

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

Consideration in Detail

Resumed from an earlier stage of the sitting.

Clause 65: Section 113D amended —

Debate was interrupted after the clause had been partly considered.

Ms M.J. DAVIES: This clause will amend section 113D. We had a discussion about this just before the break. Can the Minister for Electoral Affairs confirm that this amendment is consequential to taking out the group voting ticket, because that does not exist in the bill anymore, and can he tell me what it brings into effect?

Mr J.R. QUIGLEY: Yes, that is it: this amendment will simply delete a further reference to group voting tickets. There is no substantive change in there except the phraseology of “group voting tickets” is littered throughout the act, and we have got to pluck it out.

Clause put and passed.

Clauses 66 and 67 put and passed.

Clause 68: Section 128 replaced —

Ms M.J. DAVIES: The bill I have contains some amendments to section 114, but the bill goes from clause 65, which will amend section 113D, to clause 66, which will amend section 122A. I am happy to receive some clarification, but there is actually an amendment to section 114. Was that dealt with earlier?

Mr J.R. QUIGLEY: Those amendments are dealt with under clauses 93 and 94, and there is a schedule and tables.

Ms M.J. DAVIES: I thank the minister for that clarification.

Proposed section 128 deals with how a ballot paper is to be marked up—above-the-line and below-the-line voting. What changes are being inserted? They are quite extensive. What will be brought into effect? The clause relates to the abolition of the group voting ticket, so I presume it is how many candidates can be above and below the line, how people vote, how they are allowed to vote, including the number above the line and the number below the line, and why that was selected as opposed to the number that people are allowed to vote for above and below the line in, for instance, the Senate election. This is so we have some consistency between federal and state elections.

Mr J.R. QUIGLEY: The new provisions reflect the change to optional preferential voting above the line and optional preferential voting below the line; however, with a minimum number of squares to be marked. It is sometimes referred to as semi-optional preferential due to the requirement to mark a minimum number of squares. Marking a square above the line or below the line is defined and how an elector votes in certain circumstances is outlined. Under proposed section 128(2), in a single member election where there are two candidates, the elector must place the numeral “1” in the square opposite the name of their preferred candidate. Under proposed section 128(3), in a single member election where there are more than two candidates, the elector must place the numeral “1” in the square opposite the name of their first preference and consecutive numerals from “2” in the squares of all remaining candidates to indicate a preference for each candidate. The explanatory memorandum refers to a Legislative Council election where the number of members to be returned is more than one and there are —

- (i) no squares above the line and:
 - (A) more than 20 candidates — the elector must mark at least the numerals 1 to 20 in the squares opposite the names of candidates so as to indicate the elector’s order of preference for at least 20 candidates: s. 128(4)(a);
 - (B) fewer than 20 candidates — the elector must place consecutive numerals from 1 against the name of all candidates to indicate the elector’s preference for all candidates: s. 128(4)(b);
- (ii) squares above and below the line, unless the elector chooses to vote above the line, the elector must number at least 20 squares below the line in the elector’s preferred order (if there are more than 20 candidates) and all squares below the line in the elector’s preferred order if there are 20 or fewer candidates: s. 128(5)
- (iii) 1 or more squares above the line, the elector may choose to vote above the line by placing the numeral 1 in a square above the line so as to indicate their first preference only or, if they choose to do so, may vote by placing the numeral 2 and, if they so choose, further consecutive numerals to indicate their preference for any remaining groups, if any: s.128(6).

That is the way to mark the ballot paper and the various permutations of nominations.

Ms M.J. DAVIES: Thank you, Attorney General. Why was that particular method chosen over others? I note that submissions were made that suggested other methodologies might be more suitable. Why was the weighting given to the particular method that the Attorney General just outlined? Why was that chosen over, for instance, the method referred to in the discussion we had earlier with the member for Moore, or other methods that might have been considered appropriate?

Mr J.R. QUIGLEY: A recommendation was made to this effect in the report of the ministerial expert committee. With just a few exceptions that we have already touched upon, we have followed the report. Of course, there is a long history of preferential voting in Australia, especially in Western Australia. We are making preferential voting optional, the same as the Senate, except it does not tell us that. In other words, a “1” will suffice, which is set out in proposed section 128, or, if a person wants to indicate preferences, they can, as set out in proposed section 128, when more than one candidate is to be elected.

Mr R.S. LOVE: As I understand it, if a person wishes to vote above the line, they can mark “1” in a box.

Mr J.R. Quigley: Correct.

Mr R.S. LOVE: That would then allocate the vote according to the order of preferences on the ballot paper for that party—there might be seven members. In effect, if I vote with a “1” above the line, I have voted for seven people potentially in order of preference. Why, then, is it a requirement that if I vote below the line, I have to vote for 20 people? I may wish to vote for one of those seven persons. I might not know any of the others and I might not wish to vote for anyone else. Why can I not vote for that one person and leave my vote at that? Why is it a requirement that I must vote 20 times?

Mr J.R. QUIGLEY: The constituency of the upper house in Western Australia will require that we fill 37 seats. If a person votes above the line, they are voting for everyone below the line in the order that that party has placed them. The Nationals WA might have placed them in a certain order. If a person ticks “Nats WA”, they have voted for everyone below the line in that list. However, if a person votes only below the line and does not indicate a box above the line, we have to require that they vote for enough people to ensure that the election does not fail. What if everyone started voting below the line? We do not know how they are going to vote—that is just not the history of it. We could end up with a chamber that is only three-quarters full. When voting below the line for the Senate, I think that a person has to fill out all the squares. There are 12 squares to fill—that being twice the number. I was just reminded that that is another misleading instruction from the federal government, because we should not forget that only half the Senate is elected in each round and six people need to be elected. The instruction on the Senate ballot paper is to fill in 12 squares below the line, but if a person fills in only six, they still have a valid paper. It is all smoke and mirrors. The federal government wants voters to fill in and exhaust some preferences, so it has an instruction on the ballot paper to fill in more than is actually required. We had to choose a number. There will be 37 seats. If everyone in the state voted below the line, it would be best if everyone voted 37 times below the line and each person would have the chance to fill the chamber. However, if we start to do that, we would end up with all these informal votes that we want to avoid. After numbering 20 squares, that many preferences will be expended that we are satisfied that the chamber will be full.

Mr R.S. LOVE: I do not want to go into the mathematical probability of 1.8 million people picking a random number below the line, but not electing enough candidates to fill the chamber. That is a bit of a red herring. What would happen if the person who indicates 20 preferences made a simple mistake and put “8” and then “10”? Would that make all their votes informal, or would the votes count until the counting reaches that place of informality?

Mr J.R. QUIGLEY: That is covered by amendments to section 146 and is to do with the voter’s intention. Imagine that a voter filled out the boxes with “1, 2, 3, 4, 5” and then mucked it up by filling out “7, 7, 8, 9”, but the voter’s intention is clear—we will get to the section 146 amendments, I hope. The commissioner will count the vote. The commissioner is not going to knock them out.

Mr R.S. Love: As long as they have numbered 20 squares.

Mr J.R. QUIGLEY: Yes, and done their best and their intention is clear as to whom they want to vote for. That is dealt with in clause 73.

Ms M.J. DAVIES: Some of the concerns raised with this system is that a number of people will still be elected to the Legislative Council on a smaller number of votes. They will be likely to get less than a quota, and then the process of distributing preferences will become quite complex. One of the criticisms of the current system is the complexity of actually doing the count. Was that taken into consideration when shifting to this model?

Mr J.R. QUIGLEY: Yes, bearing in mind that less than three per cent of people vote below the line. I have already referred to that. It is the case that the last two or three people to get elected may get elected on less than a full quota. This is not unique. At the moment, that happens in South Australia, New South Wales and the Senate, so it is not a unique system. It is quite well tried and operates in those jurisdictions that have a whole-of-state electorate, those

being New South Wales and South Australia. Whilst I concede the Senate is slightly different, nonetheless, it operates in the Senate as well. It operates in all three jurisdictions successfully.

Ms M.J. DAVIES: The minister keeps talking about the fact that a small number of people vote below the line. Does the minister expect that number to increase? Has that been the experience of other states when this reform was introduced?

Mr J.R. QUIGLEY: The answer is yes because we are making it easier for them. At the moment, in some regions, there are up to 64 candidates. For a person to vote below the line, they have to fill in “1” to “64”. Now we are saying that they only have to go up to 20 preferences. There might be a slight increase because people will say they can handle voting “1” to “20”, but they cannot handle voting “1” to “64”. The idea of all these amendments and the next tranche of amendments, which we will start getting up after we get this through, is, as I said, to encourage and facilitate as many Western Australians as humanly possible on the roll to vote.

Clause put and passed.

Clauses 69 to 72 put and passed.

Clause 73: Sections 146E and 146F replaced —

Ms M.J. DAVIES: This clause relates to informal ballot papers, as I understand it. It is quite a significant addition. We are replacing sections 146E and 146F, which deal with informal ballot papers. Can the minister tell me what it would take for a ballot paper to be deemed informal? I understand that under the current legislation, as long as the intent is clear—for example, if a person ticks someone on the ballot paper—that will count. Will that still stand? What will this clause actually achieve and what will it take for a ballot paper to be deemed invalid?

Mr J.R. QUIGLEY: Thank you, Leader of the Opposition. Clause 73 will replace sections 146E and 146F with the proposed new sections 146E, 146EA, 146EB and 146EC to remove references to group voting tickets and voting ticket squares, which will be abolished by the bill. Proposed section 146E will provide that informal ballot papers, as defined in sections 139(a), (c) and (e), continue to be informal. This section then outlines when a ballot paper is informal when the relevant number is one or more than one—that is, if there are only two candidates and the elector does not indicate who they voted for, or if there are more than two candidates and the elector does not indicate a preference for all candidates. That would be informal. When the relevant number is more than one, except when the elector votes above the line in accordance with section 128(6), a ballot paper is informal if there are more than 20 candidates and the elector votes below the line and does not indicate a preference for at least 20 candidates, or if there are 20 or fewer candidates and the elector votes below the line and does not indicate a vote for all the candidates.

The prescribed manner of marking the ballot paper is defined by reference to section 128. The new provisions include how a ballot paper is to be counted when numerals are repeated or missed for individual candidates, which is proposed section 146EA; when a single tick or cross is marked or numerals are repeated or missed for groups, which is proposed section 146EB; and when an elector chooses to vote above the line, which is proposed section 146EC. It is set out in the explanatory memorandum in codified form.

I note a minor error in the explanatory memorandum that I would like to correct and highlight on the record. Under the explanation for clause 68, halfway down page 23 of the explanatory memorandum, members will note it states —

- (c) In a Council election where the number of members to be returned is more than one and there are:
 - (i) no squares above the line ...
 - (A) more than 20 candidates—the elector must mark at least the numerals 1 to 20 in the squares opposite the names of candidates so as to indicate the elector’s order of preference for at least 20 candidates ...

That is section 128(4)(a) and we have covered that. The next paragraph, which is paragraph (B), needs a little correction. At the moment, the opening words of the paragraph read “fewer than 20 candidates” but it should say —

20 or fewer candidates—the elector must place consecutive numerals from 1 against the name of all candidates to indicate the elector’s preference ...

That requirement kicks in at 20 or fewer, because people always have to number to 20. I just put that correction on the record.

Dr D.J. HONEY: In relation to this provision, when we vote for the Legislative Assembly, there is a preserving provision that if someone does not number all the squares, the ballot paper can be counted down to the point at which a clear preference can no longer be defined. In this case, why has the minister opted to make the vote invalid if someone does not get all that numbering correct, for example, all the way to 20, when above the line, the vote can still be counted even if a person does not number all the relevant squares?

Mr J.R. QUIGLEY: For the very simple reason that the bill provides that above the line, people only have to complete a number one. It is optional as to whether people want to number more squares. But the bill provides that below the line—for the reasons that I have already explained; we want to see a complete election—people have to number “1” to “20”. However, above the line, they have to only number one.

Dr D.J. HONEY: I was referring to the Legislative Assembly preservation provisions whereby someone does not have to go through and number all the squares. In fact, if they make a mistake, the ballot paper can be counted down to the point at which a difference can no longer be defined. However, in this vote for the Legislative Council whereby a person numbers the squares, if they do not do it all correctly, the vote will be ineligible, as I understand it, based on this legislation.

Mr J.R. QUIGLEY: It is a completely different system of voting and the voting is for a completely different electorate. The vote is for a district for which one person will be elected. We all represent a district, and there is only one of us for each of our districts, whereas in the Council, with a whole-of-state electorate, the district, if you like, will be the whole of Western Australia, and 37 people will have to be elected from that one district. That is why it will be mandated that voters fill out at least 20 squares below the line. Above the line it does not matter a lot, because if someone votes above the line, they have voted for everyone in that group below the line. But we have extended to voters the option, if they choose, of putting some preferences above the line—as many as they want. As I said, there is a misleading instruction in the Senate that says that people have to vote for six above the line, when in fact they do not have to.

Ms M.J. DAVIES: The minister keeps referring to the misleading instruction in the Senate. I have raised a number of times that there is the potential for confusion between the federal and state elections. It exists now. This was the opportunity to try to have a similar system in both. I am just trying to understand why that was not considered or made a priority so we could have some sort of harmony between the two. Is this related to the size of the electorate or the number of parties? What was the reasoning or rationale for not having the simplest form between the federal and state elections so voters, who on most occasions are already pretty resentful about turning up and voting, are not confused, voting is made as easy as possible and those differences are reduced?

Mr J.R. Quigley: They thronged to vote for me in Butler!

Ms M.J. DAVIES: They are not too bad in Central Wheatbelt either! I thought it would have been a good opportunity to have that harmonisation between the state —

The DEPUTY SPEAKER: Order! Pursuant to the order of the house, the time has arrived for me to put all questions necessary for the bill to pass without delay or further debate or amendment. The question is that all remaining clauses, clauses 73 to 97, and the long title be agreed to.

Division

Question put and a division taken, the Deputy Speaker casting his vote with the ayes, with the following result —

Ayes (40)

Mr S.N. Aubrey	Ms J.L. Hanns	Mr K.J.J. Michel	Mr D.A.E. Scaife
Mr G. Baker	Mr M. Hughes	Mr S.A. Millman	Ms J.J. Shaw
Ms H.M. Beazley	Mr W.J. Johnston	Mr Y. Mubarakai	Mrs J.M.C. Stojkovski
Mr J.N. Carey	Mr H.T. Jones	Mrs L.M. O'Malley	Dr K. Stratton
Ms C.M. Collins	Mr D.J. Kelly	Mr P. Papalia	Mr C.J. Tallentire
Mr R.H. Cook	Dr J. Krishnan	Mr S.J. Price	Mr D.A. Templeman
Ms D.G. D'Anna	Mr P. Lilburne	Mr J.R. Quigley	Mr P.C. Tinley
Mr M.J. Folkard	Mr M. McGowan	Ms M.M. Quirk	Ms C.M. Tonkin
Ms E.L. Hamilton	Ms S.F. McGurk	Ms R. Saffioti	Ms S.E. Winton
Ms M.J. Hammat	Mr D.R. Michael	Ms A. Sanderson	Ms C.M. Rowe (<i>Teller</i>)

Noes (5)

Ms M.J. Davies	Mr R.S. Love	Mr V.A. Catania (<i>Teller</i>)
Dr D.J. Honey	Ms L. Mettam	

Clauses 73 to 97 thus passed.

Title thus passed.

Third Reading

The DEPUTY SPEAKER: Before I put the question that the bill now be read a third time, the third reading of this bill requires an absolute majority. If there is a dissentient voice when putting the question on the third reading, I will divide the house. If there is no dissentient voice, I will count the members present and declare the question to be carried by an absolute majority, if that is the case. The question is that the bill now be read a third time.

Question put.

The DEPUTY SPEAKER: A division is required.

Division

Division taken, the Deputy Speaker casting his vote with the ayes, with the following result —

Ayes (40)

Mr S.N. Aubrey	Ms J.L. Hanns	Mr K.J.J. Michel	Mr D.A.E. Scaife
Mr G. Baker	Mr M. Hughes	Mr S.A. Millman	Ms J.J. Shaw
Ms H.M. Beazley	Mr W.J. Johnston	Mr Y. Mubarakai	Mrs J.M.C. Stojkovski
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Mr M.J. Folkard	Mr M. McGowan	Ms M.M. Quirk	Ms C.M. Tonkin
Ms E.L. Hamilton	Ms S.F. McGurk	Ms R. Saffioti	Ms S.E. Winton
Ms M.J. Hammat	Mr D.R. Michael	Ms A. Sanderson	Ms C.M. Rowe (<i>Teller</i>)

Noes (5)

Ms M.J. Davies	Mr R.S. Love	Mr V.A. Catania (<i>Teller</i>)
Dr D.J. Honey	Ms L. Mettam	

Question thus passed with an absolute majority.

Bill read a third time and transmitted to the Council.