## ELECTORAL AMENDMENT (FINANCE AND OTHER MATTERS) BILL 2023

*Introduction and First Reading*

Bill introduced, on motion by **Mr J.R. Quigley (Minister for Electoral Affairs)**, and read a first time.

Explanatory memorandum presented by the minister.

*Second Reading*

**MR J.R. QUIGLEY (Butler — Minister for Electoral Affairs)** [12.37 pm]: I move —

That the bill be now read a second time.

Here, on "democracy day", I am exceptionally proud to be introducing the Electoral Amendment (Finance and Other Matters) Bill 2023, hereafter referred to as the bill. The purpose of this bill is to ensure that Western Australia has the fairest and the most transparent electoral system in Australia. The bill will significantly reform the political finance regime in this state and deliver on Labor's promise for greater transparency and accountability in political donations.

The purpose of this bill is to improve 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 registration of how-to-vote cards; increase the rate of electoral expenditure reimbursement; and modernise the arrangements under the Electoral Act 1907.

The bill will provide the voters of Western Australia with much greater transparency around political donations. It will provide that political participants—parties, candidates, members of Parliament, associated entities, and third party campaigners—must disclose political contributions greater than $1 000 every seven days, and by the end of the next business day during the capped expenditure period. The capped expenditure period will commence on the date of the writs and will end at the close of polling. This will provide real-time disclosure to give Western Australians greater confidence in our state electoral processes and institutions. It means that any member of the public could find out on any given day during state election campaigns who has donated how much to which party or candidate. The capped expenditure period is also relevant to the second most significant reform under the bill—expenditure caps.

Those who campaign in elections should have a reasonable opportunity to communicate with electors but must be precluded from drowning out the communication of others. No-one should be able to buy elections. The bill will provide for electoral expenditure caps of $130 000 for candidates in the Legislative Assembly and $65 000 for candidates in the Legislative Council. These amounts have been determined with reference to reported expenditure in previous campaigns and the advice of the state's second most senior law officer, the Solicitor-General. I now table the justification for those caps.

[See paper 2293.]

**Mr J.R. QUIGLEY**: Caps will be indexed annually in line with the consumer price index.

I will now outline the key features of the bill.

Donations disclosure: As I have indicated, donations greater than $1 000 must be disclosed by the end of the next business day during the capped expenditure period and within seven days of receipt outside the capped expenditure period. The Western Australian Electoral Commission will establish a secure electronic portal where political entities can upload relevant information about political contributions including affiliate fees, compulsory levies and gifts. It will be easy to use, ensuring it is not onerous for candidates or parties to comply. As is currently the case, annual subscriptions of $200 or less for membership of a political party will not count as a political contribution. In addition, dispositions of property or the provision of services to a candidate or to third-party campaigners for a purpose other than a political purpose will also not count as a political contribution.

Foreign contributions ban: The bill will ban foreign donations to prevent foreign interests undermining Western Australian democracy. The ban will apply to all political entities and third-party campaigners. Foreign individuals and entities will not be able to exercise undue influence or promote agendas that do not align with the public interest of the Western Australian community. The definition of "foreign donor" has been modelled on a corresponding provision in the Commonwealth Electoral Act 1918. Political participants will not be compelled to obtain information about a donor's status but if a foreign donation is received in breach of the legislation, evidence of certain matters will provide a defence to any legal action. This includes that within six weeks of receiving the donation, the political entity that receives the political contribution obtains written affirmation by the donor that the donor is not a foreign donor; or obtains appropriate information about the donor that establishes that the donor is not a foreign donor; and the recipient did not have reasonable grounds to believe that the donor was a foreign donor.

In the case of an individual, appropriate donor information may be proof of enrolment, a copy of a passport, a certificate of naturalisation or a visa evidencing permanent residency, or that the donor is a New Zealand citizen. In the case of an organisation, a recipient would need to see proof of the organisation's incorporation in Australia, or if unincorporated, certain other documents that demonstrate the organisation is Australian. If a foreign donation

is received, there is an acceptable action period of six weeks to either return the amount of money to the donor or transfer it to the state. New offences of receiving a foreign donation, making a false affirmation or giving false information about being a foreign donor, and entering a scheme to receive foreign contributions will be created as serious offences.

Expenditure caps: As I have noted, the bill will introduce expenditure caps to make elections more fair, competitive and open. These provisions will take big money out of the election contest, if you like, arresting the expenditure arms race to ensure that state elections are a contest of ideas, rather than a contest of dollars. The proposed caps will operate to prevent some candidates, or those supporting them, making all of the political communications that they might afford. Caps will apply to political parties, non-party groups, candidates and third-party campaigners for the duration of the capped expenditure period, to ensure a level playing field in which there is truly a representative democracy.

The expenditure of elected members, candidates and associated entities will be aggregated under a total party cap. We have set the candidate cap at $130 000 in the Legislative Assembly and $65 000 in the Legislative Council. Expenditure will be deemed related to a candidate if it is for advertising or other material that mentions the candidate's name, is communicated to electors in their district and is not mainly communicated to electors outside the district. It will also include a consultant or advertising agent's fees in respect of services or material substantially used to promote the candidate or have them elected. Registered political parties will be able to spend a maximum equivalent to the candidate cap times the number of candidates they have endorsed for the election. Although higher than the amount any party spent during the last state election campaign, the cap is designed to provide consistent fairness in the political campaign process. Independent candidates will be entitled to spend the same amount as a party is able to spend on a particular candidate. Recognising that by-elections and fresh elections in the Council require greater resourcing, the by-election cap for the Assembly has been set at $390 000 per candidate and for the Council at $195 000 per candidate. These caps will strike a balance between capping expenditure at reasonable yet generous levels while still allowing political participants plenty of freedom to communicate their messages.

In 2021–22, seven associated entities provided annual returns to the Electoral Commission. Associated entities who participate in elections by incurring electoral expenditure or receiving political contributions will now be subject to the same level of disclosure as parties and candidates and any electoral expenditure will count toward the overall cap of the relevant political party.

The situation for third-party campaigners is different from other political entities. Third-party campaigners can direct funding to single issues and may expend large sums of money upon that one issue. That is different from a party or a candidate in which the campaign will have to focus upon all issues of relevance to the particular electorate or electorates. Third-party campaigners will have a total cap for the state of $500 000 for a general election. Within that overall cap they will be able to spend $13 000 on a particular Assembly candidate and $6 500 on a particular Council candidate. Third-party campaigners will also be able to spend up to $39 000 on an Assembly by-election and up to $19 500 for a Council vacancy. Third-party campaigners who incur electoral expenditure of $500 or more will be required to register with the Electoral Commission. If they fail to register and incur more than $500 in electoral expenditure, they will be subject to a fine of an amount equal to twice the amount by which the electoral expenditure was exceeded.

Registration will ensure transparency and accountability for those political participants who campaign to influence electors, and it provides the Electoral Commission with the means to oversee expenditure and political contributions. Under the current act, third-party campaigners are referred to as "other persons". In line with recognised language across Australia, and to acknowledge the role of these individuals and organisations, "other persons" will be called "third-party campaigners".

I now turn to state campaign accounts. Political participants who incur expenditure and receive political contributions will be required to establish a state campaign account to support compliance. This includes political parties, candidates, non-party groups, associated entities and third-party campaigners. State campaign accounts are an important mechanism to ensure political finance transparency and accountability. Every state except Western Australia and Tasmania currently requires political participants to establish a state campaign account. Electoral expenditure must be paid from campaign accounts and funds may be paid into the campaign account, including political contributions, subscriptions, electoral expenditure reimbursement, income, and interest payments.

In the event of a "terminating event", any amount remaining in a state campaign account after payment of debts owing must be paid to a charity nominated by the responsible person for the account. A terminating event includes, for example, a political party ceasing to exist; an independent candidate dying or not being elected and not intending to campaign again; a non-party group ceasing to exist; or a third-party campaigner ceasing to exist or not intending to incur further electoral expenditure. Account holders will be required to lodge annual returns with the Electoral Commission, and there will be penalties for noncompliance.

I refer to the increase to the rate of electoral expenditure reimbursement. The bill will establish a higher reimbursement rate for electoral expenditure of $4.40 a primary vote. The rate of electoral expenditure reimbursement

was set 17 years ago in the 2006 act. The current rate is $2.26 a primary vote, which is the lowest rate of reimbursement of all Australian jurisdictions that provide public funding. I note that a bill is presently before the Tasmanian Parliament to introduce public funding at a rate of $6 a vote. Even with the higher reimbursement rate of $4.40, WA will remain at the lower end of the scale. When we take into account the administration funding that some other states and territories provide on top of that public funding, our proposal is sensible and reasonable. As outlined, the rate was set 17 years ago, and we all know that costs have increased significantly in that time, including the cost of advertising and all related campaigning costs. In addition, under this legislation, political parties and candidates will have to comply with a new administration system, including daily reporting of donations, and with this additional level of compliance, the existing rate of $2.26 is insufficient, especially when compared with the situation in other states.

It is vital in a vibrant democracy that the public understands the policies and intentions of candidates and parties prior to casting their votes. Parties and candidates must spend money to communicate their intentions. Parties have more resources at their disposal, but new entrants to election campaigns will rely on some public funding to get their messages across. Proper funding of candidates, groups and parties to contest elections is essential to ensure it is not only the wealthy who can afford to run for office. It is also important to set public funding at a level that will prevent the need for undue reliance on private funding. The partial public funding of candidates will offset the cost of campaigning and compliance, removing a hurdle that could prevent people from running for office. It is important to ensure that everyone has the opportunity to contribute to this great democracy in this great state if they can get the support required.

Existing political parties and elected non-party members will have 28 days from the commencement of this legislation to opt in to receive the higher reimbursement rate. If they do not opt in, they will continue to receive the lower reimbursement rate, which is currently $2.26. After that, new political parties will have 28 days from the time they register with the WA Electoral Commission to opt in, and non-party candidates will have until the close of nominations for an election to do so. For transparency, the WA Electoral Commission will be required to publish the names of parties, members and candidates who opt in to receive the higher reimbursement rate.

I now refer to the registration of how-to-vote cards. With this bill, we will also ensure that voters are not misled by candidates and their campaigners by how-to-vote cards. It is a recognised global phenomenon that voters face increasing misinformation and deliberate disinformation during elections. The Australian Electoral Commission is concerned enough to establish a register of disinformation to correct the record. The government has determined to address this by ensuring that during polling voters are provided with accurate how-to-vote cards that do not deceive or mislead them about their vote. The government has adopted the approach applying in Queensland and Victoria whereby how-to-vote cards must be registered. Candidates, parties and others can apply to register how-to-vote cards prior to an election, and a person will commit an offence if they distribute or authorise distribution of an unregistered how-to-vote card. Cards will be suitable for registration if they clearly indicate on whose behalf the card is distributed or published; a method for voting that is consistent with the act; and the name and address of the person, political party or group authorising the how-to-vote card. Cards will not be suitable for registration if they are likely to mislead or deceive an elector; likely to cause an elector to vote in a manner that is inconsistent with the requirements of the act; or contain an error or abusive, obscene, threatening, violent or unlawful or similarly offensive material. This is consistent with existing provisions that make it an offence to publish, print or distribute any matter likely to mislead or deceive an elector in relation to casting their vote.

The bill provides that the Electoral Commissioner and Deputy Electoral Commissioner must have regard to a new inclusivity principle. New section 51 provides that people who identify as Aboriginal or Torres Strait Islander; persons who are from culturally and linguistically diverse communities; persons with disability; and persons who are homeless should be given reasonable opportunity to enrol and vote.

I now refer to the modernisation reforms. The act will be amended to reflect contemporary language and remove archaic terms and procedures. For example, the terms “door keeper” and “unsound mind” have been replaced with “officer” and “mental impairment” respectively. Language has also been made gender-neutral. Terminology that is in common use has replaced technical phrases. For example, terms within section 51B, “Request for address not to be shown on the roll”, will be replaced with “silent elector”, and “early voting” will become “postal voting” or voting at a polling place on an early voting day. The structure of the act will be refined and adjusted for the benefit of the reader and to assist the commission to administer the act. Concepts and categories that are closely related will be placed in closer proximity to each other. Although the act has not undergone a full redraft, it will now be better integrated into an overall framework that will be more logical and easier to follow. The approach to modernisation was informed by in-depth consultations with the Electoral Commissioner and his team and senior parliamentary counsel.

The Western Australian Electoral Commission will be required to establish and maintain a register of electors from which the roll will be prepared for an election. This was recommended by the WA Electoral Commission and simply reflects its existing practice of maintaining a database from which rolls are produced. It also reflects the

approach that is taken in other states. Political parties, candidates and the public will continue to have access to the same information that is available under the current act; however, it will be extracted from the register.

Improvements will be made to WA Electoral Commission internal processes—for example, by no longer requiring early votes to be placed in envelopes when voting in person at a polling place. The Electoral Commissioner will be able to establish procedures to transmit certain documents electronically and accept electronic payments for nominations.

Enrolment processes will be streamlined, making it easier for eligible voters to cast their vote. This will include allowing 16-year-old people to provisionally enrol but not vote; enabling the WA Electoral Commissioner to update the register based on information received from state government agencies, in the same way that the Australian Electoral Commission updates the commonwealth electoral roll using information received from commonwealth government agencies; and allowing electors who have moved districts and not updated their address to enrol and provisionally vote on election day if they have lived in the district for more than one month. For procedural fairness, when it is proposed to remove a person from the register based on mental impairment, the person will be provided with a notice of proposed removal and given an opportunity to provide information that demonstrates that they do not lack capacity.

Political parties will no longer be able to process postal vote applications and it will become an offence to distribute applications unless the person is authorised by the Electoral Commissioner to do so or the application is in a prescribed form, indicating that it must be returned directly to the Electoral Commissioner.

The period of early voting will be set to 11 consecutive days before polling day, excluding Sundays, and procedures will be standardised with ordinary voting on polling day. Mobile voting will be allowed for a period of 14 days prior to polling day. The presiding officer at a polling place will be required to establish at least one designated entrance by placing a sign prior to opening. The bill will provide for statutory recognition of election campaign workers, covering their conduct, party identification and access to bathroom facilities.

New and increased penalties: The bill will update penalty provisions following advice from the Electoral Commission that it was appropriate to do so in light of contemporary rates and penalty rates imposed for similar offences in other jurisdictions. Significant new penalties will apply to political participants in relation to their disclosure and expenditure obligations. This will include new penalties for making prohibited payments into the state campaign account, with political parties facing a maximum fine of $36 000 and other political participants a fine of $24 000; and for receiving foreign donations, which will carry a penalty of three years' imprisonment or a fine of $36 000, with a daily penalty for noncompliance of $500. If registered political parties, non-party candidates or groups exceed the electoral expenditure cap, they will face a penalty of three years' imprisonment and a fine of up to three times the amount by which the expenditure exceeds the expenditure cap. If that amount works out to be less than $36 000, a fine of $36 000 will apply. Those who enter an arrangement or scheme to circumvent the expenditure cap will face a penalty of three years' imprisonment and a fine of $36 000. If a third-party campaigner incurs electoral expenditure greater than $500 and fails to register with the WA Electoral Commission, they will receive a fine of twice the amount by which the expenditure exceeds $500. Distributing how-to-vote cards that are not authorised will carry a penalty of two years' imprisonment and a fine of $24 000.

Consultation: 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 government also noted the recommendations of both the November 2020 report of the Legislative Council's Standing Committee on Legislation, and the June 2023 interim report of the federal Joint Standing Committee on Electoral Matters. Many of the recommendations have been adopted in the bill.

Thankyous: I particularly thank Mr Robert Kennedy, the Western Australian Electoral Commissioner, and his team. They have contributed much advice and long hours to the development of this bill. I also put on the record my thanks to Mr Ben Fraser, senior parliamentary counsel. Ben's legal brain and attention to detail have benefited what is now a very robust bill. I also thank Mrs Marion Buchanan, the former legal adviser of my office, who also played an incredible role in the preparation of this bill as well as the Criminal Law (Mental Impairment) Bill and the voluntary assisted dying legislation. I am sad to say that Marion Buchanan has now moved to the bar at Murray Chambers, to act as a barrister. Finally, I would also like to thank Marion's replacement at my office, Mrs Katy McDougall, who has been indispensable in the final preparation of this bill.

I commend the bill to the house.

Debate adjourned, on motion by **Mr P.J. Rundle**.