ELECTORAL AMENDMENT (FINANCE AND OTHER MATTERS) BILL 2023

Second Reading

Resumed from 18 October.

HON MARTIN ALDRIDGE (Agricultural) [2.14 pm]: I rise as the lead speaker for the opposition on the Electoral Amendment (Finance and Other Matters) Bill 2023. Some members who served in the last Parliament might be aware that this bill had its genesis, to some extent, in a 2020 version and, indeed, even predating the 2017 election. I understand that a number of the elements contained in the 2020 bill, and now also the 2023 bill, were purported to be 2017 Labor Party election commitments. The 2020 bill was a 24-page document. The bill that is before us is 389 pages in length. It is also important to note that the 2020 bill, a 24-page construct, was subject to review by the Standing Committee on Legislation that reported on 12 November 2020. Members might recall this report because it is the second most recent report of the legislation committee. Members will not be confused when they delve back into the archives because the report is fairly front and centre when they go to the legislation committee's webpage. The committee has not reported at all throughout this current Parliament, but did so somewhat routinely in the last Parliament. The Electoral Amendment Bill 2020 was the second last body of work undertaken by the legislation committee of the Legislative Council, which, as I said, reported in November 2020. The Legislative Council referred this matter to the legislation committee that conducted a two-month inquiry and produced a report that included 14 findings and 16 recommendations.

I think it is fair to summarise that that 2020 bill would have done five things. Firstly, the annual return was to be reduced to a quarterly return and it was required by parties and others to lodge said quarterly return within 10 business days following each quarter. Obviously, we are addressing the same issue of reporting in the bill before us, but the scheme that is being developed by the government is drastically different from that anticipated in 2020 by the government. Secondly, the 2020 bill proposed to reduce the disclosure threshold from $2 500 to $1 000 and remove a loophole that allowed federal disclosure for parties that have dual registration with both state and federal electoral authorities. Thirdly, the bill required a reduction in election returns from 15 weeks to 12 weeks post-election, which is a fairly modest reduction in the time allowed for providing an election-related return. Fourthly, the bill was to introduce a scheme of expenditure caps, which, interestingly, is again drastically different from the proposal in the 2023 vintage of this bill. In 2020 it was proposed that an expenditure cap would apply from 1 October in the year prior to an election, so the expenditure cap period would effectively run from 1 October to the second Saturday in March. There would be a cap of $125 000 for each Assembly district, $125 000 for a region and $2 million for other entities. The expenditure cap proposal in the 2023 bill that is before us does not resemble to any extent the scheme that was advanced in 2020 other than it is another form of expenditure cap.

The fifth element was a ban on foreign donations. As I said, there is little resemblance between the 24-page 2020 bill and the 389-page bill that is before us in 2023. Certainly, having considered the bill, to the extent that one can, it does beg the question: why not embark on a new Electoral Act rather than the extensive amendment bill before the Parliament today? This matter should not be foreign because, if we turn our minds to the last two election reports of the Western Australian Electoral Commission, we will see that this issue was highlighted. In the Western Australian Electoral Commission's *2017 State general election: Election report*, a section called "Future issues" identifies the first future issue as "A new Electoral Act". It says —

> Western Australia's Electoral Act was originally drafted in 1907. Despite numerous amendments over the years, much of the statutory language is outmoded and the piece-meal nature of reforms has resulted in inconsistencies and difficulty of interpretation. A thorough overhaul of the legislation is long overdue.
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> The highly prescriptive nature of the current legislation also warrants further consideration. While basic standards and principles need to be enshrined in law, attempting to regulate every administrative aspect of an election can give rise to inflexibility. Re-drafting of the Electoral Act should be based on simple language and an agreed set of broad principles to provide the necessary degree of flexibility to enable practices and procedures to remain abreast of emergent issues and technology.

The first recommendation of the 2017 report states —

> That a comprehensive review of the Electoral Act be commenced at the earliest opportunity.

There were a number of other issues considered in the 2017 report, including extending the eligibility for access to internet voting. This was an issue I took great interest in when I was a government backbencher on the other side of this chamber. I remember moving amendments to my government's own electoral amendment bill about this issue. Not too many government members of this regime would be brave enough to bring an amendment to the government's own bill, but I did. In fact, some of those amendments were agreed to and some were not. Unfortunately, the one that was not was about broadening the eligibility for and access to internet voting beyond what was proposed.

The other matters canvassed were about removing the requirement for the publication of certain details and the payment of candidate deposits. I think that if there is one thing that the parliamentary secretary and I can agree on today it is significant modernisation reform to allow the use of electronic funds transfer to pay the Western Australian Electoral Commission when somebody nominates for election. I remember in my previous occupation as a state director, probably the most nervous part of that job was making sure the bank cheque was prepared and delivered to the Electoral Commission prior to the close of nominations, otherwise all of the nominations of my political party would be invalid. It has taken us until 2023 to address this issue, but finally it is here in the 2023 bill.

The fourth future issue in the Electoral Commission's 2017 report is "Disclosure requirements for political parties registered at both State and Federal levels". This is another issue that has been taken up in the bill before us. The report states —

> Section 175N of the Act requires political parties to disclose all donations of $2,300 or more, —

As it was at that time —

> except that for any party registered at both State and Federal levels submission of the Federal return is deemed to have met State disclosure requirements.
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> The current Federal threshold for the disclosure of donations is $13.200, well above the State threshold of $2300. This means that the amount that can be donated to a party with dual registration without disclosure is much higher than for a party with State-only registration. The result is an un-level playing field which should be remedied irrespective of other administrative considerations.

Recommendation 6 states —

> *That all registered political parties and associated entities should submit disclosure returns under a single set of rules.*

Fast forward to the *2021 State general election: Election report* and, unsurprisingly, there was still a chapter on this at the end of the report. It is called "Future Priorities" instead of "Future Issues". The first section is called "A New Electoral Act", and states —

> It should be no surprise to readers that a new Electoral Commissioner is repeating the request made by previous Commissioners that a new Electoral Act is proclaimed. It was evident in the 2021 State general election that the Act is outdated and Commission staff find it increasingly frustrating in the 21st Century. This is particularly the case where the Act continues to hold concepts and instructions favoured by legislators over 110 years ago. Attempts to improve have been made consistently over time but recent experience suggests this has led to confusing and in some cases contradictory sections within the one piece of legislation. This was evident in the Commission's struggle to find workable solutions for the possibility of a COVID-19 related lockdown during the voting period.
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> One simple example should suffice in this argument for modernisation. While Western Australian electors embraced the convenience of early voting in person at the 2021 election, the Commission was stuck with an outmoded requirement that these type of ballot papers be treated as declaration votes and therefore enclosed in an envelope before depositing in the ballot box. Despite careful instruction to electors some still managed to leave one or both ballot papers out of the provided envelope. At the conclusion of polling these votes could not be counted until all envelopes had been opened by hand and prepared for counting. The additional delay for a significant proportion of the overall ballots cast is unnecessary and these early in person ballots should be treated as ordinary ballots are treated on polling day, simply being placed in ballot boxes by the elector and able to counted immediately polling concludes.
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> Amendments to deal with this specific issue might fix the problem this time but a more comprehensive overhaul of the prescriptive portions of the Act would allow the Commission to respond more easily to changing electoral trends and the demands of electors for ease, transparency and accountability.

The second priority identified in this report is, "A Pivot to an Election Period". It suggests —

> While uncomfortable for the traditionalists, 2021 proved that the popularity of a voting or election period as opposed to a single election day is here to stay.

Perhaps not quite, given the provisions in this bill, but we will get to them in good time. It continues —

> The Commission will need to shift its approach to election planning accordingly, removing the previous focus on the second Saturday in March and adopting an agile response to an extended period of service delivery for electors but also for key stakeholders including political parties and our commercial election partners.

> The longer election period will necessarily entail greater cost with more staff required to ensure that workplace safety is maintained from a fatigue perspective but also to provide more polling locations that will not all be able to be located in government schools, as per the old model. It will not be possible, nor preferable to fade out the traditional Saturday polling places but it is likely that 2025 will require the Commission to reduce more polling locations on the last polling day (Saturday) as the number of electors using this option drops dramatically.

I thought that those views of, as I understand it, two different Electoral Commissioners, in 2017 and 2021, were worth quoting from. Although those quotes were somewhat extensive, they were both united in their view that a new Electoral Act was required rather than necessarily an amended act.

I will speak briefly about the path to electoral reform. My view, and that of many others, is that election reform must be done in a considered and well-consulted way, and is best achieved by consensus decision-making. Unfortunately, this Labor government really could not give a damn about anyone else's view other than its own. It certainly is not interested in conventions. It knows the best path to follow. Its legislative agenda is always perfect. I pause here because it is interesting to note that shortly after the government's bill was introduced in the Legislative Assembly, some eight amendments were listed on its notice paper. This is an admission in and of itself that the government knows that regardless of how wonderful ministers, executive government and parliamentary counsel might be, there is always scope for improvement.

At this point, it would be interesting if the parliamentary secretary's reply would outline which initiatives in the 2023 bill were indeed those of the independent statutory Electoral Commission versus those of the government. The bill before us has grown from 24 pages to 389 pages. It is also interesting to compare the 389 pages of this bill with the 342 pages of the current act. We actually have an amending bill that is considerably longer than the act itself. It would be interesting to know this bill's journey and whether consideration, if any, was given to an extensive amending bill or a new Electoral Act, as was recommended by the current and former Electoral Commissioners of Western Australia.

This bill has been couched in similar terms to the 2020 bill in that it seeks to improve transparency and accountability in elections. I think it is always important, when considering these issues, to look at how we compare with other similar democracies. In many respects, I think Western Australia and indeed Australian jurisdictions are doing very well. It does not necessarily mean that there is not room for improvement or there are not reforms that could or should be made. It is sometimes easy to lose perspective on these issues when considering the multifaceted reforms contained in the 2023 bill.

Although I am critical of the government's approach to bringing this bill to Parliament, we must now belatedly consider the merits of the proposals before us. As I said, this is a bar 2 bill. It was subject to some nine amendments, which was confirmed in the honourable parliamentary secretary's speech on the second reading debate, and eight of those belonged to the government. This bill was introduced into the Legislative Assembly not even seven weeks ago. Like other electoral amendment reforms of this government, it seemed to get very high drafting and legislative priority when it hit Parliament. Not all that long ago, my friend Hon Tjorn Sibma asked the parliamentary secretary about how many bills were in drafting. I think the number was 80-odd. However, it seems to be that when it suits the government, matters of electoral affairs can progress rapidly, with a higher order priority than perhaps other issues.

I turn to a number of the issues in the bill. The bill is obviously extensive and I am not going to do the issues significant justice in the time that I have, but it will be an opportunity to touch on them and make some preliminary comments on each. When we work through what I think is now 199 clauses at the Committee of the Whole stage, it will allow us greater contemplation of the specific initiatives being pursued.

The first issue advanced in this bill is donation disclosure. We are moving from an annual returns basis to what the government calls "real-time disclosure". This is unlike the 2020 bill, when the government's view—apparently based on an election commitment—was for quarterly returns lodged within 10 days of each quarter. This is a significant deviation from the 2020 proposal, and potentially from the government's own election commitment, because we are now going to a regime that will require disclosure within seven days of a donation being received. If that donation is received within the election period, that disclosure will need to be made at the end of the following day. If a donation is received on Tuesday, an electoral officer will have until the end of Wednesday to disclose that donation. It is quite a significant departure from the 2020 government proposal. It This will address the dual registration anomaly that I made reference to in the 2021 election report.

I pause to share an interesting anecdote from my experience from when I became the state director of the National Party. For the first time, I had to turn my mind to the responsibilities of being the person responsible for lodging returns and other matters under the Electoral Act. I started working in accordance with the Electoral Act and the advice from the Western Australian Electoral Commission. It was actually a WAEC officer who asked me why I was disclosing in this way and why I was not doing what all the other parties were doing. They told me that if I was registered with the Australian Electoral Commission, I should simply disclose it to the AEC and

send a copy to the WAEC. It is interesting that we are now addressing what is termed a loophole that allows parties to do that. Certainly, my experience in the last decade or even the decade before that was it was actually the state Electoral Commission that brought this to my attention and asked why I was not doing what everybody else was doing. Nevertheless, this bill will address this issue.

The Western Australian Electoral Commission will provide a secure online platform for this to occur. I always get nervous when the government talks about its technological capability to develop and implement secure platforms. It certainly does concern me in the context of the recent local government elections. I think it will come as no surprise that I have a significant interest in the resourcing and funding of the Electoral Commission. In my briefing, I raised concerns about local government elections and the performance of the Western Australian Electoral Commission in them and that many of the provisions of this bill would add significant burden to not only parties, candidates and others, but also the regulator—the Western Australian Electoral Commission. The best response that I was able to solicit from the briefing was that the government was aware of this as well. I am sorry, in my view, that is not good enough for the Legislative Council when we are considering this bill and the impact it will have on many stakeholders—not the least of which is the independent statutory body of the Electoral Commission and its ability to discharge not just the function of a secure online platform, but also many other functions, such as how-to-vote cards and other things that we will deal with in time.

I hope that there is a better and more fulsome answer able to be provided to the Legislative Council throughout the consideration of this bill. If the government is not able to do that, as an independent officer, the Electoral Commissioner should be able and prepared to identify what commitments have or indeed have not been made, and what it is that the Electoral Commission needs to implement the proposals, of which there are several, contained in this 2023 bill. I think that is very important for members to consider this legislation and its ability to be administered well within the pressures of election cycles.

The second issue is foreign donations. I recall that I asked at the briefings on both the 2020 bill and the 2023 vintage bill whether the Western Australian Electoral Commission was aware or had any evidence of foreign donations to political parties, entities, candidates or others in Western Australia. The answer today is the same as it was in 2020: there is no evidence of foreign donations influencing or funding elections in Western Australia. That is not a reason to not futureproof our statute book in the event that this issue arises, but it is interesting to note that the advice and view has not changed between the 2020 and 2023 bills.

I think the operation of the foreign donation provisions has been enhanced from 2020. I think that was largely borne out of some changes made at the commonwealth level, which has had foreign donation restrictions for some time now. That is probably where we are more likely to see the influence of foreign actors in elections at a national level. Perhaps the motivation is different when considering their involvement in state elections.

There is one thing I did think was interesting; I wrote it down. I think it also featured in the PowerPoint presentation that I was provided. I will see if I can just quickly provide it. It was about foreign donations. I will quote from the PowerPoint presentation from the briefing. It stated —

> No positive requirement to check BUT defence if you have obtained an affirmation from the donor or obtained appropriate information to verify the donor is not foreign

That is an interesting way of framing the obligation. I would have thought that if there was a law saying it is unlawful to receive and keep a donation from a foreign actor as defined, that it is unusual to then frame it in a way that says there is no positive requirement to check. Well, there is—unless a person wants to potentially break the law of Western Australia. It is not the way I perhaps would have pitched it in a briefing or publicly. It either is or is not the law of Western Australia that it would be unlawful with the passage of this bill to receive and keep a donation from a foreign actor as defined. The briefing also identified that there was a defence if the person was able to demonstrate that they sought information that verified that the donation was not from a foreign source. That could be used as a defence in any prosecution against those provisions.

The third issue was expenditure caps. Again, this scheme has been significantly altered since the 2020 version of the bill, but not all for the better. I think the government has often said that this provision is the reform that will stop an organisation like the Chamber of Minerals and Energy doing what it did in 2017, or indeed what the United Australia Party or the Australian Nursing Federation did in contesting seats at the next election. It has been interesting how people have publicly and privately framed the motivation for expenditure caps.

I will refresh people's memories about the Chamber of Minerals and Energy. This was an organisation that engaged heavily in the discourse that occurred during the 2017 election, not just in the election period, but extensively in the lead up. That campaign was funded by Rio Tinto and BHP through the Chamber of Minerals and Energy. It ran a very well resourced, and as history will show, successful campaign against the then member for Pilbara. Hon Brendon Grylls was trying to modernise 50-year-old state agreements to create a more level playing field amongst industry. During what I suspect was the election period, I recall Mr Howard-Smith being questioned on ABC radio news about the campaign that was being run by the CME. He was asked a question about how much

the CME was spending. His response was that in the 2017 election campaign, the CME was spending in the order of about a million dollars, largely against one individual candidate in one seat. I do not think Mr Howard-Smith realised that an election return had to be submitted within 19 weeks of polling day, because Mr Howard-Smith did not submit an election return. He broke the law of Western Australia following the 2017 state election on behalf of his organisation, the Chamber of Minerals and Energy of Western Australia, by failing to provide a disclosure of gifts and expenditure by other persons. When the person in question, Mr Howard-Smith, belatedly lodged this disclosure on 28 July 2017—I think it was about a week late—after it was brought to his attention that he had a compliance issue, he lodged a return that disclosed expenditure in the order of $4.361 million. It is important to mention at this point that this was not the total sum of expenditure in the 12 months prior; this was the sum of expenditure from 1 February to 11 March 2017. In that period of five or six weeks, Mr Howard-Smith and the Chamber of Minerals and Energy spent $4.361 million. What the CME spent in the 12 months prior is anybody's guess. By comparison, at that election the Australian Labor Party spent $4.6 million and the Liberal Party spent nearly $5 million.

Under the proposed scheme, third-party campaigners will be subject to a $500 000 cap and will be able to spend no more than $13 000 for a Legislative Assembly candidate and $6 500 for a Legislative Council candidate. Expenditure caps might appear sound in theory, but I think there has to be a way to ensure that big money does not have big influence on elections. In theory, expenditure caps are a somewhat noble cause, but in practice, designing, implementing and applying them in a way that is lawful, fair and just is very difficult. This is when we get to the provisions in this bill around expenditure caps. I want to spend some time to gain an understanding of their application and how they will apply to different people, organisations and entities throughout the course of an election campaign. If expenditure caps are to be pursued, treating an election campaign as if it starts on 1 February and finishes on the second Saturday in March, which is what the current Electoral Commissioner and the commissioner before him were referring to, is the 1907 view.

The fourth element of this bill is state campaign accounts. This is an area I have grave concerns about. This will be nothing short of a logistical nightmare. It is a clear example of the Labor government designing something that suits it without any consideration for other participants in election campaigns. Perhaps the Labor government would have known this if it had bothered to ask anyone other than itself. Election expenditure will be mandatorily disbursed from a state campaign account. If a party or a candidate wants to make electoral expenditure during the relevant period, it will have to come from one account. This will not necessarily be a problem for the Electoral Commission. If this was the Electoral Commission's proposal—I am not sure that it was; it may be the government's—I can understand why this would be pursued to improve accountability when the regulator, the commission, examines a complaint about whether an expenditure cap has been exceeded or a similar matter. However, there has to be consideration for the extent and capacity of organisations to implement a scheme that will require all electoral expenditure to occur from one account.

Interestingly, in my briefing I asked about exceptions, and apparently members of Parliament will be exempt from the requirement of a state campaign account. The parliamentary secretary is giving me a strange look so I may have misunderstood what was explained to me, but I understood that members of Parliament would be treated differently from other candidates not elected. There will probably be some examples that we ought to consider when this might also impact the operations of members, notwithstanding that electorate offices, electorate resources and financial resources should not be used for campaign and political party–related purposes. We need to look more closely at what electoral expenditure is to make sure there will not be overlaps with the ordinary functions and expectations of members.

For example, at what point will Hon Martin Aldridge issuing a newsletter to his electorate be considered normal electoral expenditure versus election expenditure? If I were to issue that newsletter today, would it be okay, but if it was during the election, would that not be okay? Would I then have to transfer money to head office and have it pay the bills for printing, mail handling and postage? That is probably just one of many examples showing that greater consideration needs to be given to how these state campaign accounts will work and whether there will be a benefit to their cost.

I turn to electoral expenditure reimbursement. The government proposes to increase electoral expenditure reimbursement from $2.26 per vote to $4.40. This has attracted significant media interest. The Minister for Electoral Affairs has engineered quite an interesting provision in this bill for an opt-in mechanism that will require political parties to opt in to this provision within 28 days of commencement, and for those matters to be reported. In his second reading speech, the parliamentary secretary said —

> In addition, under this legislation, political parties and candidates will have to comply with a new administration system, including daily reporting of donations. With this additional level of compliance and increased costs, the existing rate of $2.26 is insufficient.

This is where the parliamentary secretary and I will have a difference of view because I do not think electoral expenditure reimbursement was ever designed to fund the administrative and regulatory requirements of political

parties. It was a reimbursement system based on actual electoral expenditure. People usually have very strong views about this, but if the government is genuine in lifting obligations and compliance, and therefore the burden on political parties, there are better mechanisms than using electoral expenditure reimbursement. For one, we have to spend the money to get the money. I am not sure how that will help a small start-up party to build capacity to comply with the significantly increasing burden of the Electoral Act. I certainly do not know that it would help it if it does not achieve four per cent of the primary vote. If a party does not achieve four per cent of the primary vote, it will not get a dollar, but it will still have the same statutory obligations—real-time donation disclosure by the next business day, state campaign accounts and registered how-to-vote cards. It will have the same requirements as a major party employing tens of staff. If it does not reach four per cent, it will not get a cracker. If it does not spend the money on the election during the election period on eligible election expenditure, it will not get a cracker. I fail to see the relationship that the government is advancing that is the justification for increasing the electoral expenditure reimbursement to deal with the additional level of compliance and increased costs. It is rubbish.

Western Australia currently has seven registered political parties. We had many more, but they were tidied up by the 2021 bill. Many of the minor parties lost party status. As I said then, we should not underestimate the compliance burden that will be placed on not only existing but also potentially new political parties into the future. We have often seen these significant reforms advanced in other jurisdictions at the same time as a consideration of other funding mechanisms. This is always a contentious issue. People in the community, who are probably in the majority, believe that there should not be any electoral expenditure reimbursement, there should be a ban on every donation, and that our political institutions, parties, candidates and elections should run on nothing. I would suspect that is probably the prevailing view of the public. Of course, that is not possible; it is not realistic.

We have not seen them yet, but I am sure we will see some amendments shortly on the supplementary notice paper seeking to exclude donors from particular industries, businesses or entities. I suspect we will see that during the course of this debate; I will be surprised if we do not. When we considered the 2021 bill, there were significant amendments on the supplementary notice paper—that I refreshed myself of last night—nearly entirely in the name of Hon Alison Xamon. In other jurisdictions where these significant transparency and accountability or even donation restrictive reforms have occurred, they have usually been done in the context of a funding mechanism that is better tailored to the increasing regulatory cost on stakeholders—in this case, any person, entity or party that seeks to engage in an election, whether they are running candidates or not, to be quite frank.

The next issue that I want to touch on is the registration of how-to-vote cards. Mark my words, this will be a disaster. I just saw, as we all did only a few Saturdays ago, the challenge that the WA Electoral Commission had in dealing with local government elections with preferences for the first time. That was a disaster. If I were some of those local governments, I would not be paying the bill. I am not saying this to criticise the Electoral Commission —

Hon Darren West interjected.

Hon MARTIN ALDRIDGE: Have we got another speech coming on from Hon Darren West? We cannot provide any critique in this place without Hon Darren West jumping up and defending the good honour of public servants. It is funny that he did not have that view when he was in opposition.

This is central to my concern about the funding and resourcing of the Electoral Commission. If we do not get that right, this will be an unmitigated disaster during the peak period of demand on our Electoral Commission. We are talking about the period when close of nominations has occurred and polls are about to open. Thousands of how-to-vote cards will need to be considered, approved and registered by the Electoral Commission. The government's response to my questions is that the government is aware of that concern. In the interest of the bill, and given the spirit of the bill is about transparency and accountability, it would be nice to hear something a bit better, and I hope the government has something a bit better than "the government is aware of this concern". I was told at my briefing that there will be a dedicated team in the Electoral Commission that will deal with the issue of registration of how-to-vote cards. Imagine what the job advertisement will be. They will be the "How-to-Vote Card Registrar of Western Australia"! I do not think the government has thought through the cost–benefit ratio of such a decision. It will be borne by government. Political parties, candidates—anybody—can produce a how-to-vote card. Anyone. They do not have to be a candidate or a political party. The burden on those stakeholders will simply be to submit it and wait. The burden will be entirely on the Electoral Commission.

I will now get to some of the so-called modernisation reforms, which I will run out of time to discuss more fully. It is interesting that the parliamentary secretary's second reading speech states —

> Extensive consultation occurred between the government and the Western Australian Electoral Commission. Other electoral commissions, including those in New South Wales, Victoria and South Australia, were consulted on the operation and effectiveness of their political finance systems.

The important take away from that is that if I were the government, I probably would not have included this section. It is one sentence —

> Extensive consultation occurred between the government and the Western Australian Electoral Commission.

Who else? Were registered political parties consulted? Were elected members consulted? There are some very significant concerns about the way in which this bill has come to the Legislative Council, once again, very late in the parliamentary term. The government could have done this, but no—the priority after the election was abolishing regional representation. It was not acting on the recommendations of the 2017 Electoral Commissioner or the 2021 Electoral Commissioner. I actually heard members of the government defending their position on the 2021 bill saying, "Don't you know that the Electoral Act is over 100 years old? We have to reform it."—yet here we are, continuing on with the amendment of a more than 100-year-old piece of legislation in a way that appears to be completely absent of any genuine or sincere consultation or consensus building. This is a bill that was introduced less than seven weeks ago and has already been amended eight times by the government. I think this is an opportunity for the government to reflect upon the performance of the Electoral Commission in the local government elections. The opposition remains unconvinced about many of the propositions contained within the Electoral Amendment (Finance and Other Matters) Bill 2023. We are certainly disappointed with the way in which the government chose to progress the reforms before us. I do not think this legislation will achieve long-lasting electoral reform.

Many of the decisions of this government will ultimately bring about the same result for lawmaking in Western Australia: whoever has the numbers and power in the houses will frame the legislative system that will best suit the government of the day, and bugger convention, tradition, consensus building and shared ownership of electoral legislation. Usually the best outcome is one with which no-one is happy, because that means everyone has had to give a bit. We would not know in this case, because there has been a complete absence of any genuine engagement from the government on this legislation.

I referred earlier in my contribution to the second reading debate to some of the history of the 2020 bill, which was subject to referral to the Standing Committee on Legislation. There followed a two-month inquiry that resulted in many findings and recommendations through which that committee sought further explanations from the minister in charge of that bill at that time and, indeed, called on the government to amend the bill. There were 14 findings and 16 recommendations. Members will be aware that under clause 2 of this bill, the commencement date for the main provisions are, effectively, from 1 July 2024. We are about to embark on the summer recess. This 389-page bill has been drafted and amended by the government without any semblance of genuine consultation or consensus with Parliament or other stakeholders. The government has taken into account only its own views and its consultation with the Electoral Commissioner. That is effectively what is driving this bill. It is incumbent upon us to take the same approach to this legislation as the Legislative Council did with the 2020 legislation and use the summer recess to consider the provisions of this bill and, indeed, to see whether there are opportunities to make the legislation better. The government has already found eight amendments; how many more are there?

Discharge of Order and Referral to Standing Committee on Legislation — Motion

HON MARTIN ALDRIDGE (Agricultural) [3.13 pm] — without notice: I move —

> That the order of the day for the Electoral Amendment (Finance and Other Matters) Bill 2023 be discharged and referred to the Standing Committee on Legislation for consideration and report not later than 27 February 2024.

HON MATTHEW SWINBOURN (East Metropolitan — Parliamentary Secretary) [3.15 pm]: I make it clear that the government will not support the referral of the Electoral Amendment (Finance and Other Matters) Bill 2023 to the Standing Committee on Legislation; I do not think anyone is going to be surprised about that position. There are a couple of very key reasons for not supporting this referral, and the first is that the opposition has not supported this bill in any way, shape or form. It divided on the third reading of the bill in the other place and it would be fair to say that it is our view that no matter how much work the Standing Committee on Legislation were to do on this bill, the opposition's position will not change. It will continue to oppose this bill, and this motion is, for want of a better word, really just an opportunity to frustrate the passage of the bill, given the opposition's position on it.

We do not support the referral. Referral for the dates outlined in the motion would delay the passage of the bill. The Leader of the House has already indicated to the opposition the government's intention to have this bill dealt with before the end of this year's sitting period, and that is certainly our goal. One of the reasons for that is that we would like to provide the Electoral Commission with an opportunity to implement the reforms contained within the bill before its commencement in respect of some of the activities the commission will need to engage in on 1 July next year. A referral will truncate those activities, because it will not be the law of the land. Again, we do not want to see that happen because the period from 27 February to 21 July will potentially be a much shorter period than the passage of this bill by the end of this month, and obviously the delay that will happen over the summer recess.

We do not support the referral. The Standing Committee on Legislation is a great committee that does great work, but this is not about the Standing Committee on Legislation. This is about the opposition's desire to frustrate the

progress of a bill that it does not support and measures that it does not support, including open and accountable elections and election funding. We will not support the bill's referral to the Standing Committee on Legislation.

HON TJORN SIBMA (North Metropolitan) [3.17 pm]: The government's response should come as absolutely no surprise. When I looked at the business program earlier today I noted the number "162". This is the 162nd day of upper house sittings in the forty-first Parliament. One hundred and sixty-two days have passed without one single bill having been referred to the Standing Committee on Legislation, despite multiple attempts by the opposition.

I am standing to support the motion moved by Hon Martin Aldridge. I will encapsulate the motion this way. The Electoral Act is a signally important piece of legislation. Amendments to that act need to be considered dispassionately, proportionately and in a non-partisan manner. That is one dimension. Another dimension is that it is proposed through this legislation to effectively regulate the political marketplace. In what other industry would it be acceptable for a government of the day to, on a whim, change the rules for its own benefit and not even bother to consult stakeholders or industry participants? A direct analogy can be made in the political context because not one single member of Parliament nor one single political party was consulted on the Electoral Amendment (Finance and Other Matters) Bill 2023. I recall the strange events leading up to the splash on the front page of *The West Australian* seven or so weeks ago. My office, and I think those of my counterparts in the National Party, received an urgent call offering us an urgent briefing at 5.00 pm that evening from the Minister for Electoral Affairs on a change to the Electoral Act 1907. I thought, "With all due respect, thank you for the offer, but I've got other pressing matters of business to get on with." There was no further elaboration on what this remarkable briefing might constitute until I read it on the front page of *The West Australian* the following day. It was a gimmick; a sham attempt at consultation.

It is important to evaluate what this bill is in the context of electoral reform and its predecessor, the Electoral Amendment Bill 2020. As has been recounted, the smaller slimline 2020 bill was referred to the Standing Committee on Legislation. This bill is substantially different. I note that the honourable parliamentary secretary did not use the excuse that I was anticipating, which is that effectively these issues have been canvassed before. He is smart enough to realise that this bill is significantly different and significantly more ambitious and that it will be far more difficult to implement, plus a range of other potential issues, than the 2020 iteration. But if I am to suspend disbelief and believe that each of us has the capacity to reflect on the details as to why the motion moved by Hon Martin Aldridge demands urgent consideration and support, it is at least for these reasons.

In the 2020 bill, the proposed donation disclosure time frame was quarterly. The current bill presumes an ambitious acceleration of that reporting obligation to seven days outside of the capped expenditure period, which is the issue of the writs to the polling day, in which case it will be a 24-hour turnaround. Not only is the obligation absolutely raised and made more arduous in the current bill, it will obviously carry resource implications for not only political participants and political parties, but also the Western Australian Electoral Commission itself. I note that at least the foreign donations dimension appears to be strengthened in this bill when compared with the 2020 version. In the 2020 version, a donor had to be an Australian resident or citizen or have an ABN and have no criminal sanctions. The current iteration at least appears to be far more comprehensive and based effectively on the commonwealth provisions that apply. There is a capped expenditure period in this bill. In the 2020 iteration of this bill, the capped expenditure period was to take effect from 1 October in the year preceding the election. Under this bill, that capped period is enlivened upon the issue of the writs, and because we have predictable planned set election dates in this state—the polling occurs on the second Saturday in March; the writs will be issued some time during the first week of February—effectively, the capped period will last only six weeks when previously it was something closer to five months. We should at least examine—perhaps, the committee can examine—the policy justification that the government has come to in resetting and recalibrating that period. It may or may not be appropriate, but the committee might usefully inquire into those issues.

The setting of expenditure caps, again, has been changed in this bill when compared with the 2020 iteration. To summarise, the 2020 bill had a Legislative Assembly district cap of $125 000, a Legislative Council region cap of $125 000 and a Legislative Assembly by-election cap of $300 000. So-called third parties were allowed an expenditure cap of $2 million and in the case of a by-election in the Legislative Assembly, a $50 000 expenditure cap. The goalposts have changed in this iteration. The expenditure cap in the lower house has increased, albeit slightly, to $130 000. In the upper house, candidate caps have been cut in half to $65 000. For candidates in lower house by-elections, the cap is $390 000. The third-party cap is down from $2 million to $500 000 and, in the case of a by-election, it is a $39 000 limit. Prima facie, there seems to be an element of arbitrariness in the establishment of those limits and why some of those limits have been tinkered with and others more significantly amended in the course of the last three years, again without justification. That might be something that the Standing Committee on Legislation could inquire into or at least ask questions about.

There are significant increases in the range of penalties and the severity of those penalties in the bill presented to us compared with the bill that was brought before us in 2020. Hon Martin Aldridge spoke about the operation or mandatory utilisation of state campaign accounts as the sole conduit by which any electoral expenditure may be

undertaken. That is not a provision now and it was not a provision in the 2020 iteration. There might be some merit to it, but it is a significant administrative difference that will not be without consequences and implementation difficulties and expense and not one, I think, that will necessarily achieve the task that the government or the Electoral Commission might think that it will achieve. It is a significant difference from the 2020 bill. Again, would one not think that if it is that important, it would merit examination by the Standing Committee on Legislation, which, in three years of this Parliament, has not been troubled by a single bill? This might be the job for that committee. I still hold out hope.

Third-party obligations are very interesting. This is another serious amendment compared with the existing act and the 2020 version of this bill. Yes, there was to be an expenditure cap placed on so-called third-party actors in the 2020 iteration, but this bill, in extending that obligation, also requires their registration and disclosure and for those third-party organisations to have their own dedicated state campaign accounts and expenditure caps, which I have just outlined. These might be realistically and justifiably explained measures. They are obviously likely to be very onerous. They demand at least some considered examination by a standing committee no less that is purpose built, has terms of reference and is anticipating the referral of a bill like this. There is, again, the issue of the reimbursement. I will get to this in my second reading contribution and not in this prelude. It seems to be very difficult to justify for the reasons that Hon Martin Aldridge has outlined. Indeed, there seems to be a conflation between campaign expenditure for an electoral purpose and administrative expenses. I think it is an unhelpful conflation. The justification for the setting of the rate of reimbursement seems to have been plucked out of the middle of the pack of all other state jurisdictions, in which case there seems to be little bearing, if any, to the practical challenges, the expenses and the differences logistically or financially in running a metropolitan seat campaign compared with running a campaign in regional or rural Western Australia. It seems to me to be a very arbitrary, blunt metric. That is an issue that would merit some consideration by a standing committee established for the purpose of evaluating bills.

There is also another set of justifications for referral. I encourage members of this house, if they have the time, to read the two iterations of the second reading speeches on this bill that were written within about seven or eight weeks of one another. The one that was read in here by the parliamentary secretary a couple of weeks ago differs somewhat in tone—not entirely but a little bit—from its predecessor. A range of amendments were made to the bill in the other place and I will provide a couple of examples —

> Clause 15: Proposed subsections 17(2) and (3) have been amended to put beyond doubt that the new ability to enrol and make a provisional vote on the day of an election will apply at any place to vote, including at an early polling place or mobile polling place, and regardless of whether the person presents at a place to vote in their district. This clause was amended on advice from the … Commission to give effect to the policy intent, which is to maximise the number of eligible electors who enrol and vote in an election.

The responsible agency sought to amend its own bill via the minister. This is not without precedent, but it is highly unusual. It suggests to me that this bill was read in without all due consideration actually taking place, without the finessing or clarification that should have happened, possibly because the Minister for Electoral Affairs was in a hurry to make a splash in the media and make some nice sounding signals.

There are also amendments to clauses 68, 76, 77, 80, 113, 115—this is an interesting one and something that we do need to spend time on during our committee consideration if this bill does not get referred to the standing committee, which is where it should go in the first place. Clause 115 deals with the treatment of gifts. I think there are some dimensions here that we could drive a truck through, frankly. I will just square the circle a bit on this one —

> Clause 115 will amend section 175A to provide clarity on how a gift that involves inadequate consideration should be dealt with for the purpose of disclosure. It will put beyond doubt that, to the extent the value of goods or services provided is less than the amount paid for them, it is the difference between the value and the amount paid that must be disclosed. For example, if a bottle of wine worth $100 is auctioned at a fundraiser for $500, the value of the gift is $400.

The amendment to clause 128 deals with payments out of state campaign accounts, and a further amendment is made at clause 187. These were all made before this bill was read into this chamber. It is reasonable for a fair-minded person to assume that perhaps this is just the tip of the iceberg when it comes to clauses that demand greater examination, exposure and clarification because, with all goodwill in the world, I do not think that we can simply rely on the government's word.

I am in parts astonished but relieved that the parliamentary secretary did not fall back to the justification that this issue had been resolved previously because the 2020 iteration of the bill had gone to the Standing Committee on Legislation, but I want to highlight maybe two or three aspects of that standing committee report that justifies again the value of a referral motion such as this. They relate to the achievement of something that was not achieved in the management of the government's handling or drafting of the 2020 bill in the first place. On page 78 of the standing committee's forty-seventh report is a list of stakeholder submissions received in public hearings. The following stakeholders were contacted —

1 The Animal Justice Party
2 The Australian Christians (WA)
3 The Australian Labor Party
4 The Daylight Savings Party
5 The Health Australia Party
6 The Liberal Democratic Party (WA)
7 The Nationals (WA)
8 Pauline Hanson's One Nation
9 The Shooters, Fishers and Farmers Party (WA)
10 The Small Business Party (WA)
11 The Socialist Alliance WA
12 The Flux Party WA
13 The Greens Western Australia
14 The Liberal Party of Australia (Western Australian Division)
15 The Western Australian Party

Submissions were also made by Professor Benjamin Reilly, Professor John Phillimore, the Nationals WA, the Liberal Party of Western Australia, Professor Martin Drum, Professor Colleen Lewis, the Greens Western Australia and an academic panel. That all happened after the event. Nevertheless, it gives an indication of the breadth of stakeholders who have an interest in this bill and who, to a greater or lesser extent, will have their operations affected by the implementation of this bill. It is clear that no consultation with any of these affected groups took place prior to this bill being read in, as was the case last time. Perhaps this is an opportunity to make amends for what I consider to be an egregious oversight, absolutely, if only for this reason. What we are talking about is effectively changing the rules of the game.

The standing committee would be free from any anxiety or awkwardness about making amends for the government failures and at least get in touch with the people and the organisations it needs to be in touch with to get a fuller appreciation for the virtues and potentially the failures and fault lines inherent in this bill, which this government has not done. One of the key tests that the Standing Committee on Legislation wished to apply, or effectively principles that it wished to apply, were fundamental legal principles. One very important one, mind you, relates to whether or not the bill affects the rights, freedoms or obligations in a way that is unfair or unreasonable. I note that the committee report gave significant consideration to whether the constitutionally implied right to the freedom of political expression was in any way traduced by this bill, in particular the implications of expenditure caps. This is not necessarily what I would call a settled area of law. In fact, there was a test case, Lange v the Australian Broadcasting Corporation 1997. The result included the statement —

> It must of course be accepted that Parliament does not generally need to provide evidence to prove the basis for legislation which it enacts. However, its position in respect of legislation which burdens the implied freedom is otherwise. *Lange* requires that any effective burden be justified.

It is not clear to me, in the context of the bill, that the burden applied is justified, even with all of the best intent in the world, particularly when consideration is given to this fact. There was not a fig leaf of consultation. There was no appointment of a ministerial expert panel, which at least the Minister for Electoral Affairs had the good sense to enact when regional electorates were abolished. That fig leaf of consultation has not been enacted here. I believe this potentially exposes the government to risk. Certain aspects or clauses inherent within this bill will potentially be struck down—as was the case in New South Wales—which is why I believe some years ago a majority of this standing committee considered a similar provision to be legally unsafe.

If we are to consider this bill seriously, methodically and soberly, as we should, then let us at least satisfy ourselves that a committee of our peers considers the bill to be legally safe and sound. If we cannot do that as a minimum, expect some ruthless examination.

HON DR STEVE THOMAS (South West — Leader of the Opposition) [3.42 pm]: I will not be too long. Once again we find ourselves in the situation in which we are going to debate whether we can possibly improve legislation put forward by the Australian Labor Party in the Legislative Council. The answer from the Labor Party, of course, is, "No. No we can't." The Labor Party has a problem. It lacks accountability but it has no lack of arrogance. It is out there telling us that this legislation is perfect because all of the Labor Party's legislation is perfect, is it not? How has it gone for the Labor Party recently?

We had an astounding position in which we had an Aboriginal cultural heritage bill that had to be repealed five weeks after it was implemented. Could the government have made that legislation any better? Maybe it could have, but this government, with its lack of accountability and its overabundance of arrogance, will simply say, "We get it right all of the time", despite the overwhelming evidence that presents itself both to this chamber and to the Parliament of the people of Western Australia. What is wrong with the government and the Labor Party in this state that it refuses to test any of its ideals? Is it so bogged down in ideology that it refuses to countenance the prospect that it might be improved? In the government's defence, not so long ago it referred to the hardworking legislation committee. How many meetings has it had? How often has the Standing Committee on Legislation met in the last two and three-quarter years? Perhaps it would be a good thing to ask some of its membership. How much work has the "hardworking legislation committee" done? I should have such a job! I would not mind one of those jobs. We should all vote ourselves onto the legislation committee and we will never work again under the current set of circumstances—fantastic!

This government has an obvious problem. It has a problem in that its ambition and view of its own performance is very different from reality. I understand that the government is not going to support the motion to send the bill to the legislation committee. I do not think it will support any motion to send any bill to the legislation committee. The legislation committee may as well go on a long overseas trip. It can look at legislation in the Bahamas and France, maybe the Seychelles or the Maldives—not in the hot season, though. That is what the legislation committee may as well do. I am reminded of that *Yes Minister* episode, with "the quango of all quangos". They send the political adviser off around the world just to get him out of the country. The legislation committee may as well go and do that. Let us have it go out and do a very long trip somewhere, because it may as well be achieving something for its money. It may as well go and have a good look around somewhere—the south of France—some of those very nice destinations. The south of France is probably not too bad even in winter. The north of France is a bit cold. It could stretch things out a bit and have a good look.

The legislation committee may as well go and do that because this government has no interest in accountability. This government likes to tell us that its legislation could not be improved. This government has no shortage of arrogance, but a massive shortage of accountability. I suspect, once again, we will see that demonstrated in a vote before the house in the not too distant future.

HON BEN DAWKINS (South West) [3.46 pm]: I will be supporting the motion by Hon Martin Aldridge. Hon Martin Aldridge is too kind. I heard him use the word "rubbish" about some of this process while I was listening on the livestream. He is again too kind. It is sad that Hon Martin Aldridge and his colleagues may not be here in the next Parliament because the government uses its majority to get rid of regional representation. That is what the government does: it uses its majority for things that are authoritarian and anti-democratic in many ways.

Hon Jackie Jarvis: Regional members put their hands up—one, two, three, four, five.

Hon BEN DAWKINS: In terms of transparency and accountability, Hon Jackie Jarvis, this bill does nothing of the kind. The Labor Party, as evidenced on the front page of *The West Australian,* has given itself an almost 100 per cent pay rise with this bill. I obviously appreciate the disclosure limits of $1 000 and the provisions on foreign donations, but we know that the Labor Party will be the main industry player—which was the term used before—that benefits from this act. Hon Mia Davies gave a very commendable speech when this bill was debated in the lower house. She said that the Labor Party would use its majority to legislate its way to another term. This is more evidence of that. The Labor Party deliberately has no transparency or accountability. Depending on who gets four per cent of the vote, it will likely be the only beneficiary of that $3 million pay rise that remains unincorporated.

Where is Hon Pierre Yang? He likes it when I talk about incorporation but, of those registered political parties, the Labor Party deliberately remains unincorporated. The University of Melbourne Law School recently quoted in its *Law review* that the Labor Party remains unincorporated so that its rules —

The ACTING PRESIDENT (Hon Dr Sally Talbot): Hon Ben Dawkins, could I just remind you that the motion under discussion is the referral of the bill to the legislation committee.

Hon BEN DAWKINS: Yes, sure.

The ACTING PRESIDENT: I am sure that you have an end point in mind. Can we just make sure that it is the referral to the committee?

Hon BEN DAWKINS: Thank you, Acting President. All of these flaws, such as the Labor Party giving itself a pay rise and not being accountable for that because it remains unincorporated—as I was saying, the quote from the Melbourne Law School says that the Labor Party remains deliberately unincorporated so that its rules are not binding between it and its members. It says incorporation would also bring a mandatory amount of financial transparency through the incorporations act. This is but one of the glaring errors of this bill.

The Minister for Electoral Affairs who is the Attorney General is way too close to this. He is horribly conflicted by giving his party a huge pay rise. That, to me, is one of the more glaring things on top of the other reasons relating to lack of consultation.

The ACTING PRESIDENT: Member, if —

Hon BEN DAWKINS: That is all. I will be supporting the —

Several members interjected.

The ACTING PRESIDENT: I was hoping to hear the word "referral" fairly soon.

Hon BEN DAWKINS: I will be supporting the motion to refer. Thank you.

Division

Question put and a division taken, the Acting President (Hon Dr Sally Talbot) casting her vote with the noes, with the following result —

Ayes (12)

Hon Martin Aldridge	Hon Nick Goiran	Hon Dr Brad Pettitt	Hon Neil Thomson
Hon Peter Collier	Hon Louise Kingston	Hon Tjorn Sibma	Hon Wilson Tucker
Hon Ben Dawkins	Hon Steve Martin	Hon Dr Steve Thomas	Hon Colin de Grussa *(Teller)*

Noes (20)

Hon Klara Andric	Hon Sue Ellery	Hon Stephen Pratt	Hon Dr Sally Talbot
Hon Dan Caddy	Hon Lorna Harper	Hon Martin Pritchard	Hon Dr Brian Walker
Hon Sandra Carr	Hon Jackie Jarvis	Hon Samantha Rowe	Hon Darren West
Hon Stephen Dawson	Hon Ayor Makur Chuot	Hon Rosie Sahanna	Hon Pierre Yang
Hon Kate Doust	Hon Shelley Payne	Hon Matthew Swinbourn	Hon Peter Foster *(Teller)*

Question thus negatived.

Second Reading Resumed

HON TJORN SIBMA (North Metropolitan) [3.55 pm]: Now with the prelude out the way, I can at least target my remarks to the substance of the bill. I want to echo at the outset my absolute endorsement of the categorisation of this endeavour by Hon Martin Aldridge. How many times can we amend an act and amend an act quite substantially when effectively we are not making amendments anymore; we are rewriting the act? We are rewriting entirely the rules. Although it is not always wise to take anyone in political life entirely at their word when they are attempting to beguile and spin a web of intrigue and interest, sometimes you do need to listen to the expressed motivations that a government has when it comes to undertaking substantial work. This is a substantial piece of work and it demands some examination in a serious, orderly and measured way. My contribution to the second reading debate will be a little different. I am attempting to address the themes of this bill as they are expressed by the minister in the two second reading speeches, in the explanatory memorandum and, of course, in the content of the bill itself. This is with some licence because I will read verbatim from the most recent second reading speech —

> … the bill will improve the transparency and timeliness of political donations disclosures, ban foreign donations, introduce electoral expenditure caps, provide for state campaign accounts to be established, provide for registration of third-party campaigners, provide for the registration of how-to-vote cards, increase the rate of electoral expenditure reimbursement and modernise —

That is the kind of language that normally chills my blood because it is the cloak by which any sort of change can hide —

> the arrangements under the Electoral Act 1907.

That is a longstanding act. There is absolutely no problem whatsoever with the principle of improved disclosures and improved timeliness of disclosures. To put it inelegantly, an itch is being scratched here, and one which absolutely we can all live with. The rationale, however, for the rapidity of those disclosures effectively in real time during an election period is laudable. We have to give some consideration to the practicality of this, the deliverability of this and whether, through an absence of logistical necessities or finances, particularly those we would imagine being faced by an independent or a minor party, democracy is being advanced any great lot just because a minor party X is six hours late making its disclosure under the 24-hour turnaround obligation during the capped expenditure time or the electoral period. The issue is referred to in the explanatory memorandum and elsewhere in the bill. However, the language changes a little bit and I cannot recall between which document. However, I have seen it expressed that it is an intention that the process of disclosure be enabled or facilitated in some way by the Western Australian Electoral Commission—as in there will be a more active obligation considered and undertaken by the government. Another definition was more or less an intimation or a hope that perhaps we can.

I think that when we get to the appropriate stage of the bill, the parliamentary secretary will understand that the focus will be on what resourcing or planning has been undertaken to enliven this provision and what potential

defences may reasonably be relied upon. For example, what if a minor party candidate party operating in Kununurra cannot disclose that a person and the local football or fishing club donated a reportable amount under the bill of $2 700 to their account due to communication gaps or whatever? What would happen if they were six or eight hours late? What defences would they have to rely upon? Indeed, what defences might the Electoral Commission rely upon if it has the sole responsibility and therefore liability for producing these reports and making them available to the public and it cannot report within that 24-hour period? I think the seven-day period outside of the capped expenditure period is largely achievable, but I think in the midst of an election, that 24-hour period will present some potential difficulties at compliance level, particularly for those candidates in rural and regional Western Australia and potentially even for the Electoral Commission itself.

While they are foremost on my mind, we will get to expenditure caps and even playing fields and the like later. Something has already been said about the timeliness of counting the vote under the new voting system at recent local government elections. I will also acknowledge in passing that I have taken an interest in overall government advertising expenditure as recorded in annual reports over the last seven or eight years. In fact, the Electoral Commission effectively summarises those reports and provides its own report. I do not think it has done so for nearly two years now. If there is a reporting obligation, particularly an expeditious one that relies in any meaningful way on the Electoral Commission—either the availability of its staff or systems—I absolutely suggest that it demands examination.

I think the ban on foreign donations is absolutely a no-brainer. The opposition absolutely supports it and it has supported it for years. At an earlier stage—maybe some years ago—there was even a potential to carve out elements of the 2020 bill and just ban foreign donations on the spot. Nevertheless, I think at the time there were some serious loopholes in the definition and indeed in some of the potential consequences, even if that ban was breached. However, I do want to spend a bit more time on the introduction of electoral expenditure caps. There is a school of thought that is probably commonly held amongst the public—certainly in the media—that too much money is spent during elections or that people can buy their way to an election outcome. The example that relates to Hon Brendon Grylls two elections ago is cited.

However, there are numerous and recent examples of a disproportionate or asymmetrical advantage on behalf of one group or another spending money in an election in a futile sense—effectively just wasting their money. The recent Voice referendum demonstrated that to us in real time. There was an absolutely asymmetric difference in donation and expenditure between the Yes and No campaigns. I cannot recall the figures off the top of my head as well as I would like, but I think there was something like a fiftyfold difference between the amount of expenditure by the Yes campaign in the last week leading up to the referendum compared with the No campaign. It spent between 10 to 50 times more in that week alone for nothing—to lose. It is not absolutely proven that just having vast resources allows anyone to buy their way to an election outcome. Clive Palmer and the United Australia Party's recent forays are another demonstration that volumes of money are not always accommodated by an abundance of common sense or decency; neither do they guarantee the kind of electoral outcome that is wanted. In fact, I think enormous expenditure has a negative effect; it goes beyond the law of diminishing returns into negative returns. The more that is spent, the more likely it is that they will not win, because people are so fed up or turned off. However, the categorisation of any notional amount of money as being excessive is completely arbitrary and subjective.

There was a strange annexure, if you like, to this bill in the other place, but I think it has also been tabled here. It was a standalone piece signed by the minister on 20 September. It is largely the outcome of the work of the Solicitor-General and is entitled *Electoral Amendment (Finance and Other Matters) Bill 2023: Justification of proposed caps upon electoral expenditure*. It highlights some scenarios in which, in the view of the author, expenditure was egregious. I might just cite two examples from that document. I will quote from paragraph 33 of that document, which has been tabled already, as it relates to the expenditure cap proposed for the Legislative Council. It stated that the largest amount spent by an independent candidate upon a council region in a state general election was in the same vicinity as the notional calculation in an earlier paragraph. It continues —

> It was $79,614 in the 2021 SGE … That is more than double the next highest expenditure by an independent Council candidate, which was $33,187 in the 2017 SGE … It is unknown why so much was spent by this one … candidate (Peter Lyndon-James), but it clearly represents an egregious outlier and may be excluded from consideration.

The use of the word "egregious" is subjective and fatuous. It is just an amount; it is what that candidate spent. Why did he spend that amount? I do not think anyone has ever asked him, but I imagine he thought it would facilitate his chances, but it did not work. He spent more than double that of another upper house candidate at another election. That is a direct comparison anyway—but it did not work. It disproves the fundamental point that the government is trying to make that the more someone spends, the more likely they will get their way because they crowd out others in the marketplace. In this example, it did not happen. There was another example at the 2018 Darling Range by-election and it is referred to in paragraph 41 of this document. This section deals with justifying the caps to be imposed in a by-election. It states —

> An amount of $354,567 was spent by the ALP (WA Branch) for the 2018 Darling Ranges by-election. This amount is significantly greater than any other amount that was expended in the other by-elections which have happened since 2014, but no other by-election has been contested by both the ALP (WA Branch) and the Liberal Party.

That is obviously not true because there was a recent by-election in the state seat of Rockingham, so I suggest that this was perhaps drafted without consideration given to political reality. Again, the material fact is that WA Labor spent more than $350 000 contesting the 2018 Darling Range by-election and lost, but it wants to impose a cap, apparently to level the playing field. Whether a political playing field can ever be truly evened out is a worthwhile question but, more to the point, is the implementation of a cap during a very constrained time likely to strengthen democracy in any meaningful way? It is not apparent that the government has given any consideration to the fact that this might be counterproductive. Although we do not have a cap at present, is this an inducement for candidates to spend up to a certain amount? I suspect that in future elections that will occur in some electorates. In fact, people might feel that they are under an obligation to spend up to a certain permissible amount. In an earlier iteration of the second reading debate, or even in the briefing—I cannot recall the provenance, but I recall the phrase—it was said that we were attempting to prevent a financial arms race in the conduct of elections in Western Australia. That is a laudable objective but this is not the way to go about it. In fact, a consequence will likely be to enable it.

The policy of the bill cannot be changed; the policy is to set limits, but in Committee of the Whole House I would like to go through how these limits have been arrived at, how they have been formulated and how they have been calculated. With all due respect to the Solicitor-General, I am not sure that his office is the most qualified to make recommendations about the establishment of these limits. In fact, I suggest that it is absolutely not qualified in any sense to make those kinds of recommendations or suggestions. Indeed, for the benefit of those reading along, the schema that is proposed helpfully appears in a table on page 6 of the current explanatory memorandum. There are some curious attributes of the proposed schedule of expenditure caps. I note an oddity that relates at least to the Legislative Council. Not only has the maximum party expenditure for a state general election Legislative Council campaign been set at this limit, but there is the inclusion here of a vacancy cap of $195 000 to spend on filling a vacancy in the Legislative Council. We have just had a vacancy filled.

Hon Matthew Swinbourn: It was a by-election.

Hon TJORN SIBMA: A by-election for the Legislative Council?

Hon Matthew Swinbourn: It can happen under the act.

Hon TJORN SIBMA: I find this an extraordinary inclusion and I would like to interrogate the parliamentary secretary further on that point.

Hon Matthew Swinbourn: It is extremely rare.

Hon TJORN SIBMA: It is extremely rare.

Hon Matthew Swinbourn: It has never happened.

Hon TJORN SIBMA: It has never happened.

Hon Matthew Swinbourn: But it can happen.

Hon TJORN SIBMA: We all might learn something then. That is good; I like that.

The parliamentary secretary has taken my breath away a little bit, but we will get there.

I turn to the introduction of electoral expenditure caps as they apply to third-party participants. Again, the advice, which I suspect was largely provided by the Solicitor-General, to the minister effectively has a desktop analysis of prior disclosures by a variety of actors. Again, the matter of Hon Brendon Grylls notwithstanding, it is not obvious that a third-party actor, so described, has had an outsized, disproportionate impact on the outcome of a state general election. I note that the prior limit envisioned in the 2020 bill was four times higher than the current one. What was the justification for the $500 000 ceiling? I should probably ask a question, which is not intended to sound impertinent or coarse, about whether this includes GST as well. I have not seen that expressed anywhere in the bill and I think it is worth clarifying.

I turn to the registration process for how-to-vote cards. Actually, they will be the next topic I talk to. I now want to ask a question and make some comments about the expenditure caps. This will not change political expenditure. It will move it around. It will move the spend, but there appears to be absolutely no restriction on the amount of money a potential or endorsed candidate can spend to achieve election before the issue of writs. The bill we are considering, even though it is reported as this thing that will even the playing field and make all things fair and balanced, will apply for only six weeks in a four-year period. I find the consideration that electorally or politically related expenditure does not occur outside an election process after the issue of writs to be a fundamentally naive assumption. In fact, if the virtue of this bill is to reduce expenditure, it is a glaring loophole. All one would do is

spend all their money before the first week of February, potentially spend nothing during the capped expenditure period, and they will be compliant with the bill.

While we are talking about this scheme, I would also seek clarification because I might be reading this incorrectly. I will restrict my focus purely on the Legislative Assembly and how an expenditure cap would apply only during the period after the writs are issued. I will use a hypothetical example and I will use me, so that I will not make any reflection on any other member. Should I do a silly thing and go, "You know what? I'm sick of the upper house, staring at the same old faces all day long" —

Hon Stephen Dawson: Are you running for the Legislative Assembly?

Hon TJORN SIBMA: No. It is a hypothetical!

Several members interjected.

Hon TJORN SIBMA: See? I wanted to wake them up. I am glad I have got members' attention. I knew it would work.

For argument's sake, I have had enough of this place and I want to throw it all away, go to the lower house and mix with the zoo down there and become one of the exhibits. If I do that, I want to make sure I am acting within the rules, because I like a good rule; I like staying inside the lines. Who knows whether it will happen, but let us hypothetically say that this is a scenario. I would rather talk about me than somebody else, because I do not want to embarrass them. I am happy to embarrass me. I will go for lower house seat X.

Hon Martin Pritchard interjected.

Hon TJORN SIBMA: Do not get excited!

I understand under these provisions that as a candidate, I could spend up to $130 000 during the capped expenditure period. Yes, personally I could do that as a candidate. I ask this question because the next line down in one of the pro forma that has been given to us is that a total party cap applies. The total party cap has been set at $7 670 000, which is effectively 59 seats times $130 000. For argument's sake, if I were to do a silly thing, could I spend $130 000 as a candidate in pursuit of my election? Could my party also spend $130 000 to supplement that pursuit? This is what I want to have clarified, because it is a bit uncertain to me. Imagine a group of people think I am pretty flash and want to support me and contribute. They are constrained, I think, as a third party, to spending $13 000, but what will that $13 000 actually relate to? Will it relate to expenditure in the entire district? Will it extend to expenditure on a particular candidate in an election? Maybe I will use a fictitious example from the Australian Labor Party. Imagine I am a young up-and-coming right faction lower house member who has done some good work and party headquarters kicks in $130 000 to my campaign. I have got a dwindling number of right faction backers in the union movement; maybe there are two or three of them. Will they be allowed to kick in $13 000 each to supplement that member's campaign? This is why I used my example, because I do not want to embarrass any of my northern suburb members and friends.

Several members interjected.

Hon TJORN SIBMA: Let us hypothetically say this, and he will take this in a good way, because he is a good bloke. The member for Balcatta is doing a good job; in fact, I think he should have drafted this bill. Let us say he goes into the next Balcatta campaign. The parliamentary secretary clarified an important point for me—that it is not $130 000 plus another $130 000; it is just $130 000. I do not know how that is controlled, but okay. Would some of his union friends or an organisation be able to contribute $13 000 to his campaign? Say there are four or five of those groups that all put in $13 000, plus the $130 000 that he has on offer. Then there is a Greens candidate for the same seat. I can tell members that there is already disproportionality in the allocation of resources. There will never be an even playing field. I want to understand the most amount that could be spent, because I do not think the cap will be the cap, which is the inelegant point I am trying to make. How could the government, or how could I, determine what money gets used in support of my election, for example, or a Nationals WA member who is contesting Warren–Blackwood? If their party has got up to the $130 000 cap, what would stop, for example, the Pastoralists and Graziers Association, live exporters or forestry or whatever contributing $13 000 allocations to them? Would there be any limit on the number of groups that could make contributions in support of the election of a particular candidate? It would appear to me that there is absolutely no limit on the number of groups or other organisations if they are appropriately registered, I presume, to make contributions like that to help their man or woman get over the line. I want to understand where the cap really might lie, because I do not think the cap is the cap, even within this allegedly so-described capped expenditure period. Therefore, how will someone demonstrate compliance with their expenditure obligations, particularly if there might be examples with the interrelationship of third-party actors that they do not directly control? I think the control here could only be sheeted home to the person who runs the state campaign account. That is the point I want to clarify. Indeed, the question that seems unanswered in all of this is: who will audit these state campaign accounts? It is not clear. If the government wants to impose this new obligation and administrative requirement, what assurance will an independent candidate, a party headquarters or a third-party organisation have to give that their state campaign account sufficiently meets the purposes of that? How will it ensure

it has been established and how will we ensure that all electorally relevant expenditure—this is another issue, maybe considered during Committee of the Whole House—takes place solely from that account?

While I have the parliamentary secretary and just on this point, because I will not be able to go into detail on all the issues I want to give contemplation to, the next topic after question time will be how-to-vote cards. Hypothetically, if a candidate's corflutes are pinched and they want to go out and replace them, I imagine that would be electoral expenditure. What if they have already breached the cap? Will they have to seek approval to spend more money? Will they have to buy wooden stakes, screws and drill bits from Bunnings through a state campaign account? They are messy things, campaigns. All kinds of counterfactuals and things can happen.

Debate interrupted, pursuant to standing orders.

[Continued on page 5844.]