

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

Committee

The Deputy Chair of Committees (Hon Dr Sally Talbot) in the chair; Hon Matthew Swinbourn (Parliamentary Secretary) in charge of the bill.

Clause 1: Short title —

The DEPUTY CHAIR (Hon Dr Sally Talbot): I draw members' attention to the fact that there is a supplementary notice paper 47, issue 1.

Hon TJORN SIBMA: Good afternoon, parliamentary secretary and advisers. Before I commence my question, it might be appropriate to give the parliamentary secretary a sense of my areas of interest, at least over the course of the next couple of hours, so that if he is not in a position to provide an answer immediately, whatever facilitation is needed might be sought, desirably, before the dinner adjournment.

Generally speaking, for clause 1, I am interested in the overall time line of the decision-making process in establishing what the government refers to as electoral equality as a policy and legal objective; the time line as it relates to the commissioning and formation of the Ministerial Expert Committee on Electoral Reform and its work; and the process in drafting the bill that is in front of us. I am also interested, at least at this early stage, in the submissions process and the process of consultation. I am drawing predominantly on the parliamentary secretary's second reading reply speech, when it referred to some of the latter components I referred to then.

First of all, I hope that the parliamentary secretary might be able to fill in some gaps in the time line for me. This might seem a little painful, but if we had had our way earlier and this bill had been discharged to a committee, we would not be putting him through this process now. We commence where we start, with the election on 13 March. Was it on 18 March when the new cabinet was sworn in? I am acting on that assumption because that would be the date when the Attorney General also assumed portfolio responsibility for electoral affairs. I want to establish that I have that correct in my mind.

Hon Matthew Swinbourn: I was there, member.

Hon TJORN SIBMA: You were there?

Hon Matthew Swinbourn: At the swearing-in of the cabinet? Yes.

Hon TJORN SIBMA: The parliamentary secretary would have been, would he not? Indeed, it was a big day. If the parliamentary secretary was sworn in on 18 March, I presume that the Minister for Electoral Affairs was as well. I am trying to account for what happened in the process in the six weeks between 18 March, when I assume the cabinet, including the parliamentary secretary, was sworn in, and 30 April, when Minister Quigley effectively announced the formation of the ministerial expert committee and its terms of reference, and the appointment of certain members to it. I understand that between 30 April and 8 June, the submission period on the ministerial expert panel's work was open. Initially, the deadline for submissions was set at five weeks—to the end of May—but it was extended another week to 8 June. On 28 June, the ministerial expert panel finalised its report and presented that report to the minister; it was addressed to the minister. Then, to the outside observer—those people like me who are not privy to the workings of government—there was an 11-week period of official radio silence. I think there were some media statements and grabs along the way—that is fine—but 11 weeks transpired between 28 June and the tabling of the final report on 15 September. At the press conference, we were advised that a bill would be introduced into the lower house on 16 September. My initial area of focus is some of those big gaps. I am trying to account for what occurred, specifically during the six weeks between 18 March and 30 April, and, in particular, the 11 weeks between the finalisation of the report and the introduction of the bill. Can the parliamentary secretary account for the development of both the policy and the Constitutional and Electoral Legislation Amendment (Electoral Equality) Bill 2021 within those gaps and over the time line overall?

Hon MATTHEW SWINBOURN: We were just trying to clarify the date. Who was going to be a member of cabinet was announced on 18 March, but the swearing-in took place at Government House on 19 March. I will go through the chronology that I have here. On 1 April and then 8 April, the Attorney General met with John Phillimore and Martin Drum to discuss their availability to review electoral systems for the Council, which obviously then resulted in the establishment on 30 April of the ministerial expert committee. Advertisements were placed in *The West Australian* on 1 May calling for submissions, and then on 14 May a discussion paper was released. Additional advertisements were published on that same day in rural and regional newspapers to inform people of the discussion paper and the call for submissions. Advertisements were also published in *The West Australian* on 28 and 29 May calling for submissions, and on 8 June submissions closed. Late submissions were accepted with prior arrangement on 10 June and, of course, Hon Tjorn Sibma has already outlined that the final report was handed to the Attorney General on 28 June.

Obviously, what happened from that point on was consideration of the report and its recommendations by cabinet and then the preparation of a bill, which I think is a notorious fact. However, I cannot talk about what happened during cabinet consideration of the report or the drafting in relation to the instructions and those kinds of things because that is all subject to cabinet confidentiality. I think the report was then tabled on the date Hon Tjorn Sibma described and the bill was introduced in the Legislative Assembly not long after that. Have I missed something there?

Hon TJORN SIBMA: I will try to fill in the gaps. Thank you, parliamentary secretary. Thank you for clarifying that the swearing-in date was 19 March. The parliamentary secretary mentioned that the minister had meetings on I think 1 April and 8 April with Mr Phillimore and one other person.

Hon Matthew Swinbourn: It was Martin Drum.

Hon TJORN SIBMA: And was that a conversation to ascertain their availability to participate in a panel?

Hon Matthew Swinbourn: Yes.

Hon TJORN SIBMA: Was the first such conversation with Mr Phillimore or Mr Drum?

Hon MATTHEW SWINBOURN: It was together; they attended together.

Hon TJORN SIBMA: The minister called for two meetings with both Mr Drum and Mr Phillimore, one on 1 April and one on 8 April. Is that correct?

Hon Matthew Swinbourn: Yes.

Hon TJORN SIBMA: Thank you. From the time of the swearing-in of the cabinet on 19 March and the minister assuming the responsibilities and the capacity to bring this bill forth and 1 April, which was the very first meeting, what conversations or policy discussions—the parliamentary secretary said it was referred to cabinet at a later stage—were held between the minister and the Premier about this particular policy direction to effectively recast electoral law for the upper house in a way that was inconsistent with what was mentioned during the campaign? When was the policy direction consolidated? At what point in time did that occur between 19 March and 1 April?

Hon MATTHEW SWINBOURN: Member, I cannot be specific about dates. Obviously, I am here in a representative capacity and I was not party to those discussions. The Attorney General, in his capacity as Minister for Electoral Affairs, has answered questions in the other place, which is what I am being guided by here. He has not been specific about that. He talked about being given the task of electoral reform and having a look at it and those sorts of things. He talked about being at a fishing club when the Premier rang him on his phone and said he would like him to do that job, but I suspect that was at the same time he was talking about taking on his role. I cannot be more specific about the time frame between the swearing-in of cabinet and the formulation of these things. I do not know that I can take it further than that because, as I say, I was not party to those matters.

Hon TJORN SIBMA: The parliamentary secretary is bound by the information that is provided to him in the time it can be provided to him. There were less than 14 days between 19 March and the very first meeting that was called with Mr Phillimore and Mr Drum. But it is very clear that in the course of whatever formal or informal conversations took place between the Premier and the minister, there was a clear understanding that the minister would seek to reform electoral law as it relates to the upper house. I do not want to go into FOI phone logs and all that sort of palaver, but at what stage in the two weeks did that conversation take place? I am not asking this to be obtuse. I am asking this because it was a very clear policy departure from commitments entered into or not entered into in the course of the campaign and those that took place within a week of a cabinet being sworn in. I want to understand when precisely a high-level conversation took place between the Premier and the minister that eventuated in the development of this bill because that will help me appreciate the policy that is embedded in it.

Hon MATTHEW SWINBOURN: Again, I was not party to discussions that happened between the minister and the Premier, but I make the following point: the minister has the power to make his own decisions about whether he commences with a ministerial expert committee. I will read an answer he gave on 6 May to a question from Hon Mia Davies. He said —

I can remember being at the fishing club when the Premier rang me on my phone and said, “I’d like you to do this job and that job” and when I got to work on Monday, I thought, “Right. What needs to be done here?”
With electoral affairs, electoral reform goes without saying, so I rolled up my sleeves and got on with it.

I think we can take from that that the minister makes his own decisions about this. Undoubtedly, there would have been conversations between the Premier and the Attorney General on any range of matters, but I cannot be any more precise than that; that is, sometime following that, there was a decision by the Minister for Electoral Affairs to commence with a ministerial expert committee.

Hon TJORN SIBMA: I take it from the answer given in the other place that the parliamentary secretary has helpfully read in that there seems to be two bits. The job that the Premier offered to the now minister presumably was the portfolio allocation. I presume that is how I should interpret that part of the answer. The second part of the

answer, and, I think, the two or three occasions in the parliamentary secretary's answer that underscored the ministerial prerogative for setting policy direction, leads me to infer that the ministerial expert committee appointment process submission and the development of this bill were effectively the brainchild of the minister. When one of the conversations between the minister and the Premier occurred, was the minister saying, "Mr Premier, I've got an idea for"—I will say this in a colloquial function—"fixing up the upper house"? Did this bill find its genesis in the minister or was it potentially implicit in the offer the Premier gave to the minister in the first place in the course of him saying—I am saying this not in any derogatory way, but in a colloquial way—"John, I've got a job for you, and by the way I think you should look at this"? I am trying to get a sense of whether there is co-ownership of this bill or whether it originates from the minister himself. At what stage, then, did the Premier say this was a good idea? This is a significant piece of legislative reform, if I am to take the parliamentary secretary at his word. It is a significant departure from the policy that the government took. I just want to understand who is responsible for the bill.

Point of Order

Hon SUE ELLERY: I can well appreciate the member on his feet with responsibility for the bill wanting to understand the circumstances that led to some significant policy decisions, but there is just no way that the parliamentary secretary would be able to know about the conversation between the Premier and the Attorney General. He was not party to those conversations. I do not see how this line of questioning is reasonable; he just would not know. He is here in a representative capacity.

The DEPUTY CHAIR (Hon Dr Sally Talbot): Members, there is no point of order; however, what the Leader of the House has drawn attention to is that it is up to the parliamentary secretary to respond to this question. If the parliamentary secretary is going to respond, he will do so in terms of what he knows.

Committee Resumed

Hon MATTHEW SWINBOURN: I cannot take this any further than what I have already said to the member. I am here in a representative capacity. As the member knows from his experience in government, things are formulated in many different ways, and often things have many parents, if I can use that term. I cannot really say that in relation to this one.

Hon TJORN SIBMA: It does not surprise me. These are probably issues that would have been canvassed had the bill been discharged and referred to a committee. The parliamentary secretary invoked cabinet confidentiality at a later stage—that is, the time between 28 June, when the report was finalised, and the production of this bill. In the parliamentary secretary's early response, he did not invoke cabinet confidentiality as it relates to the time between 19 March, when cabinet was sworn in, and the minister's first publicly facing media statement on, I think, 30 April. Would it be a fair assumption to consider that there was no cabinet consideration given to this policy shift in the time between 19 March and 30 April, but that this policy was formed on the basis of at least a shared understanding in some way formed between the Premier and the minister?

Hon MATTHEW SWINBOURN: I cannot say what cabinet did and did not consider. I am not a member of cabinet, and even if I was, that would still be subject to cabinet confidentiality. Ruling things out about what cabinet does and does not consider is also reflecting on the deliberations of cabinet. I have no knowledge about that, so I cannot answer or take this matter further.

Hon TJORN SIBMA: I will just note that cabinet confidentiality is often misapplied by governments for convenience. I am not seeking what was in the cabinet note and I am not seeking what the actual cabinet decision was. I would find it highly unusual that a policy deviation of this kind, particularly one contrary to statements given by the Premier in the course of an election campaign, did not go to cabinet in that time, but who knows? I might have to wait 30 years before that question is answered, unless the parliamentary secretary has a note there. No, he does not want to interject; that is fine.

I will then get back to the very first meetings that the minister arranged with Mr Phillimore and Mr Drum—I am not using their academic titles; I will be corrected on that at a later stage. Previously, the parliamentary secretary referred to the first meeting that was held on 1 April. When was that meeting organised?

Hon MATTHEW SWINBOURN: I am reflecting on the recent report from the Standing Committee on Procedure and Privileges about the relevance of these sorts of questions and the degree of cooperation from ministers and parliamentary secretaries in answering questions relevant to the bill. Although this might perhaps be in the universe of relevance, I do not think it is in the solar system of relevance, and I am really struggling to understand how it goes to what we have before us, which is the question that clause 1 be agreed to. I cannot take the member any further on those issues.

The DEPUTY CHAIR: Before I give Hon Tjorn Sibma the call, I note that debate on clause 1 is wideranging. That has been well canvassed in this place. There are plenty of rulings on the relevance of that observation. Hon Tjorn Sibma, it is good to have a kind of arc that becomes apparent to the chamber in the line of questioning, and I am quite sure that the member will bear in mind that the bill is being handled by a parliamentary secretary who

is not actually the minister with carriage of the bill and is not a member of cabinet. Having said that, I give the call to Hon Tjorn Sibma.

Hon TJORN SIBMA: Thank you, deputy chair; I am guided, as always, by your counsel. However, I am a little surprised that the government has peaked in its frustration and anxiety so early in proceedings this afternoon. Just for the benefit of the parliamentary secretary, I thought I was being helpful by seeking at the outset to clarify the overall time line of decision-making and determine when certain decisions were made and by whom, and how we have got to this point. I focused on the process of forming the ministerial expert committee, how people were appointed to it and how the terms of reference were set, as well as the process involved in drafting the bill, and all my questions have been germane to those issues.

Hon Sue Ellery: Who set up the meeting: how is that germane?

Hon TJORN SIBMA: If the Leader of the House wants to come over to this side of the aisle and probe her parliamentary secretary, she is more than welcome to do so. We gave the government, both in the other place and this place, the opportunity to discharge the bill so that we would not have to detain everyone with this kind of consideration.

I understand that the parliamentary secretary is assisted by advisers but that they are not public servants in the traditional form; they are both from the minister's office. Is that correct?

Hon Matthew Swinbourn: Yes.

Hon TJORN SIBMA: Okay. That is all right. I just wanted to establish upon whose assistance the parliamentary secretary is relying to answer these questions and the questions of other people. I will ask, first of all: Why were two meetings deemed necessary with the co-authors of the report on 1 and 8 April? Was there a general canvassing in the first meeting, which was later confirmed in the meeting on 8 April? Can I get a sense of what was discussed and how it resulted in the development at least of the MEC and its terms of reference?

Hon MATTHEW SWINBOURN: I think the member's characterisation, in a general sense, is probably fair in the sense that the first meeting would have involved canvassing the idea of electoral equality and the establishment of some sort of panel, and the further meeting crystallised and solidified what would happen from that point forward. Obviously, in terms of the two people who were at these meetings, they represent only half of those who ultimately constituted the ministerial expert committee. I can speak only in the most general sense, but that was likely finalised in the second of those meetings, and on 30 April the MEC was established.

Hon TJORN SIBMA: The parliamentary secretary should read into this absolutely no ill-intent or pejorative at all. By virtue of Messrs Phillimore and Drum both being well-known public figures, I assume there was a pre-existing relationship, in even the most generic sense, between the minister and those two individuals. There were two other members of this committee, as the parliamentary secretary helpfully pointed out. Were there similar meetings with the other two panel members before the announcement of their appointment on 30 April?

Hon MATTHEW SWINBOURN: My instructions are that he did meet with the former Governor, Mr Malcolm McCusker, in person at some stage and obviously discussed his involvement, but I do not know the date of that meeting, and he did speak with Professor Murray by telephone, but there was not an in-person meeting with her before the establishment of the MEC on 30 April.

Hon TJORN SIBMA: I have been advised of a slight mistake on my behalf. Even though the media statement went out on 30 April, I think the appointment of the individuals was confirmed on 28 April. Can I confirm that I have that date correct, please?

Hon MATTHEW SWINBOURN: The best advice I have is that the member is correct in terms of 28 April. We think that is it. We do not have a copy of the letter of appointment here to confirm that absolutely, but I think the member's characterisation of a two-day period between the establishment formally in terms of the letters and then the announcement is correct. If that is in fact not the case—it is my best advice at the moment—I will correct it later during the course of proceedings.

Hon TJORN SIBMA: This is not an attempt on my behalf to delve into cabinet consideration—I am not asking the parliamentary secretary to wink if I am right or whatever, but that would be helpful—but I assume that the appointment of individuals of high public standing, particularly in their field of endeavour, on a job of work such as this would necessitate at least a cabinet note, and that the minister would have consulted on their appointment. Is it fair to categorise that the minister sought input from colleagues or others on the composition of this committee?

Hon MATTHEW SWINBOURN: I think Hon Tjorn Sibma has cast a very wide net by saying "colleagues and others". My suspicion is that the minister probably did have discussions, but I do not have any details of that. I do not think it is unreasonable in the circumstances to expect that he might have canvassed it with other people, but I make the point that at the end of the day, as the minister, it is his responsibility.

Hon TJORN SIBMA: If it is at all possible for the parliamentary secretary to confirm at a later stage when those other conversations occurred between the minister and Malcolm McCusker and Professor Murray prior to the

announcement of their appointment to the committee, that would be particularly helpful. I am not seeking that information at this stage. What I am particularly interested in is the drafting of the committee's terms of reference. Were the terms of reference discussed in any way with—I want to get this right in case I cause offence: is it Professor Phillimore and Professor Drum?

Hon Matthew Swinbourn: Associate Professor Drum.

Hon TJORN SIBMA: I might just call them Professors Phillimore and Drum to show them respect. Was there any discussion, in any way, around what would constitute appropriate terms of reference for the committee's work during the meetings on 1 April or 8 April?

Hon MATTHEW SWINBOURN: My advice is that the terms of reference were discussed and settled subsequent to those two meetings.

Hon TJORN SIBMA: Okay. They were discussed at the meetings as well, presumably. Not to be cute, but someone needs to raise something before they settle it, presumably, so were the issues around the terms of reference at least discussed in a generic sense, if not, in a finer sense in the context of those two meetings and then settled at a later date? Is that how I should interpret the parliamentary secretary's answer?

Hon MATTHEW SWINBOURN: My advice is it was after the meetings, member.

Hon TJORN SIBMA: Was Professor Murray and/or Mr McCusker consulted on the formulation of those terms of reference before the committee was formally established?

Hon MATTHEW SWINBOURN: Yes, they were.

Hon TJORN SIBMA: Two terms of reference were set for the committee and they were pretty clear. Was there an earlier draft or an earlier formulation of those terms of reference or was it only about how electoral equality might be achieved for all citizens and recommendations for the distribution of preferences in the Legislative Council's proportional representation system? Were other issues relating to Electoral Act amendments or representation in the Legislative Council canvassed at those meetings as well?

Hon MATTHEW SWINBOURN: If the member is talking about the meetings on 1 and 8 April, I think it would be fair to say that there probably were other general discussions about electoral matters. I think when people have meetings with Professors Murray and Drum, those sorts of things are invariably going to come up given their subject matter expertise, but, obviously, the purpose of the meeting was one thing. The member has sat in meetings with academics before and he knows how they might go. I think it is fair to say that some other stuff may have been generally discussed, but the purpose of the meetings related to what we previously discussed.

Hon TJORN SIBMA: Is it fair on my behalf to assume a high degree of collegiality or consultation between the minister and the four individuals whom the minister appointed to the panel and the terms of reference they were given to work to? Would it be a fair assumption that they knew prior to any formal announcement? Was there a consensus or co-authoring, at least to a degree, on those terms of reference, so nobody was particularly surprised by them once their appointment had been announced?

Hon MATTHEW SWINBOURN: I think it is fair to say it would not have been a surprise at the time they were appointed on 28 April. I confirm the twenty-eighth was the day of appointment via letter, so they were not surprised when they were delivered the terms of reference. I do not think it is unusual for people who agree to be involved in a committee or panel not to have some understanding or input into the development of the terms of reference. I think if I were in their position, like the member, I would hardly agree to them if I was not aware of what they were prior to that date of appointment. I would not want a lucky dip sort of approach on those things.

Hon TJORN SIBMA: I have been asked to do all sorts of crazy things in my time.

Hon Matthew Swinbourn: I bet the member has.

Hon TJORN SIBMA: These are four august members of our local academic institutions and they have bodies of work. Were they the only four individuals considered by the minister, though? Was a broader pool of people considered and then discounted, potentially?

Hon MATTHEW SWINBOURN: I do not have any advice to say that more people were considered beyond the ones who were eventually appointed. I think we have indicated that Professor Phillimore and Professor Drum were part of the discussion that led on to appointing the other two members. There is a broad academic community in relation to these sorts of things, but I cannot say specifically whether they were considered or rejected. In any event, even if they were, we probably would not want to make such disclosures for the sake of people's reputations. That is not why I am giving this answer, but in the broader sense, we would not say the people whom we rejected because of how that would reflect on them.

Hon TJORN SIBMA: I do not think that surprises me. Malcolm McCusker is probably self-recommending; he is an eminent person. Nevertheless, was the decision to appoint both him and Professor Murray to the committee taken by the minister or was it also recommended by Professors Phillimore and Drum? I refer to Professors Phillimore

and Drum only because the initial meetings obviously occurred with them, presumably because of administrative arrangements initiated by the minister. Were those meetings also used to seek views about who else might be appropriate members of the committee to round out the team, as it were?

Hon MATTHEW SWINBOURN: I cannot say the exact process in that regard, but in terms of the debates that happened in the other place and what the Attorney General has said himself about the appointment of the former Governor, he was very clear that it was his choice to appoint the former Governor based on, obviously, the Governor's esteem. He is not only a former Governor, but one of the pre-eminent barristers in Western Australia and a very experienced person in relation to the affairs of all Western Australians, beyond his philanthropic and charitable work as well. As I said, the Attorney General made specific statements in the other place about that process and I do not think I can take it any further than his own comments on that. In relation to Professor Murray, who the member also discussed, I believe the discussions were about her specific expertise as a legal expert and a constitutional law expert. That came up through discussions within that group of people—Professors Drum and Phillimore—as to the appropriateness of a person of her calibre and expertise.

Hon TJORN SIBMA: Were the initial meetings and subsequent conversations that the minister had with both Professor Murray and His Honour Malcolm McCusker minuted in any way?

Hon MATTHEW SWINBOURN: No, they were not.

Hon TJORN SIBMA: At least as it relates to the meetings on 1 and 8 April, which I presume would have taken place in the minister's office —

Hon Matthew Swinbourn: By way of interjection, I think they both did happen in the minister's office, yes.

Hon TJORN SIBMA: Who else was present at those two meetings in the minister's office?

Hon MATTHEW SWINBOURN: I cannot be specific about who was there in terms of an exclusive list. I know that at the first meeting, I was there for the original general discussion. I certainly was not there for the second meeting. Marion Buchanan, who sits next to me as the Attorney General's adviser on electoral affairs, was there as well. There may have been other people who came in and out of the meeting to say hello, as is the nature of those sorts of things when you have meetings and people come and go. I cannot be more precise than that.

Hon TJORN SIBMA: Thank you, parliamentary secretary. At least as far as the meeting on 1 April that you attended and are knowledgeable about, were any public servants there? Was anyone from the Department of the Premier and Cabinet or other departments present?

Hon Matthew Swinbourn: By way of interjection, member, no.

Hon TJORN SIBMA: Were any documents created at that meeting or subsequent to that meeting?

Hon MATTHEW SWINBOURN: Not that I am aware of in relation to any specific documents. It was a relatively informal meeting from my recollection, and a general discussion, and obviously specifically about what we have talked about before in terms of the general point about the start of the MEC idea and those sorts of things. My advice is that no formal documents were created at that meeting.

Hon TJORN SIBMA: Perhaps before the dinner adjournment, would the parliamentary secretary mind re-assessing whether a document of some kind was created as a result of that first meeting? The sheer fact is that it resulted in a second meeting a week later, on 8 April, so presumably there were issues to discuss or to settle on. It seems to have been characterised as a kick-off meeting, and the kick-off has eventuated in the bill that we are discussing now. I would find it completely unusual that at least cursory handwritten notes were not taken at that meeting. If the parliament secretary would be in a position to provide further advice at an appropriate stage, that would certainly be most welcome.

Can I ask also, as it relates to the meeting on 8 April, again involving Professors Phillimore and Drum, who else other than the minister and his direct staff were present at that meeting, and were any notes taken at that meeting?

Hon MATTHEW SWINBOURN: I was not at the 8 April meeting, but obviously Ms Buchanan was. In terms of who else was there, I think I have covered that off by saying Ms Buchanan was there as the minister's adviser. We will have to, as the member has asked, have a further look to see whether there is anything that we are able to provide to the member; therefore, following the dinner adjournment I will confirm with the member whether any documents are available that can be provided to him.

Hon TJORN SIBMA: At this stage, we have not been able to establish the date when the in-person meeting with His Honour Malcolm McCusker occurred, and, if that could be established, that would be desirable. Was that a private meeting between the minister and His Honour Malcolm McCusker, or was the minister accompanied by a member of staff or an official; and were any notes, formal or otherwise, taken at that meeting or subsequently?

Hon MATTHEW SWINBOURN: No-one at the table was at that meeting. As the member may be aware, the former Governor and the Attorney General are quite familiar with each other. They worked together on the Mallard case—I will not go into the details of that—so there is a degree of familiarity between those two gentlemen. In terms of

those specifics that the member asked for, all I can do is what we are doing with the other question and come back to the member after the dinner break with anything that I am able to be more precise about.

Hon TJORN SIBMA: I will await the advice. In the period of time between the government being sworn in and the announcement on 30 April—although the decision was made on 28 April, and there was possibly a cabinet decision prior to that—had the minister engaged with any individuals from the Western Australian Labor organisation about electoral reform?

Hon MATTHEW SWINBOURN: I presume the member means a lay party official or someone like that?

Hon TJORN SIBMA: Someone like Mr Picton.

Hon MATTHEW SWINBOURN: No-one at the table knows about any discussions between Mr Picton and the Attorney General; we are not aware of any discussions having occurred.

Hon TJORN SIBMA: Again, if it is possible after the dinner adjournment, we would seek some clarification on that issue, specifically between the dates of 19 March and the announcement that was made on 30 April.

I might get off this topic for now, which is probably to the relief of some. I ask a question of interest, only because the processes of forming the Ministerial Expert Committee on Electoral Reform and its work, and the reading in of this bill, have been compressed together in time somewhat. Would it be fair for me to categorise the two processes—the bill, and also the consultation piece—as operating sequentially, or in parallel, or has there been a bit of an overlap between the two?

Hon MATTHEW SWINBOURN: Member, there was no overlap. The MEC conducted its process and inquiry and delivered its reports and recommendations. We have said that they were then considered by the minister and cabinet and whatever drafting process started was only after the report was received.

Hon TJORN SIBMA: I take it then that that 11-week period between 28 June and the final report being tabled on 15 September was when all the action occurred, and I am not seeking the cabinet dates, so just hear me out. Presumably the report was presented to cabinet—you have said as much in your answer, and it does not really bother me when it was presented to cabinet in that 11-week period—towards the early end of July, I would imagine. But permission to draft and print a bill is presumably the cabinet process—I am talking in very generic terms—and the bill is produced within that 11-week period. That to me sounds like a pretty expedited process, when we consider that the bill has 97-odd clauses and affects three acts. Bearing in mind criticism made by both sides of this house over a variety of parliamentary terms about a government being able to fulfil its legislative agenda and the like, and the time it takes to formulate and consult on the drafting of legislation, what was the resource implication on the Parliamentary Counsel's Office, because presumably it was responsible for drafting the bill—or has this bill been drafted by many hands? I can only assume that that had to occur—if the answer the parliamentary secretary gave me previously about this being a sequential exercise—and that no work was done on drafting even the merest outline of this bill occurred prior to 28 June. The parliamentary secretary previously answered a question I asked in this chamber about any additional work or assistance rendered by any individual or group of individuals to the PCO in drafting this bill, so I use this opportunity to ask: was this bill drafted solely by PCO in that extraordinarily compressed period of time or did it rely on advice and assistance from other people; and, if so, who were those people?

Hon MATTHEW SWINBOURN: The PCO did the drafting but, as you can imagine, advice was sought during the course of the drafting process, particularly given that the bill affects the Constitution Act and the Constitution Acts Amendment Act, so I can say to you that advice was sought from the Solicitor-General and the State Solicitor's Office was also consulted, but they did not have any involvement in terms of any policy decisions, just on content. It is fair to say that PCO overwhelmingly did the drafting and, as is often the case with these things, further advice was sought about the precise nature and technicality of some of those drafting requirements.

Hon TJORN SIBMA: It might be different when you are a government member, but when a non-government member goes through the process of getting a private member's bill drafted or even if you have amendments constructed in an appropriate way by PCO, PCO relies on instructions. Was the PCO relying on instructions from the minister or somebody in his office in resolving some issues when it came to clarifying the structure and the content of the bill, or was there a broader range of individuals whose advice was sought either by the minister's office or the PCO in constructing the final version of the bill that we have in front of us?

Hon MATTHEW SWINBOURN: While my adviser is getting more information, I will turn more generally to the processes of bills. Obviously, drafting instructions are prepared and cabinet gives approval to print. As is the case for all cabinets of all political persuasions, cabinet then determines the priority of a particular bill. I do not know what all the codes are, but they give them codes and obviously the PCO will act in accordance with the instructions given, and, consistent with what I have said, the Parliamentary Counsel's Office drafted the bill and then sought advice on aspects of it—the Solicitor-General, particularly, in relation to the Constitution Act and the Constitution Acts Amendment Act to make sure they are compliant. Obviously, there are placements in the Attorney General's office of State Solicitor officers who work on the technical aspects of those things.

Hon TJORN SIBMA: I have a process question that I think perhaps everyone would benefit from. The parliamentary secretary referred to the coding issue in his response. Is he intimating a priority status for the drafting of a bill and is that part of the instructions that are normally provided to PCO as a measure of its urgency or a sense of priority that the government ascribes to having a bill drafted and then printed?

Hon MATTHEW SWINBOURN: Not being a member of cabinet or PCO, my understanding is that priority will be given to a bill and how quickly it is dealt with. Obviously, COVID bills, for example, have to be expedited due to the circumstances. The member can draw whatever conclusions and inferences he likes in terms of the time it took from the procedure of the report and the production of the bill. The member asked a question on 16 September regarding specific details of the drafting of this bill, and I want to be consistent with the answer that was given then, which was that the drafting of bills is a decision of cabinet and is cabinet-in-confidence. In any event, I am not a member of cabinet, so I am not likely to be able to give the member any insight into that.

Hon Stephen Dawson: Not yet.

Hon TJORN SIBMA: Not yet; not yet.

Parliamentary secretary, I will ask a more direct question then, and it comes back to the membership of the ministerial expert committee. I refer here to its final report, and just clarify that its term of appointment was eight weeks from the date of the cabinet appointment, which I imagine was the Monday before the press release went out, which was, I think, 27 April, or until at least the conclusion of its body of work on 28 June. Was any member of the MEC, either individually or collectively, relied upon by, or did any of them provide advice to or render assistance to, the Parliamentary Counsel's Office in the drafting of this bill since this body of work—the report that was finalised on 28 June but not tabled in Parliament until the day before the bill was read in—because they put such a degree of intense labour into this two-month process, and whether they also provided the government with assistance either directly to the minister's office or through the PCO to draft this bill?

Hon MATTHEW SWINBOURN: There was no consultation between Parliamentary Counsel's Office and the MEC in relation to the drafting of the bill. However, there was contact between some or all members of the MEC and the minister's office in relation to the bill. Drafts were provided to them in relation to that process. I am advised that the reason there was discussion or advice between them is that the bill gives effect to their recommendations.

Hon TJORN SIBMA: That is an interesting revelation. That is effectively the kind of answer I was seeking on the question I put through the parliamentary secretary to the Minister for Electoral Affairs on 16 September, which the parliamentary secretary read in. I will keep this simple. Was this done by phone or email? On what occasions was advice sought from, or drafts provided by, these “up until this point” independent members, before it was provided back to the minister's office, then, presumably, for forwarding to the PCO?

Hon MATTHEW SWINBOURN: I think the member asked about specific phone calls or emails, or those sorts of things. I can confirm that there was contact with them via telephone and email, but I am not going to go into any more specifics than that because it was part of the drafting process for the consideration of cabinet. Obviously, what was produced and what is before us was the final decision of cabinet. What happened during the course of that was the development of the bill. As is often the case with bills, or proposed laws, there is a process through which people have input. I cannot elaborate more than that, and I cannot provide specific content as to the advice and things of that kind, because it is subject to cabinet-in-confidence.

Hon TJORN SIBMA: Is it fair to say, though, parliamentary secretary—I will do this in a constructive and mature way where we can—that these were not just one-off instances? Would it be fair to categorise these as a series of group or individual consultations that occurred in that 11-week period? On what general issues—I do not need to know the full details—and on what general questions was the minister's office seeking an answer as it relates to the construction of this bill?

Hon MATTHEW SWINBOURN: In the broadest possible way, I think the consultation with them was to ensure that the bill gave effect to their recommendations. I think that it is important to note that the MEC had been disbanded by the time the drafting of the bill commenced, so it did not exist in any formal capacity. It ended its functions at the time the report was delivered to the minister, as a body. Obviously, there were discussions with those individuals, as I said before, regarding the drafts. I think it may have even been disclosed to members of the opposition alliance during their briefing, by the members themselves, that they were given access to drafts through this process, so I am not sure whether it is a revelation. I was not at that meeting, so I do not know whether that is, in fact, the case. As I say, the purpose of their having any kind of contact during that process is because they made recommendations as the MEC—obviously, the individuals. The bill is seeking to give effect to those recommendations, so the contact with them was in relation to that.

Hon TJORN SIBMA: Thank you, parliamentary secretary. I will tell the parliamentary secretary why I find it so interesting. I find it interesting for a couple of reasons. First of all, the PCO, obviously, always drafts bills, but I find it highly unusual that a highly charged political piece of legislation like this one, drafted and delivered within a compressed period of time, when we know that the PCO is short on drafters and is besieged by a range of competing

government priorities, that the PCO would be able to produce this body of work unassisted. That was the reason I put the question in the terms that I did to the minister on 16 September, which the parliamentary secretary has helpfully reminded me about. If I were to take the answer that the parliamentary secretary, an honourable person, read in on the minister's behalf, a fair-minded person would say, "Perhaps they did—perhaps the PCO just dealt with this in a professional way, despite the fact that it is 97 clauses long and amends three reasonably technical acts."

I also find it interesting, because the involvement of those individual panel members in the construction of this bill was not divulged to me when I attended the opposition briefing, not on the bill, but on the report. I will not name the member, but I put a question directly to them and said, "This is very substantial. I presume that the government will want to move quickly with this. Have you been involved in drafting a bill?" I got the answer that I had anticipated. It was neither a declarative yes or no, which, in my mind probably means yes. Can I in the very least understand when the first interaction took place between the minister's office and any ex-member of that panel on issues relating to the construction of this bill? The parliamentary secretary does not need to tell me what particular issue, whether it was on the phone or by email; I just want to ascertain the very first contact after their tenure of appointment as a panel member had ceased and when commencement of the bill commenced.

Hon MATTHEW SWINBOURN: To the extent that I can answer the member's question, they were not involved in the drafting of the bill. When there was contact with them, there was already a draft bill. That is as much as I can say. The bill had been drafted. As the member knows, with all bills there are iterations and work is conducted, but they did not have any involvement in the direct drafting of the bill. If the member looks at the questions he asked, he will see that I have been consistent in my responses. He did not specifically ask—in the question I am looking at, anyway—in relation to members of the MEC, not that that would have helped, because the answer was still, "The drafting of bills is a decision of cabinet and is cabinet-in-confidence", which remains the case.

Hon TJORN SIBMA: Can I still ask the parliamentary secretary when the first occasion transpired when an iterative draft was shared with an ex-member of that panel? Is that question answerable?

Hon Matthew Swinbourn: Member, are you after the date that that happened?

Hon TJORN SIBMA: Yes.

Hon MATTHEW SWINBOURN: I cannot give the member an answer right now because I do not know the answer or whether an answer can be given. With the member's indulgence, the best I can do is come back to him after the dinner break.

Hon TJORN SIBMA: I appreciate that very helpful offer of the parliamentary secretary. This might be my last on this line of questioning, and I get back to the panel itself, its operation and its interaction with the minister and the minister's staff. In the period between it being stood up on 28 April and it handing down its final report on 28 June, had members of that panel either collectively or individually had any contact with the minister or the minister's staff in any capacity?

Hon MATTHEW SWINBOURN: If the member has a copy of the ministerial expert committee's report and opens it up to page 2, he will note that the chair specifically thanks Ms Marion Buchanan for all her work. She is an adviser to the minister, but she provided secretarial work to the committee during its process. There was definitely a person from the minister's office involved in that capacity and, as I said, it is front and centre in the report.

Hon NICK GOIRAN: My colleague has asked quite a few questions about the ministerial expert committee, and I can understand why, because there are quite a few references to the ministerial expert committee in the parliamentary secretary's second reading speech. Indeed, I think it is fair to say that the government has placed quite a bit of weight on its report. The one thing that the second reading speech does not explain is why the ministerial expert committee was formed.

Hon MATTHEW SWINBOURN: I can only take the member to the words of the minister himself in the other place. He said —

... so I rolled up my sleeves and got on with it. What I came up with is the idea that if I did it, if I sat down at my desk and went about the task, the Leader of the Opposition, her party, the Liberal Party and people in the community would say that I am being partisan and doing what people do in America when they try to redraw the boundaries to suit a party. That is why I thought: why not go to a former Governor to chair a committee—he has travelled the length and breadth of this state and is an eminent jurist ...

I think the wash-up is that the reason the minister created a ministerial expert committee was to have independence in the decision of which model would be best to achieve electorate equality.

Hon NICK GOIRAN: The reason the ministerial expert committee was established was to provide some form of independence in order to ground the work of this bill. The bill that is before us is quite extensive; it is 97 clauses over five parts. Is it based on the recommendations of this ministerial expert committee?

Hon MATTHEW SWINBOURN: Yes, the answer is to overwhelmingly give effect to the recommendations contained in the report but the member will note that some matters are in there that were not related to the report. It includes an additional member of the Legislative Council. That did not form part of the recommendations. As is the case with all these sorts of things, the recommendations are, for want of a better word, general recommendations. Obviously, when we go to draft, we get down to the specifics. Obviously, some of the other changes are consequential to those recommendations and are necessary to give fuller force to those recommendations, but were not necessarily specifically recommended by the panel itself because it did not get down into that level of detail.

Hon NICK GOIRAN: In his second reading speech, the parliamentary secretary said —

This bill, the electoral equality bill, is based on the recommendations of the final report by the independent Ministerial Expert Committee on Electoral Reform.

I take it that notwithstanding what the parliamentary secretary just said, he does not waver from that comment that he made in the second reading speech.

Hon Matthew Swinbourn: No.

Hon NICK GOIRAN: By what power was the ministerial expert committee established?

Hon MATTHEW SWINBOURN: My advisers at the table cannot advise me on that point at this time but we will try to seek an answer for the member about under what power the MEC was created. Is that the question the member asked?

Hon NICK GOIRAN: Yes. While we are waiting for an answer on the basis of the power of the ministerial expert committee to be established, in the second reading speech the parliamentary secretary said —

In April this year, the Minister for Electoral Affairs established the Ministerial Expert Committee on Electoral Reform to conduct a review into the electoral system for the Legislative Council.

A little later in his second reading speech, the parliamentary secretary indicated that the government set the policy question how to best achieve electoral equality in the Legislative Council. He then went on to say —

It then asked a panel of leading experts in electoral and constitutional law to turn their independent minds to providing the Minister for Electoral Affairs with the best way to achieve reform ...

The use of the word “it” is a reference to the government. Was it the government that established the ministerial expert committee or was it the Minister for Electoral Affairs?

Hon MATTHEW SWINBOURN: This might sound cute, but it was the minister on behalf of the government. The minister is not separate from or different from the government. He is part of the government so I cannot separate those two things. I think I know what the member is getting at or where he might be leading me.

Hon NICK GOIRAN: Does the parliamentary secretary have a copy of the ministerial expert committee report handy? If so, I ask him to turn to pages 45 and 46, where annexure 1 of the report sets out the terms of reference. Is that a faithful reproduction of the terms of reference?

Hon MATTHEW SWINBOURN: I think it is faithful but one of the advisers suggests to me that there may have been an issue with something that was previously published to the best of our understanding. I do not have the originating document here with me to compare the two but the intention was for it to be faithful to the actual committee. I am not trying to make more of this but it appears to do that. Yes, I think that would have been picked up subject to any typographical or clerical errors.

Hon NICK GOIRAN: To be clear, at page 45 or 46 of the report, annexure 1 sets out the terms of reference. Is the parliamentary secretary saying there could be some error on one of those two pages?

Hon MATTHEW SWINBOURN: We think this is correct but I was saying that there may have been an error in what was published on the website.

Hon NICK GOIRAN: Thanks for that clarification, parliamentary secretary. If there is an error somewhere else in the ether, I am not too concerned about that, but for the purpose of the Legislative Council’s consideration of this important bill, which is seeking to change the electoral laws of Western Australia, can we be confident that he is saying that pages 45 and 46 faithfully set out the actual terms of reference for the ministerial expert committee?

Hon Matthew Swinbourn: Yes.

Hon NICK GOIRAN: Thank you very much. The parliamentary secretary will see that halfway down the page reference is made to the fact that the government now asks the committee to review the electoral system of the Legislative Council. This goes to my earlier question about the distinction in the second reading speech where it says that it was the Minister for Electoral Affairs who established the committee, or not. The parliamentary secretary indicated that there is no distinction in this instance; the Minister for Electoral Affairs is the government or acting on behalf of the government. A little later it refers to the term of appointment being from the date of cabinet

appointment. That seems to suggest that it was actually cabinet that appointed this ministerial expert committee. Can the parliamentary secretary confirm that is correct?

Hon MATTHEW SWINBOURN: The terms of reference speak for themselves on that point about a cabinet appointment. It is fair to say that it was on the recommendation of the minister himself.

Hon NICK GOIRAN: Not too much turns on that, I think, other than to say that certainly cabinet was involved in this matter. In the second reading speech, the parliamentary secretary said —

In April this year, the Minister for Electoral Affairs established the Ministerial Expert Committee on Electoral Reform ...

He may well have facilitated and established it, but it was done under the power of cabinet resolution, which is what I was going to a little earlier when I asked what the power was by which the ministerial expert committee was established. Is it fair to say that it was established under the power of cabinet resolution?

Hon MATTHEW SWINBOURN: I think, yes, that is fair. Regarding the previous question that we were seeking advice on, I was perhaps interpreting that the member was asking in terms of what legislative power there was rather than something else. I understand it is an executive power that exists. But, yes, in answer to the first question.

Hon NICK GOIRAN: We are absolutely on the same page there, parliamentary secretary. Under this executive power that was used to establish the ministerial expert panel, these terms of reference are set out on pages 45 and 46 of the report. The parliamentary secretary said these are the actual terms of reference, notwithstanding what else might be on the web and the like. Was the ministerial expert committee then constrained by the terms of reference that had been established for it?

Hon MATTHEW SWINBOURN: In a general sense, yes, the committee was constrained by its terms of reference. They gave legal effect to its existence, so it would be a fair statement to say that committee was constrained by its terms of reference, just as our committees are constrained by theirs. I might add that many committees wander off sometimes.

Hon NICK GOIRAN: As the parliamentary secretary indicated to my colleague earlier, subsequently the ministerial expert committee was disbanded. It does not exist anymore.

Hon Matthew Swinbourn: *Functus officio*.

Hon NICK GOIRAN: Indeed.

I note that in the same report we are looking at there is a letter signed by the chair of the committee. It is issued to the Minister for Electoral Affairs and is dated 28 June 2021. It says —

The Committee Appointed by your Government on 28 April 2021 ...

This goes to my question earlier about the terms of reference on page 45, which said that the terms of appointment were from the date of the cabinet appointment. Can we say that that was 28 April 2021?

Hon MATTHEW SWINBOURN: Yes.

Hon NICK GOIRAN: If the cabinet appointed the members on 28 April 2021 and if this is a faithful reproduction of the terms of reference at page 45, it says there that the term of appointment was eight weeks from the date of cabinet appointment. That being the case, the committee was *functus officio* on 28 June when it handed down its report.

Hon MATTHEW SWINBOURN: I am not going to argue with the member about the dates. I am not sure what the member wants me to say about his conclusion about the legal status of the committee.

Hon NICK GOIRAN: This is what I was asking earlier about what power the ministerial expert committee was established by. The parliamentary secretary indicated that it was done by way of a cabinet resolution. We have established that that was on 28 June 2021. I asked whether the terms of reference established here at annexure 1 were a faithful reproduction and the parliamentary secretary indicated yes. He said there may have been some errors in other documents, but the Legislative Council could faithfully rely on the terms of reference here on pages 45 and 46. It says there that the term of appointment for the Ministerial Expert Committee on Electoral Reform is eight weeks from the date of cabinet appointment. The parliamentary secretary has told us that the date of the cabinet appointment was 28 April 2021. Eight weeks after that is 23 June 2021. It is not 28 June 2021, so there was no power for the ministerial expert committee to issue the report. That is my question. Was any extension of time provided to the ministerial expert committee?

Hon MATTHEW SWINBOURN: Can the member ask the question again?

Hon NICK GOIRAN: My question was about an extension of time sought and granted for the ministerial expert committee to table its report outside of its eight-week term of appointment.

Hon MATTHEW SWINBOURN: No, I understand there was no formal extension of time from the eight weeks the member is talking about.

Hon NICK GOIRAN: I want to be really clear about our language here. When the parliamentary secretary says there was no formal request, was there an informal request for an extension of time?

Hon MATTHEW SWINBOURN: I think it would be fair to say that the report was ready within the eight-week period as set out. What was being finalised was the printing, formatting and those sorts of things, which is often the case. I think it is fair that the member has taken 28 June as the date here, but there had to be a settling of the substance of the material provided. I do not have a ready reckoner here to work out what the date would have been —

Hon Nick Goiran: It was 23 June.

Hon Tjorn Sibma: We are talking about five days.

Hon MATTHEW SWINBOURN: I think two of those were a weekend. That is the best I can do at the table for the member.

Hon NICK GOIRAN: The letter at page 2 signed by the chair of the committee is dated 28 June 2021. Is that a faithful reproduction? Are we satisfied that that letter signed by the chair was issued on 28 June 2021?

Hon MATTHEW SWINBOURN: In relation to the member's question about 28 June, I think his wording was whether this was "faithful". My advice is that, yes, that was the date of it. I also have some additional information. The MEC held its last meeting on 23 June. The report was then formatted and printed, so that the chair could pass it formally to the Attorney General following that date.

Hon NICK GOIRAN: What this means is that there was no power to issue the report. The report that we have in front of us and on which the government is basing its entire bill was issued out of power. It cannot then invent another five days of power. If the ministerial expert committee needed an extra five days, it had a lawful obligation to go back to its master, which the parliamentary secretary indicated earlier was ultimately a decision of 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 Sue Ellery: What's unlawful about it?

Hon NICK GOIRAN: Because the committee did not have the power to issue this report. It had to report by 23 June, in accordance with a decision on which the Leader of the House presumably was involved around the cabinet table. It did not do it. There was no head of power for the ministerial expert committee to continue to exist after cabinet said that it needed to report by 23 June. It might be inconvenient and really awkward for the Minister for Electoral Affairs or those people around the cabinet table who did not pick this up, but there was no power at law to issue this ministerial expert committee report.

Hon Sue Ellery interjected.

Hon NICK GOIRAN: Sorry?

Hon Sue Ellery: You heard what I said.

Hon NICK GOIRAN: No; I want you to repeat it!

Hon Sue Ellery: You're just trying to exaggerate something that is ridiculous.

Hon NICK GOIRAN: The Leader of the Government in the Legislative Council does not want to know about the rule of law! The parliamentary secretary at the table referred to an executive power that was provided by you, Leader of the House, and your colleagues at a cabinet meeting, and under that power, the ministerial expert committee was required to provide the report by 23 June 2021. That did not happen. This document, on which the government is basing its entire bill, has no status whatsoever. This is no small matter at all, deputy chair, because let us remember that this is in circumstances in which the Premier of Western Australia told the people prior to the election that this was not on the agenda. When members of the opposition previously asked that this matter be considered by a parliamentary committee, the Leader of the House, amongst others, said no. Part of the explanation that was provided was that there was no need for a parliamentary committee to go and do this work because the ministerial expert committee had already sought submissions and done all the work that a parliamentary committee would have done. Now we find out that the committee tabled its report without power. It is an unlawful report. The Leader of the House thinks, "Oh, well; don't worry about that." The people of Western Australia were misled prior to the election. The most senior person in government said, "This is not on our agenda." Effectively, five minutes after the election, it suddenly became a top priority. My colleague has been cross-examining the parliamentary secretary this afternoon on the time line. It is amazing what the McGowan government can do when it has a will to do something at express speed. That has certainly applied on this matter. If the government wants to mislead the people of Western Australia prior to an election and afterwards move with express speed, it at least needs to do it within the law of Western Australia. There was no power to issue this report on 28 June. I asked the parliamentary secretary whether any extension was sought and the answer was no. As difficult as it is for the Leader of the House to accept, it is no trivial matter. Somebody has monumentally messed this up. You expect us to just roll out the red carpet and say to you, "No, that's fine." You misled the people of Western Australia, you are not interested in a referendum,

you are not interested in genuine consultation, but, as per usual, this government, which behaves like a dictatorship, just thinks that it can do whatever it likes. When it is faced with this kind of situation, is any apology or explanation provided? No; there is just sheer arrogance by the Leader of the House. It is unacceptable. Any conscientious member of the Legislative Council ought to vote against clause 1 of this bill. The entire bill is based on this unlawful report.

Interestingly enough, the parliamentary secretary indicated earlier that there might be some other documents floating around that might have an error in them. I understand that in response to a question without notice from my colleague Hon Tjorn Sibma, the parliamentary secretary provided tabled paper 188 to the house. This document is a letter signed by the Minister for Electoral Affairs and sent to Associate Professor Martin Drum, and attached to it are the terms of reference. The term of appointment states “Seven weeks from the date of Cabinet Appointment”, yet the document that is in the report—this unlawful report—says “Eight weeks from the date of Cabinet Appointment”. Why did the terms of reference sent to Associate Professor Drum, Mr McCusker, Professor Murray and Professor Phillimore all say seven weeks and then, inexplicably, the document that is appended to the report says eight weeks? What was the term of appointment—was it seven weeks or eight weeks?

Hon MATTHEW SWINBOURN: The appointment was eight weeks. The documents that the member refers to contain a typographical error.

Hon NICK GOIRAN: Were any typographical errors contained in the covering letters that were provided to each of those members?

Hon MATTHEW SWINBOURN: I do not have those documents before me. The member has them. I am not going to canvass whether there are typographical errors. If the member has a specific issue that he wants to draw to my attention, I am happy to deal with that, but I am not going to give a general statement about whether there are typographical errors in a document that I do not have before me and I did not author.

Hon NICK GOIRAN: When the parliamentary secretary has the opportunity to peruse and consider tabled paper 188, he will see that the Minister for Electoral Affairs erroneously sent to the members of the ministerial expert committee a covering letter that states —

Your term of appointment —

For each of these individuals —

will commence on 28 April 2021 and expire on 28 June 2021, unless otherwise agreed by Cabinet.

We now know that the final terms of reference provided to the committee members, for reasons still not explained, say seven weeks from the date of cabinet appointment, but in any event, the parliamentary secretary has assured us on multiple occasions this afternoon that we need not regard the seven weeks and that what we need to have regard for is annexure 1 of the unlawfully tabled report, which refers to eight weeks from the date of cabinet appointment, which plainly meant 23 June and not 28 June. All of which is to say that the government is relying entirely on the Ministerial Expert Committee on Electoral Reform report that was issued without power and without any explanation from the government, with no extension granted. This is a case of the government taking shortcuts and expediting something that it told the people of Western Australia beforehand was not on the agenda. That is bad enough, but now it is acting outside of its powers. It had no power to issue the *Ministerial Expert Committee on Electoral Reform: Final report*. We are told that we can be satisfied because those other matters were simply typographical errors. Quite apart from whether there were any typographical errors and the intrigue, I must say, about how the term of appointment under the terms of reference suddenly changed from seven weeks to eight weeks, it does not change the fact that the committee acted out of power. Cabinet had the power to establish this committee. It did so. Cabinet said it had the power for eight weeks, and at the eight-week mark, no report had been provided to the Attorney General. That is when the work of the ministerial expert committee finishes. The committee does not have the opportunity five days later to say, “By the way, here is our work”, just as it does not have the opportunity to do so now.

As the parliamentary secretary was at pains to explain to my parliamentary colleague earlier, when some of these individuals were consulted on the drafting of the legislation and provided with copies of the draft bill, they were not doing so as the ministerial expert committee. It had been disbanded. According to my notes, that is what the parliamentary secretary indicated earlier. I think we now have an opportunity for the government to pause to seek advice on the validity of this report. For us to proceed in these circumstances is unconscionable. How can the electoral laws of Western Australia be changed by the Legislative Council when it has been identified that the government’s so-called expert committee has issued a report out of power?

Might the parliamentary secretary be minded to report progress so that he can take further advice on this matter?

Hon MATTHEW SWINBOURN: No.

Hon MARTIN ALDRIDGE: I similarly want to ask some questions on the ministerial expert committee before we move on to other areas at clause 1. I think Hon Tjorn Sibma has gone through the identification of the meetings in the lead-up to the establishment of the committee by cabinet on, I think, 27 April, with effect from 28 April this

year, quite well. I have asked some parliamentary questions of the parliamentary secretary about the costs of the ministerial expert committee process and in particular the remuneration of the committee members. I know that even as recently as the budget estimates hearings, some of the information was still not entirely settled. I am wondering whether today the parliamentary secretary is in a position to provide to the chamber an understanding of the total cost of the MEC process and also some detail around the breakdown of those costs, particularly as far as they relate to remuneration of committee members and advertising—the parliamentary secretary has mentioned a number of dates when advertising occurred—and any other expenses incurred by the committee.

Hon MATTHEW SWINBOURN: My advice is that a parliamentary question on notice has been directed not to the Minister for Electoral Affairs but to the Premier because it comes within his remit. That question is in train at the moment, so I am not in a position to answer a question on something that has already been put on notice, firstly because I do not have an answer, and also because it is outside the information the advisers and I have available.

Hon MARTIN ALDRIDGE: Parliamentary secretary, it is a little unusual that a question like that on a bill cannot not be answered, notwithstanding that there may be a question on notice from a member. It may even be me; I am not sure. Certainly, I asked some questions about this at budget estimates and I think some questions were taken on notice from budget estimates, so therefore there may be some outstanding questions to the Standing Committee on Estimates and Financial Operations. But the establishment of the ministerial expert committee played a significant role in the establishment of this bill. The entire consultation process is contained within the MEC, because the government has made it clear that that was the extent of the consultation that it was going to endure on this issue. I think it is rather unreasonable if the government is not in a position at this stage of the bill to present the costs of that process as they directly relate to the bill that we are now considering at clause 1.

Hon MATTHEW SWINBOURN: I am not trying to be difficult with the member. I do not have that information in a way that I can give to the member, but what I will seek to do is to see whether we can obtain that information through the Premier's office and make it available to the member, if an answer is ready. I understand it was the member's question and it was directed to the Premier. If that is available, we will give it to the member. If not, I will come back and explain it to the house.

Hon MARTIN ALDRIDGE: I thank the parliamentary secretary for that undertaking. It is a little unusual, because the MEC was established by the Minister for Electoral Affairs and, as far as I can tell, according to the terms of reference, executive support was provided by the office of the Minister for Electoral Affairs and resourcing was provided by the Department of the Premier and Cabinet. I suspect that the question may have been referred to the Premier because it relates to the Department of the Premier and Cabinet, but it obviously has direct relevance to the bill that is before us.

Earlier in the debate, the parliamentary secretary answered a question from Hon Tjorn Sibma around a series of dates and time lines. I did my best to write down as many of them as I could, but I am particularly interested in the advertising that was undertaken. I have recorded here that advertising occurred on 1 May and 18 May, on both occasions in *The West Australian*, but on the latter date, 18 May, it was also advertised in regional and rural newspapers, and further advertisements in *The West Australian* on 28 and 29 May called for further submissions. Can I get confirmation that those dates are correct? Is the parliamentary secretary in a position to identify the rural newspapers in which the advertisements that he mentioned earlier occurred?

Hon MATTHEW SWINBOURN: I may not have been clear when I answered previously. There were not advertisements in the rural and regional papers. On 14 May, rural and regional newspapers were provided with the discussion paper and reminded of the call for submissions, so that was sent out to them, rather than advertising, as the member says. I may have led the member into error in the way I answered the question previously, and I apologise if that was the case. It was not actually further advertisements. The advertisements occurred in *The West Australian* on 1 May, and then further on 28 May and 29 May in calling for submissions.

Hon MARTIN ALDRIDGE: The entire press advertisements were contained in *The West Australian* and occurred on 1 May, 18 May, 28 May and 29 May?

Hon Matthew Swinbourn: By way of interjection, I do not know where the member got 18 May from. I have 1 May, 28 May and 29 May

Hon MARTIN ALDRIDGE: Okay; 28 May might be the day on which they were provided to the rural press.

Hon MATTHEW SWINBOURN: No. That was 14 May; my error.

Hon MARTIN ALDRIDGE: So 1 May, 28 May and 29 May. The parliamentary secretary is not in a position to tell me the cost of those advertisement; that would be a matter that he has taken on notice as part of the entire MEC costs?

Hon MATTHEW SWINBOURN: I do not have the information at hand. I suspect there would be a straightforward answer to that one, but I will seek it in conjunction with the other costs.

Hon MARTIN ALDRIDGE: Did any other forms of advertising occur, such as radio, online or in other mediums? Given particularly the relatively short period of time for public submissions, and the lack of regional engagement

by the committee members themselves, was there anything other than three ads in *The West Australian* and an encouragement to journalists to promote the fact that this was occurring; and, if there was, what forms did that take?

Hon MATTHEW SWINBOURN: I think it is correct to say that there was no further advertising outside of *The West Australian*. I am advised—I am not certain about the dates—that the chair did do an interview on ABC Radio, which some members probably heard, but there was no other advertising outside of *The West Australian*.

Hon MARTIN ALDRIDGE: What sorts of obligations were the members of the committee under during their term with respect to codes of conduct or management of conflicts of interest? I note that in the appointment letter, which is tabled paper 188, the Minister for Electoral Affairs makes reference to him seeking advice from the Public Sector Commissioner regarding the remuneration and travel allowances applicable to the members. I assume that it was a cabinet appointment, and not necessarily under any legal instrument, and that the PSC played some sort of role in determining the remuneration. Is the parliamentary secretary able to tell me what policies applied to the committee members with respect to both the code of conduct and the disclosure of conflicts of interest?

Hon MATTHEW SWINBOURN: I take the member to the terms of reference on pages 45 and 46. It says that there is an obligation of confidentiality—members are to maintain confidentiality of all information and discussions that are not in the public domain. I am not aware of any specific codes of conduct that apply generally in these circumstances, but I am advised that the Department of the Premier and Cabinet required that members disclose any conflicts of interest that they have; therefore, they were asked, and were required, to disclose any conflicts.

Hon MARTIN ALDRIDGE: Were any conflicts of interest disclosed by members of the committee or staff assisting the committee in the conduct of its inquiry?

Hon MATTHEW SWINBOURN: No conflicts of interest were disclosed by members of the MEC. There was no requirement on the secretarial support for her to disclose conflicts of interest, but I can advise that during the course of the hearing she did disclose one conflict of interest, which was a submission that was received from her ex-husband; she disclosed to the committee that that person was her ex-husband.

Hon MARTIN ALDRIDGE: In the course of the second reading debate, I made reference to a parliamentary question that I had asked of the parliamentary secretary on 11 May. Part (2) of the question was —

Are any of the committee members previous or current members of the Labor Party or staff to Labor members of Parliament?

The answer that the parliamentary secretary provided to the house on 11 May to part (2) of the question was —

No committee member is currently a member of the Labor Party. I table their CVs.

That does not quite answer the question that I asked, so I will ask it again, parliamentary secretary: are any of the committee members previous or current members of the Labor Party?

Hon MATTHEW SWINBOURN: I am not going to take the member any further than the answer that was given previously. I think it is a bit cute to expect me to do so.

Hon MARTIN ALDRIDGE: I think the record reflects my concern about this matter, particularly when the process has been engineered in the fashion that it has, with a commitment made to the voters of Western Australia prior to the election, and a different decision being made just days after the election. It seems strange to me that a government would not be in a position to rule out the political affiliations of the four members of the ministerial expert committee. The fact that the government has not been prepared to rule it out in either question without notice 88 or today in the debate on clause 1 of the bill I think stands for itself.

I understand that 184 submissions were made to the MEC. Can the parliamentary secretary provide for me how many of those submissions were made public by the committee and how many were kept private?

Hon MATTHEW SWINBOURN: I do not have the precise number here, but the member will note that there is a list of submissions at pages 57, 58 and 59 of the MEC report. There were 184 submissions and I have been instructed that all submissions were delivered. The ones that were not published have been listed in the report with a reference number and are put down as “not for publication”. The best advice I have at the table is that five submissions were not published, but if it is more than five, I will correct that after question time.

Hon MARTIN ALDRIDGE: If about five submissions were not made public, would it have been on the request of the submitter that they remain private or was a decision taken by the committee?

Hon MATTHEW SWINBOURN: That was based entirely upon the request of the submitters.

Committee interrupted, pursuant to standing orders.

[Continued on page 5087.]