

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

*Committee*

Resumed from 9 November. The Deputy Chair of Committees (Hon Steve Martin) in the chair; Hon Matthew Swinbourn (Parliamentary Secretary) in charge of the bill.

**Clause 1: Short title —**

Progress was reported after the clause had been partly considered.

**Hon MATTHEW SWINBOURN:** Out of the Committee of the Whole House yesterday a number of matters were raised that I indicated I would take under consideration. I hope to go through them and to address them at the outset.

During the early part of the day, Hon Nick Goiran made a number of points about what costs had been incurred; I think Hon Martin Aldridge might also have raised that. I can provide the following in response to that. I am instructed by the Department of the Premier and Cabinet that members were remunerated in accordance with the letter of appointment from the Attorney General; Minister for Electoral Affairs for the period between 28 April to 28 June 2021. DPC has advised that Mr McCusker declined to accept remuneration for his work as committee chair. The University of Western Australia, Curtin University and Notre Dame University invoiced for the services of Professors Murray and Phillimore and Associate Professor Drum as follows: Professor John Phillimore, \$14 117.40, inclusive of GST; Professor Sarah Murray, \$14 117.40, inclusive of GST; and Associate Professor Martin Drum, \$13 996.46 inclusive of GST. Additional costs were incurred for advertising. The cost of advertising that occurred in *The West Australian* on 1, 28 and 29 May 2021 was \$8 452.72. Printing costs were incurred for the printing of the report, which totalled \$1 245.20—that is, for the period 27 July to 20 September 2021. I am not able to provide members with the invoices. Of course, they have other means by which they can seek access to them if they wish.

On a point raised by Hon Nick Goiran about what recommendations the Electoral Commissioner made to the government regarding the bill, the Electoral Commissioner was consulted in relation to technical operational requirements under the bill. He provided advice to the Ministerial Expert Committee on Electoral Reform in drafting the report and to the government in drafting the bill in relation to many of the clauses in the bill, but particularly—if members want to get their pens ready—on clauses 12, 24, 28, 35, 37 —

**Hon Nick Goiran:** It feels like lotto.

**Hon MATTHEW SWINBOURN:** I do not think that there is a jackpot at the end of this, unfortunately—38, 39, 42, 45, 46, 47, 48, 49, 52, 54, 57, 62, 63, 64, 68, 84, 89 and 92.

Hon Martin Aldridge also raised an issue about the occasions on which the committee formally met and asked whether I could provide the dates, duration and who attended those meetings. I need to make a correction, which is not my correction to make but is in relation to a question the member asked leading into the estimates committee. It indicated that there were five in-person meetings. There were actually six in-person meetings and a further two meetings were partly in-person and partly by Zoom. Meetings took place on 5 May for 2.5 hours with all committee members; on 26 May, there was a meeting for 1.5 hours of all committee members—in fact, all committee members attended all meetings so I will not keep qualifying that. There were meetings on 4 June, for 1.5 hours; 17 June, for two hours; 18 June, for 4.5 hours; and 23 June, for 2.5 hours. The two additional meetings by Zoom were held on 12 May, for two hours; and on 10 June, for three hours, which was partly by Zoom and partly in person. Again, all members attended those meetings. Committee members also met without secretariat support on other occasions for the purpose of drafting the discussion paper and final report. Unfortunately, we do not have access to their personal records to be able to tell the member when they had those engagements.

Hon Martin Aldridge also referred to tabled paper 188 and whether I needed to correct the record. I have conferred with the clerks who indicated that no further action needs to be taken on my part because the clarification has already been made in the chamber.

Last night, Hon Nick Goiran stated a number of times that the final report of the Ministerial Expert Committee on Electoral Reform was unlawful and that the bill is based on an unlawful report. He continued to state that it was issued without power and went so far as to claim that it had been unlawfully tabled and was a nullity. He appears to base this somewhat obscure and hyperbolic argument on the reference in the chair's covering letter to the committee's appointment on 28 April and the eight-week appointment outlined in the terms of reference. The Minister for Electoral Affairs' letters of appointment, which have been tabled in this chamber, state that the MEC's term of appointment expired on 28 June. As I indicated in the chamber last night, the committee did in fact hold its last meeting on 23 June and the report was formatted and printed before being transmitted to the minister by Mr McCusker on 28 June. Cabinet subsequently considered and endorsed the report and provided drafting instructions that were informed by the recommendations of the report.

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The honourable member also attempted to impugn the committee in his statement by saying that the committee acted out of power. He said, according to the uncorrected *Hansard* —

... it had a lawful obligation to go back to its master —

That is, cabinet —

... to make sure that it had the power to do what it needed to do. It did not do that, so what we are now embarking on is an unlawful process.

Hon Nick Goiran invited the government to look into his claims. The government has conferred with the State Solicitor who has confirmed that there is certainly nothing unlawful about the report. The term “unlawful” clearly implies that a law has been contravened. The honourable member has not identified any relevant law that has been contravened because there is none.

The ministerial expert committee was convened by the government through the Minister for Electoral Affairs. The ministerial letter of appointment said that the appointment was to expire on 28 June. Even if one were to regard the term of appointment strictly as eight groups of seven days rather than two calendar months, it was a committee established via executive power, therefore, it is open to the executive to accept a report from the committee during or after the expiry of the terms of reference. The committee members have been subjected to repeated disparaging and pejorative comments regarding their professionalism and independence. The idea that Hon Malcolm McCusker, the former Governor of Western Australia, acted unlawfully by issuing this report is offensive and I invite Hon Nick Goiran to reflect on the imputations that can be drawn from his remark.

Finally, to refer, as the member did, to the report as having been unlawfully tabled is to question the absolute privilege of Parliament to receive any document by way of tabling and also imputes improper motives to the person who tabled the document, who was me. I invite the member to reflect on that as well.

**Hon NICK GOIRAN:** Parliamentary secretary, thank you for the update on the matters that were considered overnight. In particular, I thank you for drawing to our attention the number of clauses. Quite a few were subject to consultation by the Electoral Commissioner.

The parliamentary secretary will be pleased to know that for my part I have no further questions on clause 1 and, but for the remarks that he just made, no doubt on instruction from the Attorney General, I would not be making these remarks now. But he has invited me to reflect on the matters that he has drawn to our attention, so I will do so now.

I draw to the parliamentary secretary’s attention, and I particularly would like him to pass this on to the Attorney General, that on page 45 of the Ministerial Expert Committee on Electoral Reform report—the so-called final report which I still maintain was issued and provided at a time when the committee was *functus officio*, and I will elaborate on that in a moment—the parliamentary secretary said on the record yesterday, and it has never been corrected otherwise, that the terms of reference at annexure 1 were a faithful reproduction of the terms of reference. It says —

#### **TERM OF APPOINTMENT**

Eight weeks from the date of Cabinet Appointment

It is remarkable, if what is being told to the chamber now is true—that one of the senior legal advisers to government would say that eight weeks from the date of the appointment could somehow be interpreted as two calendar months. I would love to see in writing the advice provided by the senior legal official in government who says that it is appropriate on any level that we interpret eight weeks to be read as the same as two calendar months. It is inconceivable that any self-respecting legal practitioner in Western Australia on any level, whether they are of one year’s admission or multiple years’ admission, would say that we can interpret eight weeks as the same as two calendar months. It is inconceivable. If I am wrong about that and there is somebody senior in government who wants to put their name to it, I invite the Attorney General and the parliamentary secretary to table that document from that senior legal practitioner who is quite happy to author and sign a document that says that eight weeks is to be considered the same as two calendar months. It is absurd.

Yesterday, without prompting from me under questioning from my colleague, the parliamentary secretary indicated at one stage that the committee was *functus officio*. I did not introduce the concept into the debate. The parliamentary secretary should reflect on the *Hansard*. He introduced the concept into the debate and I said, at the time, that I agreed because we were talking about how after this report had been provided to government, we found out that some of the members of the former committee were consulted on drafts of this report. Hon Tjorn Sibma asked the parliamentary secretary about the time line and who had been consulted on the various iterations of the report. The parliamentary secretary indicated that during that time the basis upon which those people were being consulted was not because the committee was in fact in place, because the parliamentary secretary introduced the concept of it being *functus officio*, and he was right. The committee was *functus officio* at that time. Those people were being consulted in a different individual capacity. I am not suggesting for a moment that there is anything improper about that. If it was

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functus officio then, it most certainly was on 28 June as well. Why? It is because the parliamentary secretary and his government tell us, the Legislative Council, that we are to believe that the terms of reference, annexure 1, are a faithful reproduction of the terms of reference.

Interestingly enough, because of some work I think undertaken by Hon Martin Aldridge, we found out that the letter of appointment that had been provided to these members has an annexure at the back that talks about seven weeks from cabinet appointment. When questioned about that, we were told, “Don’t worry about it; it’s a typographical error.” What does the cabinet minute say? What did members who are in the cabinet actually agree to on that day? Let me guess, the parliamentary secretary is not going to tell us because it is cabinet-in-confidence. He could not possibly tell us that. The government has been caught out; this is an unlawful report. There was no power for it to be issued. If the government wants to say, “No, it’s all fine because eight weeks is the same as two calendar months”, table the legal advice from the senior legal official who is happy to have their name next to that particular interpretation. Go for it. This is the same government that constantly tells us, “No, we can’t provide you with any legal advice, it’s subject to legal professional privilege.” Do it now. Put it beyond doubt. Let us confirm that there was power for this to be done. So far the explanation that has been provided is that a covering letter to these individuals from the Attorney General, in his capacity as Minister for Electoral Affairs, which refers to the date of 28 June, makes the appointment 28 June. With all due respect to those who are prosecuting that argument within government, that is not what cabinet agreed, if we are to believe what is being told to us, that the terms of reference set out in this document are a faithful reproduction. The only way we will ever get to the bottom of this is if somebody within government gets approval by cabinet to release that minute.

There is not some kind of great big conspiracy or great secrecy here—a great revelation out of cabinet. All we are asking them to confirm is that on that day when cabinet said “We’d like to appoint these particular individuals to the ministerial expert committee”, the Minister for Electoral Affairs, John Quigley was telling the members of cabinet, despite the fact that Mark McGowan prior to the election said this was not on the agenda, that this is a very important thing for us to undertake and we need to have Mr McCusker and his three friends undertaking this particular task. What was the date that that occurred? What did they agree to? What would possibly be the harm to government and any concept of cabinet confidentiality to tell us that? I bet we will never know. Until such time as somebody in government wants to release that information, I will continue to expose the fact that this committee was functus officio on 23 June. If it is inconvenient and uncomfortable for government because of the plethora of so-called typographical errors—whether they are in an appendix to a document or in a covering letter—the sheer incompetence of those who drafted those documents is what has caused this problem. No-one was paying attention. Once again, as I have said repeatedly, people need to spend the time to read. That means members of Parliament and members within the executive. Certainly, do not trawl out this kind of excuse now that that somehow becomes my problem, when there has been gross incompetence within government.

I finish on this point. The member has asked me to reflect on the so-called aspersions or reflections that I made with regard to the individuals. Again, read *Hansard* from last night. I repeatedly said that I was not calling into question the professionalism of the individuals.

**Hon Matthew Swinbourn:** You just did that then, member. You just called them incompetent. You did it then!

**Hon NICK GOIRAN:** That is absolutely right. Unless the parliamentary secretary is telling me now that any of those four individuals were the authors of the —

**Hon Matthew Swinbourn:** It is like you’re saying, “Look over here while I am doing this over there!”

**Hon NICK GOIRAN:** Parliamentary secretary, it would be very interesting if it is the case that one of those four individuals is the author of the letter. I understand that that letter has been signed by Hon John Quigley. If there is incompetence on his part, I am not ascribing that to Mr McCusker or anybody else. If the parliamentary secretary wants to correct the record and tell me that it was Mr McCusker or one of the other members who authored the letter or the appendix that has apparently got typographical errors, I am happy to correct the record. Whoever has done that is incompetent and that is what has caused the problem here. I am not and have never said that any of those other members were unprofessional. In fact, repeatedly, as is reflected in *Hansard* yesterday and is now on the record again, today—two days in succession—I am not saying that and I have never said that. It is false to suggest otherwise.

Lastly, regarding any interpretation that I am suggesting there was unprofessionalism on the parliamentary secretary’s part in tabling the document, that is absolutely not what was intended by me. He knows full well that I hold him in the highest of regard, and that he consistently behaves in a fashion that is highly professional. He continues to have my highest respect in that regard. But it does not change my argument here that the committee was functus officio on 23 June. I understand it is inconvenient for government, but it remains my argument.

**Hon NEIL THOMSON:** I would like to make some final statements in relation to the line of questioning I was making about page 21 of the report and the two paragraphs related to the large district allowance of the Legislative Assembly.

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I have had time to reflect on some of the answers that were provided earlier. I must say that I am very disappointed because I do not believe the electorate of Western Australia or the people of Western Australia have been given sufficient information. In fact, I would suggest that they have been given no information about the wideranging impacts of this Constitutional and Electoral Legislation Amendment (Electoral Equality) Bill 2021 on the Legislative Assembly. We can go to the Legislative Council second reading speech and we see that it says —

This bill will reform the Legislative Council, addressing well-known anomalies that have been canvassed from multiple quarters both interstate and locally over a long time.

However, I am flagging with the parliamentary secretary that when we get to part 4 there will be significant questioning about the impact of part 4 on the Legislative Assembly. We see that both the expert committee report has only referred to it in two paragraphs, and it talked about, for example, the fact that the Agricultural Region has an average of 17 230 voters and the Mining and Pastoral Region has 11 609 voters.

When I looked at the seat of Belmont, I saw that there were 30 025 voters at last count. We know that metropolitan seats have a significantly higher allocation. After the recent federal redistribution, we see that my federal seat of Durack touches into Bullsbrook from Kununurra. There is a significant divergence in the nature of the seat. I put on notice that my questioning will be significant. One of the changes is the prescribed factors that are necessary to be considered when the boundaries are redefined for the Assembly. They were read out. There were a number of prescribed factors, including community interest, land use patterns, means of communication, means of travel, distance from the capital, physical features, existing boundaries, regions and districts, existing local government boundaries and the trend of demographic changes. I will go into one of the amendments to the Electoral Act 1907 in more detail later; I am just flagging it with the parliamentary secretary.

I think the people of Western Australia deserve a much more significant explanation of the likely impacts on the Legislative Assembly. Sometimes things are put in a certain way. For example, we saw the Premier speak about Hon Wilson Tucker's election with 98 votes, being one of the major pretexts for this reform. That had nothing to do with the definition of "regions". We are now seeing significant changes to a number of acts, including the Electoral Act 1907. The removal of the definition of "regions" will have a significant impact on the number of electors in each of those districts in the Legislative Assembly. I think the people in the regions, in particular, deserve an explanation about how much this will impact on lower house seats. I guess I am summarising and asking the parliamentary secretary if it is possible for him to provide significant answers to that question during our detailed consideration of the bill after the debate on clause 1.

**Hon MARTIN ALDRIDGE:** I thank the parliamentary secretary for the responses that he provided to me and other members overnight. I wanted to address a few small areas to tidy up those loose ends before we move off clause 1. I start with the advice that the parliamentary secretary received from the Clerk on tabled paper 188. Obviously, by way of a statement delivered by the parliamentary secretary last night, he advised that we can no longer rely on tabled paper 188 due to a number of inaccuracies, not just in the terms of references that appear as appendices to the letters, but in the letters themselves.

I turn to the other matter that I raised. The Standing Committee on Estimates and Financial Operations, in answer to a question provided to it from the Premier, relied on the standing of tabled paper 188. I recognise that it was not the parliamentary secretary's response to the standing committee. I suggest that the Premier might like to reflect on the answers he provided to the Standing Committee on Estimates and Financial Operations prior to hearings that relate to tabled paper 188.

**Hon Matthew Swinbourn:** We have flagged that with the Premier's office.

**Hon MARTIN ALDRIDGE:** Okay; thank you.

I have a couple of minor questions about the costs. Thank you. It has probably taken around six months to finally get a straight answer on how much this rapid exercise has cost the taxpayers of Western Australia. We now find we have that. Three figures were quoted for the three members who have accepted payment, albeit through their universities, being members Phillimore, Murray and Drum. Mr Drum received a slightly lesser amount than the other two members, yet I think the parliamentary secretary told us that all three members attended all meetings. Could the parliamentary secretary clarify why member Drum received less remuneration than the other two members?

**Hon MATTHEW SWINBOURN:** I understand that it relates to who took on the lion's share of the drafting work. Obviously, there was some distribution of labour between the members, and others did more than Mr Drum—fractionally, because there was not a very large difference.

**Hon MARTIN ALDRIDGE:** It is not a major obstacle; I just thought it was worth considering, particularly given, as I understood it from a question that I asked, that there were set rates of remuneration. In fact, the answer was

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provided to the Standing Committee on Estimates and Financial Operations. There were set rates for a full day, a half day and per hour of work. Perhaps the difference in the payments made to the members relates to the hourly rate.

I want to comment on the arrangement that appears to have been struck after the fact with the universities. I find it a little unusual. I think about \$42 000 was expended on these committee members. The money is now not going to the committee members themselves; it is going to their employing universities. I think the parliamentary secretary explained yesterday that they are salaried officers of those universities, so therefore they had probably taken time off from their roles. In effect, at least financially, it would appear that the services provided to the state to conduct this exercise were provided by the three universities in question. They are ones that have issued the invoices for the services provided. I wonder to what extent the universities are aware that they have provided services to the state of Western Australia on this exercise. Nevertheless, if they have issued the invoice, they will take responsibility for the services that they have provided in that respect.

The parliamentary secretary mentioned in his reply just now that he is not in a position to provide a copy of those invoices. Is that because the state does not have them? Actually, I think his response was that members had access to other means of obtaining those invoices. Of course, that could be by way of freedom of information. We could ask the minister kindly to provide them to us or we could use Parliament, and here we are, parliamentary secretary. Is there any good reason why Parliament should not have access to the invoices in the possession of the state with respect to the services provided by these three universities?

**Hon MATTHEW SWINBOURN:** I do not have access to the invoices to table them. I am not obliged to table them. There is no order relating to me tabling them. The member has asked me to table them. I have given him the substance of the costs, but I do not have the invoice documents to table them today or any other day.

**Hon MARTIN ALDRIDGE:** This matter was raised yesterday. It is not like it is a matter that has just arisen. We will not get those invoices out of the parliamentary secretary today. I suggest that he reflect on section 82 of the Financial Management Act and any responsibility that he or his minister may have with respect to the obvious refusal to provide that financial information to Parliament.

The parliamentary secretary tabled a paper yesterday, which was the response from the honourable Premier to the Standing Committee on Estimates and Financial Operations on 8 October 2021. Part (f) of that letter reads —

Please table any correspondence between the committee and the government, including letters of engagement or other documents relevant to their engagement or appointment?

The answer to that question was —

Refer to Legislative Council Tabled Paper #188 ...

We now know that that cannot entirely be relied upon. Was there any other correspondence, other than the obvious communication of the report, which I think was dated 28 June? Apart from the letters of appointment and the reply on 28 June 2021 with the report attached, was there any other correspondence between the committee and the government?

**Hon MATTHEW SWINBOURN:** There was correspondence between the committee and the secretariat support that was provided, which, as I indicated previously, was Ms Buchanan. There was no other formal correspondence between the government and the committee of the kind that I think the member is seeking in relation to that.

**Hon MARTIN ALDRIDGE:** To clarify: I take correspondence to include email or written communication; that sort of formal communication as opposed to perhaps corridor conversations and the like. Can the parliamentary secretary confirm that apart from the secretariat support, which was a ministerial officer, there was no communication written in letter or email form between the government and the committee other than the documents that I have identified?

**Hon MATTHEW SWINBOURN:** That is my advice, outside of those things and the things that have obviously been mentioned through the course of the Committee of the Whole.

**Hon MARTIN ALDRIDGE:** The last matter that I want to go to is something that I mentioned last night and I had the briefest of conversations with the parliamentary secretary about behind the chair—that is, whether this bill constitutes a bill requiring appropriation. I think the parliamentary secretary said to me during my briefing and confirmed to this house last night that it was his understanding this bill introduced into the Legislative Assembly did not have a message from the Governor confirming an appropriation. Is that still the government's position? Is the parliamentary secretary able to provide any further information or can he update us on that exchange last night?

**Hon MATTHEW SWINBOURN:** There was a message from the Governor. I have seen a copy of it. It is publicly available, so the member may have clapped eyes on it as well. I have a bit to say about this because I sought advice from the clerks on this particular issue. If we reflect on the briefing the government gave members, we might have been at cross-purposes a bit over this particular issue. During the briefing the member asked whether this was an appropriation bill, and we acknowledged that there will be a cost for the additional member of the Legislative Council

somewhere in the legislation but that no specific appropriation was endorsed by cabinet because there are no financial implications across the forward estimates. The cost for the thirty-seventh member will come following the 2025 election and the election of the thirty-seventh member. I acknowledge that this may have created some confusion about the Governor's message, as indicated, but that message and that document do exist. I sought some advice from the clerks about this because there was some confusion on our part about what it is. I spoke with the Deputy Clerk who has provided me with some information that comes from the Clerk of the other place —

PCO, when drafting a bill, form an opinion as to whether a Governor's message is required under s46(8) of the —

Constitution Acts Amendment Act —

In forming this opinion, they have regard to the LA practice of how s46(8) is to be applied. If they form an opinion that a Governor's message is required, they write a letter to Parliamentary Services of DPC in the form ...

I have a copy of the letter that was transmitted in relation to this bill from the Deputy Parliamentary Counsel to the director of Parliamentary Services of the Department of the Premier and Cabinet. I am happy to table that letter. I think it can be tabled.

[See paper [865](#).]

**Hon MATTHEW SWINBOURN:** That is the form of the letter. The advice continues —

With regards to the *Constitutional and Electoral Legislation Amendment (Electoral Equality) Bill 2021*, the Clerk and I received a letter by email —

That is the letter I just tabled —

from PCO ... in which PCO advised that a Governor's message was required.

That correspondence did not come through or from the minister's office; it was a communication between the Parliamentary Counsel's Office and the clerks because of their view about section 46 of the Constitution Acts Amendment Act. The advice continues —

As to why PCO concluded, with respect to this Bill, that a Governor's message was required, is not known to Kirsten or myself. However, I surmise PCO thought that as the Bill contemplates an additional member of the Legislative Council, and that this would require the State to fund this extra position, a Governor's message was required according to the practice of the Assembly. Had PCO sought the opinion of Kirsten and I as to whether this Bill required a message, we would have said it did, for the reason stated.

Separate to this process, the LA Clerks review each bill when it is introduced into the Assembly to see if a Governor's message is required under s46(8) of the CAAA. If we conclude a message is required, we check if PCO have recommended the same. If they have not, we enter into a dialogue with PCO. If after this dialogue it is clear that a message is required according to the practice of the Assembly, PCO will send a letter to DPC advising a message is required.

As a matter of practice in the Assembly, if a Bill does require a Governor's message, but has not yet been received and reported to the House, debate on the Bill can continue up to the point that the second reading debate is concluded. However the question, "That the Bill be now read a second time", cannot be put to a vote until the message is received and reported.

That advice was forwarded to me by the Legislative Assembly Deputy Clerk, Scott Nalder. I hope that explains it to the member. I am sure the member could sit down with our clerks and discuss with them in detail some of the controversies that exist between the Legislative Assembly and the Legislative Council in terms of what an appropriation —

**Hon Martin Aldridge:** We are right and they are wrong.

**Hon MATTHEW SWINBOURN:** I think it is safe to assume that, but they take a different view. That is how that stamp on the front of the bill that the member previously referred me to occurred. It is because of the communication of that correspondence from PCO to the clerks. The clerks formed independently their own view that it will be an appropriation, so regardless of whether they received that letter from PCO, they would have attached it themselves as an appropriation bill of that kind. I hope that addresses the point that the member raised.

**Hon MARTIN ALDRIDGE:** I think the parliamentary secretary has just short-circuited a range of questions that are no longer needed because we now have an understanding, first of all, that the bill requires an appropriation and a message from the Governor, which was received by the Legislative Assembly. Although I have not been able to access that message and I am not sure how to access it.

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**Hon Matthew Swinbourn:** Apparently it is through the parliamentary website.

**Hon MARTIN ALDRIDGE:** Okay; I will have a look.

Given we have now established this is a bill requiring an appropriation, what is the cost to the state of Western Australia of implementing the provisions of the bill?

**Hon MATTHEW SWINBOURN:** There is no specific appropriation, as I said to the member in my response, because any costs for the thirty-seventh member will happen outside the budget estimates, but I can give a broad indication of the likely cost of a thirty-seventh member. Based on information from a number of sources, the anticipated cost—I will give an estimate; I have specific figures because someone has tallied up—is between \$520 000 and \$980 000. Those figures relate to the salary of an additional member and the provision of office accommodation and staff to the member. We cannot be certain about the exact figure because the costs will only be fully known once they have been incurred. The thirty-seventh member might have their office in Paraburdoo and there will be costs that are unique to Paraburdoo. There will be flight costs; they might have additional accommodation costs, so there is no specific cost in that regard, but the estimate is —

**Hon Martin Aldridge** interjected.

**Hon MATTHEW SWINBOURN:** We are all equal, member. That is why it is an estimate between just over \$500 000 and just under \$1 million. Of course, if the Salaries and Allowances Tribunal deigns to increase our salaries over the next couple of years, those costs will obviously vary, depending on those things and subject to changes in market conditions as well. I hope that gives the member some idea, but, as I say, there is no specific budget allocation or an appropriation at this time because we do not have the thirty-seventh member and the bill has not yet passed the chamber.

**Hon MARTIN ALDRIDGE:** I thank the parliamentary secretary. I understand that it is hard to make a precise prediction for all the reasons the parliamentary secretary has outlined. I think it is probably closer to \$980 000 than it is to \$520 000, when all is said and done. The other obvious cost will be the cost to the Western Australian Electoral Commission. I think some questions have been canvassed around the necessity for an education campaign and resources to deal with the changes in the Legislative Council voting system and the ballot processing aspects. Another obvious significant cost will be resourcing thirty-seven members of Parliament to represent every Western Australian. I think that is something that Hon Tjorn Sibma pursued late yesterday. Those things cannot be precise and we will, to some extent, rely upon rulings by the Salaries and Allowances Tribunal. Of course, as the parliamentary secretary is aware, there are a number of things that are outside the remit of the Salaries and Allowances Tribunal, such as members' offices, staff resources and some of our other entitlements that are completely at the discretion of the executive government. That is a whole other debate for another day, but hopefully one day there will be a true separation of powers, including financial separation, between the government and the Parliament.

**Hon TJORN SIBMA:** I want to express my gratitude to both the parliamentary secretary and Hon Martin Aldridge for that exchange, because it obviates the necessity for me to raise those issues—at least the cost implication, which is brought in under clause 6, which is also the clause that will introduce the thirty-seventh member to the chamber. I think we can have a debate at that time about the merits of that proposition. It clearly was not a recommendation of the report and its inclusion does not seem pivotal to the government's purported central purpose of the bill, which is to introduce its view of voting equality and dismiss the possibility of preference harvesting and gamesmanship through the abolition of group ticket voting.

I want to speak to a couple of the resource issues that were addressed by way of the supplementary information provided by the parliamentary secretary when we recommenced our deliberations. Have the three invoices that were issued by the University of Western Australia, Curtin University and the University of Notre Dame, and presumably received by the government, been paid?

**Hon MATTHEW SWINBOURN:** We do not have a precise answer to that. We can seek further advice for the member if he wants us to as to whether they have been paid. That is obviously not dealt with through the ministerial office and department; it is outside that. I hope it will not delay progress, but we can try to seek advice for the member on whether they have been paid.

**Hon TJORN SIBMA:** My interest is not necessarily an idle one. If I take at face value the advice that has been provided to us that the official tasking of the group—noting that only three of the four members accepted remuneration—ceased on 28 June, some four months ago, I would have expected that invoices would have been issued in accordance with government procurement guidelines and that those invoices would have been honoured by now. Since it was acknowledged yesterday that —

**Hon Matthew Swinbourn:** Sorry, member. I think it was indicated in the answer that was given on 8 October that there were some outstanding invoices at that time. I believe that at least one of those was in relation to this issue.

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

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**Hon TJORN SIBMA:** I thank the parliamentary secretary. Noting that the individuals were also consulted on the form and structure of the bill through iterative drafts, may I ask whether any compensation or remuneration was offered or accepted in relation to the consultation on drafting the bill?

**Hon MATTHEW SWINBOURN:** No, member.

**Hon TJORN SIBMA:** In relation to the meetings of the Ministerial Expert Committee on Electoral Reform, of which the parliamentary secretary has advised there were six fully in-person meetings and two additional meetings that were via either Zoom or a hybrid of Zoom and in-person on dates between 5 May and 23 June, were the in-person meetings—forgive me if the chamber has already been advised of this—held in the minister’s office or in some other location; and, if another location, which location?

**Hon MATTHEW SWINBOURN:** I can speak only to the ones at which Ms Buchanan was present. She said there were two or three at the minister’s office and some were held at the Constitutional Centre.

**Hon TJORN SIBMA:** Can I ask whether the minister was involved in any of those meetings, even if he was only paying a courtesy visit?

**Hon MATTHEW SWINBOURN:** He attended the inaugural meeting to welcome them, to thank them for their time and to have a general discussion, but he did not participate in any of the other meetings.

**Hon TJORN SIBMA:** I have only a few more questions on this theme. I am interested in the minister’s whereabouts only because I think last night after the dinner break the parliamentary secretary was reflecting upon a discussion the minister may have had with Malcolm McCusker at some stage. I think it was a phone conversation; it was not at the in-person meeting the minister held with Professors Phillimore and Drum, from my recollection. I have not familiarised myself again with the *Hansard*, but I recall from last night that it was difficult for the minister to determine the date on which that phone conversation may have taken place between him and Malcolm McCusker. Is that the case, or has the minister’s memory been refreshed about when that conversation may have occurred?

**Hon MATTHEW SWINBOURN:** I confirm that there is no record of it in his ministerial diary, but we have not been able to confer further with the Attorney General since yesterday. The Attorney has carriage of another bill in the other place. He was in Parliament until after we had risen and then he was straight back into it today. We have not been able to lock in a specific time and date.

**Hon JAMES HAYWARD:** I have a couple of quick questions, if I may. I refer to page 42 of the report, paragraph 4.3, “Facilitating a regional presence of MLCs”. We were speaking last night about the potential for the Premier to send the Salaries and Allowances Tribunal a letter that will be ready to go once this legislation is passed that would potentially consider, or encourage, SAT reviewing the circumstances in which allowances could be paid. I think that is outlined in the report here, as well as a potential enticement, if you like, to encourage MLCs to be located outside Perth; they may be given some extra income or resources in staffing and travel. I wonder about the basis of the idea that 37 MLCs will represent the whole state but a smaller number will be resourced to travel the state. Does the government consider that an inequity? What are the government’s thoughts about five or six or seven, potentially, being located outside Perth? Does that create an inequity? What did the government consider in its deliberations on how that might affect remote communities?

**Hon MATTHEW SWINBOURN:** The Salaries and Allowances Tribunal independently determines those resources. It is not determined by government. If we were to go down that pathway, we would have to change the law and impose that on them. The undertaking from the Premier was to write to the tribunal to explore those matters that I previously talked about in terms of allowances and things of that nature. I think I pointed out—I am not sure whether the member was on urgent parliamentary business—that there is no mandate or requirement for a member of the Legislative Council to have their office within a region and, accordingly, some members do not. The number of those sorts of members goes up and down. We have not changed from the current position. There is no mandate for members to have their office in the region they represent, whether that is a metropolitan or a non-metropolitan region. Consideration of allowances will happen over time. If the bill is passed, the Salaries and Allowances Tribunal will then give consideration to the changes in circumstances for Councillors and the change of nature from being a representative for a particular region to a representative for the whole of state. I do not want to divine that because it is an independent tribunal and it will make its decisions. Individuals and political parties can write to the tribunal when it is considering those matters; people can write to the tribunal at any time to say it should take that into consideration. I have indicated already that the Premier will be writing following the passage of this bill.

*Division*

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



**Extract from *Hansard***  
[COUNCIL — Wednesday, 10 November 2021]  
p5190b-5198a

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

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Ayes (21)

Hon Klara Andric  
Hon Dan Caddy  
Hon Sandra Carr  
Hon Stephen Dawson  
Hon Kate Doust  
Hon Sue Ellery

Hon Peter Foster  
Hon Lorna Harper  
Hon Jackie Jarvis  
Hon Alannah MacTiernan  
Hon Kyle McGinn  
Hon Dr Brad Pettitt

Hon Stephen Pratt  
Hon Martin Pritchard  
Hon Samantha Rowe  
Hon Rosie Sahanna  
Hon Matthew Swinbourn  
Hon Dr Sally Talbot

Hon Dr Brian Walker  
Hon Darren West  
Hon Pierre Yang (*Teller*)

Noes (9)

Hon Martin Aldridge  
Hon Peter Collier  
Hon Donna Faragher

Hon James Hayward  
Hon Steve Martin  
Hon Tjorn Sibma

Hon Dr Steve Thomas  
Hon Wilson Tucker  
Hon Nick Goiran (*Teller*)

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Pairs

Hon Ayor Makur Chuot  
Hon Shelley Payne

Hon Neil Thomson  
Hon Colin de Grussa

**Clause thus passed.**

**Clause 2: Commencement —**

**Hon TJORN SIBMA:** I thought I had timed that a bit better than it appears to have turned out. Is it the government's view that it has an electoral mandate for this bill?

**Hon MATTHEW SWINBOURN:** I am struggling to see what it has to do with clause 2, but all governments have a mandate to govern for the goodwill of all Western Australians, and that is what we continue to do.

**Hon TJORN SIBMA:** In the parliamentary secretary's second reading reply speech, which I am desperately trying to find a copy of, he addressed the issue of precedent. He invoked a number of precedents that the government considered to be a defence against one of the propositions endeavoured in this bill, which the government describes as equality—others might more accurately describe it as a measure to abolish dedicated regional representation in the upper house—to a referendum. The parliamentary secretary initially cited a bill introduced by Sir Charles Court in 1977, which I believe then lapsed and may have been reintroduced in 1978. In terms of what was established by way of that bill, what is its connection to this bill?

**Committee interrupted, pursuant to standing orders.**

[Continued on page 5207.]