

Hon Dr Sally Talbot MLC
Chair of the WA Legislative Council Standing Committee on Legislation
Parliament House
4 Harvest Terrace, West Perth WA 6005

Dear Dr Talbot

I write to make a submission regarding the Electoral Amendment Bill 2020.

The proposed introduction of expenditure caps for parties and candidates marks an important step forward for our State's electoral democracy. The current situation of no caps on expenditure potentially allows individuals, groups and companies — including those from outside WA — to exert undue influence over our elections. The proposed expenditure cap on parties and candidates of \$125,000 per seat contested is higher than other States such as New South Wales and Queensland, but justified in the context of WA's size and the demands this placed on parties to campaign across the State. The move towards quarterly returns and their prompt publication on the WAEC website is also a significant step towards delivering timely disclosure and greater transparency in our political process.

Also welcome is the introduction of a ban on foreign donations, which again is an overdue reform which brings WA into line with most other States. However, the definition of "foreign" in the draft legislation is very loose, enabling for example a foreign individual with residency rights in Australia or owning an Australian business to still donate. This provision would not have stopped the kind of high-profile scandals seen in the eastern states involving millions of dollars in party donations from wealthy businesspeople aligned with the Chinese Communist Party such as Huang Xiangmo, Chau Chak Wing and Zhu Minshen (respectively an Australian resident, an Australian citizen and an Australian business owner, when they made their donations). A tighter definition of foreign donation should be considered.

In some other areas, the Bill remains behind best practice compared to other States and indeed federal electoral law. There is no cap on total donations to a party, and no requirement that donors themselves declare their contributions. It thus appears possible for limitless donations to a party to be made, even if there are caps on the expenditure permitted. Nor are there restrictions on the ability of certain groups, such as property developers, to donate to politics, as exist in NSW and Queensland. This reflects a broader pattern of WA elections falling behind national best practice in crucial areas, including areas such as malapportionment, the involvement of parties in postal voting, and technical aspects of how preference transfers in Legislative Council elections are treated. These concerns were raised in a February 2019 letter sent to all State MPs by a group of concerned scholars including myself, and remain current.

Finally, while noting the increase in penalties for any breaches, I remain concerned at the self-regulated nature of WA's finding and disclosure regime, which relies on the parties themselves as the beneficiaries of any donations also being the ones responsible for declaring these to the WAEC. Given that donors are not required to declare their donations, this could surely present temptations to unscrupulous parties or candidates to avoid declaration of any gifts received, in the knowledge that these would be unlikely to come to light if all participants wish to keep such donations secret.

Despite these concerns, I welcome the Bill's proposed reforms as first step towards what I hope is a broader agenda to improve our State's electoral system.

Yours sincerely,

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1 October 2020