

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

Committee

Resumed from 10 November. The Chair of Committees (Hon Martin Aldridge) in the chair; Hon Matthew Swinbourn (Parliamentary Secretary) in charge of the bill.

Clause 6: Section 5 replaced —

Progress was reported after the clause had been partly considered.

The CHAIR: I draw members' attention to supplementary notice paper 47, issue 1, of Thursday, 28 October 2021. The question before the chair is that clause 6 do stand as printed.

Hon NEIL THOMSON: The parliamentary secretary may recall that we had a discussion around the figure of 37 members and about table 7 on page 22 of the report of the Ministerial Expert Committee on Electoral Reform. I brought to the parliamentary secretary's attention the fact that the table did not include the figure "37" in the column on the number of MLCs per region. I also referred to the column on the quota for election in a region and the last column on the percentage of vote required to win a majority of seats in the region. If members recall, during the discussion on clause 1 I raised the point that 19 seats was actually 50 per cent of the vote required to achieve a majority. That was one point I was making. We have had the discussion around the casting vote of the President and the rationale for the figure of 37 members—the reason for this odd number. I do not agree with that rationale, but for the purposes of this discussion, I am happy to accept that an odd number is required. However, I have a question. Was the idea of having 35 members in this place considered?

Hon MATTHEW SWINBOURN: The member asked whether it was considered. It was not considered that we would go backwards. I think it is common knowledge that a referendum would be required to reduce the number of Legislative Councillors. That would have been an extremely expensive option. In terms of achieving the goal of an odd number, 37 was the logical conclusion for us to draw.

Hon NEIL THOMSON: I thank the parliamentary secretary for that answer; it was very honest. There is probably an additional thing we could add; that is, if the government had gone to a referendum, we would have preferred that, of course.

We have had some discussion about the cost of an additional member. We know that the direct cost per member of Parliament, including their allowances, which depend on where they are, is close to \$400 000. Then there are the on-costs, overheads and costs of support staff. I think it would be fair to say that at least \$1 million a year would be the cost of having a member of Parliament. The expense is understood. If we go back to the table, I have done the calculations for 35 members. It just so happens, by a quirk of mathematics, that if we had 35 members, we would get exactly the same result—50 per cent—which was the issue the expert committee was so worried about. It seemed to be increasingly worried about getting the number down for the percentage of the vote required to win a majority of seats, and we obviously have the additional component the parliamentary secretary raised about having the casting vote by the President. It is a fact that 35 members would achieve exactly the same number. If table 7 had included the figures for 35 members, the quota would have been a number greater than 2.7 per cent—it would probably be closer to three per cent—and the number in the final column would have been 50 per cent, because there would be 18 members for a majority. It is 50 per cent as well. There would be absolutely no difference between having 35 or 37 members in relation to the issue of the majority required. The only difference is that there would be two fewer members than proposed. I talked about it costing around \$1 million per member of Parliament, so there would be a saving of approximately \$2 million a year from the alternative I am suggesting to the proposed future Parliament. It is actually quite a significant saving. For no change from an electoral point of view or to the functioning of the Parliament, having 35 members would save \$2 million a year. What would a referendum cost?

Hon MATTHEW SWINBOURN: Member, I have no idea what the cost of a referendum is. The policy of the bill was set at the passing of the second reading of the bill, and the clause 1 debate has finished in that regard. I appreciate that the member is talking about the thirty-seventh member, but I do not know what the cost of a referendum is and I do not propose to look at that. The member could probably look at the cost of previous referendums. I think the last one was on retail trading hours or daylight savings, but they are not cheap.

Hon NEIL THOMSON: I thank the parliamentary secretary for that answer. It is a very good answer—he does not know. I do not think anyone in the government knows because no-one bothered to check.

Hon MATTHEW SWINBOURN: No, that is not what I said. I said I did not know. There will be people who know. I do not see how the cost of a referendum is relevant to this clause.

Hon NEIL THOMSON: It is very relevant because this is about 37 members and having an additional Council member. The alternative I am positing today is that we have 35 members, which would result in a saving of at least

Hon Neil Thomson; Hon Matthew Swinbourn; Hon Steve Martin; Hon Tjorn Sibma; Hon Nick Goiran; Hon Martin Aldridge

\$2 million a year indefinitely to the taxpayers of the state. I do not have the Department of Treasury at my beck and call just to ask, but we can go onto Google again. I keep reminding the government that even in the opposition, we have access to it. If we chuck \$2 million a year for 20 years into the present value calculator and see what that is worth with a discount rate of, let us say, five per cent, it comes up with a number in today's dollars of over \$15 million. That is even with a five per cent discount rate. That is assuming a pretty big discount rate in terms of the future value of this \$2 million.

I would have thought that for the cost of a referendum—I do not know the cost of a referendum, but I am sure that it would not be that expensive—a very simple question could be put to the people of Western Australia on whether they support the model that has been proposed. I talked in my second reading contribution about all the work that was done on the change to the electoral model in New Zealand. It took several years and two referendums in order to come to a position. New Zealand came to a consensus position that everyone could live with and accept, but instead we have this position whereby thrown down our throats is this idea of an additional member who will cost the taxpayer more money. It will cost the taxpayer at least \$15 million, maybe \$20 million. It will indefinitely cost the taxpayer more money to simply not spend a few million dollars on a referendum. I will not ask a question, except to put to the parliamentary secretary that the reason 35 was not considered and the Western Australian government is prepared to throw away many millions of dollars for this flight of fancy of the Attorney General and his other supporters in cabinet is simply that it does not wish to take this matter to the people. It is absolutely the only reason, because we heard how important it is to have this odd number. As I said, I do not agree with it, but that is what we have heard. Assuming that is in the minds of the members of cabinet and they are somehow convinced of that, they simply want to take this matter forward and are prepared to throw away taxpayers' money in order to avoid the scrutiny of the people.

I put to the parliamentary secretary, given that I have now raised the matter: would he consider taking it back to the people of Western Australia?

Hon STEVE MARTIN: I will not prolong the discussion on clause 6 for much longer, but having been the chair last night, I would like to have an opportunity to ask a couple of questions about some of the work of the ministerial expert committee and the time line for this clause in the bill. It was not one of its recommendations obviously, but was it considered by the committee and not remarked on in its final report?

Hon MATTHEW SWINBOURN: I think the committee did consider an odd number of seats. Hon Neil Thomson drew that to our attention this morning and yesterday evening in his other contributions. But the committee did not consider enlarging the size of the Legislative Council as a standalone issue.

Hon STEVE MARTIN: The committee investigated various other jurisdictions and their system of electing an upper house. Can the parliamentary secretary enlighten us on what happens with an odd or even number of seats in various other state Parliaments around Australia?

Hon MATTHEW SWINBOURN: New South Wales has an even number with 42 seats. Those members serve an eight-year term, with an uneven number of candidates standing at each election—that is, 21 candidates stand at each election, generally. South Australia has an even number in 22 seats, but it also has eight-year terms for its Legislative Councillors, and at each election, only 11 candidates are up for re-election. Tasmania has an uneven number, with 15 seats on six-year terms. The Victorian Legislative Council has an even number in 40 seats that have four-year terms. Of course, Queensland got rid of its upper house, and I do not think that the Territories have upper houses—I stand corrected about the Northern Territory; I am not sure whether it has an upper house. People are shaking their heads, so on the basis of the head shakes around the chamber from those who would know, the Northern Territory does not have an upper house.

Hon STEVE MARTIN: Did the government seek advice or an opinion from those various jurisdictions about the independence of the chair when increasing the number of seats from 36 to 37?

Hon MATTHEW SWINBOURN: No, we did not on that particular issue.

Hon TJORN SIBMA: With regard to the answer provided to Hon Steve Martin by the parliamentary secretary, if I am to understand the implications of the passage of this bill, the Legislative Councils of Western Australia and Tasmania will be the only odd-numbered upper houses across all Australian jurisdictions. Is that correct?

Hon MATTHEW SWINBOURN: Yes, member, that is my understanding.

Hon TJORN SIBMA: Is it the case that the Legislative Council in Tasmania represents best practice methodology for upper houses across Australian jurisdictions? I ask that question because the parliamentary secretary might recall that some months back, this house directed the Standing Committee on Procedure and Privileges, of which I am a member, to revise our standing orders against best practice models in Australian jurisdictions. What is the benefit to the Western Australian chamber in following the Tasmanian model?

Hon Neil Thomson; Hon Matthew Swinbourn; Hon Steve Martin; Hon Tjorn Sibma; Hon Nick Goiran; Hon Martin Aldridge

Hon MATTHEW SWINBOURN: I would not say we have copied Tasmania's system. That is not where we are at here. We had some indication from our expert committee about the desirability, in an electoral system, for odd numbers for "electoral status", I think the term is. In that regard, that is what we have considered. The additional consideration is the way the President of this chamber uses their vote. I am not sure what happens in the Tasmanian Parliament and its conventions and practices for that. The member has made a very broad description of the best practice of the Tasmanian upper house, but there are many different things. It is an evaluative question the member asks. If he is talking about it in just odd numbers, plainly we have taken the view that odd numbers are preferable to even numbers, but a lot of other stuff happens in the Tasmanian electoral system that is completely foreign to the rest of us and not something we would describe as best practice.

Hon TJORN SIBMA: I join the parliamentary secretary in that sentiment. I would not propose for one second to adopt Tasmanian political practices. The less I know about the Hare-Clark system, the better. I do not want to sully my mind with any knowledge beyond that which is strictly necessary. I want to establish this point: the justification for the government's position is not necessarily founded on the experience of other Australian jurisdictions. It has emerged from a conceptually academic position that tends towards the model that was not necessarily enunciated or recommended by the ministerial expert panel. I just wanted to clarify that. However, there is an implication from having an additional member of this chamber when we consider that in conjunction with the abolition of regional representation and the adoption of a whole-of-state electorate. I and others made the point in our second reading contributions about one of the obvious implications of moving to a statewide electorate model. I would not adopt the practice—I think there are things to recommend against it—but at least with the staggered terms in New South Wales, half-chamber elections have the effect of lifting up the electoral quota required to gain a seat in Parliament. To both adopt a statewide electorate and introduce an additional member depresses that quota to 2.63 per cent. It might be a marginal difference, but what would be the difference if we retained the status quo and had 36 members? What would be the electoral quota required to gain a seat compared with what the government proposes?

Hon MATTHEW SWINBOURN: It is 2.7 per cent, as outlined in table 7 of the report.

Hon TJORN SIBMA: It is a marginal difference; nevertheless, it goes lower than I think is strictly necessary or desirable.

Parliamentary secretary, I note that this measure, embedded in the bill as it is, is not necessarily consistent with the express purpose of the bill, which is the imposition, or the entrenchment, actually—we will get to it at a later clause—of electoral equality, and the abolition of group ticket voting, and we commend the government on that measure at least. Did the parliamentary secretary, or did the government or anyone in an official sense, speak to the experiences of previous Presidents of this chamber in attempting to solicit a view about the desirability of effectively potentially undermining the impartiality of a President? I am just wondering whether the parliamentary secretary had consulted ex-Presidents of this chamber on their views on this particular measure.

Hon MATTHEW SWINBOURN: I am just trying to remember the question. The question was whether former Presidents were spoken to. The member prefaced that with an idea about impartiality, about which we do not accept the member's assertion. In relation to whether they were spoken to, there were no consultations with past Presidents about the addition of a thirty-seventh member.

Hon NICK GOIRAN: Clause 6 is one of the seven clauses that the parliamentary secretary identified when we were looking at clause 1 whose genesis does not arise from recommendations purportedly made by the ministerial expert committee in its report. I am not going to dive into the issue of the validity of the report, on which the parliamentary secretary and I have a difference of opinion; nevertheless, I think we can both agree that this particular clause does not originate from the ministerial expert committee in any way whatsoever.

I was called away on urgent parliamentary business but I came back into the chamber just as the parliamentary secretary was responding to a question from Hon Neil Thomson. If I understand correctly, I think the parliamentary secretary indicated that the reason for the decision to go to 37 members rather than 35 members was that 35 members would result in the cost of a referendum. Do I understand correctly that there was some discussion around costs as the justification for going up rather than down?

Hon MATTHEW SWINBOURN: Without trying to go back over my memory of what I said before, I draw the member's attention to what the minister said in the other place. He indicated during the consideration in detail stage, in response to questions from Hon Mia Davies, that he would rather the number was reduced from 36 to 35—those are not his words; I am just summarising—but because of the entrenchment provision, that would result in what he described as a rather expensive referendum.

Hon NICK GOIRAN: I thank the parliamentary secretary for that. That highlights the point that the honourable member was making. It was quite a legitimate reason that the Minister for Electoral Affairs provided. Again, putting to one side the genesis of the recommendation, if the policy decision has been made that we want to have an odd

Hon Neil Thomson; Hon Matthew Swinbourn; Hon Steve Martin; Hon Tjorn Sibma; Hon Nick Goiran; Hon
Martin Aldridge

number of members, and there are two ways of doing that, and we have decided to go up rather than down because of the cost of a referendum, implicit in that is some analysis of what that cost will be. I am not aware, like the parliamentary secretary, about the cost of such things, but I am quite persuaded by the argument that has been raised by the honourable member that it appears that the difference will cost some \$2 million a year in perpetuity. We could all take a stab in the dark at what the cost of a referendum will be, but clearly the Minister for Electoral Affairs turned his mind to that.

Hon Darren West interjected.

The DEPUTY CHAIR: Order, members! Hon Nick Goiran has the call.

Hon NICK GOIRAN: The honourable member is auditioning for *The Muppet Show* again!

I was saying to the parliamentary secretary that clearly the Minister for Electoral Affairs turned his mind to this issue, as evidenced by what was discussed. Are any of the advisers in a position to indicate whether an assessment was undertaken on the cost of undertaking a referendum? I know that the parliamentary secretary indicated that he, personally, did not have that knowledge, but are any of the advisers aware whether an assessment was done—a business case or some similar thing—on the cost of a referendum had the decision been to go to 35 rather than 37?

Hon MATTHEW SWINBOURN: No formal assessment was done. I think it is fair to say that it is a fact that referendums are expensive. I think the estimate for the cost of the last federal referendum—the plebiscite—was over \$150 million for the whole of Australia, so the member can imagine what the cost might be for Western Australia, if he wanted to extrapolate that. As I said, I think there will be a cost in perpetuity by creating an additional member, but no formal business case was done in relation to that.

Hon MARTIN ALDRIDGE: I have had a chance to reflect on the comments the Minister for Electoral Affairs made in the other place on 12 October. He said —

I would rather have reduced the number from 36 to 35.

...

It was more expensive to go to a referendum to try to get it down to the odd number of 35 than it was to build it up to 37 members. I would rather see the Council, frankly, reflect the Councils in other states that have approximately 50 per cent of the numbers in the Assembly, —

That is a point that I made in my contribution to the second reading debate. He went on to say —

I do not want to keep on increasing numbers in the Council. I just wanted to get it out of a situation by it being numerically impossible to have a deadlock.

Obviously, the Minister for Electoral Affairs turned his mind to the cost comparison, which is where I think Hon Neil Thomson was going to earlier to understand the long-term costs of increasing the numbers in the Legislative Council. It was the minister's view that he put to the Assembly that it was a lesser cost option to simply increase the size of the Council. Therefore, the government must have turned its mind to the issue of costs and it would be in a position to provide some more relevant specific advice.

Hon MATTHEW SWINBOURN: I think the point made by the Minister for Electoral Affairs was in relation to the cost to go from 35 members, which would have consequentially resulted in a referendum, and the decision to simply go to 37, which did not result in any direct cost because there was no referendum, not in relation to the cost in perpetuity of having a thirty-seventh member. I think I have the *Hansard* here, and I have not gone through it in the detail that the member has, but that is my advice in terms of what the minister was getting at in relation to that particular point. But, again, I do not want to get into a contextual argument about an interpretation so much about what the minister said in the other place because we could be here for a long time on that point. However, the issue about the narrower issue about cost is a decision that 37 did not result in a direct cost at that time because it would not initiate a referendum; reducing it to 35 would have resulted in a referendum cost.

Hon NEIL THOMSON: I am reflecting on the comments of the Minister for Electoral Affairs and this issue around 50 per cent. I do not want to labour the point, but it is worth noting that if the upper house reflected that 50 per cent target—in fact, it might have been an odd number that the minister considered that was closer to 50 per cent; for example, with the 59 members in the other place—it might have been a number closer to 30 or 29 for example. One does not have to be an economist to work out very quickly that that could be an absolute considerable saving. The parliamentary secretary would have to agree, would he not, that the cost of a referendum would be minuscule by comparison?

Hon MATTHEW SWINBOURN: Is the member advocating for a reduction in the number of members in the Legislative Council? Is the member's point that we should actually have fewer than 36 members because we could save Western Australian taxpayers' money and he is perhaps partly joining the position put by the number one

candidate for the Mining and Pastoral Region, “Big Nick” Fardell, that we should abolish the Council? The member did not go that far, but he seemed to be saying to me that we could ask Western Australians how much they value Legislative Councillors and reduce the overall costs. I do not really think that was the point the member was trying to make. I do not think I can add any more to what the member said. The simple position is if there were a reduction in numbers in the Council, it would automatically trigger a referendum, and there would be costs associated with that. The decision to go to 37 rather than 35 was around that, according to the Attorney General; minister. We are going to get caught in this language about Attorney versus minister. He has both roles, so I think I will stop and keep calling him the Attorney General for the sake of Hansard. They might be able to fix that up.

Hon TJORN SIBMA: I think the issue here is whether any change from the status quo, being 36 members elected to this chamber, is necessary; and, if there is a policy desire by the government to effect a change that would eventuate in an odd-numbered house, what method would the government go to? I suppose there is an argument that if the government desired to do that—I do not necessarily think Hon Neil Thomson is—why would it not do it in the lowest cost manner over the long term? That is an aside.

I want to clarify the scenario here so that we can move off this clause. This proposal was not recommended by the ministerial expert committee. It is a proposal that bears absolutely no connection to the express purpose of this bill, which is to abolish regional representation and impose a whole-of-state electorate for the upper house; nor is it consistent with the great sin of group ticket voting. It is a proposition for which the government has done no cost-benefit analysis. It is a proposition that does not seem to deliver any tangible or even intangible benefit to members of the Western Australian community. It attempts to circumvent scenarios that, as the parliamentary secretary listed, had occurred on only three occasions in the last 20 years and, further to that, the government did not even bother consulting with any ex-President of this chamber to determine whether this was a wise course of action. This is not necessarily rhetorical advice: for what reason can we possibly accept this proposition when the parliamentary secretary cannot argue for the change?

Hon MATTHEW SWINBOURN: I think the member’s point is rhetorical. We do not agree with the points that the member made. I think I have made all the points I can make about the thirty-seventh member. We are not going to agree. The policy of the bill has been set with regard to 37 members. I suppose I would ask the member to agree to disagree on this one because we are not going to convince each other.

Hon MARTIN ALDRIDGE: It is unfortunate that we are unable to take this examination further in terms of understanding these costs. Perhaps examination of that by the Standing Committee on Legislation would have been beneficial because it could have considered in greater detail the words of the Minister for Electoral Affairs in the other place, who seems to have done some assessment—unless he just makes claims without any justification. That could be the alternative. But it would have cost nothing, parliamentary secretary, for the government to have been honest at the last election and say that this was on its agenda. It would not have added an extra dollar to the election cost if it had done so.

I have a couple of final questions on this clause. One is, again, about the minister’s comments in the other place. It seems like his primary argument, notwithstanding that it is not mentioned in the explanatory memorandum, is the avoidance of a deadlock in the Legislative Council. Can the parliamentary secretary tell me what the government means by “deadlock”?

Hon MATTHEW SWINBOURN: A deadlock is when the numbers on a vote are tied. I think we have both been here when that has happened and, normally, the practice is that the question would be resolved in the negative. Actually, I do not know whether we have been here when the numbers have been tied; I take that back. But that would be a deadlock of the numbers of the house. Currently, if a member were absent without a pair and all other members were voting, that would be a vote of 17 and 17, which is a deadlock. In those circumstances, the President could use their casting vote. Currently, there are only 35 deliberative votes in this chamber. With the addition of a thirty-seventh member, there will be 36 deliberative votes and one casting vote, which would be more meaningful in our view.

Hon MARTIN ALDRIDGE: I am not sure that I necessarily characterise that as a deadlock because in our current system when we have a tied vote, if the house—not the Committee of the Whole—is sitting, the Presiding Officer, the President, has a casting vote. There is probably more likely to be a deadlock on an issue between the two houses of Parliament, and this is something that the government, particularly in the last term, had difficulty with on a number of occasions, yet we are amending acts that could provide for different mechanisms for resolving deadlocks between the two houses, but we are not. This does not seem to be something that has even been contemplated, whereas other jurisdictions have contemplated mechanisms for resolving deadlocks between the two chambers. As far as I can tell from what has been put to us by the government, it is not the case that this house has been deadlocked. In the last 20 years, there were three occasions—two of them were 20 years ago—when a casting vote was used by a Presiding Officer. That was not a deadlock. A decision was made one way or another and nothing was deadlocked.

Hon Neil Thomson; Hon Matthew Swinbourn; Hon Steve Martin; Hon Tjorn Sibma; Hon Nick Goiran; Hon
Martin Aldridge

Thirty-five members participate in the Committee of the Whole, as we are now in. What will be the impact of this decision, which will increase the Committee of the Whole to an even number?

Hon MATTHEW SWINBOURN: As the member knows, it is a simple matter of mathematics. In the Committee of the Whole House, the chair gets to cast a vote. If we increase the number of members to 37, as we are proposing to do, during the committee stage of a bill there will be 36 deliberative votes, and it is possible that those votes could divide evenly. That is what would happen. I agree with the member that that is not what presently happens, and where the numbers sit for any particular party will depend on the make-up of the house. That is what would happen. The point there, of course, is that if the votes are tied in the committee stage of a bill, the convention is that the question is always resolved in the negative. That is my understanding of the conventions of the house.

Hon MARTIN ALDRIDGE: This is interesting, because the government is concerned about these so-called deadlocks, but it is creating a situation whereby in the Committee of the Whole, with all members present and voting, we will have, on probably most occasions, an even number of members and a greater likelihood of a deadlock according to the definition from the parliamentary secretary, with no casting vote of the President available. Anecdotally, I would suggest to the parliamentary secretary that if not the greatest number, certainly the greatest number of meaningful votes that occur in this place actually happen in the Committee of the Whole. When we are dealing with a bill clause by clause, amendment by amendment, it is more often to be the case that we will see divisions occurring in the Committee of the Whole stage of a bill's progress than we will see at the first, second or third reading stage of a bill's progress. Notwithstanding that, the government's system—I think that the government is using this deadlock argument as a charade for the government's real intent—is actually going to have the perverse outcome of having more deadlocks. According to the government, there will be no casting vote available to resolve those deadlocks; therefore, those questions will be resolved in the negative. Of course, that can happen now if a member does not turn up to vote and we end up with an even number, and there have been occasions on which that has occurred and questions have been resolved in the negative because a vote has been truly tied or deadlocked, according to the definition from the government. But the question is still resolved; it is resolved in the negative.

I think it would be far better for the government to own its reasons for increasing the number of members of this place to 37, and they are twofold. One reason is that at all costs, the government does not want to take this issue to the people of Western Australia—at all costs. When we ask the government about those costs, it cannot tell us what those costs are. It is obvious from clause 6, which almost mirrors the commentary of the ministerial expert committee report, that having an odd number of Council members makes it easier for a party that wins a majority of votes to win a majority of seats. This is an interesting point, because we have had Labor members lecturing us, saying, “This will be the last time that the government will have control of the Legislative Council—the last time! We’re not doing this out of self-interest. We’re making sure small or Independent voices are heard in this chamber”, yet the government’s explanatory memorandum makes it quite clear, with nothing about deadlocks —

Having an odd number of Council members makes it easier for a party that wins a majority of votes to win a majority of seats.

Division

Clause put and a division taken, the Deputy Chair (Hon James Hayward) casting his vote with the noes, with the following result —

Ayes (20)

Hon Klara Andric	Hon Sue Ellery	Hon Shelley Payne	Hon Matthew Swinbourn
Hon Dan Caddy	Hon Peter Foster	Hon Stephen Pratt	Hon Dr Sally Talbot
Hon Sandra Carr	Hon Jackie Jarvis	Hon Martin Pritchard	Hon Dr Brian Walker
Hon Stephen Dawson	Hon Alannah MacTiernan	Hon Samantha Rowe	Hon Darren West
Hon Kate Doust	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 Neil Thomson	
Hon Donna Faragher	Hon Sophia Moermond	Hon Wilson Tucker	

Pairs

Hon Lorna Harper	Hon Nick Goiran
Hon Ayor Makur Chuot	Hon Dr Steve Thomas

Clause thus passed.

Clause 7: Section 8 amended —

Hon NEIL THOMSON: This clause refers to section 8(4) of the Constitution Acts Amendment Act, which currently states —

Where an election held as part of a general election fails wholly or partially or is declared to be absolutely void —

So that it is clear, is the definition of a “general election” of both houses?

Hon MATTHEW SWINBOURN: Yes, member.

Hon NEIL THOMSON: To clarify, the drafters of the act saw fit to say —

Where an election held as part of a general election fails wholly or partially or is declared to be absolutely void —

It is followed by some paragraphs that go through the grounds on which that can occur.

Hon MATTHEW SWINBOURN: Deputy Chair, can you ask perhaps that the chamber quieten down a bit; I am having trouble hearing the member.

The DEPUTY CHAIR (Hon James Hayward): Yes, certainly. Members, I ask that you please remain silent so that the members participating in the debate can hear what is being said.

Hon NEIL THOMSON: Maybe I will rephrase that. Sorry, parliamentary secretary I am just clarifying an issue. The drafters felt it was necessary to put in —

Where an election held as part of a general election fails wholly or partially or is declared to be absolutely void —

It is followed by paragraphs giving the grounds on which that would occur.

What I am trying to understand is the effect of this amendment that will remove “an election held as part of”. I am wondering why those words need to be removed. If the upper house component of the election failed partially, for example, I assume that would mean the whole election would be deemed to have failed. I am not sure. I want to understand the purpose of the removal of those words.

Hon MATTHEW SWINBOURN: I can only take the member back to the explanatory memorandum, and I will read it out for the sake of clarity. It was included on the advice of the Parliamentary Counsel’s Office. It states that clause 7 amends section 8(4) of the Constitution Acts Amendment Act 1899, as the member previously indicated, by deleting “an election held as part of” because there will no longer be elections for regions that form part of an election for the Council. The Council electorate will now be a whole-of-state electorate and will no longer be a regions-based electorate. That is the explanation that was provided to us.

Hon NEIL THOMSON: Thank you, parliamentary secretary. I saw that there. I understood it was referring to each region. I suppose I want to be assured that if there is some reason a —

Hon MATTHEW SWINBOURN: Sorry; can I interrupt? When the member asked previously about a general election, I said that it meant both houses, but I have just been advised that section 8 of the Constitution Acts Amendment Act refers only to the Council. Perhaps that is why we are at cross-purposes, and my apologies for any confusion that that has caused.

Hon NEIL THOMSON: Thank you, parliamentary secretary; that has clarified that.

Clause put and passed.

Clause 8 put and passed.

Clause 9: Act amended —

Hon NICK GOIRAN: During debate on clause 1, the parliamentary secretary undertook to ascertain the specific clauses that were subject to consultation with the Electoral Commissioner. The parliamentary secretary and I agreed at the time—originally that information was not known—that it most likely would be limited to part 4 of the bill. Subsequently, he kindly provided to the chamber a substantial list of clauses starting with clause 12 through to clause 92. At some point during consideration of this bill and these clauses, I would like to ascertain what type of feedback the Electoral Commissioner provided on these more technical mechanical matters, as I think they have been described. In doing so, I do not want to pose those questions when some of those clauses can be grouped together. Some of them may be complementary or consequential upon each other.

With regard to clauses 12 to 92—the substantial list that the parliamentary secretary provided—is he in a position to indicate whether any of those can be grouped together, just to facilitate the passage of the questioning? If that

is not convenient and able to be done, that is no problem; I can easily ask them at another point, but it may help to facilitate things.

Hon MATTHEW SWINBOURN: I suspect that the member is trying to be helpful here, and I do appreciate that. The luncheon adjournment is only half an hour away. I do not think I can say to the member with any certainty whether we can deal with all those things. The only general thing I can say about all those things is that the Electoral Commissioner has no objection to those clauses, but I am not sure that would satisfy the member in terms of dealing with that. In terms of proceeding for at least the next half an hour, if the member has questions specific to that, he will have to raise them at clauses 12, 24 and 28 at this stage. Perhaps after lunch, we might be able to come back to the member and talk about those things in a group. As I said, I appreciate that the member is trying to be helpful.

Clause put and passed.

Clause 10: Section 4 amended —

Hon NICK GOIRAN: This clause deals with the definitions. One of the things that it does is delete the definition of “region”, which is understandable in the circumstances, given the policy of the bill. It also deletes the existing definition of “district” and inserts a new or replacement definition of “district”. What is the rationale for doing that?

Hon MATTHEW SWINBOURN: I think it is a drafting issue to some degree, but as the member could appreciate from the existing definition of “district” in the act, it has a large reference to the Council in that regard. The current definition is —

district, in relation to the Assembly, means an electoral district for the election of a member of the Assembly and, in relation to the Council, means an electoral district that forms part of a region;

The drafting in the bill has simply deleted the definition then inserted the new one, which is —

district means an electoral district for the election of a member of the Assembly;

I am not sure about the drafting practices of Parliamentary Counsel’s Office and whether it prefers taking a definition out rather than amending it. I am not sure where the threshold sits, but I suspect it reached that threshold and it decided that rather than just deleting the words in the existing definition, it would provide a new definition.

Hon NICK GOIRAN: I want to be clear here, because the current definition of “district” found at section 4 of the Electoral Act 1907 reads —

district, in relation to the Assembly, means an electoral district for the election of a member of the Assembly and, in relation to the Council, means an electoral district that forms part of a region;

At clause 10(1) of the bill we are giving an instruction to delete that entire definition, but at clause 10(2) we are then giving an instruction to insert a new definition of “district”, which is —

district means an electoral district for the election of a member of the Assembly;

I seem to have some recollection that it is ordinarily the custom and practice of the Legislative Council that we do not insert words that have just been deleted, but that appears to be what we are doing in clause 10. At clause 10(1) we are deleting the entire definition and at 10(2) we are inserting precisely the same words. It is really a question to you, deputy chair, rather than to the parliamentary secretary to ascertain that the words at clause 10 are in order for the Legislative Council to proceed.

The DEPUTY CHAIR (Hon James Hayward): I will just need to take some advice about that. I understand that the convention that you are speaking about relates to amendments to the bill rather than to the actual bill. My advice is that that means the bill is in order.

Clause put and passed.

Clause 11 put and passed.

Clause 12: Section 10 replaced —

Hon TJORN SIBMA: I will refer to the helpful explanatory memorandum; it mentions that clause 12 gives effect to section 10 of the Electoral Act 1907 being —

... replaced because the Council electorate will now be —

In my view, unfortunately —

the whole of State electorate and no longer be a regions-based electorate. Returning officers for each district will also be deputy returning officers for the whole of State electorate.

Hon Neil Thomson; Hon Matthew Swinbourn; Hon Steve Martin; Hon Tjorn Sibma; Hon Nick Goiran; Hon Martin Aldridge

I have risen to question this particular clause because yesterday afternoon—I was about to say yesterday evening—the parliamentary secretary very helpfully provided a list of the 23-odd clauses upon which some consultation or negotiation occurred with the Western Australian Electoral Commissioner. Indeed, this was the very first clause that the parliamentary secretary mentioned on that list. I suppose although this line of questioning will not take forever, it will take a bit of time, and that probably underscores the wisdom, if it is possible, for the parliamentary secretary to come back after the luncheon adjournment with at least a table of those clauses and potentially a list of the Electoral Commissioner’s views on them so I do not have to jump up on 22 subsequent occasions to ask the parliamentary secretary the question I am going to put now. What was the Electoral Commissioner’s advice on this clause and was there any disputation or difference of opinion between the government and the commissioner?

Hon MATTHEW SWINBOURN: I appreciate the member asking whether I can provide him with a table of those sorts of things, but I do not think I have a document in a form that I can give to the member, even after the break. I think some of the reason for that is that it is not in a contextual form; it is in the head of an adviser. If the member wants to talk about these things at each of the clauses, I think we will have to deal with that. I appreciate that the member was trying to short-circuit that but I do not think I can do it. Anyway, we will take it under further consideration to see whether it is possible, but I am not sure that it is.

In relation to the member’s specific question about this clause, the government asked the commissioner what the appropriate number of district returning officers would be—whether that was 10 or 15. The commissioner suggested that all district returning officers remain able to take nominations for the Legislative Council—that is, as deputy returning officers—for the purposes of maintaining maximum flexibility for that role. That is for the council elections.

Hon TJORN SIBMA: Yes, for the Council elections. Might I use this opportunity to inquire how that measure will be, for want of a better expression, operationalised? I might also use this opportunity to make a complaint, if I will, not of the government, but about the extensive pre-polling arrangements that we endure. I think that they could be truncated somewhat and people’s convenience could continue to be met. Nevertheless, the manning—I will use the appropriate modern phraseology, “resourcing”—of the orderly, lawful conduct of elections is an arduous and complicated undertaking, obviously, in regional Western Australia. I am wondering two things: first, will the insertion being contemplated here have any direct resourcing implications on full-time staff and possibly voluntary staff of the Western Australian Electoral Commission? Second, how is this proposed to be operationalised? I do not understand it. Which districts are we now talking about and from where will those returning officers be based?

Hon MATTHEW SWINBOURN: I will take the member through what currently happens. We have 59 district returning officers and the provisions of section 10 mandate that the returning officer for each district shall be a returning officer. We already have 59 deputy returning officers for the Council. If we move to a whole-of-state electorate, all 59 returning officers will continue to be deputy officers. There will be no increase in the pool of returning or deputy returning officers in that regard. There will actually be a reduction in one sense because in each region a returning officer will be nominated, but under this legislation there will be only one returning officer for the whole state.

To answer the member’s question about resources, I bring him back to what was previously said by the Electoral Commissioner himself during the Legislative Assembly estimates hearings, which was that he expected to be able to absorb these things into his existing costs at the time of an election. We do not have any other specific information because, based on what he has told us, he thinks that he can absorb those things. When I say “absorb”, I mean manage it within his existing budget.

Hon TJORN SIBMA: I thank the parliamentary secretary. If I am to understand that properly, the insertion of proposed section 10 will not in any way amend the functions or responsibilities of the existing 59 deputy returning officers for the 59 districts; is that correct?

Hon MATTHEW SWINBOURN: There is a different complexion, because they will be whole of state rather than by region, but I think they are already mandated under the act to have those roles for their region, and it will then become whole of state.

Hon TJORN SIBMA: I took the parliamentary secretary’s earlier response to mean by implication a reduction in the overall number of returning officers. At the last election, there were 59 returning officers and an additional six returning officers for the six Legislative Council regions; is that correct?

Hon MATTHEW SWINBOURN: I am advised yes.

Hon TJORN SIBMA: Might I then ask, without getting too technical, although there are elements of the bill that make even more technical adjustments, whether there were explicitly different roles and responsibilities at the last election for the six designated returning officers who dealt exclusively with the Legislative Council ballot, and the 59 returning officers who, I imagine, dealt exclusively with the Legislative Assembly ballots for the appropriate

Hon Neil Thomson; Hon Matthew Swinbourn; Hon Steve Martin; Hon Tjorn Sibma; Hon Nick Goiran; Hon
Martin Aldridge

districts? I just want to determine whether there has been, up to this point, a division of responsibilities to a degree that is clearly understood by the officers charged with those responsibilities.

Hon MATTHEW SWINBOURN: I will give it my best shot, member. The advice is that the roles will be substantially similar to what they currently are, but that there will be changes as a consequence of having a whole-of-state electorate. There will be deputy returning officers for the whole of the state rather than the regions. Those whole-of-state deputy returning officers will report to the single returning officer for the whole of the state rather than to returning officers for each of the regions. I suppose, in one sense, the role will be centralised, because we will not have deputy returning officers for the Council in each region and then six returning officers reporting to the Electoral Commissioner. Instead, each deputy returning officer will report to the state returning officer for the Council, and that state returning officer will then report to the Western Australian Industrial Relations commissioner—I mean, the Western Australian Electoral Commissioner. I stepped back a few years!

Hon TJORN SIBMA: Another hat. I thank the parliamentary secretary. In essence, the roles and responsibilities will not be too dissimilar from what an experienced returning officer would deal with anyway.

Hon Matthew Swinbourn: I think that is a fair assessment.

Hon TJORN SIBMA: Nevertheless, would there be an advantage in retaining those officers in terms of at least expediting the vote-counting process? As someone who has more or less scraped in on two occasions, I know that getting confirmation of one's election can feel like an eternity. My personal experience is that it has been about a fortnight after polling day. I wonder whether there might be an implication for the counting of upper house ballots if six staff would ordinarily be dedicated to that purpose to some degree.

Hon MATTHEW SWINBOURN: I am sorry, member, but can I interrupt you? I need to report progress to the house.

Progress reported and leave granted to sit again at a later stage of the sitting, on motion by Hon Matthew Swinbourn (Parliamentary Secretary).

[Continued on page 5301.]