

ELECTORAL AMENDMENT (FINANCE AND OTHER MATTERS) BILL 2023

Committee

Resumed from 9 November. The Deputy Chair of Committees (Hon Stephen Pratt) in the chair; Hon Matthew Swinbourn (Parliamentary Secretary) in charge of the bill.

Clause 1: Short title —

Progress was reported after the clause had been partly considered.

The DEPUTY CHAIR (Hon Stephen Pratt): I draw members' attention to the new supplementary notice paper, issue 3.

Hon NEIL THOMSON: Before we broke for the weekend last Thursday, I was asking questions about the inclusivity provisions in the bill. I assume they are in the bill on the basis of an under-representation of Aboriginal, culturally and linguistically diverse, and homeless people on the electoral roll. Does the commission provide advice on under-represented groups in general?

Hon Matthew Swinbourn: Sorry, I do not understand the member.

Hon NEIL THOMSON: Does the commission provide advice to government? To clarify, a question was asked about whether the inclusivity provisions had come from the Electoral Commission. From my recollection, the advice was that it had not come from the commission but had come from —

Hon Matthew Swinbourn: The government, yes.

Hon NEIL THOMSON: The government sought to include the inclusivity provisions. I will put it another way. I put this question directly to the parliamentary secretary: had any other analysis been done by the government in relation to any other category of elector who might be under-represented on the electoral roll?

Hon MATTHEW SWINBOURN: Member, not in the context of this bill. I think we have identified here those who are the most disadvantaged people in our society. We want the commission to make sure that when it performs its functions, it has particular regard to the most disadvantaged people in our society.

Hon NEIL THOMSON: It is very interesting because we asked questions in this place about that issue in relation to Aboriginal people. We sought advice on the percentage of Aboriginal people enrolled. My colleague Hon Tjorn Sibma asked on 22 June about the enrolment rate of Indigenous people of voting age. He was told the population of Indigenous people of voting age was 71 456. At the time that question was asked, on 22 June, 52 942 were enrolled to vote. The estimated unenrolled population was 18 514. That is obviously a significant number of persons who are not enrolled to vote. My understanding is that the enrolment rate has gone up as a result of some of the work that was done by a range of groups in the lead-up to the referendum on the Indigenous Voice to Parliament, but when we look at the enrolment rate of regional people aged 18 years or over—I also did an analysis of that as part of my submission to Electoral Boundaries WA—as a general category, we see that according to the census, 80 121 persons from the electorate of North West Central are of voting age, but only 61 per cent of them are enrolled to vote. I think the enrolment rate in a general sense was lower than the enrolment rate for Indigenous populations. Given the parliamentary secretary talked about the most disadvantaged groups, why has the government not chosen to include people in regional and remote Western Australia as a category of disadvantage in the inclusivity provisions?

Hon MATTHEW SWINBOURN: The term “regional and remote”, as the member has used it, is not really well defined. If the member is saying regional is, for example, anything outside the metropolitan region scheme, it would include everyone who lives in Mandurah, Bunbury, Albany and the entire south west. He has used and cherry-picked particular areas. I note that North West Central has a significant Aboriginal population, and some of the people living in that area who are not enrolled are Aboriginal people, and they are included in this list here. It is the same for the Kimberley, Pilbara and Kalgoorlie electorates. We have had regard to that.

As I indicated to the member last week, there are provisions already in the act that help to deal with remote and regional people, including provisions on postal and remote voting, and those sorts of things. The member is obviously making a case for regional and remote people to be included in the inclusivity provisions. I accept that is the case that he is making. We have decided that, in our view, in the exercise of its functions in relation to enrolment and voting, the commission needs to give specific regard to Aboriginal persons, persons who are from culturally and linguistically diverse communities, persons with disability and persons who are homeless.

As I said, reasonable minds might add other categories to that. We could add people from the LGBTQIA+ community as well because they are, in large part, a group that is disadvantaged as well, but we have to draw the line somewhere, and we have drawn the line at the list in the bill.

Hon NEIL THOMSON: It is very commendable that consideration was given to disadvantaged groups. I go back to a comment the parliamentary secretary made about what we define as regional and remote. Maybe we could

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define that as the members of the electorate of North West Central, which would now include many of those persons whom the government has sought to include in the inclusivity provisions. As the parliamentary secretary rightly pointed out, many of them are Indigenous and probably some of them are homeless. I am sure there are LGBTIQ+ people in that community who are disadvantaged, along with a range of other categories. As a statistical group, one of the most disadvantaged groups is the people of North West Central, simply by the mere fact of living in North West Central, by the look of it, because of this very low engagement with our democratic process.

I must say that I am disappointed. I have spoken about this before. I am disappointed that the state has chosen to forge ahead with this. We will certainly find out in December when Electoral Boundaries WA finalises its report. We do know the full reasons. The state seems to have facilitated, through the changes to the Electoral Act that were rammed through Parliament in 2021, things that were not on the government's agenda but suddenly became on its agenda. I make the point that this inclusivity provision is just dressing up something that is the government's intent. It has been quite the opposite. The intent has been to exclude persons of Indigenous background in those regional and remote communities of the North West Central electorate, because they are potentially going to be included in the seat of midwest. The better way to bring about these inclusivity changes would have been to properly resource the Australian Electoral Commission to ensure that the enrolment rate was up and not at that horrendously low level of 61 per cent of the adult population, and retain representation for those people within a reasonable distance of their residences. Instead, we will potentially have one member representing an area that will have an adult population potentially well above the allowance under the Electoral Act but with the unfortunate circumstance that in the order of 60 per cent or so—65 or maybe 70 per cent, depending on how the boundaries fall—is enrolled.

My last question is: what analysis was done by the government, or was any serious analysis actually done at all, other than window-dressing by putting in these inclusivity provisions, to ensure that the provisions of this bill that is before us now could adequately respond to the incredible disadvantage faced by people in the North West Central and the Kimberley, where only 64 per cent of adults were enrolled? I believe that number might be closer to 68 per cent. Will that also apply to the seat of Pilbara, of which only 68 per cent of the adult population is enrolled? I believe that figure might be closer to 70 per cent. What analysis did the government do, if any at all, to ensure that the changes now being brought upon the community in those regions would in fact be sufficiently inclusive to ensure they have adequate representation?

Hon MATTHEW SWINBOURN: The bill we introduced will do a range of things that will assist the Electoral Commission to perform its functions, which will include to hopefully extend the franchise to as many people as possible, including the people of North West Central who live in the electorate currently.

Hon Neil Thomson: I don't believe you're serious about that.

Hon MATTHEW SWINBOURN: I beg your pardon?

Hon Neil Thomson: I don't believe you're serious about that.

Hon MATTHEW SWINBOURN: If the member is making an imputation, he needs to raise that as a substantive issue. He should not impute to my statements those things, and I ask him to withdraw.

Withdrawal of Remark

Hon NEIL THOMSON: I withdraw.

Committee Resumed

Hon BEN DAWKINS: I understand that this bill is largely about donations to political parties. On that basis, I have a question about the tax deductibility of political donations. I know from basic research that the Australian Electoral Commission verifies with the Australian Taxation Office, I suppose, that a party is registered and therefore donations to it are tax deductible. Is there an equivalent relationship or reporting requirement between the WA Electoral Commission and the ATO? Is there any communication with the commission about the tax deductibility of donations or the eligibility of political parties for tax-deductible donations?

Hon MATTHEW SWINBOURN: Tax deductibility is a commonwealth issue, not a state issue. In relation to what the bill proposes for the disclosure of donations and things of that kind, they will be available publicly to everybody, so if the Australian Taxation Office wishes to use that publicly available information to shore up its work, that is entirely a matter for the ATO.

Clause put and passed.

Clause 2: Commencement —

Hon MARTIN ALDRIDGE: I want to ask the parliamentary secretary a question that could probably be asked in other clauses of the bill, but I will deal with it at clause 2. Clause 2 has three paragraphs. Paragraph (a) is self-explanatory, as is paragraph (c). I am wondering why the relevant proposed sections in paragraph (b) have been grouped together. Is there a simple explanation for that?

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Hon MATTHEW SWINBOURN: Sorry, I was on the right track but I was confusing myself. The first part is that clause 3 of the bill, which will become section 3, states —

This Part amends the *Electoral Act 1907*.

It is simply a technical matter. Proposed sections 176, 177, 178 and 179 are all transitional provisions that will need to commence upon assent. They are included, essentially, because they are transitional provisions. Then, obviously, the rest of the act, which is the substantive reform, will come into effect on 1 July 2024.

Hon MARTIN ALDRIDGE: Thank you, parliamentary secretary, for that response. Proposed sections 176 to 179 are the transitional provisions that the parliamentary secretary just referred to. I am not sure whether or not this is related to those proposed sections, but I am interested in understanding how the issue of the expenditure caps in particular will be dealt with. The majority of the provisions in this bill will come into effect on 1 July 2024. Most government bills have a date fixed by proclamation. Here we have a hard-and-fast date, which is what the Legislative Council prefers. I want to understand whether expenditure for the expenditure caps will be captured prior to 1 July 2024 or even before today's date, because we are elected members who seek re-election and, as the parliamentary secretary is aware, our election-related return can span the four years since the previous election if that expenditure related to something that was, in effect, usefully utilised during the election period. I wonder what the transitional arrangements are in the context of clause 2 that might apply to this issue. Last year, I might have produced and paid for 100 corflutes that I intend to use during the election period. I assume they would form part of any expenditure cap that is applied. Can the parliamentary secretary clarify what is and what is not part of the expenditure cap?

Hon MATTHEW SWINBOURN: I am advised that all those proposed sections will commence on 1 July 2024 and that spending that has effectively occurred before that time will not be captured by that provision because of the lack of retrospectivity in the bill, including the spending from 1 July 2024 onwards until the bill is repealed or amended or whatever it might be. The member gave the example of buying 100 corflute signs that sat in his shed ready to go. That would not fall within the cap period because it commences from 1 July 2024. If the member bought another 100 signs on 2 July and he did not use them until the writs were issued, that expenditure would fall into that capped expenditure period. Does that make sense to the member?

Hon MARTIN ALDRIDGE: Yes, it does. I thank the parliamentary secretary. We are making some progress. I do not disagree with the way this clause is framed. If the government had allowed us to refer this bill to the Standing Committee on Legislation, it probably would have had an issue with retrospective application. That will not apply. What might happen now is that registered political parties that ordinarily preselect their candidates, perhaps in the early stages of next year, will effectively have an expenditure-free period until 1 July. They can knock themselves out and pre-purchase campaign-related materials that will fall outside the expenditure cap. That will apply only to the next election because subsequent general elections will be dealt with differently.

I want to clarify that if I buy 100 corflute signs from 1 July, and they are used during the relevant period relating to expenditure caps, we are currently dealing with the issue of writs to polling day.

Hon Matthew Swinbourn: To the close of polls.

Hon MARTIN ALDRIDGE: In the previous iteration of this bill under Minister Dawson, I think it was from 1 October to close of polls. Is that right?

Hon Matthew Swinbourn: Yes.

Hon MARTIN ALDRIDGE: Is my analysis of that circumstance correct?

Hon Matthew Swinbourn: Yes.

Clause put and passed.

Clause 3 put and passed.

Clause 4: Section 4 amended —

Hon BEN DAWKINS: In the interests of brevity and using our time efficiently, I have an amendment to this clause. Initially, I was going to allow members to speak to it; however, no-one wants to speak, so I will go straight to the amendment.

Hon Martin Aldridge: It is not up to you to give us the opportunity to speak. It is your call. You have the talking stick, member. Off you go.

Hon BEN DAWKINS: It is rather confusing to see the way the amendments appear on the supplementary notice paper. The first few amendments listed under clause 4 are ancillary to the main object. The main object of this amendment—I get some laughs from the chamber—is to lower the voting age in Western Australia to 16 years.

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My friend Hon Dr Brad Pettitt is not here at the moment. I know that is Greens policy. A similar amendment was introduced in the federal Parliament in the past. That is what I am attempting to do with this amendment.

The substantive amendment is to clause 15. Members can see quite simply that I am seeking to replace “18 years” with “16 years”. If it pleases the deputy chair, I will basically talk in those terms, even though the initial amendments to clause 4 are ancillary to that. Clause 4 really relates more to the need for the definition of “elected” to be deleted, attaining 18 years of age and people under the age of 18 years being silent electors. My motivation for these amendments is quite simple. I do not think it is up to us to necessarily determine who should get to vote in this state. By definition, those people are not here to speak for themselves.

Hon Martin Aldridge: Why don't you make it 14 then?

Hon BEN DAWKINS: That would be an argument, but very few 14-year-olds pay tax. I say to Hon Martin Aldridge that I am also led by one of my constituents in Margaret River. I spoke about this in my inaugural speech. Emma Heyink heads up the “Make It 16” campaign in Australia. We have reached out to Emma's office. The “Make It 16” campaign is about strengthening democracy. The website states —

Democracies thrive with broader participation. The expansion of voting rights, from men without property to women, Indigenous people, and those 18–21 in the 1970s, has consistently strengthened democracy. Granting voting rights to 16 and 17 year olds in Australian elections and referendums will bring about a similar positive impact.

My logic is evident but maybe not so much for others. The front page of *The West Australian* referred to this legislation potentially resulting in a 100 per cent pay rise to political parties and, based on the last election result, possibly a pay rise of \$3 million an election to the WA Labor Party. I think that is unfair for people who pay tax, which includes people as young as 16, if they are not allowed to vote. My uncle was involved in the federal Parliament back in the 1980s. He used to talk about the user-pays system. Under this system, the person who does not get to use it still pays. Young people who are paying tax are actually paying money to political parties, via this bill's electoral funding amendments, for a vote that they do not get to make. That is fundamentally unfair. I think it overrules any argument about the merits of young people versus old people and so on. Other parts of our law set out that young people are presumed to be competent, and aware of what is happening and of the decisions they make. I give an example. I think it might be the government's policy—I have not kept totally up to date with this—to raise the age of criminal responsibility to 15 years. By implication, we are saying that from the age of 15, people have an awareness of the implications of what they have done and they are able to make decisions. Effectively, we are sending those people to jail in some instances.

I am motivated to give the young people involved in the Make It 16 campaign a voice here today in the WA Parliament. The website states —

By 16 we can work full time, pay income tax, serve in the army, drive a car, get married and be charged with criminal offences. We have the right and the capacity to be heard, to shape policies that affect our lives, and to be an integral part of our democracy.

I am persuaded by that. I wish my friend from the Greens was here because I know this is Greens policy. I am mindful of the fact that I have been told in a roundabout way not to take up too much of the committee's time due to the impending holidays and so on. I have spoken about Emma. This is a substantive thing that we can do for young people. I said in my inaugural speech that young people are unrepresented in this house and in the other place. Obviously, it was great when Magenta Marshall was elected to Parliament; I understand that she is the only member under 30 years of age in both houses. I say to the government that rather than doing what I would call “virtue signalling” and seeking to make substantive change for minority groups—I know Hon Dan Caddy is now an advocate for the housewives of Dalkeith after his member's statement the other night—and instead of paying lip-service to things, let us make a substantive change for people in our community who are making requests of us. They cannot vote on it because they do not get a vote. They cannot even vote about you, so someone has to speak up for them, and that is what I am trying to do today. I will simply say that I believe that it is unjust that young people will effectively be charged twice the amount of tax towards the major political parties. I found those documents for the parliamentary secretary. I know he told me that he would print them off the internet for me, but I was able to get them.

Hon Matthew Swinbourn: That's not what I said.

Hon BEN DAWKINS: I am not criticising the parliamentary secretary. I am saying that he was quite right when he said that they are available publicly. I seek leave to table the document.

[Leave granted. See paper [2816](#).]

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The DEPUTY CHAIR (Hon Stephen Pratt): Member, you have tabled the document, so can you give it to the clerk.

Hon BEN DAWKINS: The document refers to the electoral funding to political parties at the last Western Australian election in 2021 and shows that \$3.3 million went to the Labor Party. Perhaps it will not get as many votes in the next election, but it will get something in the ballpark. With the doubling of the per vote rate from \$2-something to \$4-something, we can expect that figure to go up towards —

The DEPUTY CHAIR: Order, member! I remind the member on his feet that we are currently on clause 4. If the member would like to make further remarks relating to his amendment, he should perhaps consider moving that amendment. To be of some assistance, the member said that the supplementary notice paper can be quite confusing to follow. Under standing order 132(b), a member may seek, by leave, to move “amendments in any one or more clauses or schedules” at the one time in the one question. The member will need to indicate the amendments that he is moving en bloc.

Hon BEN DAWKINS: That makes perfect sense, deputy chair. I seek leave to move amendments 2/4, 3/4 and 4/15 in one question.

Hon BEN DAWKINS — by leave: I move —

Page 5, lines 24 to 27 — To delete the lines.

Page 10, lines 22 and 23 — To delete “A person who is enrolled under section 17AA(1) is taken, under section 17AA(2)(c),” and insert —

An elector who has not attained 18 years of age is taken, under section 51BA,

Page 23, after line 2 — To insert —

(aa) in paragraph (b) delete “18 years” and insert:

16 years

The only complication with that is —

Hon Matthew Swinbourn: You have achieved what you wanted to achieve.

Hon BEN DAWKINS: I thank the parliamentary secretary for his unsolicited advice. I was trying to explain that that would also make them a silent elector, but I suppose that is probably not controversial so it is okay to include them in this batch of amendments. As I was going to say, it was \$3.3 million for the Labor Party at the last election and it might be \$7 million next time.

Hon MATTHEW SWINBOURN: I note that these things have now been put together. I will give a response to the general issue. I will give a global response but I do not intend to give a government response to every amendment that might relate to lowering the voting age to 16 years. The arguments about expanding the franchise to 16 and 17 year olds are not without their merits. To be frank, of all the amendments that Hon Ben Dawkins has put on the supplementary notice paper, this is the most meritorious. However, the government is not seeking to do this at this time. It is not our intention to lower the voting age. We have not indicated that that is something we have contemplation in doing. Of course, I strongly encourage any of the 16 or 17-year-olds to whom the member referred who are very interested in the political process and in our democratic institutions to engage as much as they possibly can, and that might include, for example, joining a political party when they reach 16 years of age. I am sure that most, but not all, political parties accept members at 16 and 17 years of age. They can join those political parties and be involved with elections. At election time, they can turn up and hand out how-to-vote cards if they choose to do so. They can attend branch meetings and discuss the politics of the day and all those sorts of things. That is entirely within the capacity of 16 and 17-year-olds.

The member raised the issue of taxation. I note as a matter of clarification that other members of our broad community pay tax and do not get to vote, and 16 and 17-year-olds are probably not the most aggrieved of that category. Permanent residents do not get to vote, unless they fall into a very special class of permanent residents who were here before some of the compulsions about becoming a citizen and voting were introduced. That has become a small and diminishing group over time. The vast majority of permanent residents do not get to participate but they still pay tax and those sorts of things. Although the member’s argument about 16-year-olds is not without merit, we are not supporting his amendments.

Hon BEN DAWKINS: I take that as a great win. I am grateful to the parliamentary secretary for acknowledging the merits, however characterised, that may have been hidden within these amendments. I simply make the point that it is the increased amount of tax that individuals, including 16-year-olds, will have to pay in order to meet this figure. It was \$3.3 million for the Labor Party at the last election and it is likely to be \$7 million at the next election. It is that increase that will trigger the requirement that 16-year-olds be allowed to vote because they will be asked to pay double the amount for something they will not be able to use.

Amendments put and negatived.

Clause put and passed.

Clauses 5 to 9 put and passed.

Clause 10: Section 5I inserted —

Hon TJORN SIBMA: I will be brief, noting that my colleague Hon Neil Thomson addressed some related matters during the clause 1 debate. As it appears in the bill, the inclusivity principle infers, possibly reasonably, that the classes of individuals identified in serials (a) through to (d) have not been given a reasonable opportunity to enrol and vote and the inclusivity principles effectively attempt to remedy that situation. Is it possible for the parliamentary secretary to give an indication of the levels of enrolment or unenrolment—these might be estimates—that pertain to Aboriginal persons, persons from culturally and linguistically diverse communities, persons with disability and persons who are homeless? I note that in relation to groups (b) and (c), I did not come into this chamber seized by the fact there is significant under-enrolment of those two groups compared with the rest of population, particularly serial (b), persons from culturally and linguistically diverse communities. I and many other members, probably including the parliamentary secretary, have occasion to attend citizenship ceremonies. Indeed, a feature of citizenship ceremonies that I have observed, particularly in the last two or three years and particularly in advance of a state or federal election, is that officers, volunteers or whomever from the Australian Electoral Commission actively enrol people at the point at which their citizenship becomes active. I am particularly interested in group (b). Can the minister give an indication of whether unenrolment or under-enrolment of that group can be quantified?

Hon MATTHEW SWINBOURN: We do not have enrolment figures for (b), (c) and (d). There are figures for (a), and I think Hon Neil Thomson asked a question about that. I do not have any up-to-date figures at the table; it is certainly something we can provide the member behind the chair or at a later time if it comes to us while we are still debating this. We are happy to provide that information, although I believe it came from the Australian Electoral Commission in the first place, so that may be the source. I am told that it is only an estimate, so the member can let me know if he needs that further information. We do not have it at the table right now. That is the only category of those four for which enrolment data is kept, so we can identify that. I make the point about the broader clause that, yes, it is about enrolling, but it is also about all the other activities. Proposed section 5I(2) states —

The Electoral Commissioner and Deputy Electoral Commissioner must have regard to the inclusivity principle when performing a function under this Act.

That function might extend, for example, to the selection of polling places. Obviously, access is an issue for people with disabilities, so we want one of the issues at the forefront of the Electoral Commissioner's mind to be having regard to the needs of people with a disability when selecting the many, many polling places that the Electoral Commissioner has to pick. I think the member's opening statement was to the effect that there has not in the past been a reasonable opportunity for those things to happen. That is not the case; it is just that we, as the government—and hopefully this chamber, as the legislature—want to give prominence to issues of disadvantage in terms of how those people get to participate. If we think about culturally and linguistically diverse people as well, in terms of the functions on polling day, some relevant issues might relate to customary practices. For example, contact between men and women might be an issue for some CALD groups; obviously language is a primary one, and making sure that information is provided in other languages, and things of that kind. The issues for homeless people are, I think, quite self-explanatory in terms of how the commission might ensure that it engages with stakeholder groups that represent homeless people to ensure that they are included in the broader franchise.

I hope that provides further context. It is not just about the enrolment part because, like the member, I have seen the Australian Electoral Commission at citizenship ceremonies—I am not sure whether the Western Australian Electoral Commission has the resources to do this—sitting there, enrolling people. We get the benefit of that, because that information and data is passed on to us.

Hon TJORN SIBMA: I thank the parliamentary secretary. I am happy to accept any information he might be able to furnish me with behind the chair. To some degree he has pre-empted my next question, which was to be my last question on this: in practical terms, how will the commission seek to apply this new principle? However, I might focus on (c), persons with disability, for example. I absolutely accept that there are problems, particularly during pre-poll and early voting. This might be a consequence of having to take on a short-term lease on the terms as a price-taker, not a price-maker. There have been some particularly egregious near-misses that I have observed—I would not be alone in this chamber in that regard—with movement-impaired people and the interaction of cars parking and moving in and out adjacent to a point of entry. Will this provision provide the commission with some scope or additional foresight when it comes to effectively pre-booking the leases for those areas? I suppose this is a question that could be taken behind the chair. At what stage will the Electoral Commission determine which venues it will choose for pre-polling and polling day, and what negotiations will it enter into with landowners in relation to meeting the inclusivity principles?

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Hon MATTHEW SWINBOURN: I am advised that the negotiations the member is talking about will start in January and February next year. I will say with regard to the inclusivity principles that I do not think people have any major concerns about what we are trying to achieve. The practicality is that it is not going to solve all the issues that people in those groups have in terms of accessing our democratic processes. The commission will do its best, and has done its best to date. Obviously, there is more force now, because the legislation places a stronger emphasis on that. However, as the member said, the commissioner is a price-taker when it comes to negotiations, but the commissioner is not a property developer, either; he cannot just say, “Let’s build purpose-built facilities for a four-year election cycle.” Whilst we want to see improvement as a result of this, the member and I will still receive complaints from people in those groups, at times, that their needs are not being met. I am sure the commissioner will encourage us to engage with him when those issues arise, but we cannot meet everyone’s needs in that regard.

Hon Tjorn Sibma: By interjection, completely understood, and there’s going to have to be trade-offs.

Clause put and passed.

Clauses 11 to 14 put and passed.

Clause 15: Section 17 amended —

Hon MARTIN ALDRIDGE: Clause 15 is, I think, the main provision that allows for a person who has lived in a district for more than one month on the day that they intend to vote in an election, but is not enrolled for that district, to enrol and to vote. Was this a government initiative or a commission initiative? That might be my first question. My second question is: How big is this problem? Does the commission have some data from the last election about the prevalence of this issue?

Hon MATTHEW SWINBOURN: It was at the initiative of the commission. We do not have statistics to indicate the size of the problem in that regard, but I am told that it is a real problem. The worst district of all the districts is, would you believe, Victoria Park; one would probably not have suggested it would be that one. But I am happy to give the member an undertaking to provide data, because data is available; we just will not have it until a later time. If I have it before we finish dealing with the bill, I will give it to the member then, but if not, I will provide it to him behind the chair. I am happy to table it in the Parliament as well, if that is what the member wants.

Hon Martin Aldridge: No.

Hon MATTHEW SWINBOURN: It is okay not to? Just behind the chair?

Hon Martin Aldridge: Yes, that is fine.

The DEPUTY CHAIR (Hon Steve Martin): Hon Martin Aldridge.

Hon MARTIN ALDRIDGE: Section 17 of the Electoral Act is titled, “Who is entitled to be enrolled and vote”. The one-month principle is already established in section 17. I assume that is the ordinary process for someone to enrol or change their enrolment when their address changes. Are we here simply providing the mechanism for that to occur after the rolls have closed? I think what is being talked about is election day.

Hon Matthew Swinbourn: By way of interjection, yes.

Hon MARTIN ALDRIDGE: Okay. The emphasis has been on election day, but can it be on any day following the closure of rolls?

Hon MATTHEW SWINBOURN: It is on any day on which voting can occur, so that would include mobile voting and pre-polling, and then, of course, on election day itself.

Hon MARTIN ALDRIDGE: If somebody were to do this on election day and vote, would it be a provisional vote?

Hon Matthew Swinbourn: Yes.

Clause put and passed.

Clauses 16 to 45 put and passed.

Clause 46: Section 56 amended —

Hon MARTIN ALDRIDGE: I hope the government will honour its commitment that we will rise the moment we pass this bill today. It might even be early, deputy chair, but I do not want to say much more than that at the moment, because we still have some way to go.

Clause 46 seeks to amend section 56 of the act. I have a brief question on this clause. This proposed section will be headed —

Registrar of Births, Deaths and Marriages to notify Electoral Commissioner of deaths in State

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The parliamentary secretary might recall that at clause 1 we had an exchange about data sources, and I think the parliamentary secretary raised two relevant data sources, being ServiceWA and the Department of Transport, and I said, “What about births, deaths and marriages?” I think the answer I got was that that is a matter we ingest from the commonwealth roll. What is the relevance of this provision if it is indeed the case that we rely on the commonwealth to ingest this information on births, deaths and marriages, and we simply roll it into our register?

Hon MATTHEW SWINBOURN: I recall part of the exchange we had. It is probably better to provide some additional clarity to the member about what that is. The advice is that the different births, deaths and marriages registries in each jurisdiction send that information to a sort of clearing house, which the Australian Electoral Commission manages, and then that information is sent back out to the relevant jurisdictions. Our state commission then uses its powers here to crosscheck that information on births, deaths and marriages that comes back and make sure that our information is correct. The mechanism here is one of crosschecking. It is a bit of a complicated process, but it is about the veracity of the roll and ensuring that things are as correct as possible.

Clause put and passed.

Clauses 47 to 51 put and passed.

Clause 52: Section 62C amended —

Hon BEN DAWKINS — by leave: I move —

Page 67, after line 13 — To insert —

(2) In section 62C(1) insert:

democratic endorsement principle means the constitution of the eligible political party must provide the endorsement of a party member to stand as a candidate following a plebiscite of party members in the particular division, district, electorate or state, excepting where the party member to be endorsed is —

- (a) a sitting member; or
- (b) has applied to be endorsed but is the only member of that party to apply for endorsement (is unopposed); and

for a member of a political party to be entitled to apply for endorsement via a plebiscite of members, a political party may —

- (a) require the member to have been a member of the eligible political party for a minimum period;
- (b) disqualify from participating in the process of endorsement by plebiscite any member who is not a fit and proper person as set out in the relevant sections of the *Electoral Act 1907*, the *Electoral Regulations 1996*, the *Constitution Acts Amendment Act 1899* and the *Public Sector Management Act 1994*; and
- (c) require their member to make party specific undertakings as the party may see fit.

Page 67, lines 14 to 22 — To delete the lines and insert —

- (3) In section 62C(1) in the definition of *eligible political party* delete “that has at least 500 members who are electors and that has a constitution that specifies as one of its objects or activities the promotion of the election to the Parliament of the State of a candidate or candidates endorsed by it;” and insert:

that —

- (a) has at least 500 members who are electors; and
- (b) has a constitution that specifies as 1 of its objects or activities the promotion of the election to the Parliament of the State of a candidate or candidates endorsed by it; and
- (c) has a constitution that complies with the democratic endorsement principle for candidates.

If I could talk to that, there is a slight complication in that proposed amendment 74/52 has replaced what I previously had on the supplementary notice paper about the very intriguing issue of the incorporation of political parties. That has now been replaced by this proposed amendment. If there are any members to my right, or, for that matter, anywhere in the chamber, who want to talk about incorporation, they can come to me. But to save us time, and instead of trying to get incorporation put back in, I will talk about the amendment as it is now.

I move the amendments in my name.

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The DEPUTY CHAIR (Hon Steve Martin): The question is that the words to be inserted be inserted. To be clear, I am referring to proposed amendment 14/52, although we are dealing with the proposed amendments at the same time.

Hon BEN DAWKINS: Thank you, deputy chair. I will be brief; I have already discussed this principle in other parts of the debate on clause 1. Hon Martin Aldridge knows what I am proposing. All this proposed amendment does is refer to the eligible political parties for the increased funding. I have already spoken about the figures there for the increased funding for political parties. This was on the front page of *The West Australian*. There will be a 100 per cent pay rise for political parties. This article, which was behind the front page, also refers to that issue. The article is dated 14 November 2023. I seek leave to table this article.

[Leave granted. See paper [2817](#).]

Hon BEN DAWKINS: What I noticed in this article, regarding the principle that I am talking about, is that Hon John Quigley talks about increased transparency coming at a big cost. There is a transaction, a social contract or, as the article suggests, a near doubling of taxpayer-funded reimbursements made to political parties, and we need to get something in return. This is the principle that John Quigley is talking about. That is the principle I am seeking to enforce in my proposed amendments. The second page of this article states —

Underpinning the overhaul—characterised by Mr Quigley as delivering on a commitment to “transparency, integrity and accountability”—is a massive increase to electoral reimbursements.

The people should be getting something for that. The best way of doing that is by making it mandatory for recipients of increased electoral funding to incorporate. Hon Sue Ellery already assisted here —

Hon Martin Aldridge: That’s not what your amendment says.

Hon BEN DAWKINS: I tried to explain that; there has been an error. For the interest of brevity —

Hon Martin Aldridge: Your amendment is about democratic endorsement principles, not about incorporation.

Hon BEN DAWKINS: I tried to explain that and I just spoke to the clerks about it. I had proposed the democratic endorsement principle as something that could be suggested if incorporation did not succeed. Instead of that happening—I am not blaming anyone—the clerks just deleted the incorporation idea. I am speaking about them both at once.

Hon Martin Aldridge: But you have to speak to the motion you moved; you can’t speak to something that isn’t specified.

Hon Sue Ellery: Just speak about what is in front of us.

Hon BEN DAWKINS: Okay.

The DEPUTY CHAIR (Hon Steve Martin): Members, I think Hon Ben Dawkins is doing his best to explain the process, but, member, there are two amendments in your name in front of you and I would ask you to contain your remarks to the amendments in front of us.

Hon BEN DAWKINS: I will not be specific at this point about incorporation versus the “democratic endorsement principles” but I will address both and speak about why I believe that if a party will get funding, it should provide a copy of its constitution, be that incorporation or addressing what I call the democratic endorsement principles. I believe that is the trade-off, the social contract that political parties should deliver to the electors: that it will behave in a certain way. That is the principle I am talking about. Why give a pay rise to an organisation if it does not deliver something in return? It is the principle of public funding and part of what I thought I was going to be doing if I were elected to this place, to look at public administration, accountability and a return on public funds. That is why the definition of eligible political party needs to be changed. Implied within my amendment is a return that is needed for the people of Western Australia. When I first spoke to—I will not say who—members of this place in 2020, I was encouraged that what we do in the upper house is look at public administration and a return on taxpayers’ funds.

As I was saying before, this relates to incorporation, if members can bear with me for a bit longer. On 7 November, I asked Hon Sue Ellery why the minister, the government, the Department of Commerce or whatever the body is requires the Women’s Grants for a Stronger Future 2023 recipients to be incorporated. The answer was that —

The DEPUTY CHAIR: Sorry, honourable member. I am going to have to take you back to the amendments that you have put in your name. The clause 1 debate has finished. We are dealing with very specific clauses. Your amendments, please.

Hon BEN DAWKINS: I will not talk any more about incorporation because it has been deleted from the supplementary notice paper and I cannot do that anymore. Thank you, deputy chair. I will not talk about incorporation. It has been deleted, so I will talk about the second option that is on the supplementary notice paper, which is the democratic

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endorsement principle, and I will abandon incorporation. The chamber knows my views on it. I have been asked to make out that case and I will not talk about it anymore. It is the subject of a private member's bill, so forget about that.

The democratic endorsement principle, which is the subject of this amendment—I will no longer try to cover two in one—is about why we would fund a party that does not have democracy at its core when electing candidates for this place. The parliamentary secretary said to me the other day, “If you don't like how a political party preselects its candidates, join another party.” I do not think that is acceptable. With this amount of funding I believe that political parties are effectively public institutions and should have internal democracy. I am well versed on this issue and I can talk about it. I know that it entertains some people and others not so much when I talk about Labor Party preselections, but the point is that people like Hayley Edwards, who ran for the seat of Rockingham recently—as much as I admire Magenta Marshall—have been excluded from participating in a plebiscite of members, as have people with great support from within the community. This continues to happen, particularly in the Labor Party whilst we put no demands on it in terms of incorporation or something such as the democratic endorsement principle. All I am saying is let us have a plebiscite of members. If the party is going to take public funds, it should get its house in order. People are to be endorsed for this place, the other place and the place in Canberra if the members vote via a plebiscite. That would be under this amendment. It may well be fairly elaborate wording with the democratic endorsement principle, but the act already talks about endorsing candidates. That is what we are paying the political parties to do. That is what the taxpayer wants. That is what members of political parties want. They want to vote for who goes through as the candidate.

As far as I am aware, the last member vote for the Labor Party was in 2012 for the seat of Tangney. I do not know, and I am happy to be corrected, who in this house in the Labor Party was brought to this place or endorsed via a plebiscite of members, because the administration committee manages to circumvent that and simply eliminate anyone who is not endorsed by a particular union. That is all—I am just calling for some internal democracy. If we are paying that money, it is a fair thing for taxpayers and our children to have. We should insist. We do it for other grant recipients, other people who are publicly funded. They have to operate with internal democracy. Bowling clubs do it. Why can we not do it with this? I do not think we pay anyone anywhere near as much money as this in Australia. I would say that the WA Labor Party is the largest unincorporated recipient of public funds in Australia.

I thank members for their time and I simply refer them to this rather elaborately worded democratic endorsement principle, which I refer to via these two amendments.

The DEPUTY CHAIR: Hon Ben Dawkins.

Hon BEN DAWKINS: I say that these principles have to go into this bill in return for the increased funding so that there can be internal democracy. The role of political parties in our democracy is misunderstood, and it is actually huge. If people do not get a vote on who is endorsed by a political party, effectively, they do not get a vote, or their vote is much more compromised during an election. There should be two votes: one vote that is endorsed by a political party, especially the major political parties, and a second vote at the general election. Both go hand in hand if democracy is to be improved in this state.

I will not say any more. I do not know whether there is any interest for either of these amendments. It has been made clear to me that there is a limited appetite to delay our Christmas holidays or anything like that, so I will limit my remarks to saying that the democratic endorsement principle is set out in my amendment at 14/5. It goes hand in hand with my amendment at 47/52 in that it would change what is required from political parties before the taxpayers put their hand in their pocket and subsidise the activities of political parties.

Amendments put and negated.

Clause put and passed.

Clauses 53 to 60 put and passed.

Clause 61: Section 70 replaced —

Hon MATTHEW SWINBOURN: I have an amendment in my name on the supplementary notice paper at 1/61. I move —

Page 71, line 21 — To delete “Friday” and insert:

Thursday

This amendment proposes to bring forward the close of nominations in a periodic election by one day from the second Friday following the issue of the writs to the second Thursday. This will have the corresponding effect of bringing forward the commencement of the registration period for how-to-vote cards, which begins on the day after the close of nominations. This amendment will address some concerns that were raised with us about the

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requirement to register how-to-vote cards causing delays because of getting them printed and transported in time for the commencement of early voting. That is what we are trying to achieve here.

Hon MARTIN ALDRIDGE: This is one of a growing list of government amendments, which I am sure we will get to in good time. The parliamentary secretary just said that this was based on some concerns or that the matter was effectively raised and the government responded. Who raised the concerns about the registration and the how-to-vote cards period that has resulted in this extension?

Hon MATTHEW SWINBOURN: It was raised during the briefings. To the best of my recollection, it was raised in the first briefing we provided to opposition members about the time frame. I cannot recall whether that was a specific issue raised at the briefing we provided to the member and others who involved themselves in it, although I thought some matters were raised about this. That is, essentially, the foundation of why we have now made the amendment to take into account the concerns that were raised with us about the turnaround time for the close of nominations and the process of starting to get those how-to-vote cards submitted to the Electoral Commission and for it to vet and approve them or otherwise and get them back to the candidates of the political parties.

Hon MARTIN ALDRIDGE: Given that the government consulted with only two entities—the Electoral Commission and the Labor Party —

Hon Matthew Swinbourn: We consulted with other electoral commissions, but obviously not in relation to what we may have done for this. Anyway, I will make my point later.

Hon MARTIN ALDRIDGE: I take the parliamentary secretary's point. Is it fair to say that the commission was happy with the Friday and in meeting its obligations for the registration of how-to-vote cards but that at subsequent briefings with political parties and others concerns were expressed about the ability of the commission to discharge this function? I share that concern and I think others do, too. The commission was comfortable with Friday but we are erring on the side of caution by going with Thursday. Is that what we are doing?

Hon MATTHEW SWINBOURN: I am sticking to my papers! The member's summary is fair. Essentially, the commission was comfortable with the Friday; however, the concerns raised were taken on board and we have stepped it back to the Thursday.

Hon MARTIN ALDRIDGE: My last question is: what will be the period of time now? Actually, I just thought of another question. The political party nominations will close a day earlier. I assume that will mean the Wednesday and that the final close of nominations will be Thursday for individual candidates and other ratbags. How many days will there be until, effectively, a how-to-vote card would be in use? Effectively, when will voting of some form commence after the Wednesday or Thursday?

The DEPUTY CHAIR (Hon Steve Martin): Parliamentary secretary, take your socks off and count!

Hon MATTHEW SWINBOURN: We have enough fingers at the table and have managed to count it out, although for Collingwood supporters that might not have been the case!

I am advised that it will be 10 full days. It is not 10 business days, but 10 calendar days, to answer the member's question.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 62 to 77 put and passed.

Clause 78: Section 88 amended —

Hon MATTHEW SWINBOURN: There is an amendment in my name on this clause. I move —

Page 97, lines 1 to 6 — To delete the lines and insert:

- (j) in paragraph (c) delete “or deputy returning officer, who shall forthwith,” and insert:
for the whole of State electorate or returning officer for a district who must,

This will remove at proposed section 78(2)(c) the reference to a “deputy returning officer”. References to “deputy returning officer” were removed elsewhere in the legislation, but this one was omitted. The concept of a deputy returning officer has been replaced with a reference to a returning officer for each district. To put it bluntly, this is just one that slipped through, and Parliamentary Counsel's Office identified it when reviewing the drafting. We are trying to tidy this up. It will have no substantive effect on the bill. It will just clean it up.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 79: Part IV Division 2A inserted —

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Hon TJORN SIBMA: The parliamentary secretary might have to refresh my memory. In answer to a question on his second reading speech, I believe the parliamentary secretary in his second reading reply speech indicated that the introduction of a new division 2A, which effectively relates to the registration of how-to-vote cards, is a concept that originated from the government rather than the Western Australian Electoral Commission.

Hon Matthew Swinbourn: That is correct.

Hon TJORN SIBMA: Splendid. What problem does the government intend to fix here? What has necessitated the introduction of this new regimen involving the registration of how-to-vote cards? It is something that has not been conducted before during a state general election in Western Australia. What problem is it purporting to fix?

Hon MATTHEW SWINBOURN: The mischief we are trying to deal with here is essentially the capacity for how-to-vote cards to be misleading, contain false information and things of that kind. How-to-vote cards are taken into polling booths, which is within a controlled, or what I would describe as a special, place. This is an exercise not only of individual voter power, in the sense people can take how-to-vote cards in there for their own purposes, but they are also on display for others in there as well. We do not want the individual voter who has a how-to-vote card to be misled by anything that is printed on the how-to-vote card. We do not want how-to-vote cards to be issued by people purporting to be a political party when they have not been issued by a political party. There is the possibility that people, in an attempt to mislead, might put out a how-to-vote card that for all intents and purposes looks like another party's how-to-vote card. It may contain misleading statements and things of that kind. Although we do not necessarily have evidence of it happening here in Western Australia, I think there have been instances of it happening in other jurisdictions. We are proactively trying to avoid this mischief by putting in place a regime to hopefully limit the possibility of people being misled by other people's misinformation and malicious activities with how-to-vote cards.

Hon TJORN SIBMA: The parliamentary secretary in his answer effectively referred to a global phenomenon.

Hon Matthew Swinbourn: I think that was in my second reading speech.

Hon TJORN SIBMA: It was in the second reading speech. I want to establish whether it is a recognised global phenomenon that voters face increasing misinformation and deliberate disinformation during election campaigns. However, the government or the Electoral Commission is unaware of any recent examples of misinformation or disinformation conveyed by a how-to-vote card during a Western Australian state election. Is my appreciation of that fact correct?

Hon MATTHEW SWINBOURN: During the clause 1 debate, I think I conceded the point that the member has just raised again. The commission provided advice to me that there have been times when the commissioner—whether it is the current or a previous one—or the commission has asked political parties to correct how-to-vote cards because they have included incorrect information on how to vote. There has been an element of that. I think that has sometimes been more inadvertent than deliberate, but we are trying to avoid the deliberate intent of a person to mislead a voter by way of a how-to-vote card. We are aware of examples of this happening in other jurisdictions, but do we have a recent example? No, not one that I can provide.

Hon TJORN SIBMA: This is a substantive clause, and I understand other members have an interest in it. While we are on this thread, I think it is important to ask: would it be reasonable to form the view that introducing this new measure to register how-to-vote cards prior to their distribution represents, in some form, a burden or obstacle to free political expression and communication?

Hon MATTHEW SWINBOURN: The way the member characterised it, I think it could be argued by some that it would create a burden on the implied freedom of political communication, probably at two levels. Firstly, the process in and of itself. Secondly, if the commissioner makes a decision not to approve a how-to-vote card, it would create an offence for a person who subsequently distributes that. Whether that is a permissible incursion onto that implied freedom will be a matter determined by taking into account all the circumstances; for example, whether it is reasonable and those sorts of things. This scheme has been established in other states. I also add that is already an offence under the Electoral Act. Section 191A, "Misleading or deceptive publication etc." states —

A person shall not, during the relevant period in relation to an election, print, publish or distribute, or cause, permit or authorise to be printed, published or distributed, any matter or thing that is likely to mislead or deceive an elector in relation to the casting of the elector's vote.

That regime already exists in the current scheme. We are not creating a new obligation to not mislead. It is a process for the registration and vetting of how-to-vote cards to try to make sure that does not happen in advance. It is a prospective. Somebody has to engage in the misleading or deceiving behaviour to have committed the offence. If I can put it this way, we are trying to get in front a little bit by asking political parties. Overwhelmingly, candidates and political parties will engage in this process in good faith, with a view to making sure that their how-to-vote

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cards are good and proper and they have the commission's imprimatur placed on them, and they then move on. What will become more apparent though is when the member and I are at a polling station and we see a person distributing a card that clearly has not been approved by the commission because there will be evidential foundation. Hon Tjorn Sibma and I will collect them—one of them at least—and then say that was the person who was distributing them for the prosecution of that person, even to the extent, say, for example, it is being done at a pre-polling station for people to possibly take injunctive relief to stop someone from engaging in that kind of behaviour. There is obviously a spectrum of behaviours here from the very, very minor—someone might put a “u” in Labor and that would upset me because I think we should stick with the traditional spelling—to someone who is absolutely going out of their way to spread disinformation and misinformation with capricious intent to the process, which could, in fact, undermine an election process if it were significant enough. I hope that provides a broader context for what we are doing here.

Hon TJORN SIBMA: It is a very useful conversation to have and the parliamentary secretary introduced some interesting comparisons that I was not originally intending to inquire into, but I think it is worthwhile having as comprehensive a conversation around this as is possible because, indeed, a burden will be imposed on the constitutionally implied freedom of political communication by introducing, effectively, a step before a political communication is permitted. That is a material change and quite a substantial change. The parliamentary secretary knows that I am not a lawyer, but being interested in these matters, it is a clearly established principle that the burden or onus of proof is upon the government, effectively, to demonstrate that its legislative response is appropriate, proportionate and the like. One of the possible impediments to the Western Australian government being able to demonstrate that is that, first of all, it is proceeding on the basis of no evidence or no case examples in its own jurisdiction. One might make the observation that there is a potential for anything to happen, but there is no risk assessment, really, in a Western Australian context to say that this is a clear and present threat to the polity or representative government in this jurisdiction.

Might I then seek to clarify a little better, to determine whether or not this is a proportionate response, what specific vector or threshold of threat does the government anticipate? Is it in the realm, for example, of increasing misinformation or is deliberate disinformation a greater threat and a greater likelihood of manifesting itself in one form? Is it also the case that the origin of potential misdeeds or misbehaviour of the like that the bill anticipates is likely to originate from a person engaged in a political contest, either a registered political party or a candidate standing at that election, or is it more likely to originate from a third-party campaigner who has a vested interest of some kind in the failure or success of certain candidates and the overall electoral outcome? Is it contingent upon the potential interests of others within the broader Australian polity, but not Western Australia, or from an overseas actor? I am trying to establish whether, if the chamber is to form a view that this is an incursion—it is an incursion of a kind—into the implied constitutional freedom of political communication, we can be a little bit more precise about the nature of the actor or the nature of the threat that this measure is likely to remediate.

Hon MATTHEW SWINBOURN: It is kind of all of the above with the member having given that list. It is not really one thing that we can nail down and say that this is the most obvious entity because issues in politics and the political process ebb and flow depending on what is happening in the broader global context and things of that kind. What might be the most pressing issue at a particular election this time around may be very different. If we go back over time and look at the names of the different political parties that have run at different elections, we can always get a flavour of the pressing populist issue of the day, if I can put it that way. But we also to give regard to the fact that we have had a rapid growth in the use of social media and the ability of social media to spread disinformation and misinformation about elections, candidates, voting processes and things of that kind. We as the small Western Australian jurisdiction do not necessarily have the capacity to stop the Xs—which was formerly Twitter—Facebooks, Snapchats, Instagrams, TikToks or whatever the kids are on today because a lot of those platforms are hosted outside of our jurisdiction. However, this provision will protect the authenticity of political parties' how-to-vote cards due to the cards being formally endorsed by the Electoral Commission. I think people will start to see it as a virtue because they will see that this card is hosted on the Western Australian Electoral Commission's website. For example, in the case of the Liberal Party, its socials might say that if they want to support Hon Tjorn Sibma in the northern metropolitan seat that he has yet to identify that he wishes to run for in the Assembly —

Hon Tjorn Sibma: I'll stay here and keep you company!

Hon MATTHEW SWINBOURN: I would be very grateful for that. I do enjoy your company! If people want to vote for whichever hypothetical candidate, the socials will say “Follow this link to the Western Australian Electoral Commission's webpage” because it will host it on there and that information will be there. Although the member is taking it from the burden and the delay that might happen and the necessity of this, I think that although there will always be issues with process in terms of how quickly the commission does it or does not do it and people saying it favoured him or her over them, at the end of the day we will see the official seal on a group of how-to-vote

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cards and it will be a big part of the commission's webpage. It will have to have the infrastructure in place to support that, but, as I said, that is also where we are coming from.

Hon TJORN SIBMA: I would infer from not only that answer but the answers leading up to it that the provisions in the statute for ensuring that nothing misleading is conveyed in the course of a political context already exist under the Electoral Act. Would it be fair for us to assume that the powers or the capacities that the commission holds presently in relation to misinformation or disinformation that are broadly described are, presently speaking, inadequate to deal with what the government kind of anticipates but cannot fully describe may be the threat that imposes itself on the conduct of future elections, which would therefore require the introduction of this new measure?

Hon MATTHEW SWINBOURN: As I indicated earlier, this has come from the government. I will not put words in the mouth of the commission and say that the current provisions are inadequate. But the commission sees the virtue of what we are proposing to do here. It is what is happening or has happened in other jurisdictions. I think Victoria and Queensland, if I am not mistaken, have provisions of this kind. I think there is a trend in electoral reform for these kinds of measures to be put in place to address that. It is not designed to curtail the genuine, robust and open political communication that people are entitled to engage in in a democracy; it is designed to protect people from what is, in our view, disinformation and misinformation. Advocates for free speech will argue about where that sits. We think, in this instance, that it is a process for the registration and approval of how-to-vote cards—not for the order in which people are put, unless that is misleading because people are encouraging people to vote 1, 2, 3, 4, miss 5 and 6, and then 7, which would make the vote invalid. The commission is not interested in who puts what in which order, but what might accompany that and how it might mislead or deceive a voter during an election.

Hon TJORN SIBMA: Sorry for bearing down on this, but I do think it is important. I anticipate a problem in the implementation of this provision and the likelihood of it being challenged, so I am attempting—in partnership with the parliamentary secretary, to some degree—to assist the interpretation of the legislation, particularly the way in which particular words are interpreted and applied. I will get to the usage of the word “error” later in this clause to extract what is intended here.

The parliamentary secretary mentioned other jurisdictions that have adopted this as a statutory requirement in the conduct of their elections. In his second reading speech he identified Queensland and Victoria as states where how-to-vote cards must be registered. I ask this question out of curiosity, because I have done no research on this dimension, but have those measures been tested in an electoral context yet?

Hon MATTHEW SWINBOURN: I am advised that it was done in the Victorian 2022 election and that the Victorian Electoral Commission had some commentary on that in its annual report, if the member is interested enough to go back and do some homework after we have been through this. It has been tested through that process and I am absolutely certain that our commission will seek consultation or guidance from the Victorian commission about its processes to ensure that the lessons it has learnt will not need to be relearnt in our jurisdiction, and, hopefully, there will not be any particular problems once the legislation comes into effect in this state.

Hon BEN DAWKINS: As a courtesy, I advise the house that I will not seek to move any of the further amendments in my name on the supplementary notice paper. Members can give me a buzz if they want me to move them, but otherwise I will not be here.

Hon TJORN SIBMA: I thank the member for giving me an understanding of how we might proceed through the rest of the bill; I appreciate the courtesy of his advice.

Back to the clause in hand, the implementation of this provision at the moment of truth is of great interest to me, particularly with regard to the implementation of proposed section 89B, which relates to how how-to-vote cards will be suitable for registration and, indeed, are registered. As I gather myself after that contribution —

Hon Sue Ellery: Perth really is a beautiful place!

Hon TJORN SIBMA: Well, sometimes you think you have seen it all, and then there is something more to see! Several members interjected.

The DEPUTY CHAIR (Hon Dr Sally Talbot): Focus, members, focus!

Hon TJORN SIBMA: Sorry, I will compose myself; apologies for my disorderly discombobulation!

I will ask the most prosaic question: who at the Electoral Commission will register or refuse to register a how-to-vote card that is lodged with the commission?

Hon MATTHEW SWINBOURN: Under this legislation, when it becomes the act, it will be the commissioner; he will obviously have a team of people providing advice to him as to how things fall within that category, but it will be the commissioner's decision.

Hon Martin Aldridge: Can he delegate?

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Hon MATTHEW SWINBOURN: I am not sure whether he has a delegation authority; let me just check on that. There is an existing power of delegation under the current act and I believe that will be amended by clause 9 of this bill. I think that was just a redrafting, not a substantive change. Proposed section 5G(1) states —

The Electoral Commissioner may, by written notice, delegate a function of the Electoral Commissioner under this Act, other than the power to delegate a function, to an officer.

That would capture this function as well, but if there are any concerns that this might be delegated to returning officers and decentralised, that is not the plan. The plan is for this to be dealt with centrally by the commission through its existing and permanent workforce, not the thousands of people it brings on at elections. My understanding from the Victorian commissioner is that the Victorian commission oversaw this process at the 2022 Victorian election. Subject to all the other things he has to do during an election, the commissioner will manage this process as well.

Hon TJORN SIBMA: We foreshadowed in the second reading debate and the clause 1 debate the obvious resourcing implications of the implementation of the measures contained in this bill—not only for the political participants, but for the electoral commission itself. Nevertheless, I anticipate a deluge of how-to-vote cards that candidates and registered parties will all want to publish as soon as possible, particularly upon the commencement of early voting. How will the registration of these how-to-vote cards operate in practice? Will it be on a first come, first served basis? What turnaround times should a registered party or candidate expect? Obviously, candidates will have a more acute or sensitive experience of time than will the commission. How will this be managed? I think it could possibly be problematic for it to rest on one person alone, albeit with counsel around him, when the Electoral Commission is not an enormous organisation that is not fully staffed to begin with. How long does the Electoral Commission see this process taking during the conduct of an election?

Hon MATTHEW SWINBOURN: The system is still not yet designed. I think we made that clear before. We need to understand the amount of work involved and that the overwhelming majority of these how-to-vote cards will simply be assessed in terms of that. There is not an exhaustive list or a wide range of things that need to be checked by the commission. An officer or a group of them will look at it. The commission will intend to have legal resources on hand during the process to ensure that is done. We need to think about it in three groups. The vast majority are likely to be ticked and flicked because they are just very straightforward; they are self-evident and they will go through. There will be a group in a grey area that will require further consideration, and a third group will be those with a big problem. The commission would really actively become involved in the second and third groups because a decision has to be made about whether to accept or reject them. Obviously, rejection can cause further issues.

Another issue is that I suspect that the commission's goal, and we have covered this point, is to get these through and to get the people through. Currently, the commission deals with people raising concerns with how-to-vote cards having incorrect information or inadvertently misleading information about the voting process. The commission's goal will be to get them into a shape in which they can be approved. The goal here is not to be an arbitrator of all that is good in political communication; quite the contrary. The commission has too many other things to worry about during an election campaign to get involved in that, so that is not the goal. It is to pick up the ones that are most egregious and concerning, and would be concerning for everyone except for the person doing them. It is important that we understand that.

I turn to the time frame. All I can say is that it will be as quick as possible but while meeting the requirements of the legislation. It is not a process that we have been through in this jurisdiction so there will be some learning, but the commissioner's goal will not be to have people ringing him up complaining that their how-to-vote cards have not been processed; quite the contrary, the next step from that is to say to the media that this is failing. The commissioner's goal is for it to be as expeditious as possible and still have the right outcomes.

Hon TJORN SIBMA: Noting that we propose to go through a process of how-to-vote cards being registered, it is important to make a distinction—this might not be the most elegant or precise description, but the parliamentary secretary will understand what I mean. For the moment, a legitimate how-to-vote card distributed at a polling booth, at least those of the three major parties and the Greens—say four established parties—is always authorised at the bottom by the office holder. For a Liberal Party card, it would be the state director, and for WA Labor, it would be the state secretary. To a degree there is ownership of the material, which I suppose is also an inference of legal liability for the material contained. This is effectively the starting point by which there is a responsible party or candidate X, Y or Z for the material distributed so long as it is demonstrated at the bottom of the ticket who it has been authorised by.

Does the authority or the liability transfer to the commission when a how-to-vote card is registered by the commission as an authorised document of a kind for electoral purposes but then also hosted on a portal or a website it owns and controls? In this discussion we are inferring that errors—I will get to the word “error”, probably in the next

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tranche of questions—misinformation or disinformation will be picked up by the commission. This is no disrespect to the commission or impugning of its professionalism, but organisations and people within organisations can make errors. Who bears responsibility or liability for an error if the commission has taken the card on—taking it out of a party’s hands, out of a candidate’s hands and effectively authorising or approving that document? Does it not then belong to the commission? In that case, how are errors remediated if they are pointed out to the commission?

Hon MATTHEW SWINBOURN: We have to be careful about the language we use because the process for the commission is a registration of the card but not an endorsement of its contents. The commission will only do it against the matters dealt with in the legislation, and when the commission does that, it will perform a statutory function. For example, if there were material on the how-to-vote card that was true but defamatory, the commissioner would not become the publisher of that material. For example, the commission might refuse to host a particular card on its website on the basis that it publishes defamatory material, and there could be consequences subject to that. For example, if a person serves legal proceedings against the commissioner saying that he needs to stop publishing the card on the website, it would have to be taken into consideration. Again, the information in itself may be neither misleading nor deceiving—we do not want to get into the law of defamation here—but, ultimately, matters that are true can still be defamatory, for example, and they may not mislead but they may be actionable in that regard. The commissioner will not become liable by the mere fact of performing the statutory functions under this. There may be consequences and the commission gets advice to take material down on that basis, but, again, I suspect that the commission’s website will carry the necessary qualifications that the material on the site does not mean it endorses a political party or a candidate and it is not vouching for the substance contained in any of those materials.

We do not want to put the commission in a de facto position to be held responsible. It will still be the person who has authorised, whose name will continue to be published on the card and who will be responsible for what they have published on those how-to-vote cards. I do not take issue. I think the member’s line of inquiry is fair.

Hon TJORN SIBMA: Then, we should read this as not conferring the role of publisher on to the commission. It is effectively the town square. The author is the publisher for the purposes of the usual context of the work.

There is a definition that is not unusual or unexpected about what a how-to-vote card might be. This is at new section 89A. Because the bill deals specifically with it being a card, pamphlet, handbill or other similar document, presumably this will extend to representations of a how-to-vote card conveyed, for example, on one of the big freeway billboards, as the Australian Nursing Federation has used at an array of intersections throughout Perth. Will this extend to broadcasting orders compelling people to vote a particular way via electronic means? What is the capacity of the Western Australian Electoral Commission to intercept or regulate the transmission of what I will broadly call political pamphleteering, albeit through other means? How will it do that?

Hon MATTHEW SWINBOURN: I think it could, and probably would, capture that circumstance if the billboard essentially was representing a how-to-vote card. I refer to proposed section 89A(2), which states —

Without limiting subsection (1)(b), a how-to-vote card may be in a form that is a representation, or purports to be a representation, of all or part of a ballot paper for the election.

If we go back to 1890 and the establishment of responsible government in Western Australia, it was a handbill. That was how they understood it. It was probably done on a hand-printing machine and all that sort of stuff. Fast forward 133 years and people can essentially take a smart phone device with them that will have a how-to-vote card on it. For example, they might use a QR code to take them to it. That representation will be captured. The essence of it, though, is the construction of a how-to-vote card under proposed section 89A(1)(a) and (b).

For example, if Hon Tjorn Sibma were to write to a group of constituents or electors and say, “Vote ‘1’ for X person in this area”, that would not be a how-to-vote card as it would not be an instruction on how to fill out a ballot paper or anything else like that; that would be a form of advocacy for a particular candidate that the member likes, but it would not be, in and of itself, a how-to-vote card. People could not take that in and use it to fill in a ballot paper as it only says to vote “1” for a particular individual, because obviously a vote of that kind would be invalid. It would need to be more than that. Obviously, it might be different in Legislative Council elections as there is a different ballot paper and people can fill it in above the line. It is the funny thing where we all know one when we see one, but when we try to describe it with words, it becomes a bit more difficult. I do not want to give that as an answer to the member’s proposition in this regard because that would not be satisfactory, but I think he and I know what a how-to-vote card looks like when we get one.

Hon Tjorn Sibma: You are conceiving of the broadest possible definition that takes into account technological changes, but we understand that the purpose of the material document is to direct an elector to conduct themselves in a particular way.

Hon MATTHEW SWINBOURN: Yes.

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Hon TJORN SIBMA: In that respect, I suppose my first question is: considering technological change, what might the commission's capacity be to keep up-to-date with information conveyed via social media or whatever that has not been endorsed or registered by the commission? For example, what would happen if an advocacy group that might or might not be registered as a third-party campaigner—I will get to that dimension later—put out material, be it through TikTok, Snapchat, Twitter, Instagram or whatever? First of all, how would the commission become aware of that if a complaint was not lodged with them by an invested person? Will the commission have the capacity to surveil the technological or digital landscape, on the lookout for this sort of egregious material? What will the commission's response be in the case of digital material that is authored by people who are not even based within the Western Australian jurisdiction? What recourse will it have?

While the parliamentary secretary is formulating his answer, I also ask: will this power extend to both published printed material and digital material that has no tangible materiality?

Hon MATTHEW SWINBOURN: I think digital representations of how-to-vote cards will definitely be covered by what we are doing here, because they will have the same effect. I think the catch-all is "other similar document" and also proposed section 89A(2) in that regard, because it will be a representation. The other issue, and this might provide the member with some assurance, is that the commission has contact with social media companies. If offending material is brought to its attention, it can raise that with the social media companies, admittedly with varying levels of success in terms of its removal. It becomes problematic in terms of how the commission can compel them to do that. For example, I think Facebook is registered in Ireland or wherever its official home territory is for the purposes of avoiding—I do not want to put that on the parliamentary record—or minimising its taxation obligations perhaps. Others are in other jurisdictions. TikTok is a Chinese-based social media company. There are those limitations. They are the same limitations that everybody faces when they have a particular problem in Western Australia that others do not have in other jurisdictions. Apparently, other electoral commissions within Australia and the Australian Electoral Commission are working together with social media companies to try to get a code of conduct together for them. I do not know what stage that is at; it is probably a line of inquiry for another time, rather than now.

I think the issue of offending was Hon Tjorn Sibma's first point and whether the commission will be keeping some sort of Big Brother watch—my words, not his—on social media. As the member can appreciate, some social media platforms have closed systems. For example, unless someone is a part of a group on WhatsApp or Signal, they do not have access to it. Somebody in one of those groups would have to inadvertently or deliberately disclose the information there. It is like the known knowns and the unknown knowns—the Donald Rumsfeld quote. It is the same with any kind of offending; it does not even matter if it is in relation to electoral laws, it is any laws. Prosecuting investigatory bodies only know what they can get sight on. We largely rely on people dobbing in other people when they observe their behaviour, to put it quite frankly. I am not trying to belittle that; it is important that people have a civic responsibility to bring to the attention of authorities behaviour that falls outside the ambit of the law. That is what will happen here. There will not be some sort of hit squad within the Electoral Commission to hunt those things down. We would probably both agree that that would be an inappropriate use of its resources. But when the commission becomes aware of it, when it is brought to its attention that some of these things are at large, the commission will use what mechanisms it has to address the offending behaviour and follow-up that offending behaviour in an appropriate manner, in terms of whether it prosecutes them. We have discussed the commission's approach to prosecutions and whether it has big enough teeth when it comes to that.

Hon TJORN SIBMA: Reference to media companies generally is interesting. I raised this issue in a briefing and I want to get it on the record here. This approach to the registration of how-to-vote cards does not imply any constraint on free editorial expression, does it?

Hon Matthew Swinbourn: No, member, it does not.

Hon TJORN SIBMA: That said, just as an example, I think at the most recent state and federal elections *The West Australian*, as the parliamentary secretary would appreciate, took a serious interest in the election and its outcome. Editorials on mastheads nationwide often make a recommendation to their readers about whether a government deserves re-election or whether it is worthwhile giving the other mob a turn. What has been an interesting feature in recent elections, which I had not previously seen in the 20 years leading up to it, is an almost seat-by-seat recommendation. I think that is a novel innovation. I do not think it is necessarily problematic in any ethical way, but it is an advance on a more dry or elevated editorial landscape view with assessments of a campaign's successes and the likely outcome. To the degree that an editorial goes beyond that or that journalistic content in a paper starts advocating to vote for this person in the seat of Kingsley, vote for this person in the seat of Scarborough and vote for this person as opposed to the other one in the seat of South Perth, I actually think that that is a how-to-vote card, of a kind. On the parliamentary secretary's previous answer, it is the kind of material that one could take with them into a booth to guide their vote. I do not have a problem with that. That is a free expression. It is an opinion expressed by the writer and endorsed by an editor. That is material upon which many votes might be determined. That is

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material provided to guide an elector to a particular outcome. Is that kind of information captured by the concept of this how-to-vote regime or is it not; and, if so, does the government or Electoral Commission have any view or intention to regulate such material in a way that it is regulating standard how-to-vote cards?

Hon MATTHEW SWINBOURN: I will make some general comments that might address what the member is saying. There is nothing in the bill or the act that prevents a media company from becoming a third-party campaigner by way of their conduct. However, the act does not capture legitimate journalistic and editorial reporting practices. Those legitimate entities may, and I am not suggesting that they will, transition from going from the proper journalistic pursuit—the editorial pursuit of a particular point of view—to falling within being a third-party campaigner because their activities fall within electoral expenditure definitions. There is the possibility for that. I am comfortable with them not having special protections to stop them from that, because if they ever went down that path, that is a line that they will voluntarily choose to cross. It is not just the local daily paper here. It could include other publications. It could be the local independent—there are not many of them left of course—newspapers or it could be a journal that somebody uses whereby they are basically just printing material for a particular candidate that is electioneering; it is not journalistic. I do not think reasonable people think that that kind of behaviour should be treated differently because it happens to also provide news in that regard.

Of course, a newspaper has ads for all sorts of things in it. It is not responsible for the messaging that goes in those ads in the sense that they belong to it, but that does not provide that protection. There is the possibility that a publication that is ordinarily engaged in news reporting and journalistic endeavours falls into the category of putting material into its publications that becomes necessary for it to have it registered as a how-to-vote card. *The West*, for example, puts in a form guide for the TAB and that sort of stuff and how-to-vote cards are a bit similar to that. If it were doing that, it may very well fall within that category. Have I answered the member's question in a general sense?

Hon TJORN SIBMA: As a premise, I have adopted what I think is largely substantiated, which is that this provision seeks in some way to curtail freedom of political expression. The government might be of the view that it is actually not as great an impost as I am making out. I am not necessarily sure what kind of impost it is or is likely to impose. That is the focus of my question. I absolutely want to rule out whether there is any incursion or overreach into free press and freedom of speech.

Hon Matthew Swinbourn: No.

Hon TJORN SIBMA: It is great to establish that.

I am speaking only on my behalf here; the final tranche of interest on this clause is at proposed section 89B(2)(c). Preceding that, the proposed section outlines the means by which a how-to-vote card may be considered not suitable to be registered, a determination to be made by the commissioner. On page 100 of the bill, it says —

(c) contains an error or abusive, obscene, threatening, violent or unlawful or similarly offensive material.

I understand all those words, but I want to precisely focus on the issue of the error. If I am to read the bill in its broader context against the second reading speech that this provision has been introduced to deal with the rising global phenomena of misleading misinformation and deliberate disinformation, am I to interpret the word “error” in a broad or narrow context? I will give assistance when I can. No doubt there are different categories of error that the government and the commission anticipates. Could the parliamentary secretary identify what those errors might be?

Hon MATTHEW SWINBOURN: I think it is best understood that an error might be an error in relation to an incorrectly referenced political party or candidate. There could be an error on a how-to-vote card within the broader context of understanding what we are trying to achieve here regarding misleading or deceptive behaviour, whether deliberate or inadvertent. For example, if someone put on their paper “Democratic Labor Party WA Branch” instead of writing “Australian Labor Party WA Branch”, that could have just been an error but it is likely to deceive. That is probably not the best example. The misspelling of someone's name on the paper could be an error.

Hon Tjorn Sibma: We're both sensitive on this matter.

Hon MATTHEW SWINBOURN: We are, very much. For Hon Tjorn Sibma it is probably about the complete misspelling of both his names. For me it is the addition of unnecessary vowels.

Hon Sue Ellery: Interesting, but not!

Hon MATTHEW SWINBOURN: All right. We are getting on.

That is what we are anticipating—slips that people engage in. This is a helpful thing for people because, as I have indicated previously, the commission will likely go back to the political party and say that there is an issue with the paper because it has made errors in how it has spelt people's names or the order that it has put them in and things of that kind and, if the party corrects these, there will not be a problem with registering the how-to-vote card. The

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party may not have done it on purpose; it did not know how a name was spelt. Who knows how “Tjorn” is spelt? Anybody could take that issue.

Hon TJORN SIBMA: Lucky my mum knew!

The issue, though, substantially is because this has been framed in dealing with a global phenomenon of—I will not say nebulous—issues that have a measure of tangibility, but are grave matters. From the answer the parliamentary secretary has provided me, with the construction of the word “error”, if it were to apply to these global phenomena that are probably undermining conduct of elections in democratic communities, we would have to interpret that word more broadly. But the parliamentary secretary is suggesting that the intent here is to interpret the word “error” in a very narrow way. I do not want to put words in his mouth because it is important to determine. If the intent is for there to be a narrow application or a definition of error, I would want to avoid a dispute or protest from an individual claiming that their how-to-vote material was not registered by the commission because the material was found to be in error in some way, but error in what way? Would it be an error of spelling? These are trivial issues. Would it be an error of ordering? This is what I am trying to ascertain, because I think there is a disconnect here maybe in a philosophical sense between what the minister says the bill attempts to do. The how-to-vote card registration is the process by which the Western Australian community defends its elections from perfidious encroachment through disinformation and misinformation.

I know I am focusing on one word, “error”, but we can all interpret what offensive material or defamatory material or material that will incite might be, but what is an error on a how-to-vote card? How do we interpret that? Who will interpret that? I think there is the potentiality here of if there is a misunderstanding of what kind of errors the commission is on the lookout for and, potentially for there to be a broader ill-defined administrative latitude provided to an unelected official to regulate what is political expression, can we get a sense, please, of the government’s intent around the use of the word “error”? Perhaps the parliamentary secretary could cite some errors that he anticipates and say whether they might be in the realm of misinformation, rather than disinformation, because I do not know how disinformation applies to how-to-vote cards. I still do not.

Hon MATTHEW SWINBOURN: So, I think the first thing to really understand about what we mean here by “error” is that “error” does not mean wrong. Sometimes people think “error” is wrong and I think maybe that is somewhere where the member is getting at in terms of the commissioner, who makes the decision, has decided that this how-to-vote card is simply wrong and does not like it; it puts people in the wrong spot, does the wrong thing and all that sort of thing. That is not what we are talking about and that is not what we mean and that is not the role of the commissioner.

An error has to be a matter of substance that is likely to have a meaningful effect on the way somebody may or may not vote. The error could be an incorrect order; that is a key one here, because, for example, if the error is that the party has put the candidates in the wrong order on its how-to-vote card, that may impact on a person’s ability to look at the ballot paper and their how-to-vote card in front of them and try to understand, because it can be confusing and it may mislead. Error needs to be understood in the broader context of misleading and that error has that particular effect.

Whilst if someone drops the “T” off Hon Tjorn Sibma’s first name, that is not likely to be an error that has any substantive effect on someone’s decision to vote for him or not for him. It is probably likely to be an issue of aggravation for the member, but it is not likely to change someone’s vote, particularly if everything else is right. If, however, the party completely misrepresented the member’s name because it just did not understand how to spell it and, therefore, a voter is unlikely to find the member on a corresponding ballot paper, that error could be likely to upset and give effect to their true vote. It is always going to be a question of degree at the time and also the context of the overall ballot paper as to how and if the commissioner decides to reject that paper. The commissioner, on rejection, does have a process. They will have to identify—the act provides for this—the reasons for their decision, and that is primarily on the basis that the person could then correct those issues because the commissioner has identified those particular reasons. Certainly, if the issues relate to error, that would be something that I and my political party, and Hon Tjorn Sibma’s political party, would want to address as soon as possible. I think it is about being facilitative on that basis.

Hon TJORN SIBMA: There is a sense of looking for areas that will have a material impact on what, though? Is it the formation of an elector’s view or the recording of that view? I am going to assume it is the act that misleads them against their own intention at the point at which they fill in their ballot paper. Is that correct?

Hon MATTHEW SWINBOURN: Yes, member.

Hon TJORN SIBMA: So it is not there to surveil wrong opinions or wrong ideas. The sin that comes out of the error is the sin of misleading somebody to record their vote in a particular way that is against what they intended to do, more or less.

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Hon Matthew Swinbourn: By way of interjection, yes.

Hon TJORN SIBMA: Fantastic. I think it is very important to clarify these issues since we are introducing a new power. I have two more questions; I do not want to hold people up. First of all, to what degree will there be a review of the commission's conduct in discharging this new responsibility after the election? Will there be a post-election review or is there an anticipated auditing of these decisions potentially and, if so, who would do that work?

Hon MATTHEW SWINBOURN: There are no special processes in relation to this, but I remind the member that the Community Development and Justice Standing Committee of the Legislative Assembly does a post-election inquiry and report. The commissioner himself will do his own post-election report, which will undoubtedly deal with some of the matters that are dealt with here. We are also of the view that the Auditor General could audit the commission's use of those particular functions under her powers if she chose to do so.

Hon TJORN SIBMA: That is encouraging because this is a new power and it relies substantially on the discretion and the good judgement of the commissioner, which is why I wanted to establish exactly the intent of the words that appear in the bill. I have one final question. The presumption here is that we are dealing with material produced in the English language. We know that political parties appeal to wide constituencies for whom English is their second or third language. How does the commission intend to discharge this new registration responsibility in terms of material produced in Mandarin, Hindi or Vietnamese, for example?

Hon MATTHEW SWINBOURN: I refer the member to proposed section 89C(4), which states —
if the how-to-vote card includes a language other than English—be accompanied by—

- (i) a translation into English; and
- (ii) a certificate from the person who did the translation stating the translator's name and address, their qualifications to translate the language into English and that the translation is a correct translation.

Obviously, that is a self-management process. The commission does not have specialist language people, but the commissioner has indicated to me that if he has concerns that it is not correct, he will engage services that are available to verify that if, at the time, he thinks it is necessary to do so.

Hon MARTIN ALDRIDGE: In the exchange between the parliamentary secretary and Hon Tjorn Sibma, we established that a how-to-vote card can be in both printed and digital form. I think there was a conversation about QR codes, accessing websites and things like that. If it falls within the definition of a "how-to-vote card", those things will also be captured by this provision. What if, let us say, a medium such as a television advertisement or a radio advertisement met the definition of a "how-to-vote card" in that there was some portrayal of how a voter should vote, whether in full or in part, and it met the definition set out in proposed section 89A. Could a TV or radio advertisement be subject to approval by the commissioner?

Hon MATTHEW SWINBOURN: Conceptually it is possible if that was the only form, but the discussion at the table is that the most likely would be, particularly with television, a representation of the registered how-to-vote card and the activity of publishing that rather than actually doing it separately. But I think, conceptually, if somebody designed a TV ad that satisfied the elements of a how-to-vote card, arguably it could come within that. I was not thinking so much about radio but other mediums. For example, visually impaired people have things read out to them and that sort of thing. In that instance, reading out a registered how-to-vote card would not become subject to registration itself. This is, perhaps, my lack of imagination to imagine a radio ad that could possibly represent the process of marking a ballot paper that would be sufficiently engaging enough to justify anybody going down that particular path. But, as I said, if it satisfies the elements of the how-to-vote card itself in that regard, conceptually it could probably do that but the prospects of what is possible are extremely improbable in what could be done. Hon Martin Aldridge has been a director of a state political party; I am not sure whether he can think of a time in which he published a how-to-vote card via television or radio. If they satisfy the elements of the provision then, yes, it could. It is not excluded, but it is highly unlikely.

Hon MARTIN ALDRIDGE: How-to-vote cards are traditionally, but not exclusively, in A4 format. They are often electronic and printed; parties will send them to the printer and run some off a photocopier while they are waiting. They will stick them on their website and their social media platforms. In effect, they are just reproducing the approved design and format of the how-to-vote card after it has been submitted, approved and registered.

Hon Matthew Swinbourn: That's correct.

Hon MARTIN ALDRIDGE: Once registration is granted, is there anything placed on the card to indicate that the commissioner has registered it and that it is an approved how-to-vote card? Does it have a stamp or a registration number? Is there anything to indicate that? There will be literally thousands of them. Will there be anything to indicate to the reader that it is an authorised and registered how-to-vote card?

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Hon MATTHEW SWINBOURN: I do not think the bill requires there to be a representation on the card that it has met registration requirements. I do not think the commissioner has fully turned his mind to whether, as a matter of practice, he would do that. I think that is something that will be the subject of discussions with political parties between the passage of the bill and the commencement of these provisions. It will be discussed whether, firstly, that is desirable in the first place; and, secondly, if so, what it would look like and how it would work. But it is not a requirement of the scheme that there is a stamp from the commission on the card to say that it has been approved.

Hon MARTIN ALDRIDGE: If the Electoral Commissioner does go down this track, unless it is in the legislation there will be nothing to compel political parties to apply it. Conversely, political parties could perhaps say, “This is the Electoral Commissioner’s endorsed how-to-vote card.”

Hon Matthew Swinbourn: That would be deceptive.

Hon MARTIN ALDRIDGE: Would it? The Electoral Commissioner cannot delegate that power. A person could say, “The Electoral Commissioner has endorsed my how-to-vote card, so therefore I am handing it you.” They could not perhaps change their how-to-vote card, because that could be subject to resubmission to the Electoral Commission for approval, but could it not be exploited by political parties in that way?

Hon MATTHEW SWINBOURN: I do not see a political party seeing value in putting the Electoral Commissioner’s name on its how-to-vote card. Sorry, there is some chatter behind me that is distracting me. If that card were submitted and the commissioner registered it with that material on there, it would form part of that particular registered card. If it were to be added post-registration of the card, that would be an addition that would require it to be re-submitted. If the card had not been submitted and someone claimed it had the imprimatur of the commission, that would be misleading and a breach of the act. But the commission, as we have indicated, intends to put up the registered cards on its website, and political parties will see the benefit of driving traffic to the commission’s website to check their how-to-vote cards.

Hon MARTIN ALDRIDGE: I refer to proposed section 89B(2), which provides an explicit list of things that are not suitable to be registered. I think (c) is pretty self-explanatory; as the parliamentary secretary said, it is already an offence under the act to distribute information that is likely to mislead someone in casting their vote as an informal ballot. Proposed section 89B(2)(a) states —

is likely to mislead or deceive an elector in relation to the casting of an elector’s vote for a particular candidate, political party or group;

I think there was a significant exchange between the parliamentary secretary and Hon Tjorn Sibma on that provision. Proposed section 89B(2)(c) states —

contains an error or abusive, obscene, threatening, violent or unlawful or similarly offensive material.

I heard quite an exchange on the interpretation of “error”. Some of the things listed, particularly in (c), are quite subjective, especially with regard to offensive material. At the last election, there was a party—I do not know whether it was registered—that was interested in mandatory vaccination. It advertised all sorts of misinformation, in my view, in relation to the election and why voters should vote for that party. It was effectively telling voters that the government and the opposition were going to force people to be vaccinated unless they voted for that party, which would put a stop to that. Similarly, the Animal Justice Party could publish, as part of its how-to-vote card, quite visually graphic mistreatment of animals. I am wondering about the threshold for offence. It is always difficult to establish a threshold around such things; as I said, it is quite subjective. How will the commissioner apply these matters under proposed section 89B(2), and particularly paragraph (c), with regard to offensive material?

Hon MATTHEW SWINBOURN: I am not going to be able to go through an exhaustive list—I do not think that is what the member is asking me to do, anyway—of things that may be considered offensive. I take the member’s point that, for some people, offence is generally taken rather than given, so there is a balance to be struck there. I think the commissioner will have regard to community standards and take guidance from what has happened in other jurisdictions as well. But the commission’s intention with regard to all these parts is to develop guidance material in the lead-up to elections to ensure that people are clear about what should and should not be included on their how-to-vote cards. I return to the fact that this material is taken into the polling booth, so to some degree people are going to receive political messages in an environment in which we generally do not want political messaging to be given—the polling area itself—in the same way that party political T-shirts are not worn there. Police officers and other uniformed personnel often will cover up their uniform so that there is no sense that they are performing an official duty in order to maintain the independence of the process and things of that kind. Things will be developed in that regard, but if, for example, the Animal Justice Party includes a picture that some people do not like and claim is offensive, the judgement will have to be made by the commissioner at that time on whether it is beyond community standards. There will be a line somewhere, and it will change over time as society’s values

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change. Obviously there will be some difference between individual commissioners, but there will be an expectation for the commissioner to telegraph to people where the envelope sits on these sorts of things and what is permissible.

Hon MARTIN ALDRIDGE: Will colour be a factor in the commissioner considering whether it is intended for voters to be misled by a how-to-vote card? Logos and party names are probably a bit more obvious. How is colour going to feature? Electoral commissions get quite excited if their colours are adopted. I assume that the commissioner will probably have a strong view about using the commission's lovely purple on party —

Hon Matthew Swinbourn: The state commission's colours are blue and gold. Purple is the Australian Electoral Commission.

Hon MARTIN ALDRIDGE: Equally, if someone were to use the Australian Electoral Commission's colours at a state election, it could be alleged that they were intending to mislead voters, because I think the purple is actually much more prominent, with no disrespect to the commissioner, than his branding. It is similar for parties. I know that the Labor Party in particular from time to time is vulnerable to people issuing red how-to-vote cards, I think with an intention to mislead voters that it is somehow connected to the Labor Party.

Hon MATTHEW SWINBOURN: Conceptually, colours could be misleading. It really comes back to the intent, so it would probably have to be coupled with other factors, as well. For example, the Nationals WA has a certain hue of green as its colour. I am right on that, am I not? The Greens party has a different hue of green, but if, for example, another political party was imitating—that is the key—with the intent to deceive or mislead, then the colour could be a factor that comes into it. It may not be singularly determinative in and of itself, but it may come into it. I do not think there are any protected colours, if I can put it that way; it is really about the context and the intent for which it might be used.

Hon MARTIN ALDRIDGE: I refer to proposed section 89C(1)(b). I want to touch on this point. It reads —

(1) In this section —

registration period, for an election, means the period —

- (a) beginning on the day after the day on which the close of nominations occurs for the election; and
- (b) ending on the day that is 6 business days before polling day in the election.

I have two questions here that I will put to the parliamentary secretary. The first is on proposed section 89C(1)(a). Recognising that registered political parties have a different close of nominations, what date is actually referred to in proposed subsection (a)? Is it the final close of nominations, which will now occur on the Thursday for everybody, or will it be relevant to the day on which either a party or —

Hon Matthew Swinbourn: It is the Thursday.

Hon MARTIN ALDRIDGE: It will be the Thursday for everyone?

Hon Matthew Swinbourn: Yes.

Hon MARTIN ALDRIDGE: Okay. A political party that registers its candidates on a Wednesday cannot lodge an application for registration of a how-to-vote card until the day after the day on which it closes, so will that be the Friday?

Hon Matthew Swinbourn: Can the member repeat that?

Hon MARTIN ALDRIDGE: This proposed section is titled “Applications to register how-to-vote cards”. It states —

registration period, for an election, means the period —

- (a) beginning on the day after the day on which the close of nominations occurs for the election ...

Recognising that parties will close nominations on a Wednesday, others will close on the Thursday, I think the parliamentary secretary said by interjection that the registration period will commence the day after the Thursday, so it will be the Friday. Can I just check that is the case?

Hon MATTHEW SWINBOURN: I think the key here is perhaps not just the close of nominations, but when the ballot draw happens, because a party cannot finalise its how-to-vote card until it knows what order the ballot is going to be. That will happen on the Thursday after 12 noon. Practically, the first day that a party can then commence lodging its how-to-vote card for registration is the following Friday. Does that make sense? Yes.

Hon MARTIN ALDRIDGE: Proposed subsection (b) reads —

ending on the day that is 6 business days before polling day in the election.

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I think we established before that there were 10 calendar days between the close of nominations and a form of voting commencing. This states six business days. I guess, to put it more simply, how many days before voting commences will the registration period conclude?

Hon MATTHEW SWINBOURN: I thank the chamber for its indulgence on that. We just want to get this right. If the member wants to pay close attention, because I will run through a bit here. I wish I had something to table for the member but I do not, so I just want to get this right. Firstly, writs are issued on the first Wednesday in February of an election year. In the next election that will be 5 February 2025. Secondly, the close of nominations will be 12 noon on the Thursday, which will be the second Thursday in February, which is 13 February 2025. As we have already indicated, the ballot draw will be the afternoon of that Thursday, and then the registration period commences on the following Friday, which for the next election will be 14 February 2025. Next, the pre-poll commences 11 consecutive days from polling day, excluding the Sunday, and so for the next election it will be the commencement on Monday, 24 February 2025. Mobile polling will start on Sunday, 23 February 2025. Polling day at the next election will be the second Saturday in March, which will be 8 March 2025. The deadline for postal votes is 6.00 pm Wednesday, 5 March 2025. In answer to the member's question, the registration period for how-to-vote cards will close on Thursday, 27 February 2025.

Hon MARTIN ALDRIDGE: Is that just for the initial registration of a how-to-vote card, if somebody needs to amend or even replace a how-to-vote card?

Hon MATTHEW SWINBOURN: That is the initial period, but the amending or replacing can be done at any time after that.

Hon MARTIN ALDRIDGE: I understand that proposed section 89D might address having more than one how-to-vote card. I wonder what limitations there are. I have been involved in elections in which the Greens have had two how-to-vote cards for the same district. They might be, "Vote Greens, if you then want to vote Labor" or "Vote Greens, if you then want to vote Liberal." I have sometimes seen that on the same card. There might be the two options—Green/Liberal, Green/Labor. The Labor Party in particular issues an initial how-to-vote card and then realises who shafted it in the preference process and then will issue a second one. That is probably a little bit different because it is a replacement. Is it possible for a political party to register two how-to-vote cards for the same district?

Hon MATTHEW SWINBOURN: It is possible to register multiple cards. In the example that the member gave of the Greens including more than one way of distributing the votes on a single handbill, as long as that was not a misrepresentation, deceiving and all those sorts of things, there is no reason to think they could not do that. The how-to-vote card could include alternatives for individual voters. The thing here is about empowering voters to make their own choices and not about limiting political parties' ability to say that if someone wants to vote Greens then Liberal Party, Greens then Labor Party or Greens then Legalise Cannabis WA Party, or the other way around, this is how the party suggests the voter vote. That would not prevent that from happening. That can all be on one card, but the discretion of the commissioner would be if the party was seeking to register separate, multiple cards—for example, a party might say, "If you want to give Labor your second preference, take this card. If you want to put the Liberal Party second, take that card." That might be a tactical decision about how the party then presents that card to the commission to ensure that it captures everything.

Hon MARTIN ALDRIDGE: So there effectively can be multiple how-to-vote cards. Turning to replacement, is there any positive obligation? Recall the example of the Labor Party that I gave of pre and post-preference negotiations. When a how-to-vote card and a new one is registered in its place, the first one is still in circulation. What is the status of the how-to-vote card? Is it delisted, deregistered or unlawful to continue to distribute? Is there some positive obligation on somebody to take all measures necessary to stop the distribution of what has become an unregistered how-to-vote card?

Hon MATTHEW SWINBOURN: In this instance, the obligation is on the political party not to further distribute the card. It does not have a positive obligation to take back the cards already distributed into the community. The party, its apparatus and its volunteers are not to distribute cards that have had their registration cancelled, if I can put it that way.

Committee interrupted, pursuant to standing orders.

[Continued on page 6214.]