given that we have only about 17 minutes, perhaps if I just take that one on notice. That way the member will get a more fulsome answer.

Hon TJORN SIBMA: If the parliamentary secretary does not mind, I will take the opportunity to step out the next elements of the questioning, because that will probably allow for a more complete answer.

The first piece of correspondence that is sent out attempts to establish the apparent failure on behalf of an individually enrolled person to present themselves at a polling booth. What is the proportional amount of responses back to that first letter that provide something of a lawful excuse for their inability to present themselves? How many responses,

proportionally speaking, indicate that the person did vote and the commission was acting on some wrong advice? Of those in which there is no lawful excuse or no error established on behalf of the commission, what proportion of people are just effectively recalcitrant and refuse to admit, effectively, liability, which then precipitates potentially further escalation—either investigation by a third party or the referral to the fines enforcement agency?

What I am attempting to get, in part, parliamentary secretary, if it is of assistance, is what level of discretion the commission has and what level of discretion it executes in enforcing a lawful requirement for a voter to present themselves at a polling booth. Is a different attitude taken in respect of by-elections? Is a different attitude taken in the conduct of a state general election? Some data on this facet would be useful to help us guide some of our consideration at a later stage.

I suppose this might be a related question that the parliamentary secretary can answer now: is there a penalty of some kind for recidivist non-voters who are on the electoral roll? What happens, for example, in a scenario in which person X refused to vote at the 2013 state election and then refused again at the 2017 state election, and then potentially refused again at the most recent election? What happens to that person? Are they struck off the roll? Is there an escalating sense of penalties or is there a point at which the commission decides there is no use even contacting this person any further because they are determined not to participate in the democratic process?

Hon MATTHEW SWINBOURN: It would be fair to say that although participating in elections is compulsory, generally governments in Australia have had a light touch for how they deal with people who fail to meet that civil obligation, responsibility and right. It has never been the case, for example, that governments have come down heavy handed, in the first instance at least, with an individual who says, "I do not wish to participate. You can fine me as often and as much as you can." If a person failed to vote, for example, in the 2013 election, the penalty would have been $20. If they subsequently commit a further offence by failing to participate and vote in the 2017 election, they would have been fined $50. If they failed to participate in the 2021 election, it would have been $50. Those fines are all modified penalties if they pay on the infringement.

Point of Order

Hon MARTIN ALDRIDGE: Deputy chair, I am finding it difficult to follow the parliamentary secretary and I think the parliamentary secretary is finding it difficult to maintain concentration in the chamber.

The DEPUTY CHAIR: It is a point well made. I was just about to raise it. Honourable members, if you would not mind keeping your chair where it is supposed to be and keeping your chit-chat down to a bare minimum, please.

Committee Resumed

Hon MATTHEW SWINBOURN: The point I was making is that under the modified penalties, the fine is $20 for a first offence and $50 for the second and subsequent offences. If the person got a fine of $20 and they did not pay it or challenged it and it went to court, the full penalty of $50 would be imposed by the court, or if it went to the Fines Enforcement Registry, it would be $50. What we are proposing under the bill is to move from an initial penalty of $20 to $50, and if the person offends a second and subsequent time, it will be $75. The fine for not exercising the opportunity to pay the modified penalty at the appropriate time or for challenging the matter and losing the case before the court will be increased to $200. It is an increase in that regard. No, the commission does not give up pursuing and issuing infringements to people who are avowed non-participants in elections. If somebody consciously makes that choice, they can reasonably expect that each and every time they do that, they will receive contact from the commission asking them to explain and, on the failure to provide a satisfactory explanation, they will receive an infringement, and if they do not pay it, they will be referred to the Fines Enforcement Registry or to the court.

Hon TJORN SIBMA: Maybe when we recommence consideration tomorrow, we might be in a position to inquire into some of the consequences or outcomes of the two by-elections that I mentioned previously. I will return to my purpose in this part of the clause 1 debate, which is to ascertain the involvement of various authors in the construction of this bill. Another principal author that was mentioned only in passing is the recently resigned Solicitor-General. Could the parliamentary secretary clarify what particular features of the bill the Solicitor-General is responsible for, noting that he provided, at least to Hon Mia Davies, a supplementary briefing on the bill six or so weeks ago?

Hon MATTHEW SWINBOURN: I think the former Solicitor-General might reject the idea that he is responsible for the bill in any way, because I do not think that is how he likes to characterise his role. He was not involved in the drafting per se. He was not involved in the policy development of the bill. The Solicitor-General's role was in relation to matters that might intersect with constitutional issues and providing advice and ensuring where we might safely sit with the constitutional issues. The elephant in the room is the expenditure caps and what might be an appropriate range, but the decision on where they finally sat was a decision of the government, not the Solicitor-General. He does not make those decisions; he only provides advice to government. That is the nature of his advice. He has provided other advice on points of law that might come up. I will not get into that because it is subject to legal professional privilege and I do not have access to it in any event. I also do not have authority to waive that privilege either. Again, the Solicitor-General did not draft elements of the bill. He did not have any input on the policy as the

originator of any of those things. Let me clarify it. His view has informed the justification statement as well. I think the member could probably pick that up from the way that the justification statement is framed. It is not his statement, but it has been informed by advice that we have received from him.

Hon TJORN SIBMA: I would anticipate that that will be the beginning of quite a substantial dialogue. I just want to clarify this specifically in a way that is not intended to be painful but is an attempt to be methodical. The Solicitor-General did not establish the structure for the proposed expenditure caps and did not set the particular financial limits that will apply to the Legislative Assembly and the Legislative Council, at a by-election and to so-called third-party actors. Is that a correct interpretation of the advice that the parliamentary secretary has just provided to the chamber?

Hon MATTHEW SWINBOURN: I will just nuance the answer, because I cannot give the member an absolute, as the process of the development of the bill and those sorts of things was iterative over time. As I understand the advice that I have received at the table, the Solicitor-General provided advice about what the caps could be, but, of course, the ultimate decision on where they would properly sit was a decision of government, not the Solicitor-General. If the member is saying to me that he provided that that is what they should be—for the sake of *Hansard*, I am representing hitting something on the table; I should probably avoid gesticulating because it cannot be picked up —

Hon Tjorn Sibma: Hansard's friend!

Hon MATTHEW SWINBOURN: Ultimate responsibility for them rests with the government. It was our decision, not the Solicitor-General's.

Progress reported and leave granted to sit again, pursuant to standing orders.