ELECTORAL AMENDMENT (FINANCE AND OTHER MATTERS) BILL 2023

Committee

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

Clause 79: Part IV Division 2A inserted —

Committee was interrupted after the clause had been partly considered.

Hon MARTIN ALDRIDGE: The parliamentary secretary will be pleased to know that we have only a couple of questions left on clause 79. When we were interrupted for question time, we were canvassing the idea of a replacement how-to-vote card. I think we got to the point that, effectively, the initial how-to-vote card would become deregistered —

Hon Matthew Swinbourn: I think "cancelled" is the word.

Hon MARTIN ALDRIDGE: It would be cancelled and there would be some unwritten onus or expectation on the person who registered it to endeavour to make sure that it was no longer distributed. If it were distributed, would that be an offence?

Hon MATTHEW SWINBOURN: Strictly speaking, I think it would be an offence. However, some other factors would come into it, like intent and the state of mind of the person; if they were under mistaken belief, they may have a defence for their conduct. Also, the commissioner obviously retains a discretion when prosecuting offences under the act. Those mitigating circumstances might be taken into consideration. For example, somebody may have become confused or an error may have occurred. I do not think there will be a heavy hand in that respect when it is done inadvertently. However, if it is done carelessly, that might be a different issue. Strictly speaking, yes, it would still be an offence.

Hon MARTIN ALDRIDGE: I draw the parliamentary secretary's attention to proposed section 89C(4), which effectively lists the prerequisites for registration. Why is it not a prerequisite for registration that material is authorised?

Hon MATTHEW SWINBOURN: I think this is a matter of construction. It states —

> An application made under subsection (2) or (3) must —

Then it lists the things that must be contained in the application. If we return to proposed section 89B(1), it states —

> In this Division, a how-to-vote card is **suitable to be registered** if —
>
> …
>
> (c) the name and address of the person, political party or group authorising the how-to-vote card is stated on each side of the how-to-vote card where a statement referred to in paragraph (b) is stated.

Hon Martin Aldridge: Which section is that?

Hon MATTHEW SWINBOURN: I am referring to proposed section 89B(1)(c). Reading those two things together, the commissioner would not be able to register a how-to-vote card if it did not include the name and address of the person, political party or group authorising the how-to-vote card, as stated on each side of the how-to-vote card where a statement referred to in paragraph (b) is stated. Proposed paragraph (b) is divided into (i) and (ii). Proposed subparagraph (i) relates to the Assembly and (ii) relates to the Council.

Hon MARTIN ALDRIDGE: If the material is authorised by the name and address of the political party, would that satisfy the general authorisation requirements under the Electoral Act, which I thought requires a natural person rather than a body corporate or some other entity or structure to authorise material? For example, quite often we will see political material, people advertising or election advertising authorised in the name of the state director or the state secretary, not necessarily the party name. I understood that to be an explicit requirement of the act. If we are killing two birds with one stone here, I am wondering whether we would satisfy the general authorisation requirements of the act by authorising the how-to-vote card in the political party's name.

Hon MATTHEW SWINBOURN: The bill states "the name and address of the person, political party or group authorising" the how-to-vote card. The example given by the member about material generally authorised by the state director or the state secretary of a particular political party is a preference that they probably take rather than a strict requirement. Let me take some further advice just to double-check that and make sure that the provisions are consistent with each other.

I have the blue bill before me. I take the member to section 187, "Illegal practices defined", on page 411. It states —

> (1) The following are illegal practices —
>
> (a) bribery;

(b) undue influence;

(c) publishing any of the following publications without publishing at the end of the publication the name and address of the person authorising it —

(i) an electoral advertisement (other than an advertisement in a newspaper announcing the holding of a meeting);

(ii) a handbill, or pamphlet, other than a how-to-vote card;

Importantly, it continues —

(d) publishing a how-to-vote card without stating the name and address of the person, political party or group authorising it on each side of the card where the statement referred to in section 89B(1)(b) is printed.

They are dealt with separately, so a person is required to not engage in the conduct that is described in (d), which relates to a how-to-vote card; but if it is any other material that falls within (c), it is the person. In the particular instance that the member described relating to the state director of the National Party or the state secretary of the Australian Labor Party, that would still be required on all advertising material. However, the political party's name could be advertised on the how-to-vote cards. An example of one of the important reasons why that is different is that a political party or a group does the Legislative Council how-to-vote card. There are different ways of contemplating that. I think it is not much different. I suppose that one could argue that the address of the person, political party or group could have been extended to that, but I do not know why the drafting has not been done that way or changed that way. As I said, they are dealt with separately so one would not argue that proposed sections 187(1)(c) and (d) both have to be complied with for how-to-vote cards because it deals with it separately as a matter of statutory construction.

Hon MARTIN ALDRIDGE: I thank the parliamentary secretary for bringing this to my attention. It is interesting that we are effectively now splitting the authorisation requirement. I accept what the parliamentary secretary has said to me, but I am not sure that it is necessarily helpful in making the application of electoral law less complicated. Interestingly, I have also noticed that we are dropping the "printed by" requirement. If I am reading this correctly, as part of the authorisation, we will no longer have to publish who has effectively commercially printed the advertisement. The purpose of authorisation is effectively for legal recourse so that if somebody publishes something, it can be known who the accountable person or entity is. As the parliamentary secretary points out in proposed section 187(1)(d), the publishing of a how-to-vote card can be authorised by a person, but it can also be authorised by a political party or group. If the political party or group is not an official entity, body corporate or incorporated entity, how would somebody seek legal recourse against what is effectively an organisation that for all intents and purposes does not exist?

Hon MATTHEW SWINBOURN: I do not want to give the member legal advice as such about who he might sue in those particular circumstances. As a general principle, members of unincorporated groups are both jointly and severally liable for the actions of the groups. That is just a common law equitable principle relating to how unincorporated groups might be dealt with. However, because these are already all registered with the commission, there will be a responsible person registered with the commission, so there will be a point of contact. There is a requirement for them to provide that information to the commission because of that registration requirement so that when the commission is dealing with the how-to-vote cards, it is not just some nebulous thing and there is an individual that they will be able to focus on and take action against, if necessary.

Hon MARTIN ALDRIDGE: If I were running for a district in the Legislative Assembly at the next election and an unincorporated body —

Hon Matthew Swinbourn: Which one?

Hon MARTIN ALDRIDGE: Somewhere in the northern suburbs.

An unincorporated body, "Friends of the Trees", registers a how-to-vote card and includes a bunch of defamatory material that does not meet the threshold for the commissioner to strike it out. It publishes it and it gets registered and I seek to quickly commence legal proceedings, because I do not have a lot of time in the context of an election. I call up the Electoral Commissioner and say "Who is this mob, 'Friends of the Trees'?". Would the Electoral Commissioner furnish me with full particulars of that application for registration so that I could commence legal proceedings?

Hon MATTHEW SWINBOURN: I cannot give quite as direct an answer that the member would be satisfied with, but if the circumstances that the member described arose, it would obviously be a matter of interest to the Electoral Commissioner in and of themselves. It is possible that one could complain to the commissioner about the conduct of that particular party going beyond just the registration of its how-to-vote card. If it has incurred an expense of more than $500, it will be a third-party campaigner and will have to have the registered details of its organisation with the commission and that will be publicly available.

I think if someone with deep enough pockets was looking for the person to sue and the commissioner would not identify them, they could take general proceedings to the Supreme Court—not under this act—that would require the disclosure of that information by the commissioner if he were not forthcoming. However, to give an undertaking here at the table, it is hard to think of a circumstance in which I could say "You will get that information." I think it will depend entirely on the particular circumstances. There is generally not a right to privacy in a lot of this sort of stuff as a general policy thing because we want political parties and participants to be open and accountable.

I do not have a yes or no to what the member asked me, but the assurance I can provide him is that we are trying to avoid people who are trying to cheat the system as much as we can and is possible.

Clause put and passed.

Clause 80: Part IV Division 3 replaced —

Hon MARTIN ALDRIDGE: The Leader of the House will be interested in my line of questioning here on proposed section 92G. I never thought I would see this in statutory law; that is, the right to have access to a toilet facility. I assume this section arose at the initiative at the government. What does the Electoral Commissioner think of it?

Hon MATTHEW SWINBOURN: If I can be so bold, I think the Electoral Commissioner probably understands the virtue of what we are trying to achieve here but is probably burdened by the practical realities of providing the toilets and facilities at all the polling booths. It is not designed to have him spend all his time trying to provide those. I think the word "reasonable" is used in the provisions. It is just not going to be possible in certain circumstances to provide that. However, I think when running an election, the Electoral Commissioner is not interested in the toilet facilities for volunteers outside. However, for the member and I, our concerns are the people who we represent as well as the volunteers who support us. In this regard, the government is of the view that the commission should make reasonable efforts to ensure that there are toileting facilities available to poll volunteers or workers—I think we are calling them that.

Hon MARTIN ALDRIDGE: I will share an experience and ask the government to reflect on it. I know it will not change the government's mind, although it seems quite happy to make multiple amendments to this bill in both chambers. I think that is an admission that there could have been a better way of reaching the point we are at. I was at a polling booth during the last election and saw a line develop outside the polling place entrance. I was approached by a heavily pregnant lady with small children who urgently needed access to a bathroom. I tried to facilitate access to a bathroom—the polling place was at a local school—but the polling place officials denied access to the bathroom. The explanation given on the day was that they were not authorised by the school to provide public access to the bathrooms. I raised this with the school after polling day, and it made me aware that there was no such limitation on the hire of its facilities on polling day. Why have election campaign workers been singled out and why it has not been envisaged that at relevant times others may be more in need of such facilities than our volunteers?

Hon MATTHEW SWINBOURN: I do not even have to qualify it; I think most reasonable people would say that in the circumstance the member described the person in need needed to access the toilet, regardless of any relationship, contractual or otherwise, that existed between the Electoral Commission and the particular school. I find it hard to understand why, in that instance, it was denied. It is difficult. Here, we are trying to do something for booth workers, whom we will elevate in the amended act, and that is what we have turned our minds to. I dread to say this, but I hope that in most instances common sense would prevail when people need toilet facilities because of their physical condition. There is an issue with opening up toilets to the general public more broadly because, obviously, under work health and safety laws, there comes a question of who might then be responsible for the continuing safety and cleanliness of the toilets and that sort of thing. There is a balance here. At this stage, we are saying it is for booth workers, and we have not gone further than that.

There are merits to what the member described as well. There are many hundreds of polling booths on any given election day. I personally have not had an issue accessing the toilet generally in those circumstances. I have spoken to the returning officer responsible for the polling booth and been given access to the toilet keys, but the example for others is that there are simply not facilities there at all. As I say, the member can make an argument for his position.

Hon TJORN SIBMA: This interests me. I appreciate that there is an intent to elevate election workers, but, with all due respect, sometimes bills such as this are drafted by people who have not spent any hours on a booth nor participated in any lengthy or meaningful way in an extended election campaign. Noting that there was an imperative at clause 10 toward broader board inclusivity, and inclusivity was taken in its broadest context, such as appreciating religious obligations, observances and the like, and ensuring that people with a disability are safe and have convenient access to a polling booth. Presumably, a fee is paid to a landlord, even for a pre-poll location. Why cannot it not be a condition of hiring a venue that toilet facilities are made available to people using the booth, including people casting a vote and those in charge of young children, who always find their needs occur at the most inconvenient, inopportune times, as the member and many of us are well aware? This is not to trivialise the issue; I think it is important, but I think there is an equal need for toilet facilities and it extends beyond just those working on the campaign to the people casting their vote and the people they are in charge of.

Hon MATTHEW SWINBOURN: It comes back to a point made earlier in the debate about the commissioner's position in the negotiations with these places. The commissioner does not have the power of fiat in these sorts of circumstances to dictate to a contracting party for their premises that they must do this and the other. The commissioner must take into account a range of considerations when establishing a polling booth. The provision of toileting facilities for the polling workers would be the highest of those priorities, and then it would descend from there. As I say, I do not know that with all the work that needs to be done that it is always possible to reach that agreement. There might be a perfect polling both that is inaccessible to people that provides all the amenities or there might be a polling booth that is very accessible but has very few amenities, and the commissioner is to make that decision. Schools and community facilities are the obvious ones, but in other areas it is commercial premises and, again, the commissioner does not necessarily have the whip hand when it comes to the short leasing arrangements that the commissioner has to enter into with these people. They are free to lease to the commissioner or not.

It is a difficult balance. We appreciate the hard work that the commissioner has to do in this area. It is always easy to pick on the areas that have not worked well, but overwhelmingly they do work well. I do not think I can take it much further than that.

Hon MARTIN ALDRIDGE: I now move to proposed section 93A. I am reluctant to stereotype the personality profile of a polling place manager, but in my experience they are very effective in applying the electoral rules at polling places; they do not necessarily have the best operational understanding of the act and its regulations though. That is not a harsh criticism; it is a product of complexity. As I said in my second reading contribution, we have an amending bill that is longer than the act itself. We cannot expect these people, who often step in once every few years, maybe once every four years if they do not also cooperate with the Australian Electoral Commission elections, to be across every issue like we would expect Electoral Commission officials to be. One area that is always contentious is designated entrances for places to vote, and I have certainly had a run-in or two with polling place managers. Perhaps this was articulated in a different form under the current act. My first question is: what is effectively changing here? At a federal polling place, the entrance is far better demarcated than in the state context. There are signs and it is very clear where the entrance is. That is obviously important for candidates, campaign workers and volunteers because we have obligations in relation to our conduct at a polling place. Can I clarify what the current arrangement is for designated entrances; and, if there is not one, will this be the first occasion on which we formally recognise that in the legislation?

Hon MATTHEW SWINBOURN: The current arrangements are in section 183 of the current Electoral Act, which states —

> Any person who —
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> …
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> (4) or in any way interferes with any elector, either in the polling place or within 6 metres from the entrance thereto with the intention of influencing him or advising him as to his vote;
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> …
>
> shall be guilty of undue influence.

I think that some other provisions, such as section 421, deal with that requirement about the six-metre rule, as we all understand it. The feedback provided to the commission and our own lived experience here was that the six-metre rule is not clear. The act does not currently mandate that there be a designated entrance. The clarity here is that the requirement to actively designate and signpost the entrance will give a very clear indication of where the six metres starts. Once that has been designated and signposted, six metres is an objective measure; it cannot then be outside of or longer than that. That is really the key here. During the member's briefing, we might have talked about whether the entrance could be designated 30 metres down the road and therefore —

Hon Martin Aldridge: I think it was the entrance to the car park.

Hon MATTHEW SWINBOURN: Yes, it could be in the car park or something like that. Again, the act does not dictate that. The problem there, of course, is that the area of the returning officer's control increases massively. Although the returning officer, the person in charge, the poll manager—I am not quite sure what the term is now—or the presiding officer might think that their fiefdom is large, their responsibility would be even larger because once they do that, they have to take responsibility for everything that happens on the other side of the designated entrance, and I am not sure that any of them practically will want to do that. I think this is the key. It is a combination of feedback and lived experience from our side of the election. Obviously, it recognises that it should be clearer in the structure of the act, particularly since it gives rise to offences.

Clause put and passed.

Clauses 81 to 112 put and passed.

Clause 113: Section 175 amended —

Hon MARTIN ALDRIDGE: I have one question here, parliamentary secretary, before other members take an interest in this clause. My question is about the definition of a compulsory party levy. I am looking at page 222, which states —

> ***compulsory party levy*** means an amount a political party requires to be paid to the party by —
>
> (a) an elected member who is a member of the political party …

I think that is well understood. It should be no secret that political parties often, sometimes unjustly, apply compulsory levies on their members, and there is even the potential for differential rates between the Legislative Council and the Legislative Assembly, just to discriminate even further. We will not get into that argument today. It then states —

> (b) a person employed by, or appointed or employed to assist, an elected member who is a member of the political party, including an electorate officer as defined in the *Parliamentary and Electorate Staff (Employment) Act 1992* section 3(1) …

I do not have an issue with the next point, which states —

> (c) a person employed by the political party;

But I do have a problem with proposed subsection (b). Electorate officers are not public servants; they are servants of Parliament. They are employed by the respective Presiding Officers, the President and the Speaker. The fact that we are enshrining in an act the concept that a compulsory party levy can be applied to a parliamentary officer, in effect, seems very strange. I would like the parliamentary secretary to advise me what gave rise to this and what would be the consequence if an electorate officer, a parliamentary officer, did not pay said compulsory party levy.

Hon MATTHEW SWINBOURN: Sorry, member, I have kind of lost what the question was. Could the member prompt me again?

Hon Martin Aldridge: There were two parts: what has given rise to this characterisation in proposed subsection (b), and what would happen if a person refused to pay said compulsory levy?

Hon MATTHEW SWINBOURN: The first part was about what gave rise to it. It was not from the government or the Electoral Commission. As I understand it, from my advice at the table, this was caught up when the Parliamentary Counsel's Office was drafting the legislation and was looking at other jurisdictions for guidance. Some of the other jurisdictions have such provisions, so it was included in the drafting of our bill. That is what gave rise to it. It was not specifically a thing that the government wanted to pursue, and it is certainly not a matter that the Electoral Commission was concerned about, per se.

The member asked about the consequence if someone who is an electorate officer refused to pay a compulsory party levy in their employment. There would be no consequences because they cannot be required in their employment to contribute to a compulsory party levy without their consent, if I can put it that way. There is no real effect here. I am not aware of any political party that requires its electorate officers to contribute compulsory party levies, if I can use that term. It cannot be a condition of employment that they be a member of the political party.

Hon Martin Aldridge: What about ministerial officers?

Hon MATTHEW SWINBOURN: They are not captured by this provision. I can put my employment law hat on here. An employee cannot be required to expend money on their employment in this kind of manner without their consent. How is the best way to describe it without upsetting people? It does not do very much work here, because this ever occurring in our jurisdiction is not a realistic proposition. If it does occur in any situation, there may be courses of action that those electorate officers could take to stop it from happening. As I say, we are not aware of any particular practice where it does occur.

Hon MARTIN ALDRIDGE: I accept the consequence if this arrangement occurred and effectively an electorate officer who was a party member was required by the party to pay a levy because of their employment. That is effectively the situation outlined here. This is a section that is trying to capture funding sources, income and electoral finance, to try to close any gaps. I guess the consequence will be that the person may no longer continue to be a member of the party. The party could take that action and say, "If you are not going to pay your levies, be gone with you", but I accept that permanently terminating their employment on that basis would be problematic, although our parliamentary and electorate staff have very different arrangements for recourse than ordinary workers and public servants have.

Hon Matthew Swinbourn: Off the top of my head, it would probably be a breach of the Fair Work Act, because the protections that relate to unlawful termination for political affiliation go to all workers, including state government employees.

Hon MARTIN ALDRIDGE: I think what probably makes me uneasy about this definition is the compulsory part. It effectively insinuates that there could be situations in which taxpayer-funded staff—that is what they are; they are not technically public servants; they are taxpayer-funded employees—are subject to compulsory levies.

My preference would have been if the government wanted to capture this funding stream to political parties, to have probably left it as a party levy rather than a compulsory party levy. I am uncomfortable with this definition and insinuation that, effectively, public officers will be required to pay compulsory levies to political parties on the basis of their employment.

Hon MATTHEW SWINBOURN: I will add these comments, member. Nothing in this provision gives rise to an entitlement for a political party to collect compulsory party levies or a compulsion on those public officers that are our electorate officers to, in fact, pay them. All it does here is if in a circumstance an electorate officer is a member of a political party and as a consequence of their membership the party levies a compulsory levy on them, and they then choose to pay it, the political party must disclose that it has received it from that electorate officer. In terms of the disclosure of that, we would probably make sure that this never actually happens in the first place.

Hon Dr BRAD PETTITT: Members will be aware that I have a few amendments on clause 113 that break into two key different parts. Given the time, I will start on the simpler on the two and some question around the specified amount. I start by acknowledging that the intent of this was really good, which is to close that loophole that has been misused for a long time whereby people disclose under the federal commonwealth Electoral Act rather than the state one. Before I move an amendment, which I will come to shortly, it is around thinking that the $1 000 that was introduced in the other place was a logical, clearly defined, sensible amount. Obviously, that got changed via an amendment. I am seeing whether there is any support for changing it back to where the legislation started. Before I do that, I want to start with a question around the loophole. My understanding is that the current Commonwealth Electoral Act has a threshold that is around $16 300. Can I confirm that all political parties will now have to disclose all donations, gifts and other income under the threshold set by this bill?

Hon Matthew Swinbourn: Do you mean over? I think you said under.

Hon Dr BRAD PETTITT: I said under. Over is correct; thank you, yes.

Hon MATTHEW SWINBOURN: Yes, all registered political entities that receive donations over $2 600 that fall within the definition under the act will have to report those donors and donations.

Hon Dr BRAD PETTITT: When discussing this in my office something has not been clear. Obviously, donations are quite straightforward in that anything above $2 600—or I hope anything above $1 000 after I move my amendment—will have to be disclosed, which I think is very good. Do all forms of cash for access, that kind of fundraising definition of gift, have to be disclosed in the same way?

Hon MATTHEW SWINBOURN: The member's term is "cash for access". If, for example, somebody has a dinner at which people are prepared to make a contribution to a political party or campaign and that amount is more than $2 600 for the entity or individual who buys the ticket, there will need to be disclosure for that. That will probably lead to a further question from the member. If, for example, over the course of a reporting year the aggregate is more than $2 600, if a party has six $500 dinners for which it buys a table at and puts aside the cost of the hospitality and food and it will be $3 000, that would have to be reported. They cannot just go, "Well, I'll just invite people to multiple dinners over the course of the year and then I can avoid the cap." They cannot avoid the cap, because donations for the individual add up. People will need to be conscious of that when doing their reporting.

Hon Dr BRAD PETTITT: As a follow-up question I will take as an example the one in the paper the other day that was $6 000 to attend a round table of some kind with the Premier. I have a couple of questions. Is the whole $6 000 a donation? I appreciate they will get a meal and something in return. Would the whole $6 000 be counted as a donation? If that is bought by a corporate entity, could it be going to an individual? Or if a corporate entity, for example, bought a seat or a table, would that be attributed to the corporation, or will it always be to the individual who is sitting there?

Hon MATTHEW SWINBOURN: Let us go to the $6 000 example that the member has given. If, for example, I hosted a dinner for 10 of my dearest and strongest supporters at the local Chicken Treat at Maddington and provided them with a three-course meal, it would probably cost me a grand total of about $200. I am being a bit glib there, but the cost to me for putting on the dinner is incurred and therefore will not constitute part of the donation. For example, it is paying greater consideration for a thing than it is actually worth. We can extend this to other forms of gifts, not just the meal example. The most obvious meal example is that somebody pays a significant amount of money. A portion of that will go towards paying for the meal, the hospitality and the drinks, and the remainder would be the disclosable donation. If, however, for example the meal, hospitality and drinks were donated, the entire $6 000 would be disclosable as would the meal and the hospitality if it were worth more than $2 600.

Regarding the corporation, I refer the member to clause 130 of the bill. Proposed section 170M states —

> (2) For the purposes of subsection (1)(c), information in relation to the person who made the gift or paid the affiliate fee is —
>
> (a) if the gift is made or fee is paid on behalf of the members of an unincorporated body —
>
> (i) the name of the body; and

(ii) the names and addresses of the members of the executive committee (however described) of the body;

or

(b) if the gift is, or is purportedly, made or fee is, or is purportedly, paid out of a trust fund or out of the funds of a foundation —

(i) the names and addresses of the trustees of the trust fund or of the foundation and of the person for whose benefit the funds are held; and

(ii) the title or other description of the trust fund or the name of the foundation, as the case requires;

or

(c) otherwise — the name and address of the person who made the gift …

Sitting suspended from 6.00 to 7.00 pm

Hon Dr BRAD PETTITT: Before the break, there was a question around corporations versus individuals that I think I was about to get a response to.

Hon MATTHEW SWINBOURN: I take the member to proposed section 175M. Pages 342 and 343 of the blue bill outline the relevant details of political contributions. Proposed section 175M(2)(c) states —

otherwise — the name and address of the person who made the gift or paid the fee.

We are advised that the term "person" includes a corporation. The corporation by its name would be disclosed as the gift-giver in that situation.

Hon Dr BRAD PETTITT: As I said before the break, I have two key amendments for clause 113. One is to delete lines 13 to 16 on page 226 and insert that the specified amount means $1 000. I assume I move that and then I speak to it, but I am happy to be corrected. I seek some direction here. I am not entirely familiar with the amendment process.

The ACTING PRESIDENT (Hon Dr Sally Talbot): In my turn, I will seek some direction, so just hold fast. Sorry to do this to the member, but could he be absolutely clear about what he is seeking to move.

Hon Dr BRAD PETTITT: I am doing it in two parts. I will not do the whole block together. I will do that next. I will do the one that sits separate at this stage, which is 27/113 on top of page 6 of the supplementary notice paper. It seeks to delete the lines and insert the specified amount of $1 000.

The ACTING PRESIDENT: Is the member seeking to move 27/113 alone? Just that one?

Hon Dr BRAD PETTITT: Yes. I move —

Page 226, lines 13 to 16 — To delete the lines and insert —

specified amount means $1 000;

I will speak to this briefly as it is self-evident. The $1 000 amount was in the initial bill introduced in the other place. I think there are good reasons for $1 000 rather than $2 600. Simply put, $1 000 is a clear and easily remembered line that should not be controversial. I am fascinated to know, in the response to this in the debate, where $2 600 comes from. It feels like a rather arbitrary number. I am not sure what it refers to. For me, there are two clear measures for best practice in things like donation reform. Firstly, it should be clear and easily identifiable. Secondly, it should be an amount in which it can rationally and fairly be said that anything below that amount is not likely to influence greatly, but anything above that amount gets into the space of expecting outcomes for donations and undue influence. That is the line we want to draw in the sand. When does that undue influence by entities or individuals donating to political parties come into play? If one asks the average punter out there, I reckon $1 000 is about right. I suspect that is why when the Attorney General first put this together, he put $1 000 in. I think that is why it went through the whole drafting process with $1 000. Again, it is a simple move to return it to that. I do not quite understand the rationale for $2 600, except for suspecting it might be how it sat in WA for some time. I guess this is a bill to improve, not simply return to what was always the state-specified amount. For me, there are really good reasons for this. The more we start to have a legible, simple, neat and ultimately transparent process that will take undisclosed donations out of the system in a clear way, the better and healthier our democracy will be. This is merely a small move in that direction. For that reason, I seek the house's support.

Hon MATTHEW SWINBOURN: I put this as simply as I can. This is not to simplify the member's position, but to be as clear as possible. Our position for some time is for the amount to be $1 000. The opposition put forward an amendment in the other place to move it from $1 000 to $2 000 and we did not oppose that amendment.

Hon Dr Brad Pettitt: To $2 600.

Hon MATTHEW SWINBOURN: Sorry, $2 600. I have caught the member's disease of saying the wrong thing!

Hon Dr Brad Pettitt: An amount of $2 600 is hard to remember.

Hon MATTHEW SWINBOURN: One of the member's questions was where the $2 600 came from. It is the existing amount.

Hon Tjorn Sibma: The status quo.

Hon MATTHEW SWINBOURN: Yes. It is maintaining the status quo. Because there is the federal registered political party loophole, the $2 600 under the current act is effectively a nullity. It does not have any bearing because people use the $16 300. We did not oppose the opposition's amendment. We will be consistent in that we have essentially adopted the opposition's position because if we had opposed it, it would have defeated it in the other place, so we will not move back to the $1 000. I understand Hon Dr Brad Pettitt's arguments about that, but we will stay at the $2 600 mark.

Hon TJORN SIBMA: It is an interesting discussion. Where does one reasonably draw the line at a disclosure amount? With respect to the $1 000 versus the $2 600, which is the status quo, I recall a conversation with the minister—not in the chamber. I do not think I am imputing anything unfairly to him, but I had a discussion, as we ordinarily do in this place and around the traps. I recount this without any disrespect. I said, "John"—I have that kind of relationship with him, I think. On occasions I see him out the front of my electorate office for reasons I cannot explain; nevertheless, he is there. It is in the northern suburbs. I said, "John, what electoral mischief occurs at that level of $1 000 versus $2 600?" There is no evidence, and there is no rationale. If we move to a stricture of imploring, demanding, that people report in a more timely fashion, and we demand that they expend only a certain amount over a certain period and that that expenditure occur only through an established account, it is reasonable to maintain the status quo in the absence of evidence suggesting untoward political opportunity can be bought at that level between $1 000 and $2 600. No sensible political practitioner has ever made an argument for the fact that there is a level of malfeasance, skulduggery or nefariousness that occurs when a political donation is above $1 000. There is an argument that certain levels of political donation attend to different groups unequally. For example, it is a reasonable expectation that a cafe owner—a husband and wife, for example, who own a cafe very close to my electorate office—might want to give a donation of $1 000 or more. It is within their means, it is a substantial donation, but it is not the level of donation upon which the entire policy of an elected political party will turn once in government. I think that is a reasonable assumption. What advantage is there, then, to the public at large in knowing that that cafe made a donation to the Liberal Party or to my colleague from the Labor Party across the street? There is none other than potentially to earn the enmity of its customer base—for what particular outcome?

As well, there is a view formed in the context of this bill—I want to address this question—that influence attends only to donations, gifts, favours or what have you provided from a donor to a donee that is a registered political party or the candidate thereof or an Independent candidate in the context of an election. Are we so naive to consider that the influence or pressure attends only to that moment? This bill suggests that that is the only time when a donor might exert some influence or expect some return of favour. That is hopelessly naive proposition. It is also a hopelessly naive proposition to think that the greatest sin or threat to good governance in Western Australia emanates solely from the transactions between a donor and a political donee. I have made this argument in public fora, I think at one the member was at on planning during the last election: the greatest threat to good decision-making in Western Australia is not at the political level; it is in gifts, largess, hospitality and the like extended by private companies to bureaucrats. They are the people who shape decisions. This is not to impugn the class of bureaucrats, but this is where the risk really takes place.

There is no such thing as a real-time gifts disclosure register on behalf of senior executives, for example, at the Department of Planning, Lands and Heritage, the Department of Water and Environmental Regulation, the Department of the Premier and Cabinet or the Department of Health. I cite those agencies for illustrative purposes, without making any accusations. If we are serious, genuinely serious, about the risks, or purported risks that money, largess or invitations to the corporate box at the footy might have, friends, that is where we will take our attention. We are, frankly, focusing on the wrong area—on the wrong area absolutely, entirely. It also suggests that if there is absolutely a risk, and one must think that there is, that a politician receives a gift, perhaps it is a bridging loan and they are a minister, and that bridging loan takes place during the course of a parliamentary term, that to me is a bigger risk to governance, to the administration of a portfolio. We can go back to members' interests. I know of a minister of the Crown who took a bridging loan from the kind of organisation that might be within their jurisdiction. To me, that is a bigger kind of risk—that is, a risk at a level higher than the $2 600 threshold.

As has been my contribution throughout this debate, if Hon Dr Brad Pettitt cannot provide evidence, frankly, his position can be disregarded. I understand the intent here; it is consistent with Greens policy long expressed. The member makes a reasonable argument but I do not think he has demonstrated that there is a case to amend the status quo. We will not vote in support of that amendment.

Hon Dr BRAD PETTITT: Can I get direction here? I assume I am able to respond.

The DEPUTY CHAIR: You have 10 minutes and then you can have another 10, if you would like.

Hon Dr BRAD PETTITT: It is a really interesting and worthwhile debate. In response to some of the things that Hon Tjorn Sibma has said, we look at the thresholds for other levels of government. As someone who was involved in local government for a long time, the threshold for disclosure for most of the time that I was in local government was $199. Amounts of $200 and above were disclosed. Do members know what? That felt about right to me. The amount is now $299, so it has gone up slightly. I would reverse the onus of proof, frankly; that is, the onus of proof should not be on showing evidence for why the amount of $2 600 cannot be made to work, but why it is not best practice having—I come back to the criteria mentioned before—something clear, legible and transparent. Apart from the fact that the amount of $2 600 has always been there, I have heard no rational explanation for it. All I have heard is it is just the way it has always been. Here, we are dealing with making legislation better. I come back to the point that $1 000 is about right. I take the argument about the fact that there are other dangers, and I agree with the Hon Tjorn Sibma about those. Ideally, I would like to see a range of amendments to donation amounts that are consistent across levels of government, public servants, the private sector and a range of things because we need to set a clear bar for what is accepted in these cases. I can think of very few examples in which we should not be transparent. I acknowledge the example that Hon Tjorn Sibma gave of the cafe owner and the example that Hon Dr Brian Walker gave about people donating to Legalise Cannabis WA. Part of me appreciates that it is perhaps uncomfortable for some people, but that is what transparency is about in this space. Frankly, people do not give money for no influence; people give money because they want to have connection or some influence. Otherwise, we would expect them to give their money to a charity or something else. I am not going to die in a ditch over this one; I just think it is the right thing to do. I suspect the Labor Party probably thinks it is the right thing to do as well, but it previously opposed something in the other place, so we are where we are. For that reason, and despite the arguments we have heard, I will still be fascinated to know why the figure of $2 600 was arrived at back in the day. I wonder whether someone can explain that to me before we vote on this.

Hon Matthew Swinbourn: A figure of $1 500 was set in 1992 and it has been indexed since then.

Hon Dr BRAD PETTITT: Okay, it has been indexed. That is interesting.

As the debate was going on, I was reminded of the resignation of the former Premier of New South Wales over a bottle of Grange. How much is a bottle of Grange worth? It is not a thousand bucks, is it? I have never bought one!

Hon Martin Aldridge: You'd have to ask members of the Labor Party.

Hon Stephen Dawson: Chardonnay, mate!

Hon Dr BRAD PETTITT: The point I make is that a bottle of Grange does not even cost a thousand dollars, from memory. That clearly forgotten undisclosed gift was the reason the Premier thought it was worth resigning. I think $1 000 is a clear line in the sand. Anyway, the case has been made and I rest my case.

Hon TJORN SIBMA: There is, I think, one dimension of this, and I go into this very reluctantly. This debate is sometimes misconstrued in a way that is not helpful. Yes, Hon Dr Brad Pettitt, an argument can be made that people give money to support a political side only for an outcome. Unfortunately, I think that is a very narrow and cynical view. Another argument that can be made is that they give money to a political party or a political candidate they like and want to see succeed, and whose values they think they embody. I think we debase the debate when we engage in narrow undergraduate concepts of political finance. Frankly, that is what I think Hon Dr Brad Pettitt has done with his argument. I suppose the reporting or misreporting of my contribution here can be taken for what it is, but I am an adult and let us deal with an adult situation. Frankly, that argument is specious and cherrypicking, and, as I say again, actually overlooks the genuine threats to governance in this state that come in a variety of ways and not solely through a donation to a political campaign.

Amendment put and negatived.

Hon Dr BRAD PETTITT — by leave: Pursuant to standing order 132(b), I move —

Page 222, after line 19 — To insert —

close associate, of a body corporate, means —

(a) an officer (as defined in the *Corporations Act 2001* (Commonwealth) section 9) of the body corporate; or

(b) a person whose voting power (as defined in the *Corporations Act 2001* (Commonwealth) section 610) in the body corporate is greater than 20%; or

(c) the spouse or de facto partner of a person referred to in paragraph (a) or (b); or

(d) if the body corporate is a stapled entity in relation to a stapled security — the other stapled entity in relation to the stapled security; or

(e) if the body corporate is a trustee, manager or responsible entity in relation to a discretionary trust — a beneficiary of the trust;

Page 223, lines 1 and 2 — To delete the lines.

Page 225, after line 5 — To insert —

liquor or gambling industry business entity means —

(a) a body corporate that carries on a business or undertaking mainly concerned with either or both of the following, but only if it is for the ultimate purpose of making a profit —

(i) the manufacture or sale of liquor products;

(ii) wagering, betting or other gambling (including the manufacture of machines used primarily for wagering, betting or other gambling);

or

(b) a close associate of a body corporate referred to in paragraph (a);

Page 225, after line 7 — To insert —

mineral resources or fossil fuel industry business entity means —

(a) a body corporate that carries on a business or undertaking mainly concerned with exploring or prospecting for, or the discovery, development or extraction of, mineral resources or fossil fuels; or

(b) a close associate of a body corporate referred to in paragraph (a);

Page 225, after line 29 — To insert —

prohibited contribution means a political contribution the donor of which is a prohibited donor;

prohibited donor means any of the following —

(a) a foreign donor;

(b) a liquor or gambling industry business entity;

(c) a mineral resources or fossil fuel industry business entity;

(d) a property developer;

(e) a tobacco industry business entity;

(f) a representative organisation if the majority of its members are persons referred to in paragraphs (a) to (e);

property developer means any of the following —

(a) a person who engages in an activity —

(i) in the course of carrying on a business or undertaking mainly concerned with the residential or commercial development of land for the ultimate purpose of the sale or lease of the land for profit; but

(ii) that is not for the dominant purpose of providing commercial premises at which the person will carry on the business, unless the business involves the sale or lease of a substantial part of the premises;

(b) if a person referred to in paragraph (a) is an individual — the spouse or de facto partner of the person;

(c) if a person referred to in paragraph (a) is a body corporate — a close associate of the body corporate;

Page 226, after line 16 — To insert —

stapled entity —

(a) means an entity the interests in which are traded along with the interests in another entity as stapled securities; and

(b) if an entity referred to in paragraph (a) is a trust — includes any trustee, manager or responsible entity in relation to the trust;

Page 227, after line 20 — To insert —

tobacco industry business entity means —

(a) a body corporate that carries on a business or undertaking mainly concerned with the manufacture, sale or supply of tobacco products; or

(b) a close associate of a body corporate referred to in paragraph (a).

Page 247, line 23 — To delete "foreign" and insert —

prohibited

Page 273, line 13 — To delete "**foreign**" and insert —

prohibited

Page 273, line 17 — To delete "foreign" and insert —

prohibited

Page 273, line 20 — To delete "foreign" and insert —

prohibited

Page 273, line 22 — To delete "foreign" and insert —

prohibited

Page 273, line 26 — To delete "foreign" and insert —

prohibited

Page 274, line 1 — To delete "foreign" and insert —

prohibited

Page 274, line 6 — To delete "foreign" and insert —

prohibited

Page 274, line 7 — To delete "foreign" and insert —

prohibited

Page 274, line 10 — To delete "foreign" and insert —

prohibited

Page 274, line 12 — To delete "foreign" and insert —

prohibited

Page 274, line 17 — To delete "foreign" and insert —

prohibited

Page 274, line 18 — To delete "foreign" and insert —

prohibited

Page 274, line 23 — To delete "foreign" and insert —

prohibited

Page 274, line 29 — To delete "foreign" and insert —

prohibited

Page 274, line 32 — To delete "foreign" and insert —

prohibited

Page 275, line 4 — To delete "foreign" and insert —

prohibited

Page 275, line 8 — To delete "foreign" and insert —

prohibited

Page 278, lines 8 to 13 — To delete the lines and insert —

receives a prohibited contribution or the benefit of a prohibited contribution; and

(b) at the end of the acceptable action period in relation to the prohibited contribution, acceptable action has not been taken in relation to the prohibited contribution.

Page 278, line 20 — To delete “foreign” and insert —

prohibited

Page 278, line 22 — To delete “foreign” and insert —

prohibited

Page 278, line 27 — To delete “foreign” and insert —

prohibited

Page 279, line 5 — To delete “foreign” and insert —

prohibited

Page 279, line 10 — To delete “foreign” and insert —

prohibited

Page 279, line 16 — To delete “foreign” and insert —

prohibited

Page 279, line 20 — To delete “foreign” and insert —

prohibited contribution, or the benefit of a prohibited

Page 279, line 23 — To delete “foreign” and insert —

prohibited

Page 280, lines 20 and 21 — To delete the lines and insert —

(a) the third-party campaigner receives a prohibited contribution, or the benefit of a prohibited

Page 280, line 28 — To delete “foreign” and insert —

prohibited

Page 280, line 30 — To delete “foreign” and insert —

prohibited

Page 281, line 7 — To delete “foreign” and insert —

prohibited

Page 281, line 18 — To delete “foreign” and insert —

prohibited

Page 281, line 22 — To delete “foreign” and insert —

prohibited

Page 281, line 29 — To delete “foreign” and insert —

prohibited

Page 281, line 33 — To delete the line and insert —

prohibited contribution, or the benefit of a prohibited

Page 282, line 2 — To delete “foreign” and insert —

prohibited

Page 282, line 5 — To delete “foreign” and insert —

prohibited

Page 282, line 8 — To delete “foreign” and insert —

prohibited

Page 283, line 1 — To delete "foreign" and insert —

prohibited

I thought this would be a much less painful way of dealing with a package of amendments that are quite simple in their intent. The intent of the amendments is quite a simple one.

The bill before us has a clear part on foreign donors and a definition of the term. These amendments seek to replace the list of foreign donors with an expanded list of prohibited donors. These amendments will do something quite simple. They will take the idea of prohibiting foreign donations, which I agree with and these amendments will continue to do that, and expand the list under a broader definition of "prohibited donor". The definition will go beyond foreign entities and include tobacco, liquor and gaming entities, property developers, weapons entities, mining and resource companies and individuals who hold board or director roles or family members of individuals who hold board or director roles in this regard. This is consistent with what we see in other states that have a long list of people who cannot donate in this regard. This is at the heart of the policies of the Greens, as a party does not support corporate donations.

Coming back to some of the earlier arguments, I appreciate that some members would say that donations are not the problem. However, I think that even if there is not a real problem, there is certainly a perception that when we accept large donations from these kinds of groups, decisions are not made in the best interests of people or the planet. There is a strong example of this that exists not in Western Australia, thankfully. We see it with the pokies on the east coast and the huge influence of the sector. It donates huge amounts of money to political parties to, frankly, maintain a regime that is deeply broken and damaging to society.

With these amendments, I am seeking to create a full and robust list of groups that should not donate to politics. We want our decisions and policies, and what we do in this place, to be made on the best evidence, not on who has the fattest wallet. When we take money out of politics, we can all step back and look at the evidence and make sure that it is not the donations, but the facts before us that lead us towards specific decisions and those kinds of things.

Let me give some examples of why this matters. These are the donations that we know about. These were disclosed and, of course, this comes back to some of the problematic thresholds that we talked about earlier. Thresholds of $16 300 and above have often been used, but of the donations that we know about, the Liberal Party of Western Australia received $575 000 in donations from individuals. The Liberal Party also received another $405 000 in donations from the types of corporations listed in my amendments. Almost half of the donations came from the types of corporations that would be banned under these amendments.

Of course, that is not something that is confined to the Liberal Party. The Labor Party disclosed donations as well, including $92 000 from Mineral Resources, $21 000 from Nigel Satterley and $15 000 from Crown casino. Similarly, the Liberal Party disclosed donations, including $70 000 from Mineral Resources, which clearly wanted to have a decent bet each way, and $25 000 from Crown casino.

Importantly, both major parties also funnel money through other organisations. The Liberal Party has a number of these, including the 500 Club and another associated entity called LPPH Pty Ltd, which gave more than $560 000 to the Liberal Party for the 2021 election. Of course, the Labor Party has many of these as well.

Hon Tjorn Sibma interjected.

Hon Dr BRAD PETTITT: Sorry?

Hon Tjorn Sibma: It did not help us.

Hon Dr BRAD PETTITT: It did not help you? No; nevertheless.

Hon Tjorn Sibma: Maybe it did.

Hon Dr BRAD PETTITT: That may be because the Labor Party got more. Maybe that is why it did not help the Liberal Party. The Labor Party got $700 000 worth of income through Perth Trades Hall. If we go back and look at Perth Trades Hall's Western Australian Electoral Commission return, it is kind of interesting because we see that the groups, companies and corporations that donated to Perth Trades Hall included $27 500 each from Woodside, Fortescue Metals and Mineral Resources. There is a very interesting sense of quite large donations being made.

Hon Tjorn Sibma said something before, and I think he makes an important point: These donations alone are not the problem, but they form part of a network or a matrix of influence that is not healthy for our democracy. They are unhealthy not just for the reality of our democracy but also for the perception of our democracy. I think that taking these donations out of our system would be healthy.

One of the things we are doing in this bill is quite substantially increasing the amount that political parties will receive, which is great. I think that is the right thing to do. That will make political parties less reliant on donations

from the kinds of corporations that I want to put on a prohibited list, so we can be really confident that the kinds of decisions being made are made for the right reasons.

I am looking at a couple more figures that I think are interesting. This comes back to some of the stuff that we were talking a bit about before about how much of that money remains hidden, and now that threshold has changed. Interestingly, after the last election, we saw that the Labor Party got $12.6 million in gifts and donations in the election year and a more muted $7.13 million in the year following. Of that declared sum of over $7 million, only $1.86 million was attributed to donors, which would mostly be corporations and unions. The rest of it was hidden in that murky and undisclosed group, and it is not clear where that $5 million plus came from. Similarly, the Liberal Party pulled in $8.21 million in 2021–22, but it only disclosed $1.77 million of that as coming from donors. The donors were all big corporations, but the rest of it was not clearly there.

I think that this move to have a clear list—the bundle of amendments before members now—will provide a really clear sense of the kind of democracy and the kind of Parliament that we want to be, one that makes decisions on good evidence from impartial parties and not under the perception of influence, whether it is from fossil-fuel companies, property developers, or the gambling and tobacco industries. With those industries, we might make decisions that are not in the best public interest. This might sound radical, but these kinds of reforms are already underway in Queensland and New South Wales, where property developers, tobacco companies, gambling entities and any persons associated with them are banned from making political donations. Frankly, WA needs to do the same.

Hon TJORN SIBMA: Hon Dr Brad Pettitt makes an argument that demands our attention. It is an argument that is consistent with, over a longer view, the Greens party platform. No-one can accuse the honourable member of any inconsistency, but let us look at the quality of the argument and the examples cited in order to sway the opinion of the chamber. It is almost as though the Greens in WA have never received a donation at either a federal or state level. If the member was genuine in his commitment to this, he would have also cited some of the larger donations that it has received from corporates or individuals. At a federal level, I think the founder of Wotif provided the Greens in 2017 or 2018 the single largest donation the Greens had ever received in its entire history, and did it not make a lot of use of that capital?

Hon Dan Caddy: It was $600 000.

Hon TJORN SIBMA: Thank you, member; it was $600 000. Should we then add to this prescribed list of persons those who operate travel booking platforms, because that might attenuate or influence the way that we make policy around short-term bookings, accommodation, housing or planning? If the member goes down this track of prescribing all the organisations that he does not like and that do not donate to the Greens, but donate to his political opponents, the honourable member will run into the accusation of cherrypicking, of seeking to weaponise or legislate out those who support his political opponents because he does not like them. He is not jeopardising any capital, instead of reflecting on the point about why these people donate to those parties but not to his; that, I think, would be the question I would want to ask myself.

The issue of prescribed donors, classes of donors and industry was addressed in the pretty good, verging on very thorough, standing committee report when the 2020 bill was successfully referred to the Standing Committee on Legislation, something I have not been able to repeat this time around. Nevertheless, I think it made a pretty sober, thorough assessment of the problems that we encounter when one attempts to prescribe classes of donor because someone does not like them. I would disregard the issue of foreign donations, which there is unanimous support for, but the member has included a class of people who he just does not like. Now that the precedent might be established, what then is to prevent the discounting or prohibiting from donation individuals who we do not like? In this chamber in the last term we dealt with an individual that we did not like by the name of Clive Palmer. Should we also add him to the list? Many people here would say yes. Why not go through the list of individual donors to individual parties and start to identify individuals? For example, Chilla Bulbeck, who donates to the Greens, should be a prohibited person, because he does not donate —

Hon Dr Brad Pettitt: She.

Hon TJORN SIBMA: She. Exactly. Would that be a fair thing to do? No, it would not. Why? I would be acting consistently with the member's orthodoxy and platform here, because he has not made a demonstrable claim or provided any evidentiary basis at all to say that the liquor or gambling industry, or the mineral resources or fossil fuel industry for one, presents a clear and present danger to the polity of Western Australia, undermines demonstrably the practice of representative government or the conduct of elections. Know that the member has not done that.

This gets to the principle that when a person debates, manages or reforms a bill such as this, they need to encounter and engage with all political participants. This is absolutely evidence of how not to reform the Electoral Act. But it ventilates, I suppose, the more undergraduate and pedestrian political inclinations of some members of this chamber. Hon Dr Brad Pettitt is a person of repute and integrity, but this is a cheap shot and it will not be supported.

Hon MATTHEW SWINBOURN: I perhaps will not be as rhetorical as Hon Tjorn Sibma has been, but I will be very clear that the government is not supporting the member's amendments. We have chosen a path that we think is appropriate in the circumstances, which is the path of disclosure, transparency and capping. We think that that is a significant step in this community for how we keep our democratic processes open and accountable. Clearly, the honourable member would go further than we would. I take Hon Tjorn Sibma's argument about Hon Dr Brad Pettitt cherrypicking the ones that he likes and does not like. There is some argument about the ones he has picked in terms of a political party that might be formed called, for example, the Fossil Fuel Party, and the member is saying it could not receive political donations from fossil fuel companies even though its entire reason for existing is to promote the fossil fuel industry, which remains a lawful and important contributor to our Western Australian economy.

We do not support the member's amendments. We are not saying they are without merit. We are certainly not as forceful or vociferous in our opposition as Hon Tjorn Sibma and the opposition alliance. However, we will not be supporting the amendments.

Hon Dr BRAD PETTITT: There is a clear response to some of the things that Hon Tjorn Sibma has said. Frankly, it is fair to say that he is missing the point. It is not about who we do not like, because that is not the judgement for this. The judgement is around which of these kinds of industries need major government decisions and rely on those for their very existence and are highly, highly regulated for good reason. Again, take gambling. The way gambling works in Australia, its existence relies on the way that it is regulated. It is the same with tobacco. It is the same with the way that we create mining leases or leases for fossil fuel products. Frankly, I do not hate all these. I see mining as a really important part of the state's future. It is an essential part of the state's future. But as much as I might like lithium mining companies and others that I think are going to be essential for the clean energy transformation, I do not think they should be donating to my party or to other parties so that they can have access to those minerals in a way that is not properly governed by good decision-making based on evidence, or might be perceived at least to be swayed.

This is at the heart of this. The member misrepresented and kind of took, frankly, what I think is probably a little bit of an undignified stance by using the undergraduate line in this place, because these are serious arguments for our democracy and for this place. What defines each of us is industries that require major government decisions or are heavily regulated. In each of those cases, the idea that they would donate tens of thousands, if not hundreds of thousands of dollars to political parties for an outcome—people do not donate money of that stature unless they want an outcome—undermines the best kinds of decision-making and undermines our very democracy.

As I said before, these are not radical ideas. These are versions of what I am proposing, what the Greens are proposing, are happening by the major parties in other states on the east coast of Australia. These are not radical ideas. I know they are radical in WA, but they should form the basis of good governance and make sure that we are making the best decisions we can without undue influence. I think it is quite self-evident, frankly.

I suspect members resort to those sorts of rhetorical responses when they know they are losing the argument because —

Hon Tjorn Sibma: It is an assessment of the quality of yours. You might not like it, but that is my truthful rendering, I think, of the quality of the argument. I am not expecting you to accept it, but don't get all sooky about it.

Hon Dr BRAD PETTITT: I will push back on it. My job, frankly, is to push back on an argument that relies on cheap, personal rhetoric, which is what the member has done, and does not go to the heart of the issue. When you can focus on the issues, that is when you know you are winning the argument. The member knows that he lost the argument because he resorted to, frankly, undignified and semi-personal attacks. I am very happy to stand and defend the issue, which is about how democracy works. Good democracy works and the best practice of democracy is when we do not have hundreds of thousands of corporate dollars influencing a political party's decisions. That is entirely self-evident.

It frustrates and disappoints me that that is not self-evident in this place. Frankly, that is not how it should work. I support a lot of what is in this bill, but this is a lost opportunity not to strengthen these things. We get to make major amendments to this kind of legislation only once in a decade or once in a generation. It is disappointing that we are not doing that. I will, of course, support the bill on the whole, but this amendment would make a good amendment bill an excellent one, and that is why I moved it today.

Amendments (deletion of words) put and negatived.

Division

Amendments (insertion of words) put and a division taken, the Deputy Chair (Hon Dr Sally Talbot) casting her vote with the noes, with the following result —

Ayes (2)

Hon Wilson Tucker Hon Dr Brad Pettitt *(Teller)*

Noes (26)

Hon Martin Aldridge	Hon Sue Ellery	Hon Martin Pritchard	Hon Neil Thomson
Hon Klara Andric	Hon Lorna Harper	Hon Samantha Rowe	Hon Dr Brian Walker
Hon Dan Caddy	Hon Jackie Jarvis	Hon Rosie Sahanna	Hon Darren West
Hon Peter Collier	Hon Louise Kingston	Hon Tjorn Sibma	Hon Pierre Yang
Hon Stephen Dawson	Hon Kyle McGinn	Hon Matthew Swinbourn	Hon Peter Foster *(Teller)*
Hon Colin de Grussa	Hon Shelley Payne	Hon Dr Sally Talbot	
Hon Kate Doust	Hon Stephen Pratt	Hon Dr Steve Thomas	

Amendments thus negatived.

Clause put and passed.

Clauses 114 to 127 put and passed.

Clause 128: Part VI Division 2B inserted —

Hon MATTHEW SWINBOURN: Members may note that there are a number of amendments to clause 128 in my name on the supplementary notice paper. They all relate to the same issue. There are also corresponding amendments to clause 180 that relate to that issue. I will seek leave to deal with all those amendments together, but, first, I will explain the basis of the amendments so that members understand what I am trying to achieve.

Clause 128 relates to state campaign accounts. It amends proposed section 175LL, "Terms used"; proposed section 175LM, "State campaign accounts to be kept for electoral expenditure"; and proposed section 175LN, "Notifying Electoral Commissioner about State campaign accounts". The purpose of these amendments is to provide greater clarity and flexibility in state campaign accounts and operational matters. They will allow for candidates, elected members and associated entities to rely on a state campaign account established by their relevant political party or group rather than having to create their own for the purposes of their electoral expenditure. A new defined term "eligible SCA nominee" will be created to clearly set out the relationship required to nominate another entity state campaign account. Proposed section 175LN(2) creates the exemption from the requirement to establish a state campaign account in circumstances in which a political entity wishes to rely on the state campaign of an eligible state campaign account nominee with requirements that the nominee consent and a notice is lodged with the Western Australian Electoral Commission under proposed section 175LN. Proposed section 175LM(2) will create an exemption from the requirement to establish a state campaign account in circumstances in which a political entity wishes to rely on the state campaign of an eligible state campaign account nominee, with the requirement that the nominee consent and a notice is lodged with the Electoral Commission under proposed section 175LN. Section 175LN(1)(a) will be amended to provide for political entities to lodge a notice stating that they will rely on the state campaign account of another political entity as an alternative to lodging notice of their own state campaign account. Subsection (2) will be amended to require a new notice to be lodged if that information changes.

The amendments at clause 180 are consequential to the amendments to clause 128 relating to state campaign accounts and provide for political entities to rely on the account for an eligible SCA nominee. New subsection (2A) will provide clarity in relation to a participation date for elected members for the purpose of the transitional provisions in proposed section 233. Participation dates are set out in proposed new section 175LL in relation to all other political entities. A new subsection (3)(aa) will provide transitional arrangements in situations in which a political entity wishes to rely on the state campaign account of an eligible SCA nominee rather than create their own account. The responsible person for the political entity has a period of five days after the commencement of the legislation to lodge a notice with the Electoral Commission in the improved form, advising of this.

By leave: I move —

Page 244, after line 20 — To insert —

eligible SCA nominee, in relation to a political entity, means —

(a) for an endorsed candidate — the political party that endorsed the candidate; or

(b) for a candidate included in af group — the group; or

(c) for an elected member —

(i) if the elected member is a member of a political party — the political party; or

(ii) if the member is a member of a group — the group;

or

(d) for an associated entity — a political party, or the party group of a political party, to which the associated entity relates;

Page 245, line 25 — To delete the line and insert —

Penalty for this subsection

Page 245, after line 28 — To insert —

(2) Subsection (1) does not apply if —

(a) a political entity (the ***relevant political entity***) who or which is not a group, political party or third-party campaigner, does not have a State campaign account because the relevant political entity intends to make use of the State campaign account of another political entity; and

(b) the other political entity is an eligible SCA nominee in relation to the relevant political entity; and

(c) the other political entity consents to make payments for electoral expenditure on behalf of the relevant political entity out of the other political entity's State campaign account; and

(d) the responsible person for the relevant political entity lodges a notice under section 175LN(1).

Page 246, lines 5 and 6 — To delete the lines and insert —

(a) that the political entity —

(i) has a State campaign account; or

(ii) intends to make use of the State campaign account of another political entity named in the notice that is an eligible SCA nominee in relation to the political entity and has given the consent mentioned in section 175LM(2)(c);

and

Page 246, line 12 — To delete "subsection (1)(b) or (c)" and insert —

this section

Page 246, lines 16 to 18 — To delete "stating the changes within the period of 5 business days after the day on which the change occurs." and insert —

stating, within the period of 5 business days after the day on which the change occurs, details about the changes to the information, including —

(a) if the change is that a new State campaign account is established — the information about that State campaign account mentioned in subsection (1)(b) and (c); and

(b) if the change is that the political entity intends to make use of the State campaign account of another political entity — that the other political entity is an eligible SCA nominee in relation to the relevant political entity and has given the consent mentioned in section 175LM(2)(c).

By leave. And in relation to clause 180, I move —

Page 352, after line 11 — To insert —

(2A) For the purposes of sections 175LM, 175LN and 175U(1) and this section, the first participation day of a person who is, on commencement day, an elected member is the day on which the elected member was nominated for election at the most recent election for which they were a candidate.

Page 352, after line 31 — To insert —

(aa) the responsible person for the political entity complies with section 175LM(2) by the end of the period of 5 business days after commencement day; or

Hon MARTIN ALDRIDGE: That was quite a lengthy explanation. I want to try to understand what we are doing here and how this has arisen. This matter was listed only today and we have not had an opportunity to be briefed on it or to caucus on it, as the Labor Party would put it. I remember being in government and the then Labor opposition would tell us that if it was something it had not been able to caucus, it would oppose it. We are in a bit of a difficult position, so can we spend a couple of minutes working through this? I had some questions around state campaign accounts, who is required to have one and the exceptions. I think the general principle is that there should be one per political entity that electoral expenditure has to occur from during the relevant period. Are we changing that at all with the series of amendments that the parliamentary secretary has moved, including the two amendments at clause 180? Are we disrupting that at all? With these amendments passed, how will the state campaign account apply?

Hon MATTHEW SWINBOURN: I acknowledge that this was put on the notice paper immediately before we started sitting today and the opposition has had limited opportunity. I hope once the member understands what we are trying to do, he will be able to support it.

Essentially, without this amendment, each political entity must have their own state campaign account. A political entity includes political parties, members of Parliament and candidates. I think it also includes groups. That is a lot of state campaign accounts. It is not the case, of course, that every political entity intends to have electoral expenditure. I will give the most obvious example. Candidates in the Legislative Council who are on a major political party's ticket will typically—certainly in the case of the Labor Party—rely upon the statewide campaign for their political party and not incur individual electoral expenditure. For example, it is not likely that I would run ads that say "Vote for Hon Matthew Swinbourn; put me at 1 underneath the line and then fill out the rest of the boxes!" I think that people are now required to fill out up to 17. It is unlikely that I would run that kind of campaign and therefore incur that kind of expense. Hon Tjorn Sibma is distracting me!

Hon Tjorn Sibma: All kinds of options! All kinds of scenarios!

Hon MATTHEW SWINBOURN: But it will be the case that all political entities must have, in effect, a connection to a state campaign account, if I can put it like that, under the amendments that we propose. I will use myself again as an example. In my circumstances, I would nominate the campaign account of the WA branch of the Australian Labor Party. I would then do all the necessary paperwork to ensure that that account was properly nominated, and then any electoral expenditure made on my behalf would come out of the state campaign account of the Australian Labor Party, rather than imposing on me a burden to set up my own state campaign account. I absolutely think that is a preferable position to what is now proposed in the bill. We can obviously have state campaign accounts for those political entities that intend to incur the vast majority of electoral expenditure. Those political entities that are unlikely to incur expenditure or are likely to incur very limited expenditure can then rely on the state campaign account of the political party or group that they have nominated.

The member asked a question about how this amendment came about. We became aware of this issue during the briefings. To give credit to Hon Dr Brad Pettitt and his team, it was a question that was specifically put during the briefings that we responded to afterwards. We had other—how do I put it?—considerations that came up as a consequence of that, and it then became apparent that this would be a much more desirable outcome than what is currently proposed in the bill. That is why we proceeded with this amendment. I think that it will be a more desirable outcome for political parties and political candidates. I do not want to speak on behalf of the Electoral Commission, but I suspect that this amendment will reduce the number of state campaign accounts it has to be notified of and potentially keep track of. That hopefully answers the member's question.

Hon MARTIN ALDRIDGE: I am just looking back at the PowerPoint presentation from the briefing. The first dot point was that state campaign accounts must be kept by all political participants, parties, candidates, groups, associated entities and third-party campaigners. This series of amendments is really targeted at the political parties, or maybe groups, in that they will eliminate the requirement or give those groups the option; is that a better way of putting it?

Hon Matthew Swinbourn: Yes, by way of interjection.

Hon MARTIN ALDRIDGE: The legislation will still allow for a proliferation of state campaign accounts, but it might be administratively easier for a group or party to organise itself in a way that minimises its number of state campaign accounts. Is that a fair summary?

Hon Matthew Swinbourn: Yes.

Hon MARTIN ALDRIDGE: In a political party structure, can the party still have multiple state campaign accounts? It might have one for the Legislative Council campaign and one for the Legislative Assembly districts, or maybe one for each of the Legislative Assembly districts. I perhaps misunderstood the information that was provided to me. I thought we were going to a very centralised structure in which there would be literally one account for one party, and everything that was electoral expenditure would have to be expended from that account, which means that a lot of the decentralised decisions that occur within party structures would need to be centralised to meet the requirements of the act. That might have just been my misunderstanding from the information that was provided to me. Can the parliamentary secretary perhaps clarify that?

Hon MATTHEW SWINBOURN: I think the misunderstanding the member identified from what he understood from the briefing, which was a centralisation of that, was perhaps incorrect in that the way it currently sits, it is a requirement for each political entity to have its own individual state campaign account. What we are doing here is effectively giving an option for political parties or groups and their associated members of Parliament and candidates to either continue with that, if they so desire, if that is the way they want to run it, or to have the ability for the candidates and members of Parliament to nominate their political party state campaign account as their state campaign account as well, and for the person responsible for that to be then essentially responsible for the reporting out of it. It basically increases the flexibility around that. A political party that wanted to keep it centralised can maintain that if that is its desire but if a political party has a decentralised process—for example, associated entities or relevant campaign committees that exist as an associated entity of the political parties—they could maintain

it for a district if they were running it and that was the choice of that particular campaign and that political party. In a sense, it frees it up so that they can make their own decisions. As it presently is, it would mean you must have a campaign account and I must have a campaign account —

Hon Martin Aldridge: It is whether or not you use it.

Hon MATTHEW SWINBOURN: That is exactly right, then there are the reporting obligations that come on you as a consequence of that. Obviously, there is also the issue of oversight for political parties that need to make sure they maintain their overall expenditure caps because if they are unable to have vision of what a candidate or member of Parliament is spending out of their campaign account, then they must assume that they are spending the maximum amount and that affects how they might use the residuals for their statewide campaign.

Hon MARTIN ALDRIDGE: Thanks. I think that has clarified it significantly. I think the parliamentary secretary used the term "political entities" and the presentation used the term "political participants" but I think they are interchangeable. I take his point that if someone is not likely to incur expenditure, they can nominate someone else through this new definition and the subsequent amendments. An elected member has the ability to nominate their political party as the host of the state campaign account responsibility.

Hon Matthew Swinbourn: That's correct, member.

Hon MARTIN ALDRIDGE: Within a lay party structure, as a political participant, they can still have only one account, can they not? For example, the Northam branch of the Nationals WA cannot have a state campaign account of its own or the Central Wheatbelt campaign committee could not have a state campaign account of its own because they are effectively functions of the lay party and therefore the party has one state campaign account. Is that correct?

Hon MATTHEW SWINBOURN: It would largely depend on how they are legally structured, and I do not know about how the Nationals WA are structured, for example. The definition of "associated entity" at proposed section 175(2) reads —

> ***associated entity*** means an incorporated body, unincorporated body or trustee of a trust that —
>
> (a) is controlled by 1 or more political parties; or
>
> (b) operates for the benefit of 1 or more political parties …

The member gave the example of the Northam branch of the National Party. I presume that is just a construct of the National Party, it does not have its own separate legal identity, it is not incorporated, it would not count as an unincorporated association and it certainly is not a trust, so it may not be an associated entity. I am advised that political entities can have more than one state campaign account as long as they are notifying the Electoral Commission and meeting those requirements. It is possible that there is not an obligation on the Northam branch to have that state campaign account, but if the National Party, for example, decided it was going to have a central campaign account but wanted its branches to also have them, for whatever reason, it would be permissible for it to do that as long as it met the notification requirements and the other obligations that arise as a consequence. Whether that is desirable is a matter for individual political parties to decide.

Hon MARTIN ALDRIDGE: Obviously, on that point, the responsible person of the party would have to have regard for their ability to manage as well because they will ultimately be held responsible to the expenditure cap enforcement.

Hon Matthew Swinbourn: I suspect it is the kind of thing that keeps them up at night-time.

Hon MARTIN ALDRIDGE: In having many of them, there is probably a balance to be found. One might be too few, but I do not think we want to manage 40 of them in an election environment. I thank the parliamentary secretary for the advice.

Hon Dr BRAD PETTITT: I have some questions. They have partially been answered in answer to Hon Martin Aldridge's queries. Can I just clarify matters, partly because they came from the back of the briefing, as the parliamentary secretary said. There is quite a bit of interest in this amongst the Greens. I want to double-check some of these things, if the parliamentary secretary does not mind. First question: does every single candidate running for a political party in the lower house require their own campaign account?

Hon Matthew Swinbourn: Under these amendments, no, they would not.

Hon Dr BRAD PETTITT: They would not, okay.

Hon MATTHEW SWINBOURN: Can I just clarify that. If the member's questions are quite direct, it might be easier just to ask each one and get me to respond. When I say they do not have to have their own, they still have to have nominated another state campaign account, which would be their political party state campaign account. In effect, it means that a candidate or a member of Parliament cannot be unattached to a state campaign account. They may not have their own specific one. They would have otherwise nominated the state campaign account of their political party or group.

Hon Dr BRAD PETTITT: That answers a whole stack of my first bunch of questions. The next question is about candidates for the Legislative Council. As has been written, Legislative Council candidates will be considered a grouping. Could they use a single state campaign account?

Hon MATTHEW SWINBOURN: If I give the example of the member's political party, he and any candidates who run would be able to nominate the Greens state campaign account as theirs, as a political party. If, for example, individual council candidates form a group registered with the Western Australian Electoral Commission for these purposes, those individuals could nominate that group's state campaign account in that circumstance.

Hon Dr BRAD PETTITT: I think that makes sense. I will just restate it back to the parliamentary secretary. There are a couple of options. One is that everybody gets to use the party's joint account.

Hon Matthew Swinbourn: Nominates, yes.

Hon Dr BRAD PETTITT: They could nominate to do that and have their own campaign account, or they could, between them—pick a number, there are 10 Greens candidates running for upper house positions—form a single account that they could all nominate to use.

Hon MATTHEW SWINBOURN: I will put it this way: the Greens candidates could not be classed as a group because they are members of the Greens political party. They cannot form a group under the act because it is a registered political party. The member's political party—I identified this—might create two separate state campaign accounts, one to support its Legislative Assembly candidates and one to support its Legislative Council candidates. Then each of the Legislative Council candidates would nominate one account and their electoral expenditure would come out of that. The Legislative Assembly candidates would nominate the other account. They would be able to do it that way.

There are also party groups, which include all the endorsed candidates including those who have been endorsed by the same registered political party or one or more registered political parties. That is an instance in which there are two political parties. I suppose the most obvious example of that would be if the Nationals WA and the Liberal Party decided to run a joint ticket on the Legislative Council ballot for next time—as unlikely as that very well may be. If they decided to do that, they would then be classed as a party group. That party group could then nominate a state campaign account that the expenditure would come out of. They would not get extra funding as a consequence of that. It does not matter how many state campaign accounts a party group has, the caps still apply because it is based on the individual candidates rather than on their groupings and things of that nature.

Hon TJORN SIBMA: I have a question on holding and operating multiple accounts from the perspective of a registered political party. I might use an example. Forgive me if the answer has already been provided. Is there capacity to transfer funds between accounts? Say, for example, party X is running an upper and lower house campaign. Maybe it is the Legalise Cannabis WA Party. For whatever reason, it determines that it has actually made a mistake; it has misallocated resources and it wants to transfer its upper house resources because it has received new polling to suggest that it might get a lower house seat. Would it be able to transfer funds between accounts? They are accounts that it controls and it would not breach any expenditure limits. How flexible is the operation of these accounts?

Hon MATTHEW SWINBOURN: To put it bluntly, no, it could not do that. The only money that can come out of the account is electoral expenditure. I think political parties and entities will need to consider how they use their state campaign accounts, and not use them as general accounts in which they just deposit money but only transfer money into them when they know they want to transfer it back out again. When the accounts get through the election process, the money can be transferred out when the whole process is terminated. However, from the scenario that the member gave, there is no opportunity to transfer between.

Hon TJORN SIBMA: I frankly find that a bit odd and unnecessary. Nevertheless, it is how the bill has been drafted. I would then imagine that if a party is responsible and organised, it would have a holding account, and it would then distribute funds to state campaign accounts. That is the only way it could give itself the flexibility it needs to respond to political dynamics as they occur in the course of a campaign, which is an obvious requirement. Would that be permissible under this bill?

Hon MATTHEW SWINBOURN: Yes, it would be permissible. Hon Tjorn Sibma described the creation of a holding account for funds and moving those funds into the state campaign account or to other campaign accounts. That is probably the way that most political parties will manage this process. When a donation is received, it will not have to be paid into the state campaign account; it will go into the political party's other accounts and things like that. We will not be requiring political parties to run all their financial affairs out of the state campaign account; it will be quite limited. That will make electoral expenditure as clear as possible, as only electoral expenditure will come out of it, subject, obviously, to termination of the state campaign account and money being moved in those circumstances.

That is really what this is about. I think once political parties get their heads around that, they will see that it will be better, because that money will not get mixed up with their other activities.

Hon TJORN SIBMA: On that rendering, though, it would be an impermissible use of funds for a party to engage in electoral expenditure out of that holding account. That expenditure must be transferred through the state campaign account.

Hon Matthew Swinbourn: By way of interjection, yes.

Amendments put and passed.

Clause, as amended, put and passed.

Clause 129 put and passed.

Clause 130: Section 175M replaced —

Hon MARTIN ALDRIDGE: This clause will replace section 175M with a number of proposed sections relating to donation disclosure. We had an exchange earlier about funds raised from compulsory staff levies. The parliamentary secretary indicated they would be disclosed and that that would hopefully be a deterrent from acting in such a way. I am just wondering whether we will see that granularity of detail when a political party is required to lodge necessary returns arising from donation disclosure requirements. Will it be detailed sufficiently to be able to identify, within subgroups, the source of those funds, including those raised through compulsory levies on electorate staff?

Hon MATTHEW SWINBOURN: I think we can give the member some assurance about the disclosure requirements. Proposed section 175M(1)(d) states —

> if the contribution is a compulsory party levy — a description of the position held by the person who paid the levy.

For example, if the position held was that of electorate officer, under those other provisions, that in and of itself will have to be described by the political party as a compulsory levy received from an electorate officer. It would not identify that electorate officer, unless the contribution was greater than $2 600, which would be a donation that is disclosable, but it would indicate that the political party had received such an amount from that particular category.

Hon Dr BRAD PETTITT: I have a few questions on clause 130 and how the capped expenditure period is going to operate in practice. This is the way that these questions have been put to me. Firstly, is the intent to stop parties or candidates buying, for example, billboards or television advertising space months or years in advance of an election?

Hon MATTHEW SWINBOURN: In effect, yes. The issue is to ensure that expenditure that is incurred outside the capped period but is also being used is also captured. The example the member gave of buying political ads in advance of the period coming into effect and then rolling them out during that period would count as electoral expenditure. We had a debate earlier with Hon Martin Aldridge about what the effect would be presently, as the bill will not commence until 1 July 2024. Currently, it will apply only to those matters that are incurred from 1 July 2024 onwards. Naturally, after the next election, it will include those matters that are in advance. If the member stockpiled corflutes saying "Hon Dr Brad Pettitt—Vote 1 for me" in his back shed for the purpose of putting them out in the capped expenditure period for the election, that would need to be included in his electoral expenditure.

Hon Dr BRAD PETTITT: If a party or candidate paid for these in advance, keeping in mind that that often happens because these things have to be booked, will a percentage of the payment that relates to the capped expenditure period count towards the statewide electoral cap for the party or the candidate?

Hon MATTHEW SWINBOURN: Conceptually, we need to understand that there is not a party cap per se in the sense that the total cap is an aggregate of all the candidates run by a political party. In the first instance, the question would be whether the electoral expenditure related to a district or a Council candidate, and then it would fall under their particular spending. If it was statewide or campaigning at large, the residual of that would be available to political parties to use on the broader campaigns. In some seats, political parties will spend up to the cap on their particular candidate, because that is an important target for them; in other seats, they will spend very little. The residual could then be used for the broader campaigning and messaging of the political party.

Hon Dr BRAD PETTITT: I want to turn to a slightly different matter of disclosures. If the parliamentary secretary does not mind, I want to use an example to demonstrate it. This might be particular to the Greens. The Greens have an ethics review period for any donations that we receive; for example, we might get a donation that we return because it does not meet the requirements and all those things that I was talking about earlier about prohibited groups. To pick a hypothetical one, if Woodside gave us a donation, we would ultimately return the donation. This is a serious question in relation to that. This is a question from our party to understand what we will have to declare. Take that Woodside example; we get a donation from Woodside and we need to make it public within 24 hours. That is correct. If we return the donation—say, the committee meets, makes the decision and a couple of days later that donation

is returned—what happens then? I guess it might not be covered by legislation, but it is a real issue for the Greens because that is what actually could happen.

Hon MATTHEW SWINBOURN: If I can be a bit rude, the Greens might have to speed up its ethical process because it will have to disclose the receipt within the time frames. Depending on which stage it gets it, the time frames are within seven days if it is outside the election period but within 24 hours if it is during the election period. Of course, if the Greens return the money to the donor, the party would need to advise the Electoral Commission that the money has been returned. That is the party's internal process. It will still have to disclose that. The fact of the matter is that once the party has received it, it is a donation. If it is the party's choice to pay it back, it does not mean that the donation was a nullity; it just means that the party decided to pay the money back. Presently, once it is a donation, it is the party's money. The party can do what it likes with it within the confines of the law. I think, in that instance, the Greens will probably need to truncate the period and make a quicker ethical decision. I will not get into some gratuitous descriptions after what happened earlier tonight.

Hon Dr Brad Pettitt: Thank you. That is all I have got.

Clause put and passed.

Clause 131: Section 175N amended —

Hon MARTIN ALDRIDGE: Clause 131 amends section 175N of the Electoral Act, which is concerned with political parties' annual returns. The next clause, clause 132, which I will not go to, effectively does the same thing for associated entities. As we move to the new regime of so-called real-time disclosure, what is the purpose of an annual return?

Hon MATTHEW SWINBOURN: Obviously, the import of the annual return will be significantly reduced under what we are doing, but the purpose is to help political parties reconcile all that they receive over the reporting year. As I indicated to the member before, donations certainly accumulate from individuals and may then become over the disclosure amount. It will certainly keep political parties' minds turned to the fact that they will need to keep an eye on the fact that somebody is making contributions. I will leave it at that.

Hon MARTIN ALDRIDGE: The proposed amended section 175N references both political contributions and other income. It has been some years since I did an annual return, but from my memory, it was effectively a very simple form; I think it was one page. I think it might have had a total of gifts below the threshold and a total of gifts above the threshold. There then might have been a section for other income that was not necessarily gifts. At least from my understanding, an annual return would probably encompass other sources of income that are non-gift and non-donation related. As part of the design of the new platform that the commission will develop in a very short time, I wonder whether there will be some scope to make this process easier for political parties in preparing their annual returns.

Hon MATTHEW SWINBOURN: I am advised that the commission will do its best, if that is of any reassurance to the member. The answer is yes. The view would be to try to make it simpler for political parties in that way.

Hon Martin Aldridge: And the other income?

Hon MATTHEW SWINBOURN: That is the case with the other income that the member has referred to as well. It is to capture all political contributions, not just gifts.

Hon MARTIN ALDRIDGE: Say, for example, a political party owned a building and it leased it out on commercial terms. That is not a political contribution; that is other income. That would not be subject to the live disclosure regime, but would perform part of an annual return in terms of total income received by a party, and that is why there will still be a purpose for annual returns to occur?

Hon Matthew Swinbourn: Yes.

Hon MARTIN ALDRIDGE: The parliamentary secretary mentioned the issue of multiple donations that exceed the threshold. When we do the seven days and end of the next-day live disclosures, depending upon where they are on the cycle, will there be a threshold for the donation disclosure? Will any donation have to be disclosed within seven days? How will be it be treated when multiple donations exceed $2 600?

Hon MATTHEW SWINBOURN: The aggregate period, if I can call it that, is the financial year, and if people make progressive donations over that year that eventually aggregate to an amount larger than the $2 600 it is at, the last donation that pushes it over is the triggering donation. That is a phrase used in the bill; it is the triggering donation. The obligation to disclose will depend on whether that is during every period outside an election period, and will be the seven days. In terms of whether political parties will be able to feed into the reporting machine all the donations and they only technically become reportable on the receipt of the triggering donation, we have not yet settled on the software package and whether that will be achievable, but it is certainly something that has been given consideration. That might help political parties because they can then feed in that Ethel, who runs the local shop, donated $600

to Hon Tjorn Sibma's campaign, and then later donated $3 000. That will then give the automatic thing that has not yet happened, but there is an idea that we might be able to achieve that. That part is not in the bill itself.

Hon MARTIN ALDRIDGE: Just to round this off, there will still be a utility to do annual returns for other income, but also a donation or multiple donations that remain below the threshold, because they would not necessarily be disclosed throughout the year but would come together at the end of a financial year as part of a party's annual return.

Hon MATTHEW SWINBOURN: Yes; I endorse what the member just said.

Clause put and passed.

Clauses 132 to 134 put and passed.

Clause 135: Section 175Q amended —

Hon MARTIN ALDRIDGE: This clause will amend section 175Q of the Electoral Act and give it a new title, "Third-party campaigners to lodge return of gifts received during disclosure period". A couple of my questions relate to the earlier clause as well but I thought I would land on this one because of the reference to third-party campaigners. We are doing a few things here. We will reduce the disclosure time frame from 15 weeks, I believe, to 12 weeks.

Hon Matthew Swinbourn: Correct.

Hon MARTIN ALDRIDGE: What is the basis of the reduction in time?

Hon MATTHEW SWINBOURN: I am advised that for our purposes, it was lifted from the 2020 bill, and our understanding is that it was included in that bill because it was part of an election commitment to reduce the time for reporting from the greater time of 15 weeks to now 12 weeks.

Hon MARTIN ALDRIDGE: What is the penalty for noncompliance with this provision, perhaps currently and if it is changed, what it will be on the passage of this bill?

Hon MATTHEW SWINBOURN: I refer the member to section 175U, "Offences", which will be amended to provide —

> (1) If a person fails to lodge a disclosure document that the person is required to lodge under this Part within the time required by this Part the person commits an offence.
>
> Penalty for this subsection:
>
> (a) if a disclosure document is required to be lodged by the agent of a registered political party — a fine of $36 000; or
>
> (b) otherwise — a fine of $24 000.

That is what the new penalties will be. The current penalties are $7 500 in the case of an agent of a political party, and $1 500 in any other case.

Hon Martin Aldridge: Do you have a page number?

Hon MATTHEW SWINBOURN: I am looking at pages 390 and 391 of the blue bill.

Hon MARTIN ALDRIDGE: I am at section 175U. In relation to third-party campaigners, it would be which of the offences?

Hon Matthew Swinbourn: It will be $24 000. It was previously $1 500.

Hon MARTIN ALDRIDGE: So let us say I am a third-party campaigner who decides to spend $4.3 million during the election period, which is a very short period.

Hon Matthew Swinbourn: You just plucked that figure out of the air, didn't you?

Hon MARTIN ALDRIDGE: Yes, it was just a random figure of $4.3 million. Publicly, I will say to the ABC that we will spend $1 million but, in reality, it is actually $4.3 million, but who is going to sweat the small stuff? Will this be an incentive to comply with the law? The problem we are trying to address is the capacity of organisations and individuals who have significant financial resources having undue influence on an election based on their financial means. Why would they not just cop a $24 000 fine?

Hon MATTHEW SWINBOURN: I would hope that all legitimate third-party campaigners would seek to be in compliance with the law. It is reasonable for the government to expect that will occur. This is only the fine for a failure to file the disclosure. If we look, for example, at third-party campaigners who fail to register, I think we will see that there is also a penalty for that. I do not have the penalty to hand for what that is, but if they spent more than the overall $500 000 cap, the fine would be three times the amount by which the expenditure cap was exceeded, or $36 000, whichever is higher, and up to three years' imprisonment. There is a criminal element to it and also a significant financial element. For example, if someone spent $500 000 above the cap, the penalty would be up to $1.5 million

because that is three times over the $500 000 cap. The higher they go, the larger the maximum penalty will become in those circumstances. I think the penalty for failing to submit the disclosure within the time frame has gone from a penalty of $1 500 to grave and significant penalties for people who break the rules. Of course, we do not want them to break the rules. We want them to play within them. It will become quite obvious when someone is not doing that because of the level of activity they are engaged in, and that will undoubtedly trigger inquiries from the relevant government agencies.

Hon MARTIN ALDRIDGE: Thank you, parliamentary secretary. I hope that everyone will be good citizens, but people who are not even citizens of Western Australia could engage as third-party campaigners. The penalties have improved, but we also discussed at clause 1 the powers available to the Electoral Commissioner to require the production of documents and, I think, even other forms of evidence, to establish that. These types of larger campaigners will not be discrete; they will be well known and visible because their intended purpose is to disrupt and influence. They will not be clandestine in any form. On the matter of penalties, to give me an assurance around the advocacy of them, was the Chamber of Minerals and Energy fined $1 500?

Hon MATTHEW SWINBOURN: We do not have advice about that at the table. The current commissioner was not the commissioner at the time of that event, so we do not have that with us here today.

Clause put and passed.

Clauses 136 and 137 put and passed.

Clause 138: Part VI Division 3A inserted —

Hon TJORN SIBMA: When I read clause 138 in conjunction with clause 2, I assume that the prohibition on receiving foreign contributions will not take effect until 1 July at the earliest. Is that right?

Hon MATTHEW SWINBOURN: That is correct, member.

Hon TJORN SIBMA: Is it also accurate to assume that for the purposes of making contributions to Western Australian political entities, it will be lawful and acceptable to receive foreign contributions up until 1 July or is there another prohibition that will affect that outcome?

Hon MATTHEW SWINBOURN: I am advised that all the current registered political parties are also federally registered political parties; therefore, they would be caught by the federal prohibition. Obviously, it is possible for a political party that is not also a federally registered party to become registered. This clause will create the necessity of having our own provisions because that commonwealth umbrella would not apply to them as opposed to our political parties.

Hon TJORN SIBMA: In the meantime, there is the very real possibility that political entities registered in Western Australia that are not subject to federal registration could avail themselves of foreign donations. Is that a reasonable assertion to make?

Hon MATTHEW SWINBOURN: I want to correct my last statement. I am advised that some state-registered political parties are not federally registered, such as the Animal Justice Party. There are some that do not fall under federal registration. It would be open to them. I would not encourage it—I do not think it is acceptable—but it is not unlawful for them to receive foreign donations. Some other commonwealth laws may intervene when money is transferred to political parties from overseas, but some of these foreign donations may come from foreign corporations that have Australian bank accounts and therefore would not necessarily get caught up in that situation.

Hon TJORN SIBMA: Theoretically, would any impediment prevent the operation of this clause coming into effect, as is the case in part I or elements of part II, either on the day on which the act receives royal assent or the day after that day? What is the problematic issue that would impede the operation of this more or less immediately?

Hon MATTHEW SWINBOURN: One of the impediments is that that comes under clause 2 and we are now on a different clause. We are not dealing with that. The commencement clause has been dealt with.

In terms of the practicalities of it, a regime needs to be put in around foreign donations, which is the defences that would apply when inadvertently receiving a foreign donation and then returning the money. That comes back to the six-week period in which a political party is able to identify that it is a foreign donation. Most of our political parties have mechanisms for people to make donations through web pages. It is possible that someone will make a foreign donation that has not been solicited by the political party; it is unsolicited. The political party would then receive and then carry out the necessary investigations. Those structures are not in place and we do not anticipate them being put in place until 1 July next year.

Hon TJORN SIBMA: If there is one unanimously agreed vector of potential risk that emanates from any financial contribution being made, it is from a foreign actor. Will the commission, for argument's sake, provide any guidance material or instruction or appeal to those registered political parties that are not subject to the commonwealth

provisions to not accept a foreign donation or advise them of the way in which the law is being moved and will take effect from 1 July?

Hon MATTHEW SWINBOURN: I do not think there is going to be separate stuff for those particular groups. There will be stuff that applies to all the political parties. The communication and guidance will start during the period from the passage of the bill and its royal assent. The commission will then start engaging with political parties about these new regimes and that will be across all the registered political parties not just the ones that are only state registered.

Hon TJORN SIBMA: Therefore, from 1 July next year, will there be a blanket prohibition on any political actor, whether they be an individual or a registered political party, from receiving a foreign contribution? For clarification, obviously we are fixated on the capped expenditure period or the issue of an election from the issue of writs to the end of polling day but that is not where the threat only exists. Will there be a prohibition on an MP, for example, receiving a personal private donation from a foreign individual or a foreign company?

Hon MATTHEW SWINBOURN: Political entities are political parties, members of Parliament, candidates for political parties and third-party campaigners. From 1 July 2024, it will be an absolute prohibition in this jurisdiction that if you are a political entity, you are prohibited from receiving a foreign donation.

Hon TJORN SIBMA: On that rendering, and this is just a hypothetical, there would be no prohibition even though it is unseemly, unethical and the like, for a private member either of the lower house or the upper house who is a political entity from receiving a foreign contribution or a foreign donation from any kind of benefactor.

Hon MATTHEW SWINBOURN: In the absence of any other exclusion that might apply, no; I agree with the member's proposition.

Hon Tjorn Sibma: Does the parliamentary secretary agree or disagree?

Hon MATTHEW SWINBOURN: I agree, sorry.

Hon TJORN SIBMA: He agrees; so it is a possibility. This might pre-empt a line of inquiry that I was holding over to clause 146, so it might be efficient and opportune to deal with it now. I am interested in the interaction of foreign entities, potential foreign contributors, and the potential for them to be registered as a third-party campaigner. The operative clause 146 deals with the registration of such entities. Without casting any aspersions on this organisation, might I use it as an example for illustrative purposes only? There is an organisation called the Pew Charitable Trusts. It is headquartered in New York. It operates across Australia. It has an office in Perth. Some of the people do some interesting work but they are pursuing objectives that are framed in New York. Would they have the opportunity to provide contributions to Western Australian political actors, be they registered parties, candidates or even third-party actors or campaigners? Would they be permitted to be registered, for example, or would they be prohibited from doing that? How deep in an organisation's supply chain do we go to determine whether an organisation, particularly those that trade under a charitable designation, are foreign owned and controlled or Western Australian or Australian-based and focused?

Hon MATTHEW SWINBOURN: I cannot really talk about the Pew Charitable Trusts in any meaningful way because I do not know what its arrangements are—whether or not, for example, the Pew Charitable Trusts is just a brand or whether there is an Australian registered entity of some kind; I do not know. The more direct question that underlies this is: could a foreign entity that is lawfully operating within the Australian jurisdiction be a third-party campaigner or be required to register as a third-party campaigner? The answer is yes. If they are going to spend more than $500 in electoral expenditure, they must register and they are not entitled to spend more than $500 000 in electoral expenditure in that regard. Yes, it captures them. I suppose the argument could be made that they should be excluded in their entirety. I am not sure that the member is making that argument, but if they spend money and it falls within the four walls of being a third-party campaigner, they must register and then they have to disclose. Those are the obligations that come along with that.

Clause put and passed.

Clause 139: Section 175SAG inserted —

Hon MARTIN ALDRIDGE: This clause will insert proposed section 175SAG. I have been waiting to say that all day! It is the only reason I paused at this clause! Not really. I am a little confused by this proposed section. It will really not do much more than create a definition that will apply to this division; "expenditure disclosure period" for an election means the longer of either the period beginning on 1 July immediately before the election and ending on polling day in the election, or the capped expenditure period for the election. I do not quite understand the distinction. I understand the capped expenditure period to be from writ to the close of polls. Why do we have a period that will commence on 1 July, immediately before the election? Would that not always be the longer of the following periods?

Hon MATTHEW SWINBOURN: We are trying to capture electoral expenditure that happens not just during the capped electoral period but also the electoral expenditure that happens from 1 July until the closing of the polls, which realistically is the period during which political parties will tend to start to ramp up their political campaigns. This is a disclosure period for that period of electoral expenditure. That is what we are trying to achieve here—not just the expenditure that occurs during the capped expenditure period, but the expenditure that occurs during the entire period, so we have a full picture of what was spent or likely had been spent on the election campaign for each political entity that has a reporting obligation.

Hon MARTIN ALDRIDGE: I am glad that I paused at 175SAG, because I did not realise that that was occurring. This is new; I do not believe this to be an existing provision. When the election return is made, we are interested in those six things that the parliamentary secretary read out earlier, which include publishing an advertisement, printing flyers, conducting research or doing TV ads, in the context of the election period for the purposes of electoral expenditure reimbursement. I do not recall political parties having to disclose election-related expenditure beyond that, but I might be wrong, because I think there were provisions that applied to, for example, members of Parliament who were candidates, hopefully successfully, in multiple consecutive elections. If I recall correctly, their election return spanned the entire previous term. It started on a date shortly after the writs being returned or after polling day, or something like that, and it carried on throughout the member's term. Can I get some advice on what we are changing here? I think I have probably convinced myself of two different positions, and I want to make sure we are clear on what it is we are doing.

Hon MATTHEW SWINBOURN: The member had us a little bit stumped, but if we trace the breadcrumbs back to the current regime—I think the member is asking about what has changed—the current disclosure period is from the issuing of the writs until the closing of the poll. The member has to take a few steps back. In division 4 of part VI, proposed section 175SAG will be inserted before the first provision, which is current section 175SA, "Electoral expenditure by political party, return as to required", which reads —

> Where electoral expenditure in relation to an election is incurred by or with the authority of a political party, the agent of the party shall, before the expiration of 15 weeks after polling day in the election, lodge a return with the Electoral Commissioner in an approved form …

I think that was the requirement. The member then has to look at the term "electoral expenditure" to see what it previously was. The previous definition of "electoral expenditure" was quite long and included paragraph (g), which states —

> the carrying out, during the election period, of an opinion poll, or other research, relating to the election;

It really comes back to the election period, which was a defined term. The definition reads —

> … in relation to an election, means the period commencing on the day of issue of the writ for the election and ending at the latest time on polling day at which an elector in the State could enter a polling booth for the purpose of casting a vote in the election;

The last sentence of the explanatory memorandum for this clause states that we will extend the period for disclosure of electoral expenditure back to 1 July. I will read the explanatory memorandum, which says that this division —

> … provides a definition of the term "expenditure disclosure period" for the purposes of Division 4.
>
> This provision is inserted to identify all electoral expenditure within a designated time frame, for the purpose of an election return to the WA Electoral Commission. The time frame may extend beyond the capped expenditure period so as to accurately identify all electoral expenditure that has been made by political participants in relation to an election. Only expenditure incurred during (or for goods and services provided within) the capped expenditure period count towards the permitted expenditure cap. However, the community and the Commission will have a clearer view of total electoral expenditure in relation to each election.

This is a new thing. It is about greater disclosure and accountability for our political parties, candidates and entities of the entire amount that they spend on electioneering. I think 1 July is an appropriate date. Of course, electoral expenditure may occur before that. There is obviously no cap on the amount from 1 July just before the issue of the writs, but it is good for the public to be aware of what political parties spend on the electoral expenditure leading up to an election.

Hon MARTIN ALDRIDGE: It is good to clarify that. Currently, our annual returns are interested in income. Our election returns are interested in expenditure during the election period. What is changing under proposed section 175SAG is that there will be disclosure of expenditure from 1 July until the end of polling day, noting that the expenditure cap will apply only during the capped expenditure period, which is from the issue of the writ to the close of polls. This will add an extra burden to political participants, but as per the concern I expressed in my second reading contribution, or on the clause 1 debate, in the 2020 bill we went from the capped expenditure period, I think,

on 1 October the year prior, to, now, the issue of the writ. At least this will give us some visibility around the total expenditure on elections from 1 July to the close of polls, as well as the expenditure cap applying during the traditional election period. Probably the only other question I have on this is: why has it been framed in such a way that it anticipates the capped expenditure period for the election being longer than 1 July until polling day? Could that be the case when a by-election is held on 2 July?

Hon Matthew Swinbourn: By way of interjection, yes.

Hon MARTIN ALDRIDGE: Okay; thanks.

Clause put and passed.

Clauses 140 to 144 put and passed.

Clause 145: Part VI Division 4A inserted —

Hon TJORN SIBMA: We find here, this deep into a 199-clause bill, one of the signal features of this legislation and one that the minister responsible for drafting the bill has trumpeted will ensure a level playing field and necessitate or guarantee a truly representative democracy—or words to that effect. By way of tangential reference, I express my complimentary appreciation for the endeavours of the parliamentary secretary and his staff at the table over the course of debate on this bill since last Tuesday. I obviously also positively reflect on my colleague Hon Martin Aldridge, without making reference to myself. We have been here throughout the entire debate on this bill and have not come in and out on a whim as our gym routine and other circumstances have permitted. It has been a difficult undertaking. I thank the parliamentary secretary for the endurance he has shown and the composed manner in which he responds to questions that are sensibly and reasonably put.

There is one notable feature of this bill other than the sheer arbitrariness of the caps, which I know were determined on the basis, essentially, of a desktop analysis. That is one way of going about it. In previous interactions, we established that there was not necessarily an assessment of some of the cost drivers that influence or, obviously and axiomatically, have an impact on the kind of expenditure one needs to undertake if one wants to truly compete. Indeed, reference has been made on repeated occasions to the truncated consultation on the drafting of the bill—one that involved, predominantly, the Western Australian Electoral Commission, which is completely understandable; some interaction with like bodies; and one passing interaction, undated, unverified and unminuted, with a member of the Labor Party. That being said, there is one interesting dimension of the bill and the proposed caps that I think merits a more thorough investigation. That is why I spent the earlier part of this contribution buttering up the parliamentary secretary about his endurance, because it is worth, at the very least, five to 10 minutes of intellectual inquiry, if we can entertain that prospect at this not late hour but later hour in terms of the way that we have conducted our affairs over the last few years. The matter is this: there is a considerable disparity between the expenditure caps proposed to apply to registered political entities and those that will apply to third-party campaigners. I draw the parliamentary secretary's attention to the obvious earlier iteration of this, which was incorporated in the 2020 version of this bill and which sought, as this bill does, to introduce expenditure caps during the capped period, but it entertained more generous limits of around $2 million applying to third-party campaigners. As the parliamentary secretary well knows, the limit that has been proposed in the 2023 bill is $500 000. Can I first understand some of the decision-making, cogitations or assessment that the government relied upon that has so radically brought down that $2 million figure to the $500 000 limit that is now before us?

Hon MATTHEW SWINBOURN: The best I can do, even with the buttering up, is to say that in the desktop review—that is the member's description not mine—the money that was spent at the 2017 election, the notorious $4.3 million and change, is largely an outlier, because the next highest amount was just under $850 000, which was also spent at the 2017 state general election. If I recall correctly, that amount was spent by the Australian Services Union—I stand to be corrected on that—on the Western Power campaign that it ran. I am referencing paragraph 51 of the justification statement. Apart from the amount spent by the Chamber of Commerce and Industry of Western Australia, the largest amount that has been spent by a third-party campaigner at a state general election was just under $850 000 at the 2017 state general election. Only four amounts spent at the state general elections that occurred in 2013, 2017 and 2021 exceeded $500 000, including the chamber's contribution in 2017, out of a total of 39 contributions from third-party campaigners. Even including all the amounts contributed by the chamber and the other contributions over $500 000, the average amount contributed by third-party campaigners was $244 012. In these circumstances, a cap on electoral expenditure by third-party campaigners would not significantly dampen communication on political issues if the limit were set at more than double that amount.

That is the justification in terms of its impact on political communication, but obviously regard was had to the other jurisdictions that also have caps. Obviously, we are proposing $500 000, with our approximately 1.8 million voters. New South Wales, which has at least three or four times that many, has a cap of $1.46 million. Obviously, the larger the population, the larger the amount. Its population is almost three times higher than ours. Queensland has a cap of $1.043 million. Again, its population is significantly larger than ours. The other jurisdiction that has it is the Australian Capital Territory. Its total cap—wait for it—is $47 575 for third-party campaigners. I think that

informs where we sat. We are in the pack for where this amount is set, and I think the justification is having regard to that. It also comes back to what we call the egregious amounts being spent. It is certainly our position that the $4.3 million and change that was spent in 2017 would fall within an egregious amount.

Hon TJORN SIBMA: Thank you, parliamentary secretary.

Hon Matthew Swinbourn: Sorry, by way of interjection, it was not the Australian Services Union; it was the Australian Nursing Federation.

Hon TJORN SIBMA: I will get to the ANF later. I thank the parliamentary secretary for that reply. My question, however, was more focused on the justification the government relied upon, not so much in setting a cap, which is a policy gift, but the process by which the cap was set for a third-party campaigner.

In 2020, when the proposed cap was set at $2 million for third-party campaigners, the very phenomena that the government relied upon to justify that cap were the 2017 examples, which the parliamentary secretary just provided to me as justification of the 2023 amount. I will ask again: what is the specific justification for reducing it to a quarter of the previous permitted proposed limit, other than what other jurisdictions do? I might just say that the ACT is an absolute basket case. Having lived there for about six or seven years, I do not follow it in any regard. What is the justification necessarily? What was the clear and present threat or the outsized political influence demonstrated in the course of the 2021 state general election, for example, that made the government reconsider its relatively more generous prior allocation of $2 million as being an acceptable limit? Did something occur in 2021 that suggested to the government that that is still way too high and would have an egregious, outsized and disproportionate impact on the way that elections are conducted? I would have thought that the largest-spending outfit during the entirety of the 2021 campaign—with all due respect and some grudging admiration—was the WA Labor Party.

Hon MATTHEW SWINBOURN: I think that reasonable minds would disagree about where the cap should start. In this instance, the current Minister for Electoral Affairs did not just uplift what had been done by the previous Minister for Electoral Affairs and use whatever reasoning he took to why it should be $2 million. Also, an additional dataset, the expenditure at the 2021 election, was available to the government that was not available in 2020. At the 2021 election, we had seven disclosures by third-party campaigners. The highest expenditure in that instance was the Australian Services Union Western Australian branch, which spent $625 161.63 in electoral expenditure. That was followed by UnionsWA Incorporated, which was $286 748, and then the United Workers Union, which was $73 897. This is part of annexure 5 of the justification material. It is available and was tabled previously. I will not go through all the other ones, although I note that the Aaron Stonehouse Campaign Committee Inc was a third-party campaigner at $44 439.54. The additional data from those things gave us more understanding of where our third-party campaigners were. Obviously, in this particular stuff, the ASU would have exceeded the cap if the cap had applied at that election. As I say, it would have been exceeded by the Australian Nursing Federation in 2017, along with the Chamber of Minerals and Energy; they both would have exceeded the cap. Then, in the 2013 election, UnionsWA would also have exceeded the cap because in 2013 it spent $602 499.07 as a third-party campaigner. Given that the unions typically are supporters of our political party more than others, one might suggest that the government might be more affected by this than others. The member can take from that what he wishes, but as I said, that is to understand how we have arrived at $500 000.

Hon TJORN SIBMA: What I have gathered from the response is a number of things. First and foremost, this is an arbitrary level that has been arrived at without much science but with an attempt to rationalise it. With regard to the expenditures by third-party campaigners that the parliamentary secretary has outlined, I absolutely understand the political orientation and objectives of those organisations. Largely, they have done me no political favours at all at the last two elections, and I count on them not doing that again in 2025 or in any other election in which I compete. Nevertheless, I think they are valid, responsible members of the overall polity and should be given the opportunity to democratically campaign effectively for their cause. That is what I want to apply to all democratic participants, even if they want to do me well or do me harm in a political sense. But the arbitrariness, particularly the rapid reduction and downward movement from what was originally proposed, has not been strongly argued. That is a point that we will agree to disagree on.

The most pertinent matter here is one of two things; it is the proportionality. Largely speaking, I think these are government figures, but they are scribbled down. If we are to take expenditure for the registered political parties in the Legislative Assembly and the Legislative Council together, and they can compete in all contests and spend their limit, the government is effectively putting a cap of around $10 million as a political entity contesting an election. We have talked about the arbitrariness and the desirability of these things, but that policy has been set. When we countenance the obligations, the strictures that we will put on the expenditure of a third-party campaigner, they would expend no more than $500 000, compared with $10 million. Effectively, they will be operating at five per cent of the proportion of spend that an unregistered party can. How does the government justify that kind of disparity or disproportion—or permit it? I can understand there is a difference, absolutely, between the orientation

of the objects of a recent political party and a third-party campaigner, but this is quite a stark chasm; it is an enormous disparity. How is it justified?

Hon MATTHEW SWINBOURN: I think there is a danger of false equivalency between political parties and third-party campaigners, member.

Hon Tjorn Sibma: I do not quibble with the parliamentary secretary on that point. I do not think there is an equivalency. Nevertheless, there is an enormous disparity, so how do you justify it?

Hon MATTHEW SWINBOURN: My point is that political parties and political candidates who work as a group are privileged in one sense by the fact that they will have greater expenditure, but they are also under a great deal more scrutiny than any third-party campaigner. A third-party campaigner can focus their energies, their $500 000, on a single issue that can penetrate across the electorate. Political parties and political candidates are, by virtue of running for Parliament, required to have a range of issues upon which they must engage in the community on. They are trying to get themselves elected, rather than stopping, because, as the member probably appreciates, most of this expenditure by third-party campaigners is not necessarily in support of a political party. They are usually opposed to either a candidate or a political party on its particular philosophy.

Hon Tjorn Sibma: Or an issue.

Hon MATTHEW SWINBOURN: Yes, or an issue. There is a difference. As I said, they should not be given the same prominence in terms of the level of expenditure that an organised political party has. If they want that level of influence, they can form a political party, like the rest of us have, and then run political candidates in elections. This will be open to them and they could be on the same field that the member and I are on, but they choose not to be. If we keep the sport analogy going, they choose to sit, essentially, on the sidelines and to throw their messages over without having to play by the same rules that the member and I play by and the same level of competition that the member and I have to participate in. There is a difference between these two things. As I said, the member is not necessarily accepting how we have come up with the $500 000, but that is the limit. As I said, we are happy to defend that position.

Hon TJORN SIBMA: It is one of those moments that the parliamentary secretary and I have encountered in this debate when we are probably of a similar mind on some of the principles or some of the ways in which politics is conducted. Again, just for clarity's sake, I obviously see a stark difference between a political candidate, a registered party and an independent person pursuing election to a chamber of Parliament from those in the commentariat or those who inhabit the political class and are, I think, very well remunerated for achieving very little and being held to close to zero scrutiny. In fact, the best job in politics is not to be in Parliament but have a political interest and well done to them. I just do not necessarily think that they are achieving a hell of a lot for their membership.

Nevertheless, the parliamentary secretary reflected upon the principle that there is no equivalence. It would be false for us to assume that there is a direct equivalence between the conduct of, say, the Labor Party, the Liberal Party or the Nationals WA and their candidates at the next election with someone who is a third-party campaigner such as the Chamber of Minerals and Energy or the Australian Nursing Federation or even the RAC, for that matter. I do not necessarily know whether the parliamentary secretary's argument rests on any established constitutional principle, and I think there is a risk in that because it is just an assertion of preference, largely speaking, with all due respect.

I would like to understand whether there is any assessment of whether at the next election or at future elections a third-party campaigner—be it the nurses' union, which is pretty active at the moment, or the RAC—would be able to effectively prosecute its case or make its fair argument in the course of an election campaign with the imposition of this cap. Maybe I will reflect upon an organisation that I think is unanimously respected across the chamber, and that is the RAC. In the 2013 election, I believe the RAC had some pretty strong campaigns and individual interactions with MPs; I remember that. I think it spent something like $473 000 in either 2013 or 2017. I will need to be corrected on the election. That is by the bye. I think with the application of indexation, inflation or the like, it would probably be in breach now, retrospectively, of that $500 000 cap. There was no suggestion, really, that it engaged in that election process unfairly, egregiously, disproportionately or whatever.

It formed a judgement, rightly or wrongly, that it was going in to bat for the organisation and its imperatives and therefore the best interests of its membership. To what degree has the government assessed, when formulating this $500 000 cap, whether or not other than just citing examples that the average spend is X, $500 000 is an appropriately set fair limit, noting that each election battle has its own kinds of contingencies? How does the government vouchsafe that that is a reasonable and fair limit when there has been absolutely no negotiation or consultation, it would appear, with established third-party campaigners unless consultation has occurred that we do not know about?

Hon MATTHEW SWINBOURN: I am not sure I can take it a lot further than I have. To be clear, in 2013 the RAC expended $423 360.43.

Hon Tjorn Sibma interjected.

Hon MATTHEW SWINBOURN: No, that is all right.

In 2017, it spent $361 421.42, and at the last election, I am not sure what it spent this on, but it spent $973. It is obviously very judicious in making sure it discloses its expenditure. The $423 000-odd it spent left an impression on the member because he still recalls the money it spent. In terms of him asking how effective that was, he still remembers it now. I do not think he is typical of the punter out there, but I think it was enough that it still stays with people and they remember the campaign that it ran almost 10 years ago. How effective any of them have spent their money is always debatable because there will have been other campaigns. Frankly, I do not remember the Australian Nursing Federation's campaigned in 2017, and I was a candidate. It spent an incredible amount of money. I might need prompting to remember that. There are many ways to campaign effectively. Electoral expenditure, which is a set thing, is one of those things. The ANF might also do a social media campaign that costs it the price of designing the material and the campaign goes viral because it resonates with people. There are effective ways for third-party campaigners to do that. They might do a small out of boosting and it takes off. I do not want to restrict that. I think $500 000 is a considerable amount of money. In the last three elections that we have accounted for, the organisations would have spent very effectively and memorably, if I can put it that way.

Hon TJORN SIBMA: I thank the parliamentary secretary. I am trying to endeavour, in some small effort, to attempt to provide or expand upon the defences that a government might have to rely upon if it is challenged. I have been consistent throughout this debate that I anticipate that a challenge will be mounted at some stage.

Hon Matthew Swinbourn: Greater legal minds than mine would agree.

Hon TJORN SIBMA: I am not a legal mind at all. Nevertheless, coming from the school of political cunning, I can anticipate the potential for things to go wrong. They inevitably and invariably do. The strength of the proposition and the argument for the government's justification can be tested only in the courts. I just hope we do not get there but if we do, I will not be the kind of person who says, "I told you so", I will scream, "I told you so."

Hon Matthew Swinbourn: That is your prerogative.

Hon TJORN SIBMA: Fair enough; I would have earnt that right.

I have one final point on the setting of these limits. We have returned to this point on occasion. I refer to the accrual period or, I suppose, the expenditure period and how that is accounted for or audited. The Australian Nursing Federation of Western Australia is mounting a very strong campaign. The parliamentary secretary might not be able to recall its 2017 campaign. I do not either, but I am pretty convinced about its present message and what its message is likely to be at the 2025 election. Is it correct that under this bill, there would be no restriction on the ANF's expenditure for an electoral outcome until the writs are issued?

Hon MATTHEW SWINBOURN: Once a party has hit the $500 mark, the obligation to register kicks in and the $500 000 covers the capped expenditure period.

Hon Tjorn Sibma: Of the writs?

Hon MATTHEW SWINBOURN: Yes, that is right. By implication, there is no cap on spending before the election period starts at the issuing of the writs. Given the activities of the ANF currently, whilst maybe giving rise to the need to register at some point, there is no cap on the amount that it can spend on that campaign.

Hon TJORN SIBMA: I have only a few more questions before I feel that I have discharged my obligations as best I can. I take the example of the ANF. I do not know what its cogitations are around purported running of candidates and the like. I will use it as the example in this context. Until 1 July next year, the ANF can and will likely spend as much money as it sees fit to achieve the industrial outcome it wishes to, which is effectively a political argument. We can all agree, without taking a side, on its argument. That is correct; it can spend as much as it likes. Is it under any obligation until 1 July in a reporting context under the Electoral Act?

Hon MATTHEW SWINBOURN: No, not at this time.

Hon TJORN SIBMA: To some degree, the ANF and other third-party organisations would be incentivised to spend as much money as they like. They can do that without encountering any strictures, prohibitions or further obligations that this bill contemplates. Is that a fair assessment?

Hon Matthew Swinbourn: Yes.

Hon TJORN SIBMA: From 1 July until the issue of the writs, other than disclosing its expenditure or donations, there is no restriction on the amount of money it can spend. Is that correct?

Hon Matthew Swinbourn: No, there is no restriction. Whether its members are happy with that is a different question.

Hon TJORN SIBMA: That is absolutely the case. It may indeed form a political party and potentially avail itself of even higher levels of grouped expenditure, which is possibly a risk I would not completely discount, but I do

not know; I am just relying upon reports. Other than for that restricted period of time, there is really no restriction on the amount of money it can spend.

I have a more prosaic question. I have attempted to deal with some of the potential legal pitfalls. In a way, my prosaic question relates to my question around having multiple state campaign accounts and a holding account. To what degree was it contemplated that the following might be desirable, while operating within a total cap? A political party has that $10 million cap, roughly speaking—I know it is not precise—and let us just say that when we apply the lower house cap, a party is running in 59 seats and it is allowed to spend just over $7.5 million.

Why would it not be permissible to allow a bit more flexibility in the way individual campaigns are run? For example, political parties operate within that cap totally but there is a massive contest, for example, in Warren–Blackwood, Albany or Willetton. Was a global cap that could not be breached ever considered? Could there be some flexibility in the way moneys are allocated so some campaigns would be run skinny and some campaigns would run a little flush, which is my experience of political campaigns, largely speaking? Why was a reasonable flexibility not considered while maintaining an overall cap, because I do not think we can do that here?

Hon MATTHEW SWINBOURN: I think the cap is $130 000 for each Assembly district and half for a Legislative Council candidate, but it really comes back to the policy that we are trying to achieve here. If we did a global cap, as the member said, then a political party could decide how much energy it puts into a particular seat. It may very well be the case that it runs 59 candidates and 37 candidates in the upper house, giving it $10-plus million and it decides to spend all of that in three seats. We are trying to avoid the circumstance in which money and expenditure on electoral expenses drowns out the other voices.

What the member proposes, which is having a global amount, could still have that impact because millions could still be spent on a single seat against a candidate to effectively blast them out by a party's level of communication and ability to dominate political communication in that district. That is why we went for candidates in the Legislative Assembly. Political parties do not really run as such. People have to vote for an individual candidate who is a member of a political party. That is the structure of our elections. Classically, people presume that they voted for Tony Abbott, Mark McGowan or Malcolm Turnbull, but, as we all know, only those electors in their district voted for them. People do not vote for the Prime Minister or the political party per se in practice. That is why we are focused on candidates in districts rather than the global amount. It is obviously a little bit different in the Council because people vote for political parties in the Legislative Council but it will now be statewide because of the changes under the Constitutional and Electoral Legislation Amendment (Electoral Equality) Bill.

Hon MARTIN ALDRIDGE: I have just a few questions on this clause. It was outlined in the briefing, the parliamentary secretary mentioned this and it is in the bill: the total expenditure cap that applies to a party is effectively a product of the number of candidates that are run by them. Is it possible for a party to run more than 59 Assembly candidates and more than 37 Council candidates at the next election?

Hon MATTHEW SWINBOURN: I am advised: no. A party cannot run more than one candidate in a district for a political party. I do not have the reference. I can find it if the member wants but I am obviously conscious of moving the debate on, so the answer is no.

Hon Martin Aldridge: What about in the Council; can a party run more than 37?

Hon MATTHEW SWINBOURN: My advice is no, not more than 37 in the Council. There are only 37 vacancies. For a political party, they could only nominate. I suppose a group could go much longer, but let me get some more advice.

Does the member have the blue bill before him? I take him to page 124. It is provided, under proposed section 81A —

> (4A) Subsection (4B) applies if —
>
> (a) for a Council election where the relevant number is more than one, the Electoral Commissioner receives more party nominations by the same registered political party than the relevant number for the election; and
>
> (b) all but the relevant number of the party nominations are not withdrawn under section 82.
>
> (4B) When this subsection applies, all of the party nominations for the Council election by the registered political party are of no force or effect.

Effectively, the advice is that that would limit a political party to 37 because anything more than that is of no force or effect. That means that the maximum number of party candidates in the Assembly is 59 and in the Council is 37.

Hon MARTIN ALDRIDGE: The clause is quite explicit in setting out electoral expenditure relating to an expenditure cap for a district. The same principle applies for the Legislative Council. We cannot say "regions" anymore, because the government abolished them.

Hon Matthew Swinbourn interjected.

Hon MARTIN ALDRIDGE: I did not support that. It has to be production, broadcasting publication or display of advertising or other material relating to the election that explicitly mentions the name of the candidate; is communicated to electors in the district; and is not mainly communicated to electors outside the district. A similar composition applies for the Council. In terms of the electoral expenditure that falls outside that definition, that still has to be accommodated in the overall party cap, does it not? This is where parties need to make judgements to say, "We're going to run a general brand campaign saying, 'Vote 1 Labor Party'. We're going to run a negative campaign saying, 'You can't trust Minister Jarvis'." Any sort of election advertising that does not fall within the definition that effectively relates to the candidates and the districts has to be accommodated by apportioning some of the individual caps to a central use by a party in running those non-candidate-specific advertisements.

Hon Matthew Swinbourn interjected.

Hon MARTIN ALDRIDGE: Yes, and that applies in the same way to negative advertising. If there is a flyer that says, "Vote 1 Tjorn Sibma, but these are the reasons not to vote for Matthew Swinbourn", that would still be captured by this.

Hon Matthew Swinbourn: It would be a short flyer!

Hon MARTIN ALDRIDGE: Parties often run negative advertising on TV or in print; I am not sure how effective it is. But if it does not mention the name of the party candidate, it will not form part of the district cap and will have to be accommodated by the overall cap; is that correct?

Hon MATTHEW SWINBOURN: Yes, member.

Clause put and passed.

Point of Order

Hon MARTIN ALDRIDGE: Can I raise a point of order on the issue just made. We have amended clause 180, too. I wonder whether we need to deal with that clause separately.

The DEPUTY CHAIR (Hon Stephen Pratt): I will just check.

Committee Resumed

Clauses 146 to 179 put and passed.

Clause 180, as amended, put and passed.

Clauses 181 to 199 put and passed.

Title put and passed.

Bill reported, with amendments.