## CONSTITUTIONAL AND ELECTORAL LEGISLATION AMENDMENT (ELECTORAL EQUALITY) BILL 2021

*Committee*

Resumed from 11 November. The Deputy Chair of Committees (Hon Dr Sally Talbot) in the chair; Hon Matthew Swinbourn (Parliamentary Secretary) in charge of the bill.

**Clause 24: Section 17 amended —**

Progress was reported after the clause had been partly considered.

**Hon TJORN SIBMA**: When we last broke off on Thursday just gone we were up to clause 24. I think I was coming to the point in my contribution at which I was going to ask about the nature of the Electoral Commissioner's advice on the construction of this clause, because clause 24, as the parliamentary secretary previously helpfully outlined to the house, is one of a number of clauses upon which the minister's office conferred directly with the Electoral Commissioner. They have been helpfully enumerated and I suppose we will have questions about that. I might just use this opportunity, before I next get up, to ask briefly what the nature of that communication was with the Electoral Commissioner and whether the advice the parliamentary secretary received corresponds to the clause in front of us as it is drafted.

**Hon MATTHEW SWINBOURN**: The consultation with the commissioner was about what is now deleted subsection 4(c), which states —

> that region or district is wholly or partly included, pursuant to the provisions …

The feedback from the commissioner was that the inclusion of the phrase "district is wholly or partly included" and "in another district" is entirely redundant. All the districts are separate and do not overlap, and the phrase creates confusion and therefore should be removed.

**Hon TJORN SIBMA**: Thank you. That, in effect, is a tidying up piece of drafting and not substantial. We will in an orderly fashion get to the point when the chair puts clauses, but bearing in mind the motion provided by the Leader of the House earlier and its intention, I might just use this opportunity to specify on behalf of the opposition that we have a specific interest in the following clauses. I will provide this information to the parliamentary secretary to, I think, better focus our deliberations. They are clauses 33 through 41 inclusive, clauses 45 through 47 inclusive, and clauses 49, 50, 53, 62, 63, 68, 73, 89 and 90. Obviously, I am using this opportunity to speak only for the opposition; I do not know where the crossbench's interests might be in relation to these matters, but I expect there is a bit of shared interest—I will put it that way. I provide that as an opportunity to move things forward. From the opposition's perspective, the most objectionable facets of the bill have been dealt with, and we lost those divisions. The parliamentary secretary will note there is nothing left on the supplementary notice paper, and we are now focused on the technical implementation of the bill.

**Hon MATTHEW SWINBOURN**: I thank the member for pointing that out. I hope that will help us with the efficacious progress of the bill. We will see how we go.

**The DEPUTY CHAIR**: We might now test that.

**Clause put and passed.**

**Clauses 25 to 32 put and passed.**

**Clause 33: Section 62C amended —**

**Hon MARTIN ALDRIDGE**: Clause 33 amends section 62C of the Electoral Act by deleting the terms "member" and "related political party". What is the reason for deleting these terms?

**Hon MATTHEW SWINBOURN**: Neither terms will now be used, so, obviously, they will no longer be required. The provision relating to political parties will now be covered by proposed section 62J(4A).

**Hon MARTIN ALDRIDGE**: So that I can get this right, will "related political party" still be used, or will it be used in a different form within section 62J, or will it no longer be contemplated at all? Clause 38(3) amends section 62J by deleting subsection (6), which relates to the Electoral Commissioner refusing to register a political party on certain grounds, where there is a reference in that subsection to —

> (not being a related political party).

Will other references—or sections or subsections—in the act be impacted upon by the deletion of "related political party" as it is in section 62J(6) of the act?

**Hon MATTHEW SWINBOURN**: No, member, they will not be impacted.

**Hon MARTIN ALDRIDGE**: What is the practical effect, given that at the moment we are dealing with an amendment to section 62C and that the amendment to section 62J will be coming up, although, obviously, it is related? What will be the practical impact of the deletion of section 62J(6)?

**Hon MATTHEW SWINBOURN**: I think the member said that the practical impact of the change is that there will be a much more prescriptive approach to these things; whereas, previously the Electoral Commissioner would have had to believe "on reasonable grounds that a substantial proportion of electors"—it goes on; I am not going to read it all out. It is really because, currently, section 62J is less onerous; it will now be more onerous and prescriptive. That will be the practical effect.

**Hon MARTIN ALDRIDGE**: Section 62J(6) is to be deleted and replaced by—the relevant section will be—new section 62CA, which relates to "Membership requirements for the qualification as eligible political party". That will, obviously, then go to substantiating the "unique members" aspect. Under the current regime —

> The Electoral Commissioner may refuse to register a political party if the Electoral Commissioner believes on reasonable grounds that a substantial proportion of the electors whose names are set out in the party's application as required by section 62E(4)(d) are electors whose names have also been provided to the Electoral Commissioner under this Part for the purposes of the registration or continued registration of another political party (not being a related political party).

Effectively, we are abolishing the concept of two related political parties being registered and, in part, being able to rely on the same members, as exists under the current regime, to justify their registration as a political party or their ongoing registration as a political party. These provisions will obviously delete the concept of related political parties and, as the parliamentary secretary said, strengthening—or I think the parliamentary secretary said creating a more onerous regime in new 62CA.

**Hon MATTHEW SWINBOURN**: The concept of "related political party" in the act is not being deleted in the way that the member is suggesting. I understand that the "related" concept will continue. For example, if the member looks at section 62C(2) of the act, he will see there is already a provision there, which was inserted in the act by the Court ministry in 2000. We are just putting that into what we consider to be a more appropriate spot. It allows, for example, for there to be "related political parties". I will give the member an example that may pertain to him. If the member's party wanted—I do not want to sound flippant; it is not what I am trying to do—to create a city party and a country party and to have them as two separate but related parties, it will still be able to do that. I think if in other places there is a "Country Labor Party" and, by virtue of a different example, the "Metropolitan National Party", or something along those lines, a party will still be able to have those two separate entities and they will be related, but it will not get rid of that concept. In terms of having the 500 unique members, though, there will be consequences with respect to that.

**Hon MARTIN ALDRIDGE**: Effectively, the concept of "related political party" is being re-crafted, although it is not being defined as a term in proposed section 62C and proposed section 62J(4A). But the carve out that previously applied, which allowed a related political party to rely on the same members for justification of its registration, has been removed. When the parliamentary secretary referred to "strengthening" in this respect, a related political party cannot rely on the same members for the purpose of justifying its 500 unique members?

**Hon MATTHEW SWINBOURN**: Sorry, member, for the delay. I am just trying to get my head correctly across this. My advice is that the definition at section 62C(2), which deals with related political parties, will effectively be uplifted and moved to proposed section 62J(4A). It is the same definition. The reason it will be moved from there is that it will no longer have any applicability to that section, but the concept will be applicable to section 62J as amended. It is not creating any new concept of related political party; it is just taking it from where it will no longer be relevant and putting it into the section in which it will be relevant going forward. It will not, in effect, make any change to the current meaning of related political party. Although the actual term "related political party" is not used, with respect, it relates only to this area, so we do not need to provide a definition because it is not used consistently throughout the act or in other sections; it is just used here. One could say that this is the definition for a related political party because it effectively picks up the same wording that is in current section 62C(2). Does the member see that?

**Hon MARTIN ALDRIDGE**: Yes. I thank the parliamentary secretary; I do see that. It is just when we look at proposed section 62J(4A), which is the replaced term, if I can use that language, and we backtrack from that point, proposed section 62J(4A) relates to section 62J(4), and section 62J(4) relates to section 62J(3)(c) and (d). If we start at section 62J(3), under the heading "Refusal of registration, grounds for etc.", it states —

> The Electoral Commissioner is to refuse to register a political party if the party's application name —
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> …
>
> (c) is the name, or an abbreviation or acronym of the name, of an existing party; or
>
> (d) so nearly resembles the name, or an abbreviation or acronym of the name, of an existing party that it is likely to be confused with or mistaken for the name, abbreviation or acronym; or

Section 62J(4) states —

> Subsection (3)(c) or (d) —

I have just quoted that —

> does not apply if the existing party is related to the party in respect of which the application is made.

Proposed section 62J(4A) states —

> For the purposes of subsection (4), the existing party is related to the party in respect of which the application is made if —
>
> (a) one is a part of the other party; or
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> (b) both are parts of the same political party.

My question was: in section 62J(6), which we are deleting, there appeared to be a carve out that excluded a related political party from relying on the same members for the purposes of registration. In the example that the parliamentary secretary just gave a moment ago, we might have the Labor Party and Country Labor (WA). It would appear to me that under the current system, those two related political parties could rely on the same members because of that carve out, whereas under the new system, they cannot. Is that right?

**Hon MATTHEW SWINBOURN**: My advice is, no, that is not correct; they can rely on the same members for that purpose.

**Hon MARTIN ALDRIDGE**: If that is the case, where else in the bill is the carve out that is found in section 62J(6)?

**Hon MATTHEW SWINBOURN**: Can the member express that a bit more in his question, for the sake of clarity?

**Hon MARTIN ALDRIDGE**: This all flows from section 62(3)(c), unfortunately, because we are deleting the definition of "related political party". But section 62J(6), which we are also deleting, states —

> The Electoral Commissioner may refuse to register a political party if the Electoral Commissioner believes on reasonable grounds that a substantial proportion of the electors whose names are set out in the party's application as required by section 62E(4)(d) are electors whose names have also been provided to the Electoral Commissioner under this Part for the purposes of the registration or continued registration of another political party —

That is, two registered political parties cannot rely on the same electors to substantiate their registration or their continuing registration. But at the very end of that subsection, there is a carve out that says —

> (not being a related political party).

As I read that, I assume that two related political parties can rely on the same members under the current Electoral Act. If we delete section 62J(6), where will that provision be? Unless we are changing the approach, where is that provision found elsewhere in the bill? Sections 62J(3)(c) and (d), which flow into section 62J(4) and proposed subsection (4A), simply relate to the naming of registered political parties; they do not relate to the registration or, specifically, to the substantiation of unique electors supporting them.

**Hon MATTHEW SWINBOURN**: Obviously, there is a lot going on with this clause and we are trying to get across it. There are probably two intersecting issues here about eligible political parties and their registration and naming, and whether a political party can effectively create a division and operate under that. I think that issue was pursued somewhat in the other place, when Hon Mia Davies asked —

> … I assume that a party would have to adhere to the registration requirements that we have been talking about, which is that if it wanted to have the name "Country Labor" or "Metro Nationals" —

A member interjected and then Hon Mia Davies continued —

> Would such a party need to have 500 unique members of its own? Would it have to adhere to the registration requirements if it was indeed a separate party, although it acknowledges that it has the same constitution? Would that be the requirement?

The Attorney General replied, "That is correct." He then talked about ballot papers and continued —

> If "Urban Nats" or "Country Labor" or whatever we like to think of this morning wanted to get above the line, it would need to register as a political party and have 500 members.

To clarify: it is a question of degree. If it were the same political party with the same constitution, it could rely on the same 500 members. However, if the related party has a separate name and a separate constitution, it must have its own unique 500 members. The mischief that we are getting to with subclause (3) and the registration of political parties is avoiding the situation in which we have other parties that register with the purposes of hijacking effectively the good names of existing and well-established political parties. We have seen a number of examples of that over

time. The Liberal Democrats is a very good example. The party probably gained a seat in the last term of Parliament because of its position on the ballot paper and the similarity of its name with the Liberal Party.

Then there is the separate issue of when we have existing political parties that want to effectively trade under a slightly different name to cater for an audience. That might be a party that wants to be "Country Labor" or "Urban National Party" and things of that kind. We have to be careful in those circumstances because we do not want to create a proliferation of trading names. Allowing particularly smaller parties to overlap the same 500 members will effectively create a problem, because they will be just populating the ballot paper with different party names based on the same 500 people, rather than the existing 500 people.

We are obviously going backwards and forwards between sections 62C and 62J of the act. As I say, we are trying to get across that and there are a few things working at cross-purposes, which might explain why we are trying to nail down the answer for the member.

**Hon MARTIN ALDRIDGE**: I understand the complexity of this issue. I think what the parliamentary secretary read out from the Attorney General sounds correct to my reading. I was concerned initially with the parliamentary secretary saying that there was no change with this provision and that it is simply reinserting the term in a different place, which I accept. But where it will be inserted limits its application to paragraphs (c) and (d) of subsection (3) and subsection (4) of section 62J. As I said earlier, my concern is that it seems we will lose the carve out, if you like, of the Electoral Commissioner being able to refuse the registration of a political party when that political party is related to and relying on the same, or substantially the same, members for its ongoing registration. I draw the parliamentary secretary's attention to new section 62CA, which is upcoming, and the amendments to section 62E. I would have thought that if we were to retain the status quo, it would be in a subsection of one of those two sections and that there would continue to be a carve out for related political parties, but that does not appear to be the case. It is something that I think I might take up a bit later, which will not be too much further down the track. As I said last week, parliamentary secretary, I think, absent a committee referral, there would have been some value in having expert advice at the table from the Western Australian Electoral Commission.

**Clause put and passed.**

**Clause 34: Section 62CA inserted —**

**Hon TJORN SIBMA**: I want to establish something because I think it may be a partial error. The explanatory memorandum indicates that clause 34 —

> **inserts new provision s. 62CA** to outline membership requirements for qualification as an eligible political party. It provides that eligible political parties must have 500 'unique' members.

I cannot see where that provision is included in clause 34 of the bill presented. I do see it set out in clause 35. I just want to ensure that the EM as it relates to clause 34 is just a transposition error in drafting.

**Hon MATTHEW SWINBOURN**: I do not know that it is an error, member, but I had a similar reaction when I looked at it. I think it is because new section 62CA(1) uses the term "eligible political party", which is one with 500 members. The operative part of new subsection (1) effectively says that a party cannot rely on the same person as a member. The term "unique" is not used in the bill, but I think it was used in the explanatory memorandum as a shortcut for that. I think that is what that is doing there. Yes, I get where the member is coming from—I thought the same thing—but when you tie it back to the definition, that is what you achieve.

**Hon TJORN SIBMA**: Thank you for that clarification, parliamentary secretary. I want to test the assumption I made when reading this clause for the first time. The clause sets out the membership requirements for qualification as an eligible political party. The implication seems to be that these are the requirements for the formation of a new party post–the passage of this bill; or is the application of this provision to apply also to extant parties?

**Hon MATTHEW SWINBOURN**: Extant parties will go through the process as well, but only once. They will do that within 12 months of the passage of this bill.

**Hon TJORN SIBMA**: Is it 12 months from the passage of this bill or 12 months before the writs are issued for the next election? I was under the impression it was the latter.

**Hon MATTHEW SWINBOURN**: It is 12 months from the commencement of the act for existing parties.

**Hon TJORN SIBMA**: There is probably an answer for this question: how does the Electoral Commissioner determine that a party can rely—I underscore the word "rely"—upon a person "as a member for the purpose of qualifying or", as the parliamentary secretary identified in the previous answer, "continuing to qualify as an eligible political party"? I presume that is dependent to some degree on a declaration to that effect, but a declaration provided largely by the party seeking registration. How is the concept of "rely on" determined, and how is it then tested?

**Hon MATTHEW SWINBOURN**: The Electoral Commissioner can take the declarations required at face value; he does not have to look behind them. He will obviously create a database of each party that is registered and the

names used. I think it will just be the case that an algorithm will check if similar names pop up, which can obviously lead to inquiries. Also, the Electoral Commissioner currently does, and will continue to do, spot audits to test the veracity of the declarations—their truthfulness and substance.

**Hon TJORN SIBMA**: Reflecting on that advice, parliamentary secretary, and the capacity of the Electoral Commissioner to undertake an audit or spot check concerning the veracity of an individual party's membership, when did such a spot check on audit take place, for example, in the lead-up to the last state election? It is implied that the Electoral Commissioner will do this, but has this been done previously and what is the likelihood this will be done at a point after the bill is passed?

**Hon MATTHEW SWINBOURN**: I cannot give specific details of the last spot check. I have been in a meeting with the Electoral Commissioner at which he described the practice of spot-checking and what he has done in the past. It is certainly within the realm of the things he is minded to do, but I cannot give the member any specific date for the last time he did this or whether it was in relation to the process for registration he followed in the last election. It would be fair to say that it is something the commissioner is minded to deal with it. He obviously wants to avoid fraud. The expectation is that by strengthening this process, more emphasis is placed on the uniqueness of each of those electors.

**Hon TJORN SIBMA**: If we are to follow the implications of this bill through to their logical conclusion, that is something we can anticipate the Electoral Commissioner will be minded to do—if not for the fact that the establishment of a statewide electorate and the inclusion of the thirty-seventh member of this chamber depresses the electoral quote required to get elected in the first place. The hurdle a new party is required to jump over has been substantially lowered. That is more of an observation in passing.

Noting we do not have an adviser to guide the parliamentary secretary in his responses to these questions could he, nevertheless, elaborate on the process intimated in new section 62CA(3) at lines 20 to 25 on page 16 of the bill about the opportunity that the Electoral Commissioner would afford to a party to change or make amendments to the list of personnel on which it can usefully rely? What does that process entail?

**Hon MATTHEW SWINBOURN**: Section 62L(3) of the Electoral Act sets out —

> If the Electoral Commissioner proposes to cancel the registration of a political party, other than because of subsection (2)(d), the Electoral Commissioner is to —
>
> (a) give written notice of the proposed cancellation to the secretary of the party at the address shown in the register; and
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> (b) give notice of the proposed cancellation in —
>
> (i) the *Gazette*; and
>
> (ii) a newspaper circulating generally in the State;
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> and
>
> (c) include in the notice under paragraph (b) a statement that persons may, within 14 days after the *Gazette* notice is given, object to the Electoral Commissioner in writing against the proposed cancellation.
>
> (4) The Electoral Commissioner is to consider any objection made under subsection (3) before taking any further action in relation to the cancellation.
>
> (5) If the Electoral Commissioner decides to cancel the registration of a political party, the Electoral Commissioner is to —
>
> (a) give notice of the cancellation and the reasons for it to the secretary of the party; and
>
> (b) give notice of the cancellation in the *Gazette*; and
>
> (c) cancel the information in, and remove the documents from, the register of political parties relating to the political party; and
>
> (d) retain the documents.
>
> (6) During the election period in relation to an election, the Electoral Commissioner is not to cancel the registration of a political party other than because of subsection (2)(d).

Section 62L(2)(d) deals with registration that was obtained by fraud or misrepresentation.

**Hon TJORN SIBMA**: This is related to my last series of questions: do we have any definitive guidance about when the Electoral Commissioner last undertook such action to deregister a party on the basis of the provisions outlined at the attendant clause?

**Hon MATTHEW SWINBOURN**: The question was asked of the commissioner and apparently it was not with anyone's corporate memory when it was last cancelled. It is obviously rare.

**Hon TJORN SIBMA**: Largely speaking, I think we might be—I will choose my words carefully—burnishing a largely unutilised or under-utilised set of powers; certainly beyond the recall of anybody's corporate knowledge in the jurisdiction.

May I use this opportunity to define the scope upon which the intended section 62CA would come into effect? I want to establish trigger points, I suppose. Hypothetically, if an extant political party that satisfied the registration requirements then undertook, for whatever reason—political purposes; marketing purposes—to change its name or to amend its constitution, is there some unintended trigger point that would necessitate it going through this process again? We are effectively talking about a requalification period post the passage of this bill. How often after that point will parties be required to go through this process? I get that it is intended to be a rolling process. There are two questions: Are there any other trigger points that have possibly not been countenanced yet that would obligate a party to go through this process again, such as a change of name? Second of all, with what frequency will a party be obligated to keep its registration current?

**Hon MATTHEW SWINBOURN**: There was a lot in that question. I will do my best to cover off everything the member said. The first point was about a change of name. Section 62K of the Electoral Act relates to "Amendment of register". Section 62K(4) states —

> If the application is to amend the register by —
>
> (a) changing the name of the party to a name set out in the application; or

I will not read out all the subsections. It goes on to say —

> sections 62F, 62G, 62H and 62J apply to the application under this section, subject to any necessary changes, as if it were an application for registration of a political party.

The provisions of section 62CA would continue to have effect because it is effectively changing the name; it puts a party through the wringer.

Political party constitutions do not arise under the Electoral Act. It could be under the Associations Incorporation Act or some other act. I think some political parties are "Ltd".

**Hon Martin Aldridge**: It is mentioned in the Electoral Act.

**Hon MATTHEW SWINBOURN**: Sorry, the constitutions are mentioned, but people's constitutions are not. A constitution will not be created under this bill—that is what I am saying. If a party amended its constitution, it would have to update it with the commissioner, but it would not require the registration of a new political party.

**Hon Tjorn Sibma**: I think that is what we are trying to establish because, obviously, a political party needs to have a constitution to be registered, to begin with.

**Hon MATTHEW SWINBOURN**: Yes. Organisations, for many very valid reasons, amend their constitutions all the time. That is not dealt with in the same manner as the change of a name. On the member's other point on frequency, I think we will get to the continuing registration obligations when we get to proposed section 62KA, which is about ongoing matters. For example, if a party continued with the same name in perpetuity, then the provisions at proposed section 62KA would not affect it as long as it was satisfied with the continuing registration obligations, because it is not creating a new political party arrangement.

**Hon MARTIN ALDRIDGE**: Can I take the parliamentary secretary back to our previous line of questioning. Clause 34 will insert section 62CA, which reads —

> (1) For the purposes of this Part, 2 or more political parties cannot rely on the same person as a member for the purpose of qualifying or continuing to qualify as an eligible political party.

In our earlier exchange, my line of questioning went to the deletion of "related political party" as it applies to part IIIA of the Electoral Act, which is now confined to a later clause on naming only. At proposed section 62CA(1) as a reference point, when two or more political parties are referred to, would that include political parties that are related?

**Hon MATTHEW SWINBOURN**: No, member.

**Hon MARTIN ALDRIDGE**: Where in proposed section 62CA does it provide for that exception?

**Hon MATTHEW SWINBOURN**: I think the member's question was: where is it contained in that provision? It comes within the definition of a political party and what that means. It could mean a political party or a part of a political party that has the same constitution and the same name, effectively, as the political party, but operates under a different division of that same entity, or the party's constitution. I am not sure whether that makes any sense to the member. Perhaps he could push the point a little bit further, if he likes.

**Hon MARTIN ALDRIDGE**: A "political party" is defined in section 4 of the Electoral Act as —

> (a) a body corporate or other body or organisation (not being a body corporate or other body or organisation described in paragraph (b)) having as one of the objects or activities of the body or organisation the promotion of the election to the Parliament of this State of a candidate or candidates endorsed by it or by a body or organisation that forms part of it; or
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> (b) the branch or division for this State of a body corporate or other body or organisation which —
>
> (i) is organised on a basis that includes this State and another State or Territory or other States or Territories; and
>
> (ii) has a branch or division for this State; and
>
> (iii) has as one of the objects or activities of the body or organisation the promotion of the election to the Parliament of this State of a candidate or candidates endorsed by it or by a body or organisation that forms part of it;

I then turn to section 62C, which contains the terms used in part IIIA. An "eligible political party" is defined as —

> … a political party that has at least 500 members who are electors and that has a constitution that specifies as one of its objects or activities the promotion of the election to the Parliament of the State of a candidate or candidates endorsed by it;

I do not follow how those definitions of a political party allow one entity to register effectively two parties and, according to the exchange we had today, can continue to rely on the same members, not unique members, as I think was the case under the provision found in section 62J(6), which the government intends to delete shortly. Proposed section 62CA does not make it clear to me, and I do not think will make it clear to the commission, that if there are two related political parties—however that is defined or accepted by the commission, because we have deleted the definition of "related political party"—how the current drafting of 62CA can be circumvented to allow it to rely on the same members for registration. I cannot see before me the evidence that substantiates that to be true.

**Hon MATTHEW SWINBOURN**: I will take the member back to the debate in the other place on this same point. Hon Mia Davies, at the consideration in detail stage on, I think, clause 38, raised the issue. Talking about section 62J, she said —

> The explanatory memorandum states that clause 38 amends section 62J as follows —
>
> (d) inserts a new provision s. 62J(4A) to provide that related political parties can have the same or similar names, abbreviations or acronyms of names;
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> Could the Attorney General explain what that is seeking to do? We have seen examples, such as with the Liberal Democrats, of the use of party names that are similar in order to game the system. Is this to do with that occurrence? What is the purpose of this proposed amendment?

The minister responded —

> I think we might have already turned to it. Clause 38(4) states in part —
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> After section 62J(4) insert: —
>
> It then explains what a related political party is —
>
> (4A) For the purposes of subsection (4), the existing party is related to the party in respect of which the application is made if —
>
> (a) one is a part of the other party; or
>
> (b) both are parts of the same political party.
>
> If I could give the member an example —
>
> **Ms M.J. Davies**: Please do.
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> **Mr J.R. QUIGLEY**: There is not such a political party in existence, but we could register—I am not saying we are, or are even of a similar mind; this is hypothetical—a party called "Country Labor", which comes from within the broader Labor Party. It is either part of the Labor Party or both are parts of the same party. It is to permit people to do that, so long as it is the same party or a related party. It is not like the Liberal Democrats. That is a different party, and it has been scammed on occasions by people—I think Mr Leyonhjelm in Sydney drew a position just in front of the Liberals, so we had Liberal Democrats and then Liberal, and people saw the word "Liberal" and voted for it. That is a different provision concerning the names of the parties and confusion.

> **Ms M.J. DAVIES**: That is very interesting, Attorney General. I am wondering about the genesis of that idea. I will use the example given by the Attorney General of "Country Labor" and Labor. They are the same party or part of the same party. If "Country Labor" wanted to be registered, would it need to have 500 unique members in addition to Labor? I wonder why we are including this proposed amendment.
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> **Mr J.R. QUIGLEY**: Sure. This provision is already in section 62C(2) of the act in exactly the same wording. This provision was inserted by the Court ministry in act 36 of 2000. We are just putting it in what we consider to be a more appropriate spot.

To the extent that that helps the member—there is more in *Hansard* that I have not read out—there is the suggestion that under section 62J(6) we are taking away the capacity of a related political party to effectively have another, for want of a better word, trading name under which it can operate and run in elections and run candidates. The Electoral Commissioner has not been able to provide an example of a related political party; therefore, in terms of practicality, since it was inserted in 2000, we cannot point to when there has been a related political party to say that this is the kind of thing that exists now and it is being removed. I think it is quite opaque. In terms of the intention of the 2000 act, people seem to be a bit at odds with what it was trying to achieve. As I said, the commissioner was not able to provide any example of when it arose since 2000. That makes it difficult to illustrate and illuminate that point. I think the point the member is trying to make about the deletion of subsection (6)—in that something that we currently have is being deleted—is that it seems as though at all practical levels there effectively has been no example of when that has come into existence. The member might be aware of something that I am not aware of and I will be happy to hear it.

**Hon MARTIN ALDRIDGE**: I think we are making progress on this matter. I am not sure that there is a practical example because I am not sure that a related party has been established. I think that has been confirmed by the parliamentary secretary. But the point I was trying to get to was: what are we changing here? The parliamentary secretary's initial response was, "We are not changing anything. We are just changing the position of the definition." Even the parliamentary secretary's response earlier was that a related party for the purposes of this clause, which is proposed section 62CA, relies on the same members. The only section that the parliamentary secretary did not read out in the exchange between Hon Mia Davies and Hon John Quigley, was when Hon Mia Davies said —

> I am trying to apply it to a real-life situation! Would such a party need to have 500 unique members of its own? Would it have to adhere to the registration requirements if it was indeed a separate party, although it acknowledges that it has the same constitution? Would that be the requirement?
>
> **Mr J.R. QUIGLEY**: That is correct.

The response the Minister for Electoral Affairs gave to the Assembly was that two parties, applying for registration, sharing the same constitution and effectively being the same entities but with two registrations, would be required to provide their 500 unique members separately. That is my reading of the bill before us. I have not been dissuaded from a different point of view. My concern is about the parliamentary secretary's earlier response, which was that related political parties, however that is defined, rely on the same unique members. That was the contention.

**Hon MATTHEW SWINBOURN**: The member is correct, and what the minister in the other place said, I think, suggests that the member is correct. It was not my intention to mislead Hon Martin Aldridge in any way, so I apologise.

**Hon NICK GOIRAN**: I have been following the debate with interest. Thank you, parliamentary secretary; I think we have landed in exactly the right spot, and it is a credit to you. With respect to clause 34, what is the intended period of time for the opportunity that is referred to in proposed section 62CA(3)?

**Hon MATTHEW SWINBOURN**: The member will have picked up that that has not been stipulated, but it will be in the regulations, which have not been prepared at this time.

**Hon NICK GOIRAN**: Under proposed section 62CA, the Electoral Commissioner is obligated to provide an opportunity for the relevant political party to provide some further information. The parliamentary secretary indicated that that will be subject to regulation. Is there any indication at this stage as to what that period of time will be?

**Hon MATTHEW SWINBOURN**: No; not at this time.

**Hon NICK GOIRAN**: At this point in time, the Electoral Commissioner has not been consulted with respect to those regulations and the time frame?

**Hon MATTHEW SWINBOURN**: No.

**Hon NICK GOIRAN**: Finally, with respect to this point, before I move to the next theme in this clause, is the government aware of any like provisions elsewhere that deal with this type of situation whereby the Electoral Commissioner or the relevant electoral body is required to provide an opportunity to a political party prior to it cancelling its registration?

**Hon MATTHEW SWINBOURN**: I am advised there is a similar provision in section 67 of the New South Wales act. We have not had regard to the precise wording, but we are checking that now.

**Hon WILSON TUCKER**: I have a similar question to the line of questioning by Hon Martin Aldridge. Hon Martin Aldridge referred to "related parties" and the uniqueness in their member base and 500 members being registered. I am curious about the provision around unrelated parties. For example, there may be a vaccination party and anti-vaccination party, and under this bill, someone could not be a member of both those parties and be counted as part of the 500 membership base to complete registration. Can the parliamentary secretary elaborate on what problem we are trying to solve by ensuring uniqueness for unrelated parties?

**Hon MATTHEW SWINBOURN**: I think the primary reason is to have each unique political party demonstrate that it has a genuine and unique foundation of support in the community. I think it is also one of honesty so that the voting public understands that when a political party appears on the ballot party, it is not in fact a renamed version of an existing political party. It is a reasonable expectation of the community that if the public votes for the raving lunatic party, then decides to vote for the reasoned party it understands they are two separate parties, but in actual fact they are not the same thing beneath that. That is the motivation for it. It also arises from the recommendation of the ministerial expert committee to take action to tighten the requirements around the registration of political parties. If an individual's name is on a ballot paper, they cannot give themselves a new name and enter the ballot under that new name, and then a different name, and a different name, which is effectively what they would be doing if they were relying on the same 500 members for support of a political party. Essentially, that is what that rationale is about.

**Hon WILSON TUCKER**: Thank you for that answer, parliamentary secretary. Was any analysis done on the total number of people who currently belong to multiple parties? How widespread is this issue?

**Hon MATTHEW SWINBOURN**: Member, it would be fair to say that we have not undertaken any analysis. Anecdotally, there is a view that they are the same people. If it is not actually a problem, we are not solving a problem in that regard. The other thing is that what we are doing here does not prohibit people from being members of multiple political parties if that is consistent with the rules of those political parties. There is no prohibition against that; the prohibition is only about relying on the same individuals to justify registration as a political party. It is up to people to decide whether being a member of multiple parties is consistent with what they want.

It is also the case that in other jurisdictions there are similar provisions. South Australia, a smaller state with a much smaller Legislative Council, requires 200 unique members; New South Wales, with double our population or thereabouts, requires 750 unique members; and the federal government recently tabled a bill in federal Parliament. I have seen advertising in the paper from a certain political party that is not represented in this Council, referring to the requirement for political parties under the commonwealth scheme to have 1 500 unique members. I am sure the member is aware of that action by the commonwealth.

**Hon WILSON TUCKER**: Thank you for that answer, parliamentary secretary. The parliamentary secretary mentioned that no analysis has been undertaken to find out how many people belong to multiple parties. I am curious why this uniqueness provision is included if no analysis has been done to determine how widespread this issue is.

**Hon MATTHEW SWINBOURN**: It is based on the recommendations of the MEC, which identified it as a potential issue, so we have acted on it on the basis of that. As I indicated before, in South Australia, New South Wales and now the commonwealth, it is a requirement to have unique members.

**Hon TJORN SIBMA**: On this theme, parliamentary secretary, I was going to save it until clause 35, but I commenced asking about the 500-member threshold. The parliamentary secretary has helpfully reminded me of the recommendations on page 36 of the MEC report where it refers to registration of parties. The presentation here and my pre-existing understanding was that the Electoral Act presently requires 500 members as the threshold upon which a party can be registered. I am seeking an insight into the government's thinking in maintaining that status quo in light of the fact that, again, one of the consequences, intended or not, of a whole-of-state electorate and the additional member to this state is to depress the barrier to entry. Was any consideration given to revising that 500-member threshold to prevent that mischief, if there is a mischief here that the government is attempting to prevent? Can I establish, please, whether that limit is necessarily enshrined in a bill or could be potentially amended by way of further regulations?

**Hon MATTHEW SWINBOURN**: I do not think serious consideration was given to going beyond the existing 500-member requirement. It might be worth noting that we are, in a sense, strengthening the veracity of the 500 by the inclusion of the requirement for a declaration that does not exist. Given that in South Australia I think it is 200 and New South Wales it is 750, 500 seems to be well placed. I am not sure of the reason for the commonwealth to go to 1 500. That is obviously three times where we are at and twice that of New South Wales. I suspect its argument—I am only speculating here—is to do with the fact that it is the whole of the commonwealth rather than individual states, and they are national parties rather than state parties.

**Hon NICK GOIRAN**: The parliamentary secretary was looking for a while at section 67 of the New South Wales legislation and the opportunity provided to parties by the Electoral Commission prior to cancellation. Does that section provide any guidance regarding the period in which that opportunity is to be provided?

**Hon MATTHEW SWINBOURN**: No; member, it does not.

**Hon NICK GOIRAN**: In proposed section 62CA(2) there is mention of a nomination process to be undertaken by a political party. Will the outcome of that nomination process be communicated to the two or more relevant parties?

**Hon MATTHEW SWINBOURN**: If it impacts on their registration, member, then it would have to be communicated to them. I think they have to make an election, so that has to be communicated.

**Hon NICK GOIRAN**: In my view, not necessarily, because what we see from proposed section 62CA(3) is that an opportunity must be provided to a party if their registration is to be cancelled. That is a mandatory requirement on the Electoral Commissioner, subject to these as yet unknown regulations. It does not mean that there would be communication to the other impacted party or parties. There is reference here to two or more political parties. It may be the case that this would not affect the 500-member threshold of one or more of the other parties and would therefore not cause the cancellation of their registration. I am seeking to confirm that, irrespective of cancellation thresholds, that information will be communicated to the other parties, because, plainly, those parties should no longer rely on that person's name and details because they have made an election to participate in another party.

**Hon MATTHEW SWINBOURN**: I think that the member is right: it is not mandated by this section that that communication must happen, but I think it would be a reasonable expectation that if the Electoral Commissioner were to identify a problem with people being signed on with more than one party, that should be communicated to the affected political parties.

**Hon NICK GOIRAN**: Has that reasonable expectation been communicated to the Electoral Commissioner?

**Hon MATTHEW SWINBOURN**: It is my understanding that the Electoral Commissioner is probably following closely what is happening here, but we are prepared to give an undertaking to deliberately pass that on to the Electoral Commissioner.

**Clause put and passed.**

**Clause 35: Section 62E amended —**

**Hon TJORN SIBMA**: I think in a response given two or three questions back to a question I had on the last clause, the parliamentary secretary suggested that one of the strengthening provisions in this bill to, I suppose, ensure the integrity of the system is that declarations will be required when ascertaining party membership for reasons of registration. I note that according to paragraph (c) on clause 35 in the explanatory memorandum, the form will be approved by the WA Electoral Commissioner. I seek this opportunity to understand what that approved form might be, and whether there are models in any Australian jurisdiction to guide the generation of that form?

**Hon MATTHEW SWINBOURN**: There is a model—an example rather than a model—that New South Wales apparently has on its website, and we have asked that the commissioner look to that example to instruct him in how he might take forward the form of the declarations that he approves.

**Hon TJORN SIBMA**: Thank you, parliamentary secretary. I regret to say that I am not personally familiar with the declaration form that is applied in the New South Wales jurisdiction. I note that the Electoral Commissioner in Western Australia might take up that advice and appropriate the content or structure of that form as they see fit. But what additional information will be included in that declaration, and who precisely will make the declaration as to the bona fides of the members? Will it be the members themselves individually or the party organisation to which they belong?

**Hon MATTHEW SWINBOURN**: Member, individuals would have to make the declaration at that stage, although it will be different for continuing registration. The secretary will sign off on the continuing entitlement if the party continues to have 500 members. They are two separate things. We are talking about the registration of a new political party or an existing party going through that process for the first time, so the declarations will be individual, but the continuing one will not require all 500 people to continually put in a declaration every year, if the member understands what I am saying. The kind of information that will be contained in the declaration is identifying information like a member's name, address, email and telephone contact, so if the commissioner wishes to, he may make contact with them, but there will also be language like—I am just winging it in terms of the language—"I declare that I am a member of X party and I am entitled to make this declaration", and the form will probably include the normal stuff such as that it is an offence to make a false declaration. I am not sure whether it is an offence; I think that the consequences for making a false declaration are dealt with later in the bill. That is the kind of thing that it will include. It will not be like this; it will be a page on which someone will put their details.

**Hon TJORN SIBMA**: I think there are a couple of things in that. I might just go to the increase in information component. Presently, if a new party were to register prior to this bill, let us say six or eight months ago, the information

of the individual members upon whom that party relies to be registered would include details effectively of their name and their signature; is that the full extent of what was required? Did it require an address as well? If the parliamentary secretary could just establish what further information will be sought via these means as opposed to the status quo, that would guide my understanding.

**Hon MATTHEW SWINBOURN**: Member, the current requirement is set out in section 62E(4)(d), under which the application is to set out the names and addresses of at least 500 members of the party who are electors, so it did include their addresses. Obviously, it did not say anything about a telephone number or email, although the Electoral Commissioner has access to the electoral roll, so some of that information will be there. Are email addresses included on the electoral roll?

**Hon Martin Aldridge**: I am not sure whether emails are on the electoral roll.

**Hon MATTHEW SWINBOURN**: No. The point that I am making is that the current act dictates that the application must include their name and address.

**Hon TJORN SIBMA**: I thank the parliamentary secretary. If the current act obliges only an individual's name and address, then what utility will it provide to seek further information as to potentially their email address or phone number? I might be pursuing this on a misapprehension, but my understanding of what has been outlined is that the appetite for the information for each individual member of a party will expand somewhat as a consequence of the passage of this bill, so members will be obligated to provide additional information. I just want to clarify precisely what that additional information will be as it relates to personal identifiers, and then what actual utility that additional information will provide to preserve the integrity of the system?

**Hon MATTHEW SWINBOURN**: Obviously, it is in a form that is approved by the commissioner. To some degree, we are—I do not want to use the word "speculating"—taking it out to include information that might reasonably be asked by the Electoral Commissioner to be provided on that particular form. It does not mandate it like it does under the current act, but it is only limited to the name and address under the current act. For the purposes of going forward, it will include the name and the address, and we have indicated that it will be our expectation that it will include a contact number and an email address. The utility of that is simply for the purposes of the commissioner checking that that is a real person and that they can be contacted for the purposes of the previous proposed new section, which is if the individual concerned has been included twice, the Electoral Commissioner is able to make contact with them.

Therefore, first, there is the veracity of the 500 members, and so the commissioner may wish to have an audit of a part of someone's 500 members to determine whether those people are genuinely giving this information or have their names been taken out of the telephone book, if such a thing even exists anymore. That is one element of it. The second part of it is if an individual is identified as being the same unique member—therefore, not a unique member—the bill will compel the commissioner to contact that person to get them to nominate which party they want to be in. Therefore, the utility of that is to make sure that we do not have to rely on snail mail and those sorts of things.

But I think in terms of those details, it is important to add that the individual names and details of the people who declare will not appear on the register of political parties. That information will not be available to anyone other than the Electoral Commissioner and his staff, so that information is protected within that organisation.

**Hon TJORN SIBMA**: Thank you, parliamentary secretary. To some degree, you just foreshadowed where I was likely to go next at further clauses. I think clause 37, at least, deals with this. What presently happens with respect to names and addresses facilitating party registration? For how long is that information kept? Who precisely has access to it?

**Hon MATTHEW SWINBOURN**: Names and addresses are currently not put on the public register. In terms of the information, the requirement would be that the agency must keep that information pursuant to the State Records Act. Therefore, whatever requirements are under that act, in terms of information held by the WA Electoral Commission, would continue to apply to any new information that is collected under the current act.

**Hon TJORN SIBMA**: If memory serves, that is at least a seven-year retention, I think. Would that be a reasonable assumption?

**Hon Matthew Swinbourn**: By interjection, yes, member—a reasonable assumption.

**Hon TJORN SIBMA**: Thank you, parliamentary secretary. I bear in mind that the commissioner may choose to expand the information required of a party at registration. This information concerns individual members of a political party with, potentially, their phone numbers and email addresses, which, in the modern world, are now marketable commodities. What assurance has the Electoral Commissioner given the parliamentary secretary about his capacity for internal data protection, particularly around personal identifiers, private information and the like?

I suppose where I am going with this is: if this debate is ever read by anyone who drafts the regulations, I would hope that they note that this should not be an open invitation for expanding the set of personal identifiers that the

Electoral Commission absolutely needs to rely on to establish a party's bona fides for the purposes of registration. The drafter may elect to do that, and they can do that through a regulatory instrument. In this chamber, circumstances used to apply in which we could potentially disallow instruments and the like—it is unlikely to happen. I just want it to then be a matter of record that we should endeavour to ensure that there are adequate internal and external privacy provisions concerning data integrity because I think that is information that people can make mischief of. That is my little speech.

My question is that the parliamentary secretary indicated that there are two levels of threshold. The first-pass system for existing parties seeking to register under the new arrangements would obligate individuals to advise the Electoral Commissioner that party X, Y or Z can rely upon them. The next stage is once the person crosses that hurdle, their party—in the parliamentary secretary's party, it is the state secretary; in our party, it is the state director—updates and provides forms as required, testifying to the fact that they have 500 members.

Can I ask what the utility is, first of all, in adopting this two-pass system? In relation to the former individuals being obligated to actually say, "I am a member of this party", I see this as, potentially, a cumbersome exercise. Has the Electoral Commissioner given any insight as to how that process might actually be undertaken?

**Hon MATTHEW SWINBOURN**: I do not think there has been anything specific from the Electoral Commissioner at this stage. But I think that because this process has been in place in other jurisdictions—South Australia, New South Wales and there is an existing 500-member unique requirement at the commonwealth, which is moving or being proposed to move, as I understand it, to 1 500—the expectation would be that the Electoral Commissioner would look to his colleagues and how they have done it and how they expect to manage it.

I do not know whether I quite understand the member's question about indications as to how the Electoral Commission sees how parties would manage that process.

**Hon Tjorn Sibma**: I assume that when the registration requirement has been satisfied once, consequently this process of re-registration, or whatever, will be handled by a declaration made by party headquarters, rather than individual members of a party. That seems to be the obligation at the first stage, unless I have completely misinterpreted everything.

**Hon MATTHEW SWINBOURN**: I think the member is right about the first stage. Then it is the party official who does the continuing registration requirement. We will deal with that when we get to new section 62KA.

**Hon TJORN SIBMA**: Why is the process not just short-circuited for existing parties? The three major parties are represented in this chamber. Is there a defined need to effectively go out to one's membership base and have them self-identify to the Electoral Commissioner through some sort of conduit that will be established that they are a proud member of the Western Australian Liberal Party or a member of WA Labor or the Nationals WA? This sounds like we are preserving, to some degree, the monopoly, or the oligopoly, however you want to describe it, because, at least in this chamber, we have three established longstanding political parties with pedigree. This sounds like a question asked out of self-interest, but it is more one of pragmatism: why are we going to obligate potentially our own individual members to participate in this process to confirm what, largely speaking, we already know?

**Hon MATTHEW SWINBOURN**: In terms of the existing parties, we obviously have the parliamentary parties in this chamber that the member indicated—the Nationals WA, the Labor Party and the Liberal Party. I think the member excluded the Greens, which I think has a degree of institutional longevity.

**Hon Tjorn Sibma**: Apologies.

**Hon MATTHEW SWINBOURN**: I am not so worried, but they might be.

If we look outside those established parties, there is a range of existing political parties that continue to be registered, and some of them are undoubtedly moribund. Therefore, to the degree that we want to be consistent with all existing political parties, it has to apply to all of us. It will create work for the member's party and for my party to the degree that they will both go through it, but neither of them will get any favourable treatment in that regard.

Honestly, I do not think either of our parties will have great difficulty in satisfying that condition. I do not think the National Party or the Greens will. Unfortunately, some of the smaller parties in this chamber may, but they will have time to deal with that and get it going. The process is probably beneficial, too, because it will get them activated on engagement, which I am sure they will thank me for endlessly at some later point. I am obviously being flippant on that point. The rationale here is consistency. It is a clean slate for all and then we will go forward.

**Hon MARTIN ALDRIDGE**: I have a couple of discrete questions on this clause. Is it anticipated that the approved form talked about in proposed paragraph (da) could be submitted by electronic means? I am thinking about the geographic diversity of Western Australia and the continual decline of our postal service. I assume that electronic submission will be accepted or is that something that will be entirely at the discretion of the commissioner?

**Hon MATTHEW SWINBOURN**: This question was asked in the other place and the Attorney General did not answer it with a yes or a no; he said that it would be contemplated in a further review of the Electoral Act. Hon Mia Davies asked whether it would be "like paper". The Attorney General replied —

> The member will have to wait until the new section comes through. At the moment, yes, physically, but I am looking at all of this, member—do not despair.

That is what the Attorney General said. At this stage, it is contemplated that it will be physical. We have already indicated that the Attorney General is looking at further amendments to the Electoral Act that might deal with the issue of electronic lodgement of forms and those sorts of things.

**Hon MARTIN ALDRIDGE**: The current bill will require it to be in paper form. I will take things back a step. Who will approve the form?

**Hon Matthew Swinbourn**: The commissioner will approve the form.

**Hon MARTIN ALDRIDGE**: The way I read the words "approved form", which I believe is not a defined term, the form could be electronic, paper, facsimile or another form of communication, with the detail of the form being the particulars that are sought. My plain reading of proposed section 62E is that it will give the commissioner some discretion, but I think the parliamentary secretary just said that it is more limiting and there is a requirement for further legislative change to provide for an electronic form of communication. Is the parliamentary secretary able to clarify that?

**Hon MATTHEW SWINBOURN**: We need to make a distinction between the form, as in the document, and the transmission of that document, and whether it will be transmitted in electronic form or will be on the commission's website and people will fill it in and then hit "submit". The issue is broader than simply the Electoral Commission; it is whether the commissioner has the power to accept the transmission of a form in those circumstances. I am not aware of any specific power that he has. In the past, people have complained about some of the rather archaic practices of the commission—this is not directly a criticism—and how it is constrained. Other acts provide for how things are done; for example, the form must be signed; and whether the form should be signed, scanned and then emailed is a more complex question. The best we can do is to say that no specific power exists to accept ballot papers electronically. This does not mean that it cannot get into the commissioner's hands by electronic means. This is in the context of a broader view that the act needs to be reviewed in terms of these other sorts of things.

**Committee interrupted, pursuant to standing orders.**

[Continued on page 5383.]