CONSTITUTIONAL AND ELECTORAL LEGISLATION AMENDMENT (ELECTORAL EQUALITY) BILL 2021

Second Reading

Resumed from 14 October.

HON TJORN SIBMA (North Metropolitan) [2.51 pm]: I rise potentially a little earlier than anticipated this afternoon to speak to the Constitutional and Electoral Legislation Amendment (Electoral Equality) Bill 2021. First and foremost, I confirm that I am the lead speaker for the opposition and, to be very clear from the outset, we oppose this bill in the strongest possible terms. President, for administration purposes, I note that I am seemingly untimed, which is wonderful, but I do not think that is strictly in accordance with the standing orders! I will continue.

This bill is grounded in deceit and developed through a process with unseemly haste, a process that has made a mockery of the concept of genuine consultation. It is sad to say that its inevitable passage and execution will consolidate a partisan advantage for WA Labor and impose a dominant metropolitan bias in this chamber. That is what will be accomplished with the inevitable passage of this bill. It should be dwelt upon with some measure of seriousness that the nature and disposition of this Parliament will inevitably be transformed. We are, up until today at least, the Parliament of Western Australia. The passage of this bill will transform this Parliament into the Parliament of Perth. That is axiomatic and inevitable. It need not be this way, but this is what will occur. This bill will pass at the cost of communities and industries beyond the Perth latte belt. It will ensure that the chambers together and individually will be—this is an unfortunate choice of words, but they have common usage—deaf and blind to the realities faced in regional Western Australia. My fear is that the passage of this bill will render this chamber, in particular, mute about the challenges, disadvantages and special circumstances that are the very stuff and reality of life beyond the Perth metropolitan area—or at least beyond the south-west segment of this state, where the majority of the population resides.

When it is appropriate to do so, I will apply the principle of charity—this discipline was drummed into me as an undergraduate student—which seeks to find the best in the argument put forward by your proponent. One of the propositions in this bill is that a whole-of-state electorate will be of absolute benefit to every Western Australian; that is the argument put forward by the government. My initial reaction to this—I am yet to be convinced—is that, effectively, introducing a member for everywhere will result in a member for nowhere. A member for everything for the whole state will be a member of no fixed address in terms of a constituency. Perhaps the only thing that I can rely on is the further entrenchment of individual or party interests rather than the advancement or advocacy of interests and concerns experienced outside the metropolitan area. To be consistent with this application of charity, I must focus on what I consider to be a positive attribute of this bill. The bill is irredeemable, but one small part commends itself; that is, the abolition of group voting tickets and the introduction of a model—it is one form—of optional preferential voting, which will be to the advantage of the Western Australian electorate and community at large. Questions will be asked at the appropriate time and clauses as to why this particular optional preferential voting methodology has been chosen to the exclusion of other similar systems. I will note in passing but not dwell on the fact that it would appear at least to be more onerous than that obligated by the Senate voting system. I want to reinforce at this point that the abolition of group voting tickets will go some way—perhaps not the whole way but a substantial way—towards putting profit-seeking preference whisperers and a cavalcade of political desperados seeking office out of business. If there is one element of this bill that commends itself, it is absolutely that dimension.

That has also been the Liberal Party's position for a considerable time. My ex-colleague Hon Simon O'Brien, who is thought fondly of in this place and who was the last opposition spokesperson for electoral affairs prior to the election, argued that point on many occasions inside and outside this chamber and he wrote op-eds to that effect as well. This dimension of the proposed reforms and the terms of reference, which were set by the Attorney General in his function as the Minister for Electoral Affairs, was also seized upon in the Liberal Party's submission to the Ministerial Expert Committee on Electoral Reform. We have been consistent politically, both inside and outside this Parliament, about the obvious need to rid ourselves of the scourge of gamesmanship that goes on with the exchange of preferences—absolutely. I doubt any of my colleagues will take any exception to that. Unfortunately, as this bill is constructed, it is impossible to cleave what I would determine to be the very positive and self-recommending element away from everything else. But I think that if the government were so minded to bring forth a simple piece of legislation that dealt with only that dimension, it would pass with the unanimity of the house. Unfortunately, that is not the case.

I should also say, because the Liberal Party has been so consistent on this matter—I will reflect here not in any injudicious way and not imputing the character of the individual at all—that it is very clear that Hon Wilson Tucker's election to this chamber has precipitated this very radical overhaul to our electoral laws. But should his election to this chamber have come as an absolute surprise? I do not think that it did, at least insofar as a potential outcome for the East Metropolitan Region in 2017 is concerned. This chamber came very close to having a member of the Fluoride Free WA Party among its membership. The challenges and issues posed by the unseemly transaction of

preferences through our group ticket voting system has been known for some time. A government was re-elected that four years ago had an opportunity to deal with that matter but chose not to.

The invocation of this great sin—to be voted into this place on the basis of 98 primary votes—contains a measure of confected outrage, because the government is deliberately conflating two different issues. The inevitability of outlier sort of outcomes with respect to the way that preferences have been garnered is conflated with malapportionment or regional weighting of votes. These are two very different issues. Although we can agree on the sins of the former, the alleged sins of the latter are up for debate. My thesis and the thesis of others is, as unfortunate as it is, that the election of Hon Wilson Tucker—who I consider to be, in the very short time that I have known him, a thorough, consistent and honourable person who takes seriously his duties as much as they may have come as a surprise to him—has meant that he has been used as a scapegoat for a broader strategic agenda. It is not a hidden agenda at all. I do the government this credit. It has been on the Labor Party manifesto for some 120 years or so, but "their strategic objective" has been used with a sin that could have been prevented had the government been minded to act earlier. We can have reasonable debates in this chamber, and outside it, about the appropriate structure and balance of representatives in the upper house. The way to do that is to be open and accountable with people, particularly during elections.

In the latter days of the Roman republic, after Caesar had crossed the Rubicon and dispatched his rivals, he was offered the Crown on three occasions and he denied it thrice. I think it was Mark Antony, if my recollections of late antiquity and whatever I recall of William Shakespeare during English lit serve me correctly. That was because the Roman Republic, at its birth, had dispatched its kings and the fear of kingship and the fear of being thought an aspirant to any sort of regal role was one that people undertook on pain of death, which is why an obviously power-hungry individual such as Julius Caesar wanted to at least go through the pretence of not wanting to be made king. But he denied his two aspirations on only three occasions for show. The Premier, perhaps cast in the role as a latter-day Caesar, denied his true ambition to reform—I will say "change" because I have said before that "reform" is the most abused word in the entire Australian political lexicon. However, I will use the word in this instance. He denied his intention to reform the upper house not once, not twice, not thrice, but I think on seven occasions in one particular interview. I might be wrong, but that has been relayed to me, and I saw it subsequently on the only televised election debate. Like an incantation: "It is not on our agenda. It is not on our agenda. It is not on our agenda." It was put on the agenda, but not out of nowhere.

It was not the smokescreen that the Premier claimed at the time, with the disassembling, the dismissal, all the kinds of tactics used by a very trusted, very experienced politician who does not want to be called out, who does not want to be held accountable for his true ambition. At least seven times it was denied. If anything proves that there is no mandate for this bill or dissolving regional representation in Western Australia, it is the Premier's own deeds, words and actions throughout that campaign. There is no mandate, but there is a solution to the problem—should the government wish to take up an opportunity it dismissed in the lower house—that will be put to members again in some form during committee consideration, and that is to hold a referendum and to settle the question one way or another way. I will get to this later, but it was quite obvious that the Labor Party did not have the strength of its convictions during the election. Perhaps it has rediscovered them now; and, if so, the opportunity presents itself. I will put it in as sober terms as I can: there is only one way that the Labor government can legitimise this overhaul of the Electoral Act since it did not take it to the election, and that is by agreeing to a referendum.

I want to talk about the process to some degree because this has contributed to the form and substance of the bill that we will contemplate. I think it is worth at least a passing reference to the speed at which the government has moved. I categorise it as indecent haste and compare this indecent haste to its growing list of other problems that do not appear to be being tackled with the same laser focus or speed.

The election was held on 13 March, from memory. On 28 April, the Minister for Electoral Affairs appointed the Ministerial Expert Committee on Electoral Reform, comprising four members. The composition of that committee has been canvassed previously in this chamber and no doubt will be canvassed again briefly. All I will say is that the views of the three academic members of that committee on the matter of regional representation, or malapportionment—however one likes to categorise it—are very well known. They have published either individually or collaboratively with other academics. Their view is that electoral laws should be overhauled in Western Australia, particularly those relating to the election of members to the state's upper house. On 28 April, the minister put together his hand-picked team and gave them, I think, two terms of reference. The first was effectively the question of how electoral equality might be achieved for all citizens entitled to vote for the Legislative Council, and the second was to inquire into and provide recommendations concerning the distribution of preferences in the Legislative Council's proportional representation system.

I remember asking who drafted those terms of reference and to what degree the members of the panel were consulted on the questions they were effectively being asked to answer. It became apparent that the terms of reference were drafted out of the minister's office. That is fine, but an impartial observer would have to say that the fix was in; the questions were set. The questions were posed in such a way as to obligate only one possible answer. I think the chair of

this committee, Hon Malcolm McCusker, AC, more or less conceded that at a press conference on the day, strangely, that coincided with the tabling in Parliament of the report from which I have just quoted—the *Ministerial Expert Committee on Electoral Reform: Final report*. The opposition was kindly briefed on the report by the committee. At least one of its members then had to go to the media conference to announce the same, and also to announce to us all that the bill would be introduced on the subsequent day in the Legislative Assembly. I understand that that press conference was called short, with the Premier citing business of the house; it was over almost as soon as it began. I recall reading one or two days after that the characterisation of that process and the press conference as being somewhat underhanded. I think it was Peter Law who made that assessment. I do not find him to be an unfair judge of people. He certainly is not one of those rusted-on, permanent critics of the government. He considered that to be a pretty unseemly way to deal with something so substantial.

A process of consultation was not done on this bill, but it was done for the purposes of the report, within a two-month period. Strangely, a discussion paper was released at some point in between, which I found to be an odd way to approach this. I think there was also a moderate extension. We were advised that, overall, 184 submissions were received. I remember being rather interested in who had made submissions and who had not. I make the point now, if I have not done so before, that the WA Labor Party did not make a submission. Maybe that would have been superfluous; I do not know. Apparently, 184 submissions were received. Not all of them were published. As I was going through them, I got to a point where I had a running tally, from 128 submissions, of things that I had read to a varying degree of detail, just to get a sense of the sentiments on the questions posed. The figures I am about to read in are my own calculations and are not from the full suite of submissions; they reflect about 80 per cent of the submissions that were received.

Of the 128 submissions on which I based these figures, 101, or 79 per cent, opposed group voting tickets outright. Fifty-nine of the 128, or 46 per cent, were pro the one vote, one value sentiment, which effectively will be implemented and executed by this bill through the creation of the whole-state electorate. Fifty-seven of the 128 submissions that were received and published, or 45 per cent, argued for the retention of regional representation. It also needs to be said that not every submission was of equal quality or tackled the terms of reference. Some submissions did not pass any judgement on the principal questions that were asked. But, essentially, the overwhelming number of respondents were in favour of kicking out the preference harvesters. However, the issue of having a whole-of-state electorate or a one vote, one value electorate versus the need to retain regional representation was effectively split down the middle, if we go on those submissions alone. But things can change. My issue is not to debate the percentages, but to state the obvious themes. On the one hand, on the first question, there was unanimity of view. On the other hand, on the second question, there was quite a degree of entrenched disputation. My recommendation would have been that the government should legislate where it had consensus, but because it did not take this matter to the election, it should hold a referendum on the issue on which there was an apparent clear divide. If the government is the believer in its argument that it purports to be, and if it believes in its capacity to persuade the population rather than dictate to it, then I think it has no other alternative. However, it is again worth focusing on the merits of the argument.

I want to divert from the process now and focus more on the bill and its substance. I think it is worth asking an open question; that is, what purported sin does this bill propose to fix? We have a juxtaposition of views. The government says that the current system is malapportioned and effectively is a grievous and undemocratic anomaly. In fact, similar words were used in the second reading speech, from which I will quote. It states —

> Members, this bill is steeped in equality, and democratic values. Malapportionment that benefits a select minority is a grievous and oppressive injustice to all other voters.

That is the government's case. We say, to the contrary, that the present system, despite its imperfections, protects vulnerable, isolated and marginalised communities outside the metropolitan area. Its virtue is the establishment, effectively, of an equity floor. It recognises differences in access to services at the very least—the distances that have to be travelled. The government's position is a strict, literalist interpretation of equality. That, I think, is how we can conceptualise the two arguments.

The question as far as I am concerned, and I think as far as my colleagues in the opposition are concerned, is: what is actually the best system for Western Australia—a state that is vast and has a sparse, but concentrated, population? That is the question. I put it this way. If I lived in another jurisdiction, whether it be Europe, the United States, or potentially another state in Australia, with a smaller land area and a more evenly distributed population, and it had an upper house, I would accept the government's argument. But I do not accept the fact that a neat, almost puritanical, model of alleged democratic equality should be imposed on a system that is just a virgin. There is a case to be made for Western Australian exceptionalism. We all invoke that case from time to time to suit our argument. If we are to have an upper house at all, one that is weighted to provide appropriate representation from regional areas is the one we should stick with.

Members might think, "You would say that. You're from the Liberal Party. You're from the opposition. You're just here to oppose." But I am not the only one who says that. I want to cite and read in where I can some passages from a submission that was made by the ex-Australian Senator Andrew Murray. I thought it was, as individual or personal submissions go, a highly nuanced piece of work. There are elements of it with which I would have a disagreement, but I think the general theme of his contribution, and the arguments that he made around regional representation and the advantages of retaining the current system, are worthy of reading in. Therefore, I will, with some indulgence, quote from this document, and I will provide it to Hansard subsequently.

Mr Murray says this —

> In theory the Legislative Council regions could be abolished and members elected on a state-wide basis, as for the federal Senate, but this idea should be discarded. Inevitably this would result in the Legislative Council members being predominantly Perth metropolitan residents.
>
> For reasons long and well-argued elsewhere, the regional model for the Legislative Council should remain. There is no call for its abolition by politicians or the public.
>
> There is no political or public demand of note for the numbers of Legislative Council members to be increased or decreased.
>
> If one vote one value were introduced in the Legislative Council regions, and the same number of members retained, then the number of metropolitan members v non-metropolitan members would have to rise, and the latter would have to fall.
>
> Why that is desirable is not clear, apart from simply honouring the principle of one vote one value.

He goes on to say —

> Nevertheless, apart from breaching the principle of one vote one value, there is no evidence to indicate that the present system of malapportionment in the Legislative Council regions creates any concern for voters at large, nor is there any evidence that it has had deleterious effects on the functioning of parliament and government.
>
> Prima facie there is reason to accept that there is merit in enhanced regional representation in Western Australia.
>
> The precautionary principle should apply—if no harm is being done, and there are no benefits through major change, why risk harm being caused by that change?

I think that is a sober and salutary note, and probably on the very top shelf of personal submissions provided to that committee. The fundamentally underscores our argument that the system in Western Australia, as imperfect as it is, and as offensive as it may be to academics with a very puritanical view of how a polity should function, is a system that has worked for Western Australia and continues to work for Western Australia.

Indeed, I make this point, too. I am a metropolitan member. In my approaching five years as a member of Parliament, not once have I been approached by one single member of the vast swathe of the North Metropolitan Region, which Hon Dan Caddy also has the honour of representing, complaining about this issue—not once. I do not think that is a public demand for what the government is proposing here. I know that the government has an objective and ideological demand to fulfil, because this has been part of the Labor Party's platform for countless years, but it is not one that is within even the top 20 issues confronting regular Western Australians. It is certainly not an issue that has ever been raised with me in the time I have been a member.

On that point, is this really the kind of issue to which the government wants to devote its energy, or to prioritise? I think we have at least five more sittings weeks scheduled, with the risk, potentially, of a sixth. I know that there is other legislation that the government wants to get on with. There are other issues confronting Western Australians that are top of mind and will probably benefit from the focus and energy that the government is devoting to this particular measure—a measure that no-one has asked for, and that the government told no-one about until after the election. We can reflect on the issues that were raised last week during our estimates process, both inside and outside the chamber, about why Western Australia is a laggard when it comes to the vaccination rollout rate; the episode-by-episode revelation of further dysfunction within our health system; the un-remediated problem of homelessness; and the revelation, I think last week, that only two per cent or three per cent of the COVID stimulus budget has been spent; and, needless to say, the extraordinary blowout in the capital and operating costs of Metronet. These are issues. These are problems. These are matters, however, that the government has chosen to deprioritise. It has elevated this issue to the exclusion of all other issues. I find that absolutely extraordinary, particularly considering where we are in the electoral cycle. There is no need to do this in such a hasty way.

I want to talk a bit more about the actual problems with the bill and the propositions countenanced therein. It probably does not require much reinforcement, other than the fact that the erosion of regional representation will effectively end regional representation in this chamber. That follows axiomatically. That is not to say that the Legislative Council

will not have members who are based in the regions and who will do their best, but we will not have 50 per cent of the members of this chamber whose most exclusive job it is, aside from the scrutiny and review of legislation, to represent the needs of the regions. We just will not have that. That will not occur.

It is untrue to say that the proposed changes will have an effect only on the so-called unrepresentative swill in this chamber. It will have an effect on the lower house as well. That is because clause 19 of this bill seeks to delete from the Electoral Act section 16H(1) and (2). That section describes the six current regions of the Legislative Council, and the metropolitan area of Perth. That is the important bit. That will effectively mean the abolition of all descriptors. The removal of reference to a metropolitan zone will allow for future redistributions to extend rural Legislative Assembly seats into outer metropolitan suburbs. Effectively, those communities of interest will exist in those, I will call them, "buffer seats" and the character of the non-metropolitan seats will be transformed by this bill. They will be urbanised in a way not previously contemplated even under the metropolitan region scheme. Therefore, it is not true to say that this bill is about reforming the upper house; this bill is about removing or diluting regional representation across Western Australia, including in the lower house. If there is one practical application of this bill that should give us pause for thought, that problem would rank among them.

The other problem established through the abolition of regional definition and regional representation and the establishment of a whole-of-state electorate is that it lowers the quota required to be elected into this place to begin with. As much as members may decry what is accused of being the apparent undemocratic nature of our regional divide composition, one of the benefits of having six members for six regions is that we establish a floor of 14.28 per cent of the vote required to get into this place to begin with. That is obviously a quota the further down the list you go that can be surmounted but only through an exchange of preferences in ways, which we have determined that we are in violent agreement with, that are unseemly. But the government is establishing a dangerously low quota of I think it is 2.68 per cent.

Hon Martin Aldridge: Six-three.

Hon TJORN SIBMA: I stand corrected. It is 2.63 per cent. With 2.63 per cent of the vote, a person gets in this house.

Major parties, from time to time, including the government, have dismissed minor parties, particularly single-issue parties, and their obsessions. In fact, members in this house have been dismissed and treated in a condescending way by the government on occasion as well, even in this forty-first Parliament. If the presence of minor parties in this chamber is so appalling, so egregious, why would the government make it easier for them? That is exactly what is being done. I understand, to some degree, why it is being done. It is because the only remedy to that, if we are going to have a statewide electorate, would have been the introduction of staggered terms. Electing members for eight-year terms is a political argument that is very difficult to sustain, so I can understand why the government, in a way that is consistent with one of the recommendations in the report, turned down that option. But a quota of 2.63 per cent is where some of the danger in the bill resides.

During briefings with department officials, it became clear that there is a view that someone could probably get elected to the upper house on 1.5 per cent —

Hon Dr Steve Thomas: Or one per cent.

Hon TJORN SIBMA: Or one per cent. There is an argument to be made for political plurality, but that is not the argument that the government wants to make. I think the government is opposed to that. But this is a problem. What will happen, for example, if the composition of this chamber in 2025 is somewhat different? What will happen if we have something that is akin to the tone and character of this chamber in the fortieth Parliament and we have a crossbench that could exert itself and holds the balance of power? This is where it becomes potentially dangerous for governments but also very risky for regional communities, particularly those whose incomes are derived through primary industries, extractive industries or agriculture and the like, which are the antithesis of the party ethos of one of these parties that holds the balance of power. What in this bill, for example, really genuinely thwarts a motivated animal justice party or an end live export party or anti-vaccination or anti–mandatory vaccination party? This is the problem, which was absolutely avoidable through the retention of the current system. This is the absolute risk posed through the implementation of a whole-of-state electorate.

I also want to reflect on something that I found interesting. It is, again, something that nobody ever asked for and that is more politicians. If this bill passes, we may well be gifted a thirty-seventh member. I find that problematic, and there is a range of problems with it. What it will potentially do—much against the character and the longstanding practice of this chamber—is turn the role of President into a more partisan role. It also has a marginal impact of reducing the quota allowed but, frankly, the increasing quota, which again from retaining the membership at its current level is still appallingly low, nevertheless exacerbates the problem in a minor way. But there is absolutely no sound case made for that other than to get a potentially contentious partisan President. It is an outcome that has been argued against by well-experienced and previous long-term holders of that role.

There are also quite obvious implications for the Western Australian Electoral Commission. I have not had the opportunity of a briefing with the Electoral Commissioner yet, which one might consider to be an absolute oddity considering the fact that this bill proposes changes to the Electoral Act. It was made clear in the departmental briefing on the bill, rather than on the report, that staff could not answer questions as to how deeply the commission had been consulted. I refer back to the report of the Ministerial Expert Committee on Electoral Reform, which had an annexure of its table of consultations. Electoral commissions were consulted but they were the ones in South Australia and New South Wales and they were consulted ahead of the time when the Western Australian Electoral Commissioner was consulted, and that was just on setting the questions of voter equality. The application of those principles and their operationalisation and the establishment of a very low quota runs the very obvious risk of expanding the ballot paper to an infeasible, disproportionately large and unwieldy size. It also necessitates a communications campaign, on behalf of the commission, telling people how to vote in a way that is kind of similar but still a bit dissimilar to how a ballot might be cast for the Senate at a federal election.

Obligations are also placed on the commission to regulate the formation and currencies of a party. I am not making this the principal focus of this address, but I think it is worthwhile for studious and committed members of this place to look into because in the course of the briefing, and I might express a degree of naivety here, I was alarmed at the fact that party lists of names would have to be provided to an Electoral Commissioner, not just once, but on a regular basis. During the course of debate, we will —

Hon Dan Caddy: It is easy, your party is highly centralised—two people have the list.

Hon TJORN SIBMA: I will accept that interjection and treat it for what it is worth. I joined a party that is against the handing over of personal information on compulsion. We are a party that treats privacy seriously. I am genuinely concerned about the Electoral Commission's capacity to retain personal information identifying party affiliations, particularly when it was not consulted on the obligation. You can be as smarmy as you like, but I hope you consult with them and provide them with resources to safeguard that information.

Hon Matthew Swinbourn: I hope you are not directing that at me.

Hon TJORN SIBMA: I am addressing that at you because you are a very constructive and helpful —

Hon Matthew Swinbourn: You called me smarmy.

Hon TJORN SIBMA: I am not calling you smarmy, do not worry.

Hon Matthew Swinbourn: I think they are the words that came out of your mouth.

Several members interjected.

Hon TJORN SIBMA: I said "smarmy remarks".

Hon Matthew Swinbourn: I did not make a remark.

Hon TJORN SIBMA: I know.

Hon Matthew Swinbourn interjected.

Hon TJORN SIBMA: Do not get excited! Your time for excitement will come, member!

It is problematic and underscores the fact that a radical transformation of electoral laws is occurring without the principal independent agency responsible for ensuring fair elections being consulted in the process, and I find that more than discourteous; I find it very worrying.

One of the other clauses of concern in the bill is clause 23. I will refer to the explanatory memorandum, as it deals with this. I found clause 23 to be particularly bracing and a strange counterpoint in light of the fact that this measure was not taken to the election. I quote the explanatory memorandum —

> … modifies the previous s. 16M by now including ss. 16C and 16D of the Act and ss. 5(2) and 18(2) of the CAAA.

This is the operative bit —

> These provisions cannot be altered or amended by any subsequent Bill unless that Bill is passed with absolute majorities in both Houses. The new provision s. 16M is designed to entrench electoral equality in the Bill and lend certainty and stability to the law.

I find that completely unnecessary. If I can say this as well: it is more than just passingly hypocritical, because the only party here that has introduced uncertainty in the law is the government, by changing it; but the government wants to have its way and not change it forevermore. I do not know why that is strictly necessary in legal terms. I will put that question when we get to that point during the Committee of the Whole House process.

Not lastly, but penultimately, I want to refer a little bit, as has become my custom and practice, to some of the breezy assertions made in second reading speeches. I have never criticised a representative minister or parliamentary secretary in this place for reading them, because they are obligated to read them, but there are a couple of passages that, because they were uttered by the Minister for Electoral Affairs, took my breath away

Hon Martin Aldridge: Just two?

Hon TJORN SIBMA: There were a couple. It is not the whole thing, but I will reflect on this. At page 6 of the speech, it says in bold —

> **It is important to understand the role of the Legislative Council** The primary role of the Legislative Council is to be a house of review.

I found that sickly comic because the discharge of that very function, that very responsibility, in the course of the fortieth Parliament was never met with open arms by the government. In fact, whenever we had the temerity to act in accord with our primary role, the primary role that the minister tells us we have, we were consistently criticised up hill and down dale. Liberal members in the upper house were the great big bogeymen holding the McGowan government back from its manifest destiny. But now there is a function for us! A function has been found! Coincidentally, that function has been found when Labor has a majority in this chamber. Life is more than passing strange, but I could not let that one go!

There are also some other assertions. I think I have talked about the overreach in language when the minister claimed —

> … **this Bill is steeped in equality, and democratic values.** Malapportionment that benefits a select minority is a grievous and oppressive injustice to all other voters.

I think a lot of claims can be made in this place. As imperfect as the system we have is, it may be the least bad options of all the imperfect systems that we could devise, but I think there has not been a sufficient well-balanced case to say that we are grievously oppressing people. If that was truly a motivator for the bill, I would have expected to hear from the Premier and other members in the course of the election campaign, and I absolutely did not hear that. The second reading speech also claims —

> **At its heart, this Bill seeks to restore the franchise of the individual over particular sectional interests.** The basic unit of the community is the citizen. It is the citizen to whom the franchise should attach.

I might put it to you, Acting President, that those are pretty highfalutin words. If there is a sectional interest entrenched through this bill, it is the sectional interest of the Labor Party, because it is a viewpoint, frankly, held by no-one else. Taken together, this is a demonstration of overreach. I have to categorise it this way: reasonable suggestions and motions put in the other chamber were rebuffed, and they were referral to committee, the conduct of a referendum, the striking out of some offensive passages and the seeking of clarity on other issues. This bill was rushed through with unseemly haste. The gag was brought in, the guillotine came down, and the bill was delivered up to us. This is a government for whom the world is not enough, and this bill is just another example of the government flexing its muscles. I think it to be, in a serious way, a vulgar display of power. But we need not be a vulgar chamber. As much as I think this bill is irredeemable, perhaps some of its more offensive attributes can be moderated. Perhaps it could be scrutinised, if only to the degree that the important role and function of the Electoral Commission is countenanced in the most appropriate way. One way to do that is to refer a bill to a committee. Whenever we tried this last time, we were denied; we heard screaming and lamentation. I am comforted by the fact that the Minister for Electoral Affairs thinks that we are a house of review. Since the government has no mandate, and since there is no obvious urgency for the passage of this bill forthwith—effectively, we will get to that—and because I recognise that the government has other business that it needs to get off the notice paper before the end of this year, I move the following motion.

Discharge of Order and Referral to Standing Committee on Legislation — Motion

HON TJORN SIBMA (North Metropolitan) [3.49 pm] — without notice: I move —

> That the Constitutional and Electoral Legislation Amendment (Electoral Equality) Bill 2021 be discharged and referred to the Standing Committee on Legislation for consideration and report by no later than 28 February 2022.

I have signed that and I table that.

HON SUE ELLERY (South Metropolitan — Leader of the House) [3.50 pm]: Acting President, I appreciate the courtesy. I indicate to the house that the government will not be supporting this motion before us today.

The development of the Constitutional and Electoral Legislation Amendment (Electoral Equality) Bill 2021 that is now before the house is marked by the process that the government entered into. It appointed an expert panel that issued a discussion paper, took submissions and considered those submissions before making recommendations to the government. In addition, members of Parliament have been offered briefings by the Electoral Commissioner,

who is an independent parliamentary officer. Actually, he is not part of the oversight, as in the Ombudsman, but certainly he is independent and acts independently.

In consideration of the bill that is now before us, every member of this place will have the opportunity to examine the bill in detail in the committee stage, and that is as it should be. It is the case that there are certain things that a committee would consider and actions that a committee would take. One would be to call for submissions. That has already been done. Another would be to hear from experts. That has already been done. It is also the case that on matters like this, essentially, the question comes down to how members resolve the political issue at the heart of this bill, and no expert is going to be able to answer that question for members opposite; they will have to make that decision themselves. Political parties will have to make those decisions themselves. The people in this chamber have stood as candidates, many of them several times. They hold senior positions in their own political parties, and many of them have held those positions for many years. We are best placed to debate how the mechanics of a bill like this will have effect, because we are the ones who do it. This is our business. Although there may be people on the outside who have, for example, an academic point of view about one element or another of a bill like this, actually, the question that needs to be resolved—one that the legislation committee cannot resolve—is what political position members should take on this. No legislation committee is going to be able to resolve that for members.

In the past, the Standing Committee on Legislation has looked at particular clauses of bills and provided an understanding of how they might work. Actually, the people in this room who will be doing the examination in this chamber are the ones who already know how those elements can, may and will work, because it is our business. We do it all the time. Frankly, the legislation committee is not going to be able to resolve those issues, either. Having come to an understanding of what a particular clause means as it has been drafted, members will come to a position about whether they support that clause politically or not. No committee will be able to help members resolve that.

During my 20-something years in this place, referral motions have sometimes been used as a mechanism to delay. This is nothing more than that. For those reasons, and the reasons I have outlined, the government will not be supporting the referral.

HON MARTIN ALDRIDGE (Agricultural) [3.55 pm]: I thought for a moment, then, that the Legislative Council was going to agree to discharge this bill and actually fully undertake the responsibilities that the parliamentary secretary outlined in the second reading speech that he delivered to this place. Just reflecting now on the arguments from the Leader of the House—not the member in charge of this bill—which I jotted down as quickly as I could, it is interesting to note that, effectively, that argument would mean that we have no purpose for a Standing Committee on Legislation. Perhaps that is the view of the government, because, so far in this Parliament, as we approach the end of its first calendar year, as I understand it, we have not given one scrap of work to the Standing Committee on Legislation. Perhaps it is now the government's position that the scrutiny function of this place shall exist solely within these four walls. The Leader of the House said that this is our business and that this is a political decision. I have a different point of view. What about the 1.8 million or so voters out there? Do they not have an interest in the design of our political system?

Hon Alannah MacTiernan interjected.

Hon MARTIN ALDRIDGE: The minister will get an opportunity in a minute. In 43 minutes and 30 seconds, it will be her turn to go.

I would argue that this ought not be exclusively our business or our political decision. In fact, every voter in this great state should take an active interest in the design and nature of the democratic systems that elect people and regulate people to its respective chambers.

The Leader of the House also said that it is our business to examine the clauses, and the standing committee cannot resolve that for us. I ask: then what is the role of the Standing Committee on Legislation? I have seen many good reports, particularly in the last Parliament, from the then hardworking members of the Standing Committee on Legislation on recommendations for change. Those recommendations were adopted not just by non-government members but by the government itself, which realised the errors of its ways and the errors of its drafting. Have we simply converted back to the approach that was taken on the voluntary assisted dying legislation, which is that this bill is perfect, cannot be improved, has no fault or flaw and should be passed immediately forthwith without the scrutiny of the Standing Committee on Legislation? That is what it sounds like to me.

The final thing that the Leader of the House said was that this is simply a mechanism for delay. This is an interesting point. I want to pause here and reflect on this point, because I spent my first term as a government backbencher, and I watched many, many debates, even debates in which the Labor opposition agreed with a government bill, whereby we went through every second reading speech, one by one, and all members had to speak for the entirety of their time, which resulted in many of them reading *The West Australian* on frequent occasions. Every single member spoke. Then we got to the final member, who got up and moved the referral motion to discharge. Then what did those members do, particularly for those of us who were not here? They all got up and spoke again for the entirety of

their time. They were encouraged to make best use of their time. That was delay. That is not what Hon Tjorn Sibma has done as lead speaker for the opposition. He indicated at the earliest opportunity the opposition's intent to refer this bill to the Standing Committee on Legislation for much better consideration and scrutiny than it has been given to date.

It is my pleasure to stand in support of Hon Tjorn Sibma's motion. First of all, we need to establish why the consultation aspect of this process was so deeply flawed, and why the motion and the argument put by the honourable member should be supported. As Hon Tjorn Sibma said, the government clearly has no mandate for the policy of the Constitutional and Electoral Legislation Amendment (Electoral Equality) Bill 2021. In fact, worse than that, the Premier denied the policy on numerous occasions, one of which was only days before the election. On that occasion he said, seven times in one interview, that he would not do the exact thing that he is now doing. At the same time, every Labor candidate was out there telling voters to trust the government, trust McGowan and to vote Labor for the first time: "You can trust us." Does Hon Darren West remember that? I still have the member's infographic saved; I might table it later.

The voters of Western Australia were actively misled at the last election. The Minister for Electoral Affairs admitted as much when he released the Ministerial Expert Committee on Electoral Reform's report on the same day as he gave notice to introduce this bill. He said that it had been on the agenda for about 120 years; it is just that no-one in the Labor Party was brave enough to admit it in the lead-up to 13 March.

The government claims that there is no further consultation to be done: "It's done; we've publicly consulted." I am pretty sure that is what was reiterated just now by the Leader of the House. It should be noted that the consultation, as slim as it was, was limited entirely to the ministerial expect committee process. We need to reflect upon that committee. It was appointed by cabinet on 27 April 2021; the government lost no time after the election. The election was on or about 13 March, and I am not sure on what date cabinet ministers were sworn in and how many cabinet meetings had been held by 27 April, but it is fair to say that this was one of the highest, if not the highest, priorities of the returned Labor government.

The committee was established on 28 April 2021 for an eight-week term of appointment. The entire duration of the ministerial expert committee was eight weeks, from announcement to report. The committee sought public submissions via advertisements in *The West Australian* on 1 May and, as I understand it, on two other occasions. Apart from a government media statement, I am not sure that there was any other advertising of the fact that invitations were being extended for submissions from the public within the constrained time frame given to the ministerial expert committee. On 14 May, two weeks into the public submission period, the committee strangely released a discussion paper. It was not released on 1 May, when public submissions were first called for; it was released two weeks later—two weeks into the eight-week review. Interestingly, of the 184 submissions received, 28 were received prior to the release of the discussion paper.

I turn now to the composition of the committee itself, because we are going to hear a lot about it. The government has already used it in defence of its position to not allow this house to fully undertake the scrutiny function with which it is charged. I draw members' attention to the second reading speech delivered by the honourable parliamentary secretary, in which he qualified the so-called independence of the committee. He stated —

> This bill, the electoral equality bill, is based on the recommendations of the final report by the independent Ministerial Expert Committee on Electoral Reform. I say "independent" in the following context. The government set the policy question—how to best achieve electoral equality in the Legislative Council. It then asked a panel of leading experts in electoral and constitutional law to turn their independent minds to providing the Minister for Electoral Affairs with the best way to achieve reform, drawing from their extensive expertise in the complex fields of constitutional law and psephology. It was called a ministerial expert committee because its purpose was to inform the minister. However, the question put to it was resolved using the independent exercise of the members' collective intellect. The committee called for public submissions and published a discussion paper to elicit responses from the community. A total of 184 submissions were received, the vast majority of which were published online.

This expert committee had qualified independence. It had to report in accordance with very well-crafted terms of reference to achieve the desired outcome of the government's policy. It was not able to exercise independent thought or examination beyond the very explicit terms of reference with which it was provided. This point was made quite obvious and was referred to earlier in this debate by the chair of that committee.

This was a committee of so-called experts, hand-picked and personally selected by the Attorney General. Three of the four members—the chair excluded—have long advocated for the policy outcome pursued by the government through this bill. They have not brought unbiased, independent thought to the consideration of this issue, because to a significant extent their views were predetermined and consistent with the Attorney General's views.

Two members of the committee have links to former Labor governments. I refer members to question without notice 88. One of the two committee members had been chief of staff to the Minister for Housing and Works;

Local Government and Regional Development, between 2001 and 2004. Another had been a senior policy adviser to the Department of the Premier and Cabinet between 2005 and 2008. This information was provided in tabled paper 176, in response to question without notice 88, and I encourage members to review it. In the second part of question without notice 88 I asked —

> (2) Are any of the committee members previous or current members of the Labor Party or staff to Labor members of Parliament?

If one were setting up a committee of experts and wanted to make sure that it was free of any claim of political association or bias and was truly independent to the extent that the terms of reference would allow, I would have thought the answer to this question would be a simple no. But the answer that I received was —

> No committee member is currently a member of the Labor Party.

It is interesting, because if the answer was a simple no, the government would have said no. The answer implies that at least one member of the Ministerial Expert Committee on Electoral Reform had been a member of the Labor Party. I have spoken in previous debates about this issue and about the political neutrality that is applied to the WA Electoral Commissioner and his officers in the conduct of elections. I have also reflected previously on how somebody who applied for an electorate officer position in my office was advised by the Western Australian Electoral Commission that taking such a position would have disqualified them from providing future services at elections on the principle of political neutrality; nevertheless, you might not be able to process ballot papers on election day, but you can certainly be one of the Attorney General; Minister for Electoral Affairs' experts recommending reform of our electoral system.

It is interesting the way in which the Western Australian Electoral Commission was sidelined throughout this process. I think there is a significant opportunity for the Standing Committee on Legislation to genuinely and properly engage with the chief electoral officer of this state. We know from the annexure in the Ministerial Expert Committee on Electoral Reform's report that engagement with the Electoral Commissioner occurred on one solitary occasion, 10 June 2021, which was almost a week after consultation with the Electoral Commissioner of New South Wales and almost two weeks after consultation with the Electoral Commissioner of South Australia—one occasion. It beggars belief that in establishing the Ministerial Expert Committee on Electoral Reform a reasonable person would not appoint the Electoral Commissioner to that committee. Who in Western Australia is better qualified to inform the government and ultimately the Parliament in the design and particularly the operation of our electoral system?

Hon Darren West: Malcolm McCusker.

Hon MARTIN ALDRIDGE: Why is Malcolm McCusker, QC, more eminently qualified than the Electoral Commissioner of this state to advise on these matters, Hon Darren West?

Hon DARREN WEST: Because he is a former Governor and he knows about elections. He is better qualified—far better qualified.

Hon MARTIN ALDRIDGE: That is an interesting but extraordinary interjection. Hon Darren West believes that simply because a person is a former Governor of this state that they are more eminently qualified than the Electoral Commissioner of Western Australia to advise the government on electoral reform. That is absurd.

Another observation I would make about the ministerial expert committee process—the government's sole consultation, which the government will defend its decision to oppose referral upon—is that not a single member of the committee resides in regional Western Australia.

Hon Dan Caddy interjected.

Hon MARTIN ALDRIDGE: We are getting really worthwhile interjections from government members today. I am sure they will get told to tighten their lips before too long.

One would think that along with the Electoral Commissioner of Western Australia, the government would identify an eminent regional Western Australian to advise it on the terms of reference. Clearly, that was not the case, and that is a real opportunity for the Standing Committee on Legislation to consider. It is also interesting to note that despite the constrained eight-week period that was allocated, no ministerial expert committee members, none of whom live in regional Western Australia, left the city—not a single occasion. It was too hard: "Heaven forbid we might have to hop in a car and drive to Esperance or up to Halls Creek." I am sure that we could have attracted them to Broome or Margaret River, and this is the problem that we face with this process and the design of the electoral system that the government intends to ram with brute force through the Legislative Council. That is not the first occasion on which the committee members were invited to leave the Perth metropolitan area. As members of the previous Parliament would be aware, we received correspondence from the three experts on this committee on 20 February 2019; in fact, there were 12 signatories to the letter. I will not read the letters now, but in my response to them I invited them to spend some time in regional Western Australia to understand our towns —

Hon Darren West: Bindoon.

Hon MARTIN ALDRIDGE: — communities, constituencies and the challenges faced in representing regional people. Hon Darren West thinks that this is all a big joke. He does not think the people of Bindoon deserve representation, but I remind him that Agricultural Region is much more diverse. In fact, his electorate office, which is—where is it based, Hon Darren West?

Hon Darren West: It's in Northam these days.

Hon MARTIN ALDRIDGE: Northam! How far is Northam from Perth?

Hon Darren West: About 100 kilometres.

Hon MARTIN ALDRIDGE: There we go! That is the depth of government members with respect to this issue. They are deeply conflicted but, worse than that, they have to defend a government decision resulting from a deeply flawed process. They will probably argue that it is a well-designed process because they do not want scrutiny of this decision, just like they did not want scrutiny of the decision before the last election. None of them were brave enough to do what Hon John Quigley did, which was to say, "This has been on our agenda for 120 years; of course we want to abolish regional Western Australia!"—none of them. Interestingly, even the day after the government's announcement, which, I think, might have been a Tuesday or a Wednesday, I heard from journalists about Labor members walking into Parliament and getting door-stopped on the steps. Many of them—some spoke to the media—held phones to their ears as they rushed past the journalists. What happens, members, when you hold up your phone? The screen turns on and, if you are not on a call, it is quite obvious that you are not on the phone.

We heard moments ago from the Leader of the House that the public submission process has resulted in 184, I think the number was, submissions. According to the government, that process was sufficient. It had three ads in *The West Australian* and received 184 submissions in eight weeks—let us get on with it. In my briefing just recently, I asked for a breakdown of the submissions. I thought this would have been something the government would do, surely. I heard Hon Tjorn Sibma, who has obviously turned his mind to this as well, quote some figures based on his analysis. The advisers at the briefing rattled off a whole bunch of numbers, but the first two headline numbers that I was able to write down were: 62 submissions supported so-called equality and 79 did not. I then asked for the government to provide the full set of numbers to me, because it was obviously too many to write down quickly. A commitment to provide them was not made.

Hon Matthew Swinbourn: When was your briefing, member? What date was it? If I recall rightly, it was Friday afternoon.

Hon MARTIN ALDRIDGE: Today is Tuesday.

Hon Matthew Swinbourn: Today is Tuesday, yes.

Hon MARTIN ALDRIDGE: The advisers had the numbers written on the page. It would take about 10 seconds to copy and paste them.

Hon Matthew Swinbourn: You always act in good faith, don't you?

Hon MARTIN ALDRIDGE: Honourable member, I have received the follow-up information from my briefing. This was not part of it. That is okay; we will get to it when we get clause 1. It is interesting that the government likes to run these surveys and polls on COVID sponsoring shutting down the forestry industry, puppy farming and electoral reform, but the numbers that were given to me at my briefing by the government do not support—as small as they are—the actions that will be taken in this bill. That is probably why it did not make it to the second reading speech.

These reforms, in my view, should have been taken to the election. Absent that, at the very least, there should be a proper ventilation of the issues contained in this bill, which is not small. Those members who have bothered to pick it up and look at it will know that many issues are considered by this bill. Some of them relate to the terms of reference of the ministerial expert committee. Some do not. Some align to the recommendations of the ministerial expert committee. Some do not. That is an interesting point because the government's position is that it does not need a standing committee to look at the matters because it had 184 public submissions and a panel of experts that advised the government, and it is acting; except in many respects the government is acting inconsistently with the recommendations and particularly the narrative of the ministerial expert committee in its report. I would think that is worthy of further consideration, consultation and examination by the standing committee.

To remind members, the Standing Committee on Legislation consists of Hon Sally Talbot, Hon Steve Martin, Hon Kate Doust, Hon Shelley Payne and Hon Dr Brian Walker. I say that because these five members of the Standing Committee on Legislation are waiting for some work to do. I would think that a bill of this nature and form, and the process by which we have arrived at this position, the time constraints—I do not think there are any. I did not hear that in the government's response. There are no time constraints. This is not a COVID urgent bill. The sky is not going to fall if we do not pass it by Christmas.

Hon Dan Caddy: Hey, no *Chicken Little* references!

Hon MARTIN ALDRIDGE: That was quite good, Hon Dan Caddy.

A referral to the Standing Committee on Legislation ought not to be opposed. The government should not fear; three of five members of the standing committee are members of the Labor Party. Also, unlike the ministerial expert committee, three out of five members of the standing committee are regional members.

On the issue of timing, it was confirmed to me during my briefing on Friday that indeed to achieve the structural reforms sought in this bill, it needs only be passed prior to the next election. There is no time constraint. Some aspects of the bill would be impacted; namely, they go to the requirement that a party be registered and confirm its registration more than 12 months prior to the issuing of the writ. The other aspect is probably less obvious—that is, the impact that this bill will have on the construction of the Legislative Assembly. Obviously, the time imperative there is to have the bill passed. I am not sure whether it is the express intent of the government to affect the Legislative Assembly, because it appears absent from its second reading speech and explanatory memorandum, but I think an unintended or intended consequence of the passage of the bill in its current form is that it will impact on not only the Legislative Council regional electorates, but also the Legislative Assembly regional districts. We know that the redistribution process ordinarily occurs 18 months after an election and is typically complete as soon as practicable two years after an election. I note the motion moved by Hon Tjorn Sibma just now requires the Standing Committee on Legislation to report by no later than 28 February 2022. It is obviously clear that there is no constraint on any aspect of this bill being in full force and operational, if that is the government's will, at the next election or at another appropriate time in between.

It seems strange to me that the government is afraid of allowing the Council to properly consider this bill. I do not think that the position outlined just now by the Leader of the House is adequate. A bill developed with such significant haste and in unusual circumstances ought to be considered by the standing committee. Outside this chamber, politics aside, I am sure that every member would say, hand on their heart, that bills are improved after scrutiny by the Standing Committee on Legislation. In fact, on the occasions when we have referred bills to the Standing Committee on Legislation, I would find it difficult to identify a circumstance in which a bill has not been improved, and often improved with the acknowledgement and support of the government.

In my view, electoral reform is best achieved after careful consideration and, where possible, with consensus. On that point, it is interesting that at my briefing on Friday, I learnt of the desire of the Minister for Electoral Affairs to engage with parties about future reforms. I thought that was interesting. Why was the minister not prepared to engage with parties on these reforms, either before or after the election? In my view, electoral reform is not done by deceit. It is not done with haste. It is not done with the brute force of the numbers gifted to the government by the people of Western Australia. As I said, there are matters in this bill that were not recommended by the ministerial expert committee. They were not part of the terms of reference. The recommendations were made and the report was released post–the public submission period, so what opportunity is there for the people of Western Australia, whether as individuals, organisations or any other form they may take, to respond to the committee's report and the government's position, which I must say has been different on several instances?

Debate interrupted, pursuant to standing orders.

[Continued on page 4740.]