

**CONSTITUTIONAL AND ELECTORAL LEGISLATION AMENDMENT
(ELECTORAL EQUALITY) BILL 2021**

Committee

Resumed from an earlier stage of the sitting. The Deputy Chair of Committees (Hon James Hayward) in the chair; Hon Matthew Swinbourn (Parliamentary Secretary) in charge of the bill.

Clause 23: Section 16M amended —

Committee was interrupted after the clause had been partly considered.

Hon MATTHEW SWINBOURN: If I recall correctly, the member asked whether there will be any diminution in the entrenchment provisions by what we are doing here. The answer to that is no.

Hon MARTIN ALDRIDGE: As I said before, I have a bit of a complex cross-reference. Sections 5(2) and 18(2) of the Constitution Acts Amendment Act are now entrenched, and they will be mentioned in the amended section 16M of the Electoral Act. When we look at sections 5 and 18 of the CAAA, we can see the relationship that I have talked about. The new sections 5 and 18 in the CAAA arise, in part, from the deletion of sections 16C and 16D in part IIA of the Electoral Act 1907. Sections 16C and 16D were entrenched in their entirety while they sat inside part IIA, because there was no carve out for 16C or 16D. Is this where I am going wrong?

Hon Matthew Swinbourn: I am advised that is incorrect, and that is where the member is going wrong.

Hon MARTIN ALDRIDGE: In its current form in the Electoral Act, section 16M reads —

(1) A Bill that repeals or alters any of the provisions of this Part, —

That is part IIA —

other than Division 2, section 16G(3) or (4) ...

Is that because it falls within division 2?

Hon Matthew Swinbourn: Yes.

Hon MARTIN ALDRIDGE: I see. New section 5(2) relates to the whole-of-state electorate and new section 18(2) relates to the members who are to be returned and sit for electoral districts. We are effectively entrenching the construction of the houses in terms of their distribution, if you like—I am looking for a better word—but we are not entrenching the number of members. Why does the government see the number of members in each chamber as an issue of lesser value than the distribution of those members?

Hon MATTHEW SWINBOURN: Section 73(2)(d) of the Constitution Act 1889 provides for the fact that essentially numbers cannot be reduced in the Legislative Council or the Legislative Assembly unless there is a referendum. I do not think they are technically manner-and-form provisions in the same way we are talking about. The numbers are already protected from reduction, but we did not want to place a limitation on the additional threshold of an absolute majority for the increase in numbers of members of either chamber, which has never been an entrenched provision. The numbers in both houses over time have increased, particularly in the Assembly, to account for population and demographic changes. I do not think we have ever gone backwards in the numbers. The numbers in the Assembly or the Council cannot be reduced and the numbers can be increased by an ordinary act of Parliament without having absolute majority in both houses.

Hon TJORN SIBMA: Very quickly, I have only been in the chamber for probably half of the discussion on this clause, and I do not intend to canvass issues that have been gone into, other than to clarify the final sentence of the description in the explanatory memorandum concerning clause 23, which states —

Section 16M signals to the Legislature the special importance of these reforms and acts as an *aide-memoire* reminding the Parliament of the reasons relating to the laws protected by s. 16M.

Getting back to the utilisation of the word “reform” and “reforms”, I want to specify that the reform being entrenched here is essentially the one the government describes as “electoral equality”, but does it seek to entrench the abolition of the group voting ticket system and the introduction of an optional preferential voting system?

Hon MATTHEW SWINBOURN: No, they are not entrenched provisions.

Hon TJORN SIBMA: I want to clarify that point, because I thought this was the twin evil and, in fact, the greater evil. If I am to interpret some of the rhetoric that has gone around the public justification of the introduction of this bill, and I will draw attention to the fact that the Premier himself utilised the word “corrupt” quite explicitly around 15 or 16 September in *The West Australian*—they were remarks attributed to the Premier—and probably in other processes, I can only assume that the utilisation of that hyperbolic word was in relation to the method by which

members are elected rather than the regional construction of elections. I find it odd, first of all, that the government is proposing to entrench provisions in a way as to close the door on the policy and legislative change that it did not have the courage to explicitly take to the election. I find that a shameful act. That the government will exclude the entrenchment of the issue that apparently has given rise to the whole bill I find a curious omission, and I hope the parliamentary secretary is in a position to explain that omission.

Hon MATTHEW SWINBOURN: The abolishment of group voting tickets is clearly broadly supported. The member's party has indicated on multiple occasions, and the Nationals WA, and even the Daylight Saving Party, that they support its abolition, and so I think that there is broad consensus on this point. We do not think that it is sufficiently significant to elevate it to an entrenchment provision, and that is the position that we have taken in terms of policy. We still think it is important enough reform to bring it to the Parliament and make that change. I am not inviting the member to do this, but, when his party gets into government, invariably, if they think it is important enough to entrench, I think it is available for them to take that path.

Hon TJORN SIBMA: I thank the parliamentary secretary. I think that we come here from the principle that, really, the deployment of entrenchment provisions are the kinds of actions that should be subject to greater scrutiny than, obviously, we are permitted within this forum, and that is probably one of the reasons that would have justified the referral of this bill to a committee, but we have lost that fight. If the government is to entrench provisions to embed the reform, and I think the justification utilised somewhere in this is to effectively provide or lend certainty and stability, then it should go the full measure. That is something that the government has not done. Consequently, it is of no surprise and it is on the supplementary notice paper that we will be opposing this clause.

Division

Clause put and a division taken with the following result —

Ayes (20)

Hon Dan Caddy	Hon Peter Foster	Hon Shelley Payne	Hon Matthew Swinbourn
Hon Sandra Carr	Hon Lorna Harper	Hon Stephen Pratt	Hon Dr Sally Talbot
Hon Stephen Dawson	Hon Jackie Jarvis	Hon Martin Pritchard	Hon Dr Brian Walker
Hon Kate Doust	Hon Alannah MacTiernan	Hon Samantha Rowe	Hon Darren West
Hon Sue Ellery	Hon Kyle McGinn	Hon Rosie Sahanna	Hon Pierre Yang (<i>Teller</i>)

Noes (10)

Hon Martin Aldridge	Hon James Hayward	Hon Tjorn Sibma	Hon Colin de Grussa (<i>Teller</i>)
Hon Peter Collier	Hon Steve Martin	Hon Dr Steve Thomas	
Hon Donna Faragher	Hon Sophia Moermond	Hon Wilson Tucker	

Pairs

Hon Ayor Makur Chuot	Hon Nick Goiran
Hon Klara Andric	Hon Neil Thomson

Clause thus passed.

Clause 24: Section 17 amended —

Hon TJORN SIBMA: Noting the time, which is not necessarily enough time for a lengthy discussion about a space program or moon mission, but is close enough, I rise to get clarification on clause 24. I understand that this is one of those clauses upon which consultation occurred with the Electoral Commissioner.

Progress reported and leave granted to sit again, pursuant to standing orders.