

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

*Third Reading*

**HON MATTHEW SWINBOURN (East Metropolitan — Parliamentary Secretary)** [12.33 pm]: I move —

That the bill be now read a third time.

**HON MARTIN ALDRIDGE (Agricultural)** [12.34 pm]: I rise to make a third reading contribution to the Electoral Amendment (Finance and Other Matters) Bill 2023. In particular, I reflect on the emergence of the bill from the Committee of the Whole stage and observe that from our examination it appears that the majority of the reforms, at least the ones of any significance, were products of the Labor government, not the Western Australian Electoral Commission. Certainly, some matters we dealt with were on the recommendation of the Electoral Commission, but, in my view, they were relatively minor and technical in nature. We discovered through the Committee of the Whole stage that there was a significant lack of consultation with stakeholders. We were able to establish that the principal stakeholder was the Australian Labor Party. Other electoral commissions were engaged with, and I am sure that that was confined to matters of technical application rather than policy.

It is interesting to note that the bill emerged from the Committee of the Whole amended, as it did from consideration in detail in the Legislative Assembly; it was amended there, too. Some 10 amendments were successful in the Legislative Council's committee consideration, all in the name of the government. One amendment, or it might have been two, dealt with drafting errors. That worries me. Given the way in which this bill has progressed to the point of third reading in the Legislative Council, I am not filled with confidence that the bill being passed today is in a form necessarily without further error.

The second amendment was about bringing forward the close of nominations from a Friday to a Thursday. Some might see that as a minor amendment. As I understand from engagement in the committee stage, that amendment was predicated upon stakeholder feedback after the fact, which was effectively concerns raised about the Western Australian Electoral Commission's ability to discharge its responsibilities on how-to-vote card registrations. I think that the registrations will number if not in the hundreds then in the thousands. During the committee stage, we learned that the Electoral Commissioner himself has that responsibility and does not have the ability to delegate that decision-making power. He himself has the responsibility to issue in writing a determination for every application to register a how-to-vote card. This will be immensely problematic. The government is confident that it will be discharged effectively, and it appears that the Electoral Commission is confident because it did not request the extra day—but I have some doubts.

The last tranche of amendments—there were many—related to state campaign accounts. I think that this area requires some further consideration. I am still not exactly clear about the operation of state campaign accounts. I think that the information I was provided at the briefing differed from the information that was provided in the committee stage of the bill. Amendments have been made, and, obviously, the Legislative Assembly will now apply some scrutiny to these provisions, but what it is and how we will achieve the state campaign accounts policy are aspects of the bill that I am left not entirely settled on.

Of course, my preference was to see this bill examined by the Standing Committee on Legislation, but unfortunately, unless I move a motion now, that will not be provided for in the passage of this bill. That is unlike the infamous Sports and Entertainment Trust Bill 2023, a bill that has sat on our notice paper since May this year, and then suddenly the urgency of a referral motion appeared for it yesterday.

It cannot be denied that this bill has many flaws. Amendments made in the Assembly and Council effectively go to the insufficiencies of a bill, and I have made the point several times that this bill is longer than the actual act. As I said in my second reading contribution, the reforms to the Electoral Act are significant and important but they should be dealt with differently. I set out three tests that ought to be applied to bills of this nature: they should be considered, they should be consulted on and they should be by consensus. This bill fails all three tests and will not enjoy the support of the opposition.

**HON TJORN SIBMA (North Metropolitan)** [12.40 pm]: I will not go over the very neat precis provided in Hon Martin Aldridge's third reading contribution on the Electoral Amendment (Finance and Other Matters) Bill 2023, other than to identify one or two key concerns that I raised in my second reading contribution, which, with all due respect, I considered unanswered in the parliamentary secretary's second reading reply, and I remain greatly uncertain about them after the bill's examination during Committee of the Whole House.

There are number of features of this bill. It is a statement of fact that the substance of the majority of the provisions, particularly the most transformative provisions, originated in the cogitations of the Minister for Electoral Affairs and his colleagues in government. What has been achieved here today is effectively a rewriting of the Electoral Act and the rules of political finance to suit the Labor Party. That is not the way we should go about amending the rules of the game as they are established under the Electoral Act. It might be a cute political trick, but it is one the

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government undertakes at some great peril, and that is what I am getting to. At least two provisions in the bill are not without constitutional problems. They are the process by which how-to-vote cards must be registered prior to their distribution, and the establishment of expenditure caps and the application of proportionality in expenditure, particularly the way it relates to and constrains freedom of expression of so-described third-party campaigners. Indeed, the 2020 version of the bill was successfully referred to the Standing Committee on Legislation, which was well placed to take a view on these matters. A majority of that committee considered the imposition of expenditure caps to be legally unsafe in light of judgements made by the High Court of Australia about the matters—that is, in similar scenarios.

I have relied upon some expert academic research, which I did not table, undertaken by a professor of constitutional law at the University of Queensland. It put some questions about, particularly, the dimension of proportionality, asking whether it is legally justifiable. Is it legally safe to impose a cap on a group of people who might be an inconvenience to political parties during a campaign but that has a constitutionally implied right to freedom of expression? Whether they be the Australian Nursing Federation, the RAC, the Pastoralists and Graziers Association or the United Workers Union, it matters not.

The problem with the way the government has gone about this bill, which it has demonstrated, is that it is acting on the basis of absolutely no evidence and a supposition that there is a risk to representative democracy in Western Australia posed by the mere fact that these groups exist and might want to spend what the government considers too much money on expressing their perspective. That is legally risky and challengeable. The government has opened the door to a potential legal challenge because it has engaged in this process in a duplicitous and secretive manner—it did not consult with anyone. During the process of examination it was established that the only consultation was a barely recalled mysterious interaction between the Minister for Electoral Affairs and somebody from the Australian Labor Party headquarters—an unnamed person on an unspecified date. That is, frankly, not good enough. There was an expression used today in the course of an earlier debate that the standard you walk past is the standard you accept. That is a very good maxim. This is the standard we have accepted in Western Australia: one party can write the rules to suit itself. It will get what it wants, but it might get more than it bargained for if, indeed, this law is challenged at a future election and its validity is struck down. That is the outcome we should all seek to avoid, but, unfortunately, we have unreasonably magnified that risk by passing the bill in its current form.

Another issue, which was very clearly identified early in contribution to the debate by Hon Martin Aldridge and picked up, in part, by me, is that the government is radically transforming the rules of the game on the eve of an election, expecting a very slim, streamlined organisation, the Western Australian Electoral Commission, to operate and implement them. It is not resourced to do so. The government could not explain the resourcing that would be required for the commission to diligently and professionally execute the additional responsibilities the government has given it. Nor could the government identify or express how the Electoral Commission would go about informing registered political parties, candidates and third-party campaigners about what their responsibilities would be; yet, headlong and without any explanation at all, the government is determined that these laws will come into effect from 1 July 2024. This is evidence of reckless, facile lawmaking. It is just another example—an example we have got used to over the course of the last two, nearly three, parliamentary years. We have no problem with transparency—bring it on—but this is an absolute mess. This will not work, it will fail, and I think an erratic Minister for Electoral Affairs has again exposed the government to another liability.

*Division*

Question put and a division taken, the Deputy Chair (Hon Stephen Pratt) casting his vote with the ayes, with the following result —

Ayes (20)

Hon Klara Andric	Hon Sue Ellery	Hon Dr Brad Pettitt	Hon Wilson Tucker
Hon Dan Caddy	Hon Lorna Harper	Hon Stephen Pratt	Hon Dr Brian Walker
Hon Sandra Carr	Hon Jackie Jarvis	Hon Martin Pritchard	Hon Darren West
Hon Stephen Dawson	Hon Ayor Makur Chuot	Hon Samantha Rowe	Hon Pierre Yang
Hon Kate Doust	Hon Shelley Payne	Hon Matthew Swinbourn	Hon Peter Foster ( <i>Teller</i> )

Noes (7)

Hon Martin Aldridge	Hon Louise Kingston	Hon Tjorn Sibma	Hon Colin de Grussa ( <i>Teller</i> )
Hon Peter Collier	Hon Steve Martin	Hon Dr Steve Thomas	

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Pairs

Hon Rosie Sahanna	Hon Nick Goiran
Hon Dr Sally Talbot	Hon Donna Faragher

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Hon Kyle McGinn

Hon Neil Thomson

Question put and passed.

Bill read a third time and returned to the Assembly with amendments.