Agreement in Principle

Ms KRISTINA KENEALLY (Heffron—Premier, and Minister for Redfern Waterloo) [4.06 p.m.]: I move:

> That this bill be now agreed to in principle.

This Government is pleased to introduce a bill that implements groundbreaking reforms to political donations including bans, caps and other restrictions on political donations, and increased public funding of election campaigns. This is yet another area where New South Wales is leading the way. For many years, New South Wales has been pressing the Commonwealth to lead national reforms relating to political donations. To be fully effective, there is a clear need for reforms at all levels of government across Australia.

In 2009 this Government decided that New South Wales should take practical action to start a national reform process. We announced that New South Wales would proceed with reform of election funding laws, to provide certainty and confidence in the electorate of the impartiality of government decision-making and of the transparency of process in government. Importantly, these reforms are also directed at reducing the advantages of money in dominating political debate. They provide for a more level playing field for candidates seeking election, as well as for third parties who wish to participate in political debate.

> These reforms are about putting a limit on the political arms race, under which those with the most money have the loudest voice and can simply drown out the voices of all others. The reforms will help to give voters a better opportunity to be fully and fairly informed of the policies of all political parties, candidates and interested third parties. As a first step we introduced legislation banning donations by developers. Those reforms prohibited political donations by professional corporate property developers and their close associates. Around the same time we announced that the 2011 State election would be conducted under a public funding model rather than a system in which the cost of election campaigns is significantly met by political donations to parties. To that end, the Government made a reference to the joint standing committee to "inquire into a public funding model for political parties and candidates to apply at the State and local Government levels".

The committee published its report on 26 March 2010. The report makes numerous recommendations that propose fundamental reform in the area of political donations. It recommended that the Government reform New South Wales election funding laws before the next State election, independent of any action taken by the Commonwealth. I am pleased to say that there was genuine bilateral cooperation during the committee inquiry and that there was broad agreement from all parties that something needed to be done to take action in this area.

In drafting this bill the Government has been acutely aware that any New South Wales law that interferes with Commonwealth elections or burdens the implied freedom of communication about Commonwealth political matters may be subject to constitutional challenge. Any New South Wales reforms must take into account the elements of the test set down by the High Court in the Lange case—that is, the reforms must be reasonably and appropriately adapted to serving a legitimate end in a manner which is compatible with the system of representative and responsible government. The Government is satisfied that the right balance has been struck in this bill. However, for comprehensive and effective regulation of this area the Commonwealth must introduce similar laws to regulate Federal donations and campaign expenditure. Without Commonwealth action in this area our laws may fall prey to unscrupulous people who use the lack of Commonwealth regulation to attempt to circumvent the spirit of the law. Now is the time for the Commonwealth to follow the New South Wales lead in the interests of achieving a more transparent democratic system of government in this country.

I now turn to the details of the bill. Donations to political parties and groups will be capped at $5,000 per annum. Donations to elected members, candidates and third parties will be capped at $2,000 a year. Elected members and candidates endorsed by the same party or group will be considered a single entity for the purposes of the donation cap. Donors will be prohibited from contributing to more than three registered third parties, each up to a maximum of $2,000 in a financial year, where those donations are for the purpose of the third parties incurring electoral expenditure.

Limiting the number of donations and recipients in this area is essential to the integrity of the scheme. Without it there is a serious risk that third party entities will be established for the primary purpose of harvesting donations and avoiding expenditure caps. The limits will ensure that people retain the freedom to support the participation of non-party entities in political communication activities without creating a significant avoidance problem. Of course, if a person contributes to more than three non-government organisations in a financial year to support their political campaigns without understanding that such conduct is unlawful, there will be a defence available.

The new requirements of the bill also apply to corporations that are related to each other under the definition in the Corporations Act as if they were a single corporation. This will ensure that a single corporate group cannot avoid the caps by donating through different companies or by setting up new shelf companies for that purpose.

Party membership and party affiliation fees will be excluded from the caps on political donations. It is no surprise that there is a level of public concern about this matter and the Government appreciates that such a source of non-public funding could be seen as unfair, both by smaller parties and by parties with different organisational structures.

However, being fair requires recognition that political parties built on a long tradition of supporting workers' involvement in our political system, and they must be able to meet their administrative costs. Therefore, the bill proposes that all registered political parties will be prohibited from using membership and affiliation fees to incur electoral expenditure. However, such fees will still be able to be used to meet party administration costs. Any transfer of funds from an interstate or Federal branch of a political party would constitute a political donation that is subject to the donation cap and its disclosure will be required. Under the bill, any uncharged interest on a loan would also constitute a political donation that is subject to the donation cap, and its disclosure will be required.

Candidates endorsed by a party in a Legislative Assembly seat will have their electoral expenditure capped at $100,000. The cap for independent candidates for the Legislative Council will be $150,000, which recognises the fact that an Independent will not get the benefit of a general statewide campaign run by registered parties. At a by-election all candidates will be able to spend up to $200,000. In such cases parties will not be subject to an express cap on their electoral expenditure, but if they do incur such costs they will be attributed towards the candidate's expenditure. This approach ensures that there is a disincentive to parties spending unduly large amounts on by-elections, with the consequent impact on the public purse. Any amount not spent by a candidate in their electorate will not be able to be transferred to increase the expenditure limit for the party endorsing the candidate or another candidate endorsed by the same party.

The bill imposes an expenditure cap for parties endorsing candidates in the Legislative Assembly of $100,000 multiplied by the number of seats being contested by candidates endorsed by that party. So, if a party were to contest all 93 seats, the party expenditure cap would be $9.3 million. Parties and groups endorsing candidates in the Legislative Council that have 10 or fewer candidates in the Legislative Assembly will be subject to an expenditure cap of $1.050 million. However, the bill will ensure that parties may not spend more than $50,000 from within the applicable overall cap substantially for the purposes of the election in a particular electorate. This will ensure that there is no incentive for parties to run candidates in additional seats simply to increase their access to public funding.

Third parties that spend more than $2,000 on an election campaign will be required to register as a third party campaigner and will be subject to a statewide expenditure cap of $1.050 million. If a third party registers on or after 1 January in the year of election, that cap will be reduced to $525,000. Third parties may not spend more than $20,000 from within the applicable cap substantially for the purposes of the election in a particular electorate. This allows a third party reasonable access to funds to campaign in an electorate on specific local issues without allowing that third party to compromise the integrity of the election outcome by spending more than $1 million in one electorate in relation to an electorate-specific issue.

It is proposed that only communication costs will be subject to the expenditure caps, including advertising, printing and distribution costs, telecommunications and Internet costs, associated production costs, office rent, and staff wages and salaries. The following items will not be subject to the expenditure caps: travel, accommodation, research, auditing, office rent—in the case of the campaign headquarters of a political party—and the value of volunteer labour. Of course, electorate offices are not included because it is not permissible for such office costs to be used to fund campaigns of incumbent candidates.

Parties and registered third parties will be required to maintain a separate account for State campaigns. Parties will not be permitted to make payments for electoral expenditure unless the payment was made from the separate State campaign account. As already noted, parties will not be permitted to use any funds received as membership fees or affiliation fees to pay for electoral communication expenditure. Parties will also be prohibited from donating to unendorsed candidates and, conversely, unendorsed candidates will be prohibited from receiving donations from parties.

In accordance with recommendation 9 of the committee report, and to limit the risk of constitutional invalidity, it is proposed that registered political parties and groups be required to maintain separate accounts with a bank, credit union, building society or other entity prescribed by the regulations for the purposes of State campaigns, other campaigns such as Federal campaigns, and administration costs respectively. This will help to ensure that the proposed caps on political donations do not interfere with fundraising and expenditure for Federal elections, or impact on the flow of funds from New South Wales to the Commonwealth for the purposes of incurring Commonwealth electoral expenditure.

Caps on donations require a significant increase in public funding to reduce the risk of such caps being invalid under the Commonwealth Constitution. Parties, groups and candidates must have sufficient resources to contest elections and engage in debate about political matters, or there is a risk that the High Court may find that the reforms invalidly limit the implied freedom of political communication.

To be eligible for public funding, candidates contesting a Legislative Assembly seat will need to receive at least 4

per cent of first preference votes or be elected. Ungrouped candidates in a Legislative Council election will need to receive at least 4 per cent of first preference votes or be elected. To be eligible for public funding, parties will need to receive an aggregate of at least 4 per cent of first preference votes in those Legislative Assembly electorates in which they endorse candidates. Parties or groups not endorsing Legislative Assembly candidates will need to receive an aggregate of at least 4 per cent of first preference votes in a Legislative Council election or have a member elected to the Council. For those who qualify for public funding, reimbursement would only be paid for actual electoral expenditure, and further reimbursement would be in accordance with a diminishing sliding scale, so that public funding of electoral expenditure reduces as a candidate or party spends closer to their electoral expenditure cap. This will act as a disincentive to spend to the cap and will reduce the overall costs for taxpayers of the new public funding model.

In accordance with recommendation 32 of the committee, the bill establishes a fund to provide for the funding of parties' administration costs. Again, this funding is necessary in light of the fact that donations have been capped. It is also fair and reasonable. Parties with endorsed elected members will be eligible to obtain funding from the Administration Fund so long as they satisfy the annual continued registration requirements. Elected members who are not endorsed by a party would also be eligible for payments from the Administration Fund. Payments from the Administration Fund will be calculated at $80,000 per member of the Legislative Assembly and member of the Legislative Council up to a maximum of $2 million. Those eligible to receive payments would be reimbursed only for actual expenditure up to their maximum entitlement.

In response to concerns that capping donations may have an adverse impact on the development of new parties, the bill also establishes the Policy Development Fund. A party would be eligible for policy development funding only if it was not eligible for administration funding. The bill provides that a new party would be eligible for policy development funding of at least $5,000 for the first eight years. To maintain transparency, disclosure requirements will be maintained. The current disclosure threshold of $1,000 is retained. In light of the proposed caps on political donations and expenditure, and to improve the Electoral Funding Authority's ability to administer the Act, political donations and expenditure will have to be disclosed every 12 months as opposed to every 6 months, ensuring that the due date for disclosures corresponds with the end of the financial year.

The bill also includes a requirement that political parties that receive public funding under the new regime must furnish audited financial statements for their separate State, Federal and administration accounts—where applicable—on an annual basis. In light of the proposed reforms to political donations and expenditure, and the Electoral Commissioner's evidence to the committee, the bill also provides additional powers to the Electoral Funding Authority to ensure that the authority is in a position to enforce the new regulatory scheme. The Electoral Funding Authority will have new injunction powers, strong new inspection and enforcement powers, and new powers to enter into compliance agreements. These agreements will be a tool for maximising compliance with disclosure obligations without resorting to court action. Importantly, the authority will also have the power to withhold public funding payable to a political party, group or candidate that has exceeded the applicable expenditure cap or fails to comply with its annual disclosure obligations.

This bill is only the first step, but it is a big one. In order for there to be comprehensive, effective regulation of this area the Commonwealth and other Australian jurisdictions need to progress similar laws. There are also other issues to address within New South Wales, such as how local government elections should be regulated and funded. The New South Wales Government is proud, however, that we are the first to implement these innovative and necessary laws. Our State has one of the most stable democratic systems of government anywhere in the world. Our society cherishes this, and our commitment to democracy and transparency as a principle is unchanging. But the way we make our democratic process work has changed to meet changing times. New South Wales has seen many evolutions, and has responded to changes in human rights, technology or community expectations. These changes have always been robustly debated and carefully scrutinised by members of our community who rightly seek to protect that unwavering principle of democracy in government.

In recent years changes in technology and changes in community expectations about openness of information allow us to once again review our democratic process and ensure that it is the best, most open and accountable system it can be. In response to these changes we have proposed a range of reforms to make sure that the way our democracy functions meets the needs and aspirations of modern New South Wales communities. This is about letting the communities of New South Wales know and be confident that the principle of democratic government—with decisions made on merit, made openly and in the public interest—remains at the centre of our State. I commend the bill to the House.