ELECTORAL AMENDMENT (FINANCE AND OTHER MATTERS) BILL 2023

Receipt and First Reading

Bill received from the Assembly; and, on motion by **Hon Matthew Swinbourn (Parliamentary Secretary)**, read a first time.

Second Reading

HON MATTHEW SWINBOURN (East Metropolitan — Parliamentary Secretary) [6.31 pm]: I move —

That the bill be now read a second time.

I rise to introduce the Electoral Amendment (Finance and Other Matters) Bill 2023. 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. Put simply, 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 the arrangements under the Electoral Act 1907.

The bill will provide the voters of Western Australia with greater transparency around political donations. All political participants, including parties, candidates, members of Parliament, associated entities and third-party campaigners, will now be required to disclose political contributions greater than the specified amount within seven days and during the capped expenditure period by the end of the next business day. The capped expenditure period will commence on the date of the writ or writs and ends 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 also means any member of the public will be able to find out on any given day during state election campaigns who has donated, how much has been donated and to which party or candidate the donation was made. 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; however, this should not be to such an extent that it has the effect of drowning out the communication of others. It is self-evident that in a healthy democracy, no-one, by virtue of their greater access to incredibly deep pockets, should be able to buy an election outcome. To this end, 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 Solicitor-General. 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 the specified amount, which is currently $2 600, 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. Multiple donations in the same financial year will be aggregated, and must be disclosed if they total more than the specified amount. The Western Australian Electoral Commission will establish a secure electronic portal to which political entities can upload relevant information about political contributions, including affiliate fees, compulsory levies and gifts. It will be easy to use to ensure it is not onerous for candidates and 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 political purpose will count as a political contribution. Conversely, when they are provided for a purpose that is not a political purpose, they will not count as a political contribution.

Foreign contributions ban: The bill will ban foreign donations to prevent foreign interests undermining our democracy. The ban will apply to all political entities and third-party campaigners. Foreign individuals and entities will not be able to exercise influence over elections by making donations to political parties and/or candidates. The definition of "foreign donor" has been modelled on a corresponding provision in the Commonwealth Electoral Act 1918. I refer members to section 287AA. 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, 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 will be an acceptable action period of six weeks to either return the amount 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.

Expenditure caps: As I have noted, the bill will introduce expenditure caps to make our Western Australian democracy more equitable and transparent. These provisions aim to take big money out of the election contest and arrest the expenditure arms race to ensure that our state elections are more likely to be a contest of ideas rather than who has the deepest pockets and has been able to purchase the most political communication. The proposed caps will operate to prevent a political party, candidate or those supporting them spending virtually unlimited amounts on political communications. 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 Western Australia is truly a democracy that reflects the will of the people.

The expenditure of elected members, candidates and associated entities will be aggregated under a total party cap. Candidate caps will be set 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 for 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 multiplied by 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, whether for the Legislative Assembly or the Legislative Council, require greater resourcing, the by-election cap for the Legislative Assembly will be set at $390 000 a candidate and $195 000 a candidate for the Legislative Council. 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 that 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 towards the overall cap of the relevant political party.

The situation for third-party campaigners is different from other political entities. 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 now be called "third-party campaigners". Third-party campaigners can direct funding to single issues and may expend large sums of money on 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 of $500 000 for a general election. Within that overall cap, they will be able to spend $13 000 on a particular Legislative Assembly candidate and $6 500 on a particular Legislative Council candidate. Third-party campaigners will also be able to spend up to $39 000 on a Legislative Assembly by-election and up to $19 500 on a Legislative Council by-election. 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 political participants that campaign to influence electors, and it provides the Electoral Commission with the means to oversee expenditure and political contributions.

I now turn to state campaign accounts. Political participants that 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. Currently, every state except Western Australia and Tasmania requires political participants to establish a state campaign account. Under the bill, electoral expenditure must be paid from state campaign accounts and funds may be paid into the state 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. Examples of a terminating event include 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 turn to the increase to the rate of electoral expenditure reimbursement. The rate of electoral expenditure reimbursement in Western Australia was set 17 years ago in the 2006 act. Although there has been indexation to that amount, the base rate has remained the same. The current rate of reimbursement is $2.26 for each primary vote received by a political party or candidate, 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. The bill will establish a higher reimbursement rate for electoral expenditure of $4.40 for each vote received by a political party or candidate. Even with the higher reimbursement rate of $4.40, WA will remain at the lowest end of the scale. When we consider the administration funding that some other states and territories provide on top of that public funding, it further illustrates that our proposed increase is proportional, sensible and reasonable. As outlined, the base rate was set 17 years ago, and costs associated with elections 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. With this additional level of compliance and increased costs, the existing rate of $2.26 is insufficient.

It is vital in a vibrant democracy that voters have the opportunity to know who is standing for election, and to hear and understand the proposed policies and intentions of political parties and candidates prior to casting their votes. To achieve this, political parties and candidates need to spend money to communicate their intentions to those voters. Established political parties typically have more resources at their disposal, but new entrants to election campaigns will rely on the prospect of receiving some public funding to get their messages across. Proper funding of candidates, groups and political 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 some people from running for public office. It is important to ensure that everyone can contribute to this great democracy 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 that opt in to receive the higher reimbursement rate.

I now refer to the registration of how-to-vote cards. This bill will also ensure that voters are not misled by information on how-to-vote cards. It is a recognised global phenomenon that voters face increasing misinformation and deliberate disinformation during elections. The Australian Electoral Commission was concerned enough about the effect of disinformation on elections to establish a register of disinformation to correct the record for electoral processes for the 2022 federal election, the Fadden and Aston by-elections, and the recent referendum. The government is addressing the potential for deceiving or misleading information to be included on how-to-vote cards by ensuring that during polling, voters are provided with accurate how-to-vote cards that do not deceive or mislead them about their vote. Accordingly, the government has adopted the approach taken 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. How-to-vote 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; are 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. These content requirements are consistent in substance 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. However, rather than simply relying on retrospective punitive action to discourage political participants from engaging in this behaviour after votes have been cast and their influence on the election baked in, the positive requirement for registration of how-to-vote cards is aimed at identifying and stopping the offending behaviour quickly.

The bill provides that the Western Australian Electoral Commissioner and Deputy Electoral Commissioner must have regard to a new inclusivity principle when performing a function under the Electoral Act. New section 5I provides that people who identify as Aboriginal or Torres Strait Islander, persons who are from culturally and linguistically diverse communities, persons with a disability and persons who are homeless should be given reasonable opportunity to enrol and vote. This principle will provide guidance on decisions about appointing polling and mobile polling places, fixing the postal application period, granting applications to vote by postal voting, maintaining the register of electors and preparing rolls, as well as many other functions performed by the commissioner.

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, section 51B uses the phrase "Request for address not to be shown on the roll". This will be replaced with the more commonly known phrase "silent elector". Another example is that the term "early voting" will be replaced by "postal ballot paper" where appropriate, to distinguish from a vote cast in person 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.

A further modernisation is that 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 itself 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, after the passage and commencement of this legislation, 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. This will reduce costs for the commission, as well as streamline the process for booth workers. I am sure it will also reduce the irritation of voters. 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-olds to provisionally enrol but not vote until they are 18 years old; 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 eligible voters who have lived in a district for more than one month but are not on the register or have not updated their details by the close of the roll for an election to attend a polling place on the day they intend to vote, be enrolled and provisionally vote. 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 the proposed removal and given an opportunity to provide information that demonstrates that they do not lack capacity.

Another modernisation reform is that 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 the penalty provisions following advice from the Electoral Commission that it was appropriate to do so in light of contemporary rates and the penalty rates imposed for similar offences in other jurisdictions. Significant new offences and penalties will apply to political participants in relation to their disclosure and expenditure obligations.

For example, it will become an offence to receive, or enter a scheme to receive, a foreign donation; exceed an electoral expenditure cap or enter a scheme to circumvent an expenditure cap; pay for electoral expenditure other than out of a state campaign account; fail to lodge a disclosure document as required; or lodge a false disclosure document. The penalties will include significant fines and, in many cases, a potential term of imprisonment, to reflect the importance of ensuring integrity in the political finance scheme.

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.

Amendments: I note that the bill has been subject to amendment in the Legislative Assembly. The consequence of these amendments is that the bill I have now introduced is different from the one first introduced in the Legislative

Assembly. This includes the renumbering of the clauses. I will outline what those amendments are, referencing them by the clause number in the bill that I have introduced into this house.

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 Electoral Commission to give effect to the policy intent, which is to maximise the number of eligible electors who enrol and vote in an election.

Clause 68 will amend section 78 by inserting a new proposed subsection 78(1)(ba), which will require that a candidate nominating in an election must provide at least one means by which they can be contacted in connection with an election.

Clause 76 will amend section 86 by removing the requirement for the Electoral Commission to publicly declare and publish on its website the occupation and primary residential address of all candidates in a single-member election and instead publish a means of contact for all candidates. This amendment adopts the recommendation of the Electoral Commissioner and is consistent with the practice in local government elections.

Clause 77 will amend section 87, which is the corresponding provision to section 86, in relation to nominations for Legislative Council elections. The amendment and rationale are the same as those amending section 86.

Clause 80 will amend proposed section 97G, which will allow a person who has been enrolled on the day they intend to vote under section 17 to vote as a provisional voter by making it clear that they can do so even if they have presented at a polling place outside of their district.

Clause 113 will amend the definition of "specified amount" at section 175 by deleting "$1 000" and replacing it with "$2 600". This amendment was moved by the member for Cottesloe to revert the threshold for disclosure of political contributions to the current amount, which the government agreed to.

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.

Clause 128 will amend proposed section 175LP that will provide that a political entity must not make a payment out of their state campaign account unless it is for electoral expenditure or made under proposed section 175LR, which is the candidate terminating event provision. The amendment will ensure that a payment can also be made out of a state campaign account in accordance with the other terminating event provisions, which are a "member terminating event" under proposed section 175LS, a "group terminating event" under proposed section 175LT, a "party terminating event" under proposed section 175LU and a "campaigner terminating event" under proposed section 175LV.

Clause 187 will amend section 4.30 of the Local Government Act 1995 to insert a note and update a reference to the roll so that it will include a reference to the register of electors.

Pursuant to Standing Order 126(1), I advise that this bill is not a uniform legislation bill. It does not ratify or give effect to an intergovernmental or multilateral agreement to which the government of the state is a party. Nor does this bill, by reason of its subject matter, introduce a uniform scheme or uniform laws throughout the commonwealth.

I commend the bill to the house and table the explanatory memorandum.

[See paper 2730.]

Debate adjourned, pursuant to standing orders.

House adjourned at 6.57 pm