CONSTITUTIONAL AND ELECTORAL LEGISLATION AMENDMENT (ELECTORAL EQUALITY) BILL 2021

Committee

Resumed from an earlier stage of the sitting. The Chair of Committees (Hon Martin Aldridge) in the chair; Hon Matthew Swinbourn (Parliamentary Secretary) in charge of the bill.

Clause 35: Section 62E amended —

Committee was interrupted after the clause had been partly considered.

Hon WILSON TUCKER: Proposed section 62E(4)(d) refers to a $2 000 registration fee that parties will be required to pay to be registered and run in an election. Can the parliamentary secretary please help me to understand the process around modifying and prescribing this fee?

Hon MATTHEW SWINBOURN: The initial amount was set for fees that needed to be paid in other jurisdictions. In New South Wales it is $2 000, in South Australia it is $500, and under the federal arrangement it is currently $500. Provisions in the act allow for the fee to be increased by regulation, which is not an uncommon arrangement for these sorts of thing. The act prescribes $2 000 and, going forward, the fee can be increased by regulation. In terms of however it might be increased, because it is by regulation, it can be disallowed. It will also go to the Joint Standing Committee on Delegated Legislation for consideration, because it is a regulation. The committee has the power to inquire into and, as the member will have seen here, disallow a regulation. The committee can apply a range of principles to fees and things of that kind. As I said, it will be tied up in the way that these sorts of things happen throughout government.

Hon WILSON TUCKER: Is the parliamentary secretary aware of any factors that would drive up the fee? In what circumstance would that fee be increased beyond $2 000?

Hon MATTHEW SWINBOURN: I do not think there are any special factors in relation to this. The fee is set at around $2 000 because it is an attempt to estimate the expense, although I do not think there is a full cost recovery–type situation associated with the Western Australian Electoral Commission receiving and then processing an application. Generally speaking, fees increase every so often in the budget, depending on the nature of the fees and what they relate to. But I would be speculating to say how the fee might increase in the future in terms of the quantum and those sorts of things. It is not set in place. The fee might stay at $2 000 for some period of time, but it might be the case that the Electoral Commissioner will say that the cost of processing these things for the commission has increased dramatically and it would justify an increase in that regard. Again, the same process applies to anything that is to be increased or changed by regulation.

Hon WILSON TUCKER: I will take a change of direction. For my edification, the parliamentary secretary mentioned that the approval form has to be completed as a printed version, but the means of transmission is still up for debate and that that decision will ultimately be made by the commissioner. Can the parliamentary secretary confirm that that is the case?

Hon MATTHEW SWINBOURN: Member, the conversation I had with Hon Martin Aldridge was about whether the form could be filled out electronically and those sorts of things. I made a distinction between the object that is the form and the transmitting of that form and that there is not necessarily a clear answer about the commissioner's power to accept things in that regard but it is being looked at as part of the overall structure of the Electoral Act. The Minister for Electoral Affairs has indicated that the next stage for him is to look at the way the Electoral Act operates. I am certain the commissioner will look also at these matters, but no specific power is indicated for the commissioner to accept these things electronically. Neither the act nor the bill prescribe that he can do that. There is a range of complicated issues around how any document might be transmitted in different ways and what constitutes an electronic form. Hon Wilson Tucker is an IT data person, so he knows that there could be an interface-type form that can be filled out on a webpage and "submitted", as opposed to perhaps attaching a document to an email in the PDF form and it gets to the other end where it is printed out. What we can be certain about is that whatever form is used, it will have to be signed by the individual concerned, so there is an issue about the person having to physically sign the form in that regard. There is not a clear answer of yes we can, the commissioner will do it electronically and things of that kind; there is an issue in terms of a review of the overall Electoral Act and those sorts of things. We suspect it will be a paper form to begin with and things could progress from there.

Hon WILSON TUCKER: Has any advice been given by the government to the Electoral Commissioner on an acceptable transmission method related to this approval form?

Hon MATTHEW SWINBOURN: I think the member asked whether the government has given advice to the commissioner. We do not give advice to the commissioner because he is an independent statutory office holder. If the member was asking more about whether there has been communication from us at this stage, I think there have been general discussions about manner and form and those sorts of things, but we will get down to those specifics if and when the bill passes the house.

As the member can imagine, the Electoral Act, which is here, contains a lot of obligations concerning documents and forms. It is not just this particular one. Obviously, we are dealing with that now, so in the approach to that there will be a degree of uniformity that we will want to work with the commissioner on in terms of what works that way and what political parties expect regarding those things. We are coming up to this point and those things will be looked at more thoroughly after the point at which this bill is passed.

Hon NICK GOIRAN: Did the Electoral Commissioner raise any concerns about clause 35?

Hon MATTHEW SWINBOURN: No. The feedback from the commissioner was that he will consider the template forms used in other jurisdictions for the purpose of membership declarations.

Hon NICK GOIRAN: I take it from that the Electoral Commissioner was consulted about clause 35 and the only issue that he raised was to indicate that he will take a look at the template forms in other jurisdictions, but he raised no other matters concerning clause 35?

Hon MATTHEW SWINBOURN: My advice is no.

Hon TJORN SIBMA: I think we are probably coming to the end of this clause. If I have followed the debate closely enough, the establishment of the fee at the level it is set is largely because that is what New South Wales does, and the Electoral Commissioner has no view on the appropriate setting of the fee. Was it ever a factor in the government's consideration when it brought the bill to this place that that fee was somehow to assist the bona fides of a political party by establishing that it had a genuine community support base? Again, I reinforce the point that by virtue of this bill, the government is setting an extraordinarily low threshold for someone to be elected to this chamber. I would have thought that possibly one of the elements the government could consider would be to amend the registration fee at a commensurately higher level. Will this be required of existing parties that have a parliamentary presence?

Hon MATTHEW SWINBOURN: In relation to the last point, yes, it will be required of the existing parliamentary parties. In relation to the member's point about the amount, essentially New South Wales was the guide and that is where we have set it.

Hon NICK GOIRAN: Is any information currently prescribed under section 62E(4)(f)?

Hon MATTHEW SWINBOURN: No; we are not aware of anything being prescribed in regulations at 62E(4)(f).

Hon NICK GOIRAN: Is that why the reference to section 62E(4)(f) is being removed in the proposed amendment to section 62H(2)(b)?

Hon MATTHEW SWINBOURN: The requirements are set out in section 62E(4)(e) and (f). The proposed deletion there I think is just a drafting change, because the documents were, and still will be, required. Section 62H(2) currently states —

> Registration is effected by entering or otherwise including in the register of political parties —

Do not worry about (a), but then —

> (b) any document accompanying the application as required by section 62E(4)(e) and (f).

Even if those words are removed, those documents will still be required to be included in the register, so the wording is effectively redundant. I think the other change, other than proposed section 62E(4)(da), is information that relates to the declaration. I go back to section 62E(4), which states —

> The application is to be made to the Electoral Commissioner in an approved form and is to —

It then talks about those things at paragraphs (c), (e) and (f). As I say, any document that comes with the application, which could be a prescribed document, would still be required to be included on the register. Does the member see where I am coming from?

Hon NICK GOIRAN: I do. The parliamentary secretary is saying that the documents that are provided at section 62E(4)(da) will not be required to be entered. However, section 62E(4)(f) refers to "prescribed information" and "any other prescribed document". The parliamentary secretary indicated earlier that he is not aware that there is any prescribed information. Is there a prescribed document?

Hon MATTHEW SWINBOURN: Member, the answer is no, there is no prescribed document.

Hon NICK GOIRAN: Then why are we retaining 62E(4)(f)?

Hon MATTHEW SWINBOURN: I could give the member my answer, but I might take him to an answer given by the Attorney General. It is perhaps a little bit more colourful than my style. This is more a general point, not necessarily on this specific position. It is more in relation to other changes that the member might point me to. The Attorney General said —

> As I indicated, a further tranche of amendments will be made to the Electoral Act. I did not personally think it appropriate to fuzzy it all up with those other administrative amendments when we are dealing with this very fundamental amendment.

I think the point here is that to the degree to which we could make minimal changes to the broad provisions of the Electoral Act, that is what we have tried to do. Of course, we have acknowledged that a wholesale review of the act is necessary, and the minister has committed to that. Changes like the member is referring to here—I do not think his point is without merit—were deemed not to be necessary at this time, under this bill.

Hon NICK GOIRAN: Before we move off that, will that review that will consider these other stylistic or drafting-type matters be undertaken by the minister's office or by the Electoral Commissioner?

Hon MATTHEW SWINBOURN: There has not been any formalised decision as to the form that review will take, but the expectation is that it will be largely led by the Electoral Commissioner himself on these sorts of things.

Hon NICK GOIRAN: In which case, I make this comment in conclusion so that the Electoral Commissioner will have the benefit of it. It seems to me that there is a case for section 62E(4)(f) to be removed from the act. Courtesy of the Committee of the Whole House process, we know that no information has been prescribed. We also know that no document has been prescribed. However, a reader of the act who was seeking to register and make an application would believe that they needed to provide information that has been otherwise prescribed and must also provide a copy of any other prescribed document. We are basically telling interested people to go and seek information that does not exist and provide a document that does not exist. There may have been a reason for that when the provision was originally drafted, but given that some time has now passed and it is clearly a provision that is not being used, I think we should do the right thing and remove the provision. I accept that the parliamentary secretary says that it is not the desire of the government to make these more substantial changes at this time, but it is something that should be considered in the next tranche of reforms.

Clause put and passed.

Clause 36: Section 62H amended —

Hon TJORN SIBMA: This probably goes over an exchange we had concerning data protection and the like, possibly in earlier consideration of the last clause. It feels as though that was a long time ago. The explanatory memorandum helpfully specifies that the amendment to section 62H(2)(b) is to provide that the documents setting out the details of the 500 members—that is, the 500 members required to get over the registration threshold—are not to be included in the register. This means that personal particulars of members will not be included in the public register of the Western Australian Electoral Commission. I do not know to what degree that actually places an obligation on the Electoral Commissioner to ensure the protection of private information, but I want to establish, first of all, what personal information is presently included in the public register of the WAEC, aside from an individual's name and address. Presumably, it is just the standard electoral roll information.

Hon MATTHEW SWINBOURN: That information is not currently on the register, so it is not included at this stage.

Hon TJORN SIBMA: As the personal particulars are yet to be established, I do not think the Electoral Commissioner has yet determined which form might be utilised, so we are verging into the unknown a bit. But let us assume that the information required is name, address, phone number or email address. How will the Electoral Commission's determination to ensure that that information does not find its way onto any public register be managed or audited? Regarding the security settings around the management of personal information, who would be responsible for ensuring that the WA Electoral Commission is actually doing the right thing? Would that be a function of the Office of the Auditor General or some other oversight body?

Hon MATTHEW SWINBOURN: The commissioner himself is responsible for the integrity of the information that he holds in the systems that are in place. But the member is right; the Auditor General will also have functions of oversight over the Electoral Commissioner's management of that private information and those sorts of things. The Electoral Commissioner already securely holds personal information of the kind that we are talking about, and I am not talking about the information on the role, of course, because that information is made public. But we are not asking him to take on a new function that he is not already familiar with.

Clause put and passed.

Clause 37: Section 62HA inserted —

Hon TJORN SIBMA: I am hoping that the parliamentary secretary can guide me in relation to this clause, particularly the aspect that relates to the requirement that a party's application for registration be lodged with the WAEC at least 12 months before the issue of the writ for a general election. The first question is this: how was that 12-month period determined as being an appropriate period of time? Page 38 of the Ministerial Expert Committee on Electoral Reform report provides the corresponding arrangements in New South Wales and South Australia. I do not know what safeguard this will provide. To what degree is it desirable to establish a 12-month versus a six-month registration cut-off? What kind of mischief is the government attempting to avoid here, or what kind of regularity is the government attempting to impose by virtue of this clause?

Hon MATTHEW SWINBOURN: The government has set the policy for 12 months. It was informed by the recommendation of the ministerial expert committee, which said "at least six months" and we have fallen with 12 months. It is similar to the position of New South Wales. I think it differs from South Australia, because it has a period of six months. However, if we take the process into consideration, particularly because this will be the first time that this has ever happened, political parties will be seeking to be registered, and that will cause overlapping members and technical issues. Therefore, if we have the cut-off at six months, it may take several months for that to be resolved. As the member appreciates, the Electoral Commissioner is a pretty busy person in the six months leading up to a state election and a shorter cut-off time would add the burden of, say, six months of appeals, objections and those sorts of things. As I say, it was a policy decision to go with 12 months, which will give sufficient breathing space for the commissioner. There was a discussion with the commissioner on this clause. The commissioner prefers that registration be determined based on the issue of the writ, not the date of the election, and the rationale was that it would provide slightly more time for registration to occur.

Hon TJORN SIBMA: In terms of the issue of the writ, that is fine. Basically, from here on in, that will be sometime in early February. In relation to the buffer of time that the parliamentary secretary has intimated that the Electoral Commissioner likes for managing particular administrative challenges—possibly an appeal—can I put to the parliamentary secretary the scenario in which a party seeks registration 12 months outside of the writ being issued. Its application for registration is refused by the Electoral Commissioner. That party then appeals that decision, but the administrative process of being heard and the like takes the party over that threshold by, say, another two, three or six months. The decision to refuse registration is overturned as it is considered to be unlawful or there was a misinterpretation. Is that party then able to be registered retrospectively and contest the election, or would it have effectively missed that opportunity? Have scenarios like this been considered in some way, because I anticipate that at some time we might have an eventuality just like this?

Hon MATTHEW SWINBOURN: The date of the application is the key point here. If the application is made prior to the 12-month period, the process the member described will play out and ultimately result in registration. So long as the application was entered before that 12-month period, the applicant will get all the benefits and the privileges. I might add that people make applications to register political parties up to the very last point, but there is only a very short period of time in which they can be dealt with, including by the courts, which creates great stress for everyone. This 12-month process will perhaps make it a little more orderly for all concerned. That is except, of course, for those people who do not pay any attention to the state of the law and who decide suddenly when an election is called that they want to register a political party, and who, because they have not done their homework, find out that the registration had to be done, as the member said, in about February—or whenever it is.

Hon TJORN SIBMA: This is my last question on this clause. What is intended to be done to remind existing parliamentary parties of this obligation and for communicating this new requirement to aspiring parties that wish to contest an election? What communication campaign is being planned and how might that be resourced?

Hon MATTHEW SWINBOURN: The Electoral Commissioner has already indicated the need for community education on this legislation. I suspect community education extends to political parties and aspirant political parties. The commissioner is alive to the issues we are raising on communication. The government, independent of the Electoral Commissioner, does not have a plan to make those announcements. It is the role of the Electoral Commissioner under his functions, and I think the commissioner is very aware of the work he has coming up.

Clause put and passed.

Clause 38: Section 62J amended —

Hon TJORN SIBMA: I am interested in a couple of things about this clause, particularly the prescriptive elements on the naming of political parties—whether or not there is capitalisation and how many words might constitute a name. On what basis was it proposed to amend section 62J(3) to provide that a party name cannot have more than four words or include capitalisation except for the first letter of the word? Was this done on the advice of the

Electoral Commissioner or because the government anticipates problems with enormous ballot papers, somewhat? Will this new quite prescriptive inclusion affect the registration of existing parties?

Hon MATTHEW SWINBOURN: As the member might be aware, the Ministerial Expert Committee on Electoral Reform made recommendations on ballot design at paragraph 3.5 of its report, including limiting party names to four words or less, prohibiting the use of capitals, and prohibiting replicate party names for below-the-line candidates. There are a number of other recommendations about columns and those sorts of things. It definitely came from the MEC as a starting point. There was consultation with the Electoral Commissioner on this. He was of the view that abbreviations of names should remain in the act, but he preferred that party names should extend no longer than four words and there should be no capitalisation except for the first word or use of an acronym. Both of the latter points are to manage the size of the ballot paper. The government has been consistent with what the Electoral Commissioner wanted. The Electoral Commissioner strongly indicated that capitalisation on the ballot paper is problematic.

I think some political parties will be affected by this change. We do not have a list of them, but they certainly exist. I think the WAxit Party is one, although, if I recall correctly, it may have made an application to change its name to the Small Business Party. I am not sure whether that was under federal or state rules, but that is an example that indicates some parties will have to do that.

Hon TJORN SIBMA: This might sound like a hypothetical. It is an issue that I think might have been examined dispassionately by the Standing Committee on Legislation—not that I am reflecting on a previous decision of this house. To what degree does the government want to enshrine this kind of prescriptive measure in black-letter law, and to what degree is it advisable to leave it to the discretion of the Electoral Commissioner if we are giving the Electoral Commission other discretions on the design of forms for party registration and the like? This sounds like a partisan question, but it is relevant. How would the Liberal Party of Western Australia be represented on a ballot paper? It is more than four words. Would we capitalise the "the" and have a lowercase for the "L"? I am not here to be obtuse, but I wonder what kind of thoroughness in thinking has gone into this provision, other than the recognition that if the threshold for election is lowered, it will multiply the number of parties interested in a ballot. The principal challenge seems to be managing the size of the ballot paper. To what degree does that technical challenge supervene on or is considered to be a higher order consideration than other considerations?

To be perfectly honest, does the bill need it? It does not seem to be consistent with the purpose of the bill. The parliamentary secretary will note that there is no amendment on the supplementary notice paper—it is beside the point; we have lost every division—but I encourage a bit of scrutiny on this particular issue, because, frankly, in layperson's terms, I think it is ridiculous. I will leave it there, but I want to understand the thinking other than it just being an explicit measure to limit the size of a ballot paper, which will be extended as a consequence of the bill. Is there a way around this? Will there be opportunities for a party to say, "Frankly, we've been trading under this name"—or that name? Can parties seek an exclusion from the application of this provision? Can they seek an amendment to this provision? Is this referable in any way?

I appreciate there are rules in place, but is not a requirement for four words only, with prescriptive instructions around capitalisation, a bit of legislative overreach?

Hon MATTHEW SWINBOURN: I do not agree with the member's assessment. These factors were certainly taken into consideration and were thought to be absolutely vital to ensure that the size of the ballot paper remains manageable. Ballot design was a strong recommendation of the ministerial expert committee. Reasonable minds will disagree with whether it should be four or six words and about the capitalisation. Section 62J(3) already prescribes that the Electoral Commissioner can refuse to register a political party if paragraphs (a) to (f) are not satisfied. It is already prescriptive and it is not a discretionary decision of the Electoral Commissioner. I suppose it is where one feels comfortable drawing the line—we drew the line at four words and no capitals. Some reasonable minds might disagree as to whether that is appropriate but the view of political academia is that some of the names of political parties are beyond the pale. They are designed to obfuscate so that people do not truly understand what they are about. The government is comfortable with this clause. The member disagrees, but I cannot take it any further.

Hon NICK GOIRAN: Does the Electoral Commissioner have a function to register eligible political parties?

Hon MATTHEW SWINBOURN: Yes.

Hon NICK GOIRAN: Does the commissioner currently have the power to register an ineligible political party?

Hon MATTHEW SWINBOURN: I shudder to think where the honourable member is leading me! New section 62J(1A) reads —

> The Electoral Commissioner must refuse to register a political party if it is not an eligible political party.

By virtue of that section, the answer to the member's question must be no.

Hon NICK GOIRAN: The problem is that that section does not currently exist in the Electoral Act 1907. Does the Electoral Commissioner currently have the power to register an ineligible political party?

Hon MATTHEW SWINBOURN: The member is right; his first question referred to the current act, so I got a little ahead of myself. The advice is that currently the commissioner has the discretion to register what the member described as an ineligible political party.

Hon NICK GOIRAN: Where in the Electoral Act 1907 is the power contained for the Electoral Commissioner to register a political party?

Hon MATTHEW SWINBOURN: It is section 62H, "Registration of political party". The pertinent subsection is —

> (1) If the Electoral Commissioner, after considering all statements and replies to the statements under section 62G, is satisfied that the application complies with the requirements of section 62E, then, subject to subsection (3) and section 62J, the Electoral Commissioner is to register the political party.

Hon NICK GOIRAN: Further to that, section 62H states —

> (4) The Electoral Commissioner is not to register a political party other than in accordance with this section.

Why do we need new section 62J(1A)?

Hon MATTHEW SWINBOURN: It was a policy decision, and how it should be presented was done in conjunction with the drafters. The policy is fundamental and what is required should be made plain in the act. That is why it is there. We acknowledge the member's point that it is covered in section 68H, but the decision was to make front and centre the policy that the commissioner must refuse to register a political party if it is not an eligible political party.

Hon TJORN SIBMA: On this train of thought, before I return to naming issues, would the parliamentary secretary be in a position to identify whether under extant laws the commissioner has ever registered an ineligible party as mentioned in new section 62J(3)(a) and (b)? Have ineligible parties, according to the definition in this bill, been registered by the Electoral Commissioner in the last four to five years?

Hon MATTHEW SWINBOURN: We will pursue an answer over the dinner adjournment.

Sitting suspended from 6.00 to 7.00 pm

Hon TJORN SIBMA: Just prior to the now truncated dinner adjournment I sought clarification about whether the Electoral Commissioner had previously registered an ineligible party under the auspices of the current act or acts; and, second to that, whether any party that had been previously registered would be ineligible under the provisions contemplated in this bill.

Hon MATTHEW SWINBOURN: We conferred with the Electoral Commissioner over the course of the break and he indicated that he was not aware of any party that had been ineligibly registered.

Hon NICK GOIRAN: We now know that the Electoral Commissioner has not registered an ineligible political party. We also know that under section 62H, he has the power to register eligible political parties. All of this would suggest that the provision before us, proposed section 62J(1A), is entirely unnecessary. What was the genesis or recommendation, or who has advocated, for this provision to be inserted at this point?

Hon MATTHEW SWINBOURN: It comes from the minister. It was a policy decision.

Hon NICK GOIRAN: I understand that. That was sort of intimated prior to the break, but these things do not just come out of the ether. For a policy decision to have been made, something needed to have been drawn to the minister's attention. To use another example as an analogy, we note that at the moment there is a high-profile intervention by the same minister in an industrial relations matter. Clearly, somebody has brought that matter to the Attorney General's attention and he has decided to intervene in the unfair dismissal case. In this instance, the parliamentary secretary is saying that the Minister for Electoral Affairs has determined that it would be necessary to expressly state in the Electoral Act 1907 that the Electoral Commissioner must refuse to register a political party if it is not an eligible political party. I know, and again this is rhetorical, that the minister will have full confidence in the Electoral Commissioner, so one possible explanation might have been that he had no confidence in the commissioner and that somehow there had been this pattern of conduct whereby the commissioner had been registering political parties that were not eligible. We know that not to be true because the parliamentary secretary has indicated that there has been no such registration.

From everything we have been able to observe, the Minister for Electoral Affairs seems to have great respect for the Electoral Commissioner, so that explanation is not an explanation at all. What provoked or sparked the Minister for Electoral Affairs to expressly determine and instruct that this provision be inserted? The context of this is the remarks the parliamentary secretary made earlier, and I think he was quoting from the *Hansard* of the other place. The Minister for Electoral Affairs made some point to indicate he was not interested, at this time, in amending,

inserting or dealing with—I forget the exact language the parliamentary secretary was quoting at the time—trivial, minor or administrative matters. He really wanted to deal with substantive provisions, so this matter must be of such importance and magnitude that it exercised his mind to insert this provision. Keep in mind that this is not something that comes out of the ministerial expert committee's report; we have already established that. This has come from the mind of the Minister for Electoral Affairs. It is in the context of him saying that he does not have the time or inclination at this point to deal with trivial matters, so it is a very substantial, significant matter. The explanation is not a lack of confidence in the Electoral Commissioner or the Electoral Commissioner having registered political parties that were ineligible, so what is it?

Hon MATTHEW SWINBOURN: I do not think I can take this much further. The member is asking for a level of forensic explanation that is just not available to us. It is quite appropriate that proposed subsection (1A) is included in section 62J, "Refusal of registration, grounds for etc.". We have given an explanation about why we think that is important. I have explained the circumstances in which it has generally arisen. I do not know that I can take the member any further on this.

Hon TJORN SIBMA: I have to come again to this issue of party names being four words or fewer. Should this bill be passed, and it will be passed because the government can pass every bill it wishes to pass, how would this provision have affected those parties that contested the most recent state election?

Hon MATTHEW SWINBOURN: It would have affected a number of parties. The name of the Legalise Cannabis Western Australia Party is obviously more than four words; it is five words.

Hon Nick Goiran: Legalise Cannabis Party.

Hon MATTHEW SWINBOURN: The name on the ballot paper was Legalise Cannabis Western Australia Party. It would have affected the Nationals because its ballot paper abbreviation is capitalised. It would have affected the No Mandatory Vaccination Party because its party name on the ballot paper was capitalised. It would have affected the WAxit Party because the first two letters of its name are capitals—WA—and then there is "xit". It would have affected the Western Australia Party because its party name is capitalised. It would not have affected the Animal Justice Party, the Australian Christians, WA Labor, the Daylight Saving Party, the Great Australian Party, the Health Australia Party, the Liberal Democrats, Liberals For Climate, Pauline Hanson's One Nation, the Shooters, Fishers and Farmers Party or the Socialist Alliance. It may have affected the Greens because WA is capitalised in its name. I have just been corrected. Because WA is an acronym, it would have been okay. It would not have affected the Liberal Party because its name on the ballot paper is simply the Liberal Party rather than the Liberal Party of Australia (Western Australian Division) Inc.

Hon TJORN SIBMA: I thank the parliamentary secretary. On the basis of the answer the parliamentary secretary has just provided, at least two existing parliamentary parties in this chamber would have to change their name by virtue of this provision, whose justification is a bit doubtful, that being the parties we colloquially refer to here as the Nationals and the cannabis party. There is some question mark over the Greens' capacity to replicate their trading name on a ballot paper. I do this because I think this is one of these things about which we do not need to be so prescriptive in legislation; we can probably apply a bit of commonsense in a discretionary fashion under regulations. For example, I refer to the utilisation of "WA". "WA" is obviously a common contraction of "Western Australia". A number of parties include "WA" as an adjunct to their party name. Under this prescription, would there be some limitation on a party's capacity to include "WA" as part of its name that appears on the ballot paper?

Hon MATTHEW SWINBOURN: Putting aside any other considerations, the use of "WA" alone would not because it is an acronym and acronyms will be permitted.

Hon TJORN SIBMA: That is a useful clarification in light of the fact that there is prescriptive reference to capitalisation and how it might be used. Can capitalisation be utilised by a party on a ballot paper as it applies to the use of the definite article "the" and the use of a proper noun?

Hon MATTHEW SWINBOURN: Under proposed section 62J(3)(ea), the capitalisation requirement allows capitals for the first letter of each of the words in the name of the party.

Hon TJORN SIBMA: That is useful. What about eponymous parties—that is, parties named after an individual? For example—this is not my invention, but somebody else's; I do not think this would ever occur and I use a member's name without impugning anybody—what if Hon Kyle McGinn wanted to set up the "Kyle McGinn Party"?

Several members interjected.

Hon TJORN SIBMA: Now they know; it is out!

What about people of a particular ethnic origin—Scots or Irish people whose name starts with a "Mc" or a "Mac"? Can one use the first letter of their first name—we used to call it a Christian name—and the two capitals of their

surname? I am not doing this to be cute but when we introduce measures like this in such a prescriptive fashion, we are obliged to consider some of the possible ramifications—if not Hon Kyle McGinn's party, perhaps a WA version of a Julie Matheson or Clive Palmer party. How would this apply? Is there a measure of discretion and commonsense that the Electoral Commissioner is able to bring to bear on these issues or is he or she bound by a strict interpretation of how many letters can be capitalised?

Hon MATTHEW SWINBOURN: The member's last statement is correct; it is the first letter of each word.

Hon TJORN SIBMA: I am genuinely sorry to do this, but this would apply to people of, broadly speaking, Italian origin, such as D'Orazio, the name of an ex-member of the other place, whose name has an apostrophe as well. I am glad that is not addressed here. There are certain people with proper names whose names seem to be in breach of the very prescriptive measures that are being introduced in black-letter law through this legislation. I want to absolutely assure myself that this is correct; and, if it is correct, I ask the parliamentary secretary to please recognise what an absolute nonsense it is.

Hon MATTHEW SWINBOURN: It is correct. I do not acknowledge that it is a nonsense. There must be a limit, and we draw the limit at the first letter in the name. If people wish to be creative in the way that they title their political parties, that is a matter for them. The point is that we would end up in this never-ending circle of arguing with someone about how they preferred to spell their name and which capital is used or whatever. The simple answer is that proposed subsection (3)(ea) includes a word of which a letter other than the first letter is a capital letter. That is very clear to me.

Hon TJORN SIBMA: I am very rarely moved to make a pronouncement such as this, but, frankly, that is completely and utterly mad. I do not know what mischief is being prevented through the improper replication of a personal name. Frankly, that is not something that we should accept. The parliamentary secretary has effectively advised us that we must accept this as a consequence of the passage of this bill. These are the kinds of issues that the Standing Committee on Legislation could have dealt with. When we get to technical prescriptions of the operation of the Electoral Act, which, frankly speaking, are better dealt with in a longer form of consultation with those parties, both in the political sense and in the more generic sense, they are likely to be affected.

Which other jurisdictions—I genuinely do not know the answer to this question—impose such a prescriptive limit on party names to four words or fewer on a ballot paper? For example, is this done in New South Wales?

Hon MATTHEW SWINBOURN: Member, we did not base this decision on what other people do in other jurisdictions. I cannot give the member an affirmative answer about whether it is done with a limitation of four words in other jurisdictions, because we do not know at the table. What informed it was the advice of the ministerial expert committee and input from the Electoral Commissioner. I can tell the member that in South Australia, the limitation is under section 42(2)(a) of the Electoral Act 1985, which states, "comprises more than 6 words". We were talking about capitalisation, sorry. I do not think it contains any provisions relating to capitalisation.

Hon TJORN SIBMA: Anecdotally, this is one of the visible aspects of an expanded ballot paper—the one for the New South Wales Legislative Council election was colloquially referred to as a tablecloth because of the preponderance of parties that contested that election.

Hon Matthew Swinbourn: It was the size of it, member.

Hon TJORN SIBMA: The size of it. I do not want to dwell for long on this. This illustrates the issue about legislating so quickly without thinking through the consequences, and just putting in things that might have a certain limited academic appeal but in the real world fail obviously and quite rapidly. I would have thought the issue around ballot paper management is not the length of party names but the number of parties contesting the ballot—that would probably be a function of that. I do not intend to use my time here to channel some of the past contributions of Hon Michael Mischin, because that might cause some members here some twitchiness —

Hon Sue Ellery: A trigger.

Hon TJORN SIBMA: Yes. They identify themselves, parliamentary secretary, quite rapidly!

I ask this genuinely. The government has put this in black letter law. What is the difference between setting the limit at seven words or at six, five or four words? If we follow the logic to its complete conclusion, and if we actually take seriously the argument that is embedded in this, the optimum number of words would be one, because we would at least need to signify the party that is contesting the ballot, and all the words beyond that would then be superfluous. I think I am making more of a point now than asking a question, just to illustrate. If the government ever feels the need to amend this this particular aspect of this bill , it should take that opportunity. The issue here is precisely how a party can apply for registration using its full title, presumably. That is referred to in the proposed amendment to section 62J(1). The explanatory memorandum states that clause 38 amends section 62J(1) —

> … to acknowledge that an acronym of a political party's name may form part of its ***application name*** …

Obviously, a party will apply for registration under this new regime, potentially with its full title, but at the time of registration will it have to indicate what its ballot paper name will be, and will approval for that be necessitated at the time of registration, or will that be done closer to the issue of writs? I want to understand how that process will work.

Hon MATTHEW SWINBOURN: My advice is that when parties apply to be registered, their names will be subject to the requirements in proposed new section 62J(3). They may, when the ballot papers are put together, seek to have abbreviated or shortened versions of their name, and that will impact on the actual name of the registered political party.

Hon MARTIN ALDRIDGE: The parliamentary secretary provided, I think in response to Hon Tjorn Sibma, some analysis of the impact on the currently registered political parties. In doing so, he made reference only to the abbreviated name of the party rather than the registered political party name. I want to check this point, because section 62J(1) of the act as it will be amended by this bill will state —

> ***application name*** means a name for a political party, or the abbreviation or acronym of the name for a political party set out in the party's application for registration;

If it will be, as I interpret it, broader than just the abbreviated name and will encompass the registered political party name, on my analysis 10 of the 19 registered parties would be in contravention of this provision if it were to become law. That would include the Labor Party, which I do not think was identified in the parliamentary secretary's list of parties in breach.

Hon MATTHEW SWINBOURN: The member is correct in the sense that I dealt only with the ballot paper abbreviated names. As I recall it, the question that I was asked was what parties would have been affected at the last election, and that is how I identified it. Given that this provision will affect the registered name, the member is correct. It would affect the Australian Labor Party Western Australian branch because it would offend against the number of words.

Hon MARTIN ALDRIDGE: On the issue of "WA" as an acronym exempt under proposed section 62J(4B), the parliamentary secretary made a comment previously about the WAxit Party. Obviously that includes a capitalised "WA" and a lower case "xit". How would proposed subsection (4B) apply in a circumstance in which it is argued that an acronym does not stand alone but rather forms part of a word?

Hon MATTHEW SWINBOURN: We are getting down to brass tacks here. WAxit is a word. I understand what it is trying to achieve, and the way that it is presented is as a word rather than an acronym. What that word actually means, goodness only knows. I think it is presented as a word.

Hon MARTIN ALDRIDGE: The parliamentary secretary makes a good point about what it means. I will come to that in a moment. I am not sure necessarily how proposed subsection (4B) would apply in that circumstance, but perhaps the remedy, if it was found wanting, would be to put a space between "WA" and "xit"; I suspect that would resolve that issue. In terms of what it means, this is another issue that I want to take up with the parliamentary secretary, to see whether this mischief is addressed in either this clause or in another clause of the bill with regard to a change in party names. This is not hypothetical; it actually happens. Given that the parliamentary secretary mentioned the WAxit Party, the parliamentary secretary would be aware that prior to the 2017 election, there was a flurry of party name changes. On 19 January, the Small Business Party became the WAxit Party. On 2 February, the Flux Party became Liberals for Climate. In May 2019, the Fluoride Free WA Party became the Health Australia Party. In July 2017, Julie Matheson for Western Australia became the Western Australia Party. There were also a number of rejected changes. Most notably, the Daylight Saving Party, which funnily enough was successfully elected to this place, sought to change its name to the Daylight Saving Party the National Liberals, abbreviated as the National Liberals. Clearly it did better by having that name rejected, perhaps, in the final form in which it contested the election.

What will happen when a party significantly changes its name, particularly as we have already passed over some clauses about the establishment of a registered political party having to demonstrate that it has 500 ongoing and unique members—ongoing means not just for the registration, but of an ongoing nature—and we will have the spot-checking process that the Electoral Commissioner will undertake to verify these people beyond just data cross-referencing? More than that, I guess, is its underlying policy intention, motivation or platform for contesting the election. Obviously, some of those include the parties that the parliamentary secretary and I have mentioned, such as the Small Business Party becoming the WAxit Party. Is the government concerned about this, and how will it be addressed with respect to the requirement to demonstrate the ongoing 500 unique members supporting that party for the purposes of contesting the election?

Hon MATTHEW SWINBOURN: The provision that relates to changing the name and/or other things is section 62K. None of that will change. Section 62K(4) states —

> If the application is to amend the register by —
>
> (a) changing the name of the party to a name set out in the application; or
>
> (b) if an abbreviation …

We talked about this. Section 62K continues —

> sections 62F, 62G, 62H and 62J apply to the application under this section, subject to any necessary changes, as if it were an application for registration of a political party.

If a party wants to change its name, there will be a high hurdle for those things because the party must satisfy sections 62F, 62G, 62H and 62J to do that.

Hon NICK GOIRAN: Dealing with the issue of the change in the name of a party from six words to four, the parliamentary secretary will see at page 38 of the Ministerial Expert Committee on Electoral Reform final report that chapter 3.5 states —

> The Committee has considered a number of technical changes which could make the ballot paper more manageable:

It then says —

> - Limit party names to 4 words or less. Long names take up additional space on the ballot paper. Under current provisions, there is a requirement … —

Below the line —

> to replicate the party names alongside each candidate for that party. This unnecessarily takes up space.

I have two questions about that. First, who advocated for the four words that led the ministerial committee to make that, I suppose we could say "recommendation", noting at page 40 that recommendation 4 says —

> Measures be considered to manage the size and design of the ballot paper as suggested in Section 3.5 of this Report.

If the parliamentary secretary is happy for me to elevate this to a recommendation, the second question is: who advocated for that which resulted in the ministerial expert committee making such a recommendation and what has the Electoral Commissioner had to say about this issue of changing it from six to four?

Hon MATTHEW SWINBOURN: The member may have been out on urgent parliamentary business earlier because I referred to what the Electoral Commissioner said about the change from six to four words. I will start with the member's first question on who advocated for the MEC. I do not want to go too far behind the contextual part of the report because it is the MEC's report and its deliberations were a matter for it. My understanding is that it is based on the committee's expert view in consultation with the electoral commissions that the committee conferred with, which I think were the New South Wales Electoral Commission, the Electoral Commission of South Australia and the Western Australian Electoral Commissioner himself. To repeat what I said earlier: it was the commissioner's preference for party names to extend no longer than four words and contain no capitalisations except for the first letter of the word or the use of acronyms. That was his position.

Hon NICK GOIRAN: On page 15 of the explanatory memorandum at clause 38D, it says that this clause, which will amend section 62J, will insert a new provision—proposed section 62J(4A)—to provide that related political parties can have the same or similar names, abbreviations or acronyms of names. Is that what proposed section 62J(4A) does?

Hon MATTHEW SWINBOURN: My advice is yes, member.

Hon NICK GOIRAN: I do not know whether the parliamentary secretary has a copy of the blue bill handy, but is it not section 62J(4) that does that, rather than proposed section 62J(4A)?

Hon MATTHEW SWINBOURN: My advice is that they need to be read together to give the full effect.

Hon NICK GOIRAN: The explanatory memorandum says —

> … related political parties can have the same or similar names, abbreviations or acronyms of names;

Section 62J(3)(c) of the act specifies that the Electoral Commissioner is to refuse to register a political party if the party's application name —

> (c) is the name, or an abbreviation or acronym of the name, of an existing party;

Is the parliamentary secretary saying that this exemption does not apply in the absence of the insertion of proposed section 62J(4A)?

Hon MATTHEW SWINBOURN: I am sorry; I have lost the thrust of the member's question. If he could perhaps ask it again, that would be of assistance.

Hon NICK GOIRAN: We were dealing with proposed section 62J(4A) and what the explanatory memorandum purports to be the rationale for it. Page 15 states that it —

> … inserts a new provision s. 62J(4A) to provide that related political parties can have the same or similar names, abbreviations or acronyms of names;

The parliamentary secretary might recall that I asked what that section does and the parliamentary secretary indicated what it was. I am simply testing the veracity of that, because it appears to me that if we look at section 62J(3)(c) and read that with section 62J(4), we can see that it is already the existing law. Therefore, the explanatory memorandum is incorrect when it suggests that 62J(4A) is providing this, as it is already provided for.

Hon MATTHEW SWINBOURN: I think the member's point is that where the explanatory memorandum deals with section 62J(4A), it might be deficient and it does not have the full story in the sense that we have said that we must read proposed section 62J(4A) in conjunction with section 62J(4). I think we have said that is the case, but the EM does not say that. I do not think it is wrong, but it is probably not as fulsome as it could be. Obviously, through these debates we will say that proposed section 62J(4A) should be read with preceding section 62J(4) to provide that related political parties can have the same or similar names, abbreviations or acronyms of names.

Hon NICK GOIRAN: That is sort of it, but the issue is that the explanatory memorandum at the moment tells the reader that we are inserting a new provision. That is true. It says that we are inserting —

> … a new provision s. 62J(4A) to provide that related political parties can have the same or similar names, abbreviations or acronyms of names;

But the issue, as I understand it, is that this provision is not providing for that because that is already provided for in the act. The insertion of new section 62J(4A) will not do what the explanatory memorandum is saying. It is a new provision, but it is not providing for something. I thought that the parliamentary secretary had explained to Hon Martin Aldridge earlier that in actual fact someone had made the decision to effectively transpose the definition of "related political party" from section 62C to section 62J because they thought that was the better place to put it. Whether that is the case I guess is a debatable point, but the point I am making is that the provision is not doing what the explanatory memorandum says that it is doing. It goes to my point that I was raising with the parliamentary secretary earlier with respect to 62J(1A). The parliamentary secretary will note the contentious insertion of the words —

> … the Electoral Commissioner must refuse to register a party that is not an eligible political party.

When questioned why this was being done, to the extent the explanation was provided, it was indicated it was a policy decision by the minister. When I turn to the explanatory memorandum at page 15, it says that clause 38 —

> **amends s. 62J** as follows:
>
> …
>
> (b) inserts a new provision s. 62J(1A) that the Electoral Commissioner must refuse to register a party that is not an eligible political party.

It is again a new provision and what it is saying must occur, but evidently that is already the state of the law. There is no power in the Electoral Act that allows the Electoral Commissioner to register an ineligible political party. We cannot invent a power. It may well be that there is not an express prohibition from him doing it, but his power has not been enlivened to go and register ineligible political parties. Nevertheless, the explanatory memorandum continues —

> The conditions for eligibility are provided at ss. 62C(1) and 62CA and include that a party must have at least 500 unique members and a relevant constitution to qualify as an eligible political party;

The point I make at this stage is that the explanatory memorandum tells us nothing about what mischief we are trying to fix here. We recall earlier that I was asking: why are we inserting (1A)? Is it not evident on the face of it? It is not evident when we read the context of the bill. It is not evident when we read the Electoral Act of 1907 as a whole and it is not evident when we read the explanatory memorandum. The one thing that I confess I have not checked and revised is the second reading speech, but I would have a reasonable guess at this point in time that once again no explanation is provided on this part either. I am not asking for a response on this necessarily at this point, parliamentary secretary. However, I am troubled by what has occurred at proposed section 62J. A number of things are said to be done in the explanatory memorandum; I think five or six things at least. Some of them do not provide an explanation at all and, in other respects, matters should not have been taken up in the first place.

I know the parliamentary secretary indicated in the debate prior to the dinner adjournment that the minister is looking to consider some of these other reforms. These are the types of things that warrant further consideration, including the matters that my honourable colleague Hon Tjorn Sibma has drawn to the parliamentary secretary's attention. The one with respect to the capitalisation is worthy of further consideration by government. When I look at what the ministerial expert committee said, I see that at page 38 it said —

- Prohibit the use of capitals for party names, which can take up more space on the ballot.

If we read that on its face, it is arguing or advocating for an absolute prohibition on the use of any capitals. The government has quite reasonably taken the position to say, "Well, we're not going to go all the way there. We're still going to allow capitals for the first letter of every word." It is not clear to me why the government can take what seems to be quite a reasonable position in that respect—parking to one side the, shall I call it, McGinn argument about multiple capitals in a name—yet the government has given no consideration to providing an explanation for why, out of the ether, the Minister for Electoral Affairs has decided to insert 62J(1A).

At the very least, there seems to be a number of inconsistencies with the government's approach and, once again, it demonstrates the point that this legislation has been rushed through for no particular purpose. The point has been made previously by the opposition that should this bill pass today, tomorrow or, indeed, next year, it will have no material impact on the next election, yet had the matter been considered in other forums, such as the Standing Committee on Legislation, these types of matters might have been picked up and we might have received proper explanations.

Clause put and passed.

Clause 39: Section 62KA inserted —

Hon TJORN SIBMA: As I have previously indicated, I have taken at least a passing interest in clause 39. As stated in the explanatory memorandum, the intended purpose of proposed section 62KA is to provide —

> … a registered political party must submit an annual return in an approved form between 1 June and 30 June each year in relation to its continued eligibility under this Part, unless the Party has been registered for less than 6 months. This allows the WA Electoral Commissioner to verify each party continues to remain eligible for registration.

Okay; there are a few issues here. This seems passably simple, but we need to understand the implications and obligations that will be imposed. The first question I will ask is: does the Electoral Commissioner have a view on what an approved form might be for the purpose of annual reporting? I presume that what we are relating to here is not the broad scale of eligibility components but the eligibility components that rely on ongoing party membership to the degree that a party can rely on a quantum of 500 supporters or greater. Is that true?

Hon MATTHEW SWINBOURN: Yes.

Hon TJORN SIBMA: Has the Electoral Commissioner designed such a form yet?

Hon MATTHEW SWINBOURN: No, not yet.

Hon TJORN SIBMA: Has the Electoral Commissioner indicated to the government what form that might take and by what stage such a form will be prepared?

Hon MATTHEW SWINBOURN: I cannot say time frames, but the commissioner has indicated that he will be looking at the template forms from New South Wales for the purpose of developing an approved form in Western Australia.

Hon TJORN SIBMA: I will ask a policy question. I presume that the mischief the government is attempting to avoid through the consequences of the passage of this bill is a scenario in which parties without genuine support clutter the ballot paper. Why is it that they will need to subject themselves to annual returns confirming the depth of their membership? I can appreciate annual return obligations for gifts and donations received by a party entity because that is of a completely different complexion. Why necessitate the production of, more or less, party lists each year when an election in this jurisdiction is held only every four years?

Hon MATTHEW SWINBOURN: The policy question is to ensure that we maintain a register that is in proper order so that people can be confident that those on the register maintain significant continuing support within the community. The ongoing task in relation to the declaration is obviously not to completely provide 500 declarations. Obviously, people stop being members of political parties. The issue is that if the 500 declared members reduces by 50 because of mass resignations, the annual report is a requirement to top-up and make sure that the party maintains ongoing relevance and connection. Our political parties tend to be quite stable in that particular area. We will always have a turnover with resignations, but it would be fair to say that other political parties that have had representation in this Parliament in the past have been somewhat volatile in their membership over time. We need to take that into contemplation in terms of the ongoing annual return.

Hon TJORN SIBMA: I do not think we will be long on this clause, but two questions arise in my mind at least with the consideration of clause 39 in connection with preceding clauses. I will ask the second question first so that I do not forget it. There is embedded in this bill no positive obligation on a registered political party to advise the Electoral Commissioner at the time that its membership falls below that 500-person threshold. I suppose the opportunity to do that will be in the annual reporting schedule. I want to confirm that there is no positive obligation on behalf of a registered political party to advise the point at which it becomes aware or forms a reasonable view that its membership has fallen below that threshold.

Hon MATTHEW SWINBOURN: There is no positive obligation outside the annual reporting. To contemplate that, a party's membership could dip below 500, but when it comes to June and the time of reporting, its membership might be back well above 500 and therefore it does not have to say that at some stage it was not at the 500-member mark.

Hon TJORN SIBMA: This is my last question on this clause and it bears on preceding clauses and issues countenanced in previous contemplation. One of the reasons I could possibly apprehend the need for an annual spot check or reporting for the purpose of maintaining an orderly list is that it might be of some utility, possibly intangibly, in the case of a by-election, because it is not necessarily true that this bill solely affects Legislative Council elections. There will obviously be some impact on at least the construction of boundaries for lower house seats and the like, but that does not seem to be intimated in this bill. It would probably be the only purpose that I could justify for the need for ongoing annual reporting on membership and eligibility, periods far removed from a standard four-year general election. I am going slightly tangentially here, but can the parliamentary secretary confirm whether that was a factor in the government's decision-making?

Hon MATTHEW SWINBOURN: The answer is no to the member's direct question.

Hon TJORN SIBMA: I thank the parliamentary secretary. Based on the previous answer the parliamentary secretary provided, that all such returns of this nature necessitate record keeping in accordance with the State Records Act and the like, it is probably not a huge amount of data, but we are just building up data for the sake of maintaining orderly records with no direct bearing on the conduct of an election. I will make that point and let it rest there, but my other question relates to proceeding clauses also. With regard to the approved form yet to be developed by the commissioner, is the obligation on a party just to prove the 500-member threshold, or is there another obligation to demonstrate the full party list, or to demonstrate a quantum of members beyond the 500-member minimum? For long-established parties, where do they select the 500 members from? Is the indication the broad list, the broad sweep of membership, or just the 500 members?

Hon MATTHEW SWINBOURN: It is just the 500 members.

Hon Dr BRIAN WALKER: I have not featured much in this debate, but this paragraph in this clause strikes hard to where we are. The parliamentary secretary has mentioned that we need to establish that there are 500 members of a party to ensure, if you like, that these members represent in Parliament a significant proportion of the population. That is a very sensible discussion to be had. Given that the will of the people is demonstrated in an election, and that that passes for the whole of the parliamentary term, one might argue that this annual proof of 500 members is about as necessary as the government of the day having to justify, based on polls, that it still represents the majority view of the population. If that were not the case, two years into a four-year cycle a government might have to say, "The public obviously doesn't like us; we'll have to return our mandate to govern", but no; the government remains in place until the end of the election cycle and then the vote is put to the public again. We cannot say that we are doing this on the basis of ensuring that a party still represents the people; it is more of a bookkeeping process, as the parliamentary secretary has just said, to ensure that everything is in order. Have I understood that correctly? Is it also true that the government is perhaps rejecting the argument that the same argument does not apply to a party in government because it is not convenient?

Hon MATTHEW SWINBOURN: The member has put a lot of contentions to me and I am not going to endorse or disendorse any of them. What we are trying to achieve here is to ensure that political parties that enjoy the privilege of being registered and recognised maintain a minimum number of eligible members throughout the time that they are registered. As to representative democracy and the continuing mandate for governments to do this and that during their term, that is a whole different debate that I do not want to get into. I do not think the two things are quite comparable; 500 is nothing compared with the almost two million people who are eligible to participate in an election.

Hon Dr BRIAN WALKER: I am glad to hear that statement because it goes to my next question about the 500. It is one matter for a well-established party to be able to refer to any number of their members and the burden of proof is not going to be that great. The smaller parties, like us, are required to spend a considerable amount of effort and money, which is not that present for a smaller party. What we are facing here is planned inequity. The equality I can go with, but we spoke earlier about the equity of this provision, and it is not actually given; in fact, on the contrary, it

is discriminatory against the smaller parties, based on the amount of effort and cost involved. They are disproportionate compared with the larger, more established parties. That certainly speaks against the principle of democracy.

Hon TJORN SIBMA: Hon Dr Brian Walker has seeded a couple of questions in my mind; I do not think they are extensive questions, but they arise completely from passing the bill in the form that it is presented in. My first question is whether, in the legislation in any of the other Australian state jurisdictions on which this bill is modelled, there are any analogues to the need for the annual registration of all political parties? That is effectively the model we are moving to. It has not been given that kind of emphasis, but that is one of the effects of the bill. Where else does that take place, and could the parliamentary secretary make some remarks about how it is being implemented?

Hon MATTHEW SWINBOURN: Section 67 of the relevant New South Wales legislation has a similar provision to ours, so ours is not the only jurisdiction to have it. I do not have that provision in front of me, but I understand that it is similar to what we are proposing here.

Hon TJORN SIBMA: May I put to the parliamentary secretary, without being cute, two hypothetical scenarios that I do not think are implausible ones; I just want to know what the implications are. Firstly, we will possibly have members of Parliament elected to this chamber who come from what we describe as minor parties and whose parties are unable to fulfil their annual registration requirement. What are the implications for nomenclature—how we are to refer to members of such a party—if that party is then deregistered, other than referring to the member as an individual? To cite an example, in terms of the way in which we conduct business in this chamber, we have an apportionment of who gets to bring forward motions and who gets to bring forward non-government business. That is effectively divvied up on the basis of party affiliation. In a previous contribution, I was accused of wishing an untimely demise on other parties, and I do not want to do that again, but what would happen, for example, if a member in this chamber from the XYZ party was elected to this place on the basis of that party's platform, and the party then failed to be re-registered under this annual requirement? How would we refer to that member, and what status would they have in this place?

Hon MATTHEW SWINBOURN: We sought advice on this point from the clerks, just to be certain. If a political party is deregistered by the Electoral Commission for failing to meet the registration requirements under the legislation, the member will become an Independent and lose party status.

Hon NICK GOIRAN: If that is true, why is it that at proposed section 62L the government is going out of its way to carve out "not being a parliamentary party"?

Hon MATTHEW SWINBOURN: I cannot remember the precise nature of the member's question, but I make the point about proposed section 62L(2)(b) that the reference to not being a parliamentary party applies only to proposed subsection (2), but there are other provisions such as proposed subsection (2A) and some of the transitional provisions that allow for the cancellation of the registration of a parliamentary party. The carve out of it not being a parliamentary party relates only to the circumstances identified in proposed section 62L(2).

Hon NICK GOIRAN: I need to be persuaded further on that point. I take the parliamentary secretary to section 62C, which sets out the terms to be used in part IIIA, "Registration of political parties". Very interestingly, known only to the drafters of the Electoral Act 1907, and, indeed, the drafters of this bill, a number of terms are used. One of the terms, which is undefined, is "political party". The second term is "eligible political party", the third is "parliamentary party" and the fourth is "registered political party". I take the parliamentary secretary to the term "parliamentary party", which is defined, and this bill will not change that. A parliamentary party means a political party of which at least one member is a member of the Assembly or the Council. It does not say that parliamentary party means an eligible political party, which is a defined term. It does not say that parliamentary party means a registered political party, which is also a defined term. It simply says that parliamentary party means a political party of which at least one member is a member of the Assembly or the Council. What is the definition of "political party"?

Hon MATTHEW SWINBOURN: "Political party" is defined in section 4. I do not propose to read it out, but there is a definition of "political party".

Hon TJORN SIBMA: Under this provision, is it likely that a political party could effectively phoenix—that is, be deregistered one year, come into registration the following year, be deregistered the following year and then come into registration in time for a general election? That is my understanding if we apply this annual test.

Hon MATTHEW SWINBOURN: The member used the word "phoenix". That does not really have a specific meaning. In the construction industry, "phoenix" is considered to be a negative term. In this instance, if a party is entitled to be registered but fails to lodge its return or fails to maintain 500 eligible members and becomes deregistered as a consequence, it can then put the effort in to reapplying, paying the application fee, finding those 500 unique members and then being re-registered and then falling into a state of no longer being eligible and being deregistered. That sort of bumpy hill of going up and down that the member was talking about could happen, but I think there would be a lot of effort and expense involved if a party did that.

Hon MARTIN ALDRIDGE: The one question that I have on this clause is about the period beginning on 1 June and ending on 30 June each year. How was that date arrived at? Was it arrived at in consultation with the Electoral Commission and giving consideration to its workload? I understand that it has other responsibilities, not the least of which is that this period is the end of a financial year reporting period. It also has other responsibilities with financial returns of political parties at different times of the year. Is this a period of capacity for the Electoral Commission to manage all the 19 registered political parties submitting annual returns and being scrutinised for this purpose?

Hon MATTHEW SWINBOURN: The genesis of the June date came essentially from what happens in New South Wales. That is the period that that state does it within. The commissioner is aware of the period that we have put in the bill and has not raised any objection. It did not come from him as such, but he has seen the provision and has not taken issue with it.

Hon NICK GOIRAN: I will continue with the matter of the definition of "political party". I note that when we last discussed this matter, the parliamentary secretary indicated that he had a copy of the blue bill. I also have a copy. Just out of interest, does the parliamentary secretary's copy have a page 4?

Hon Matthew Swinbourn: Yes, member, it does.

Hon NICK GOIRAN: The parliamentary secretary has an advantage over me, because I do not have a page 4 for a mysterious reason. Of course, that is the critical page that has the definition of "political party".

Hon Sue Ellery: It's our secret plan!

Hon NICK GOIRAN: No doubt it is another one of the McGowan government's tricks in its traditional shifty fashion!

The definition of "political party", which the parliamentary secretary has kindly drawn to my attention, does not take us further with the concern that has been raised by Hon Dr Brian Walker. It appears that under this section, a political party, which is a parliamentary party, could at various stages during a four-year term not be a registered political party, yet still be a parliamentary party.

Hon MATTHEW SWINBOURN: That is correct, member.

Hon NICK GOIRAN: This clause refers to annual returns, which I know the honourable member was concerned about and he seemed to make a valid point about the disadvantage for smaller parties from these types of administrative processes. The point is that the secretary of the registered political party may well not comply with that particular provision to lodge an annual return. The Electoral Commissioner may then, under proposed section 62L(2A), cancel the registration of the political party. In fact, that will be a mandatory requirement: the Electoral Commissioner must cancel the registration of a political party if the secretary of the party fails to comply with proposed section 62KA. As the parliamentary secretary has just indicated, that party would still be a parliamentary party. I am just trying to reconcile that with the advice that he indicated he had been given earlier—I think it might have been from the clerks or otherwise—about the status of parliamentary parties.

Hon MATTHEW SWINBOURN: We received advice from the clerks. We cannot locate the correspondence, but the advice was that if the registration is cancelled under the Electoral Act, for the purposes of the chamber, they would be Independents. That is the advice we got from the clerks.

Hon NICK GOIRAN: We would have a strange set of circumstances, then, by which under Western Australian law, the Electoral Act 1907, there would be this entity that is referred to as a parliamentary party, which is defined in the statute of Western Australia—the Electoral Act 1907—as "a political party of which at least one member is a member of the Assembly or the Council", yet the Parliament would disregard what is in the statute and say that it is not a parliamentary party. We are not in that situation at the moment, but I think that that issue will probably need to be clarified in due course, because we cannot have the statute saying one thing and the Parliament doing another with regard to the term "parliamentary party". There needs to be consistency on that point. That said, there has obviously been consultation with the Electoral Commissioner on this issue. I think the parliamentary secretary indicated this in his exchange with Hon Tjorn Sibma and others. This clause, which inserts proposed section 62KA, is one of seven clauses that the parliamentary secretary indicated in the debate on clause 1 did not arise from recommendations purportedly made by the ministerial expert committee. Where did it come from? Was it simply a result of consultations with the Electoral Commissioner?

Hon MATTHEW SWINBOURN: I am advised that it was initially raised by the Parliamentary Counsel's Office when it was doing the drafting, as there is a similar provision in the New South Wales act. It was raised with the minister's office through that drafting process. The minister took it to cabinet and it was endorsed, because it is now in the bill.

Hon NICK GOIRAN: This is interesting, because it is an example, to use the strict language of the Attorney General; Minister for Electoral Affairs in the Assembly, of ancillary or other matters—trivial matters that he does not really want to concern himself with. Nevertheless, a decision has been made to include it at this point.

It appears that the one penalty for not providing an annual return is cancellation, and that cancellation is mandatory, and there is no grace period or discretion on the part of the Electoral Commissioner. One might say that is harsh, particularly if some kind of administrative error has occurred. Nevertheless, for the reasons I have argued earlier, it will not affect parliamentary parties. If that was to occur and there was a cancellation, to what extent would that be taken into account in the event that the party wanted to reregister?

Hon MATTHEW SWINBOURN: We are on clause 39, if I recall correctly. Cancellation arises at clause 40, and there is quite a lot of detail there. I suggest that we deal with that at clause 40 rather than here, because we will be in the thick of it there.

Clause put and passed.

Clause 40: Section 62L amended —

Hon MARTIN ALDRIDGE: I have a question at clause 40 about the insertion of proposed section 62L(2A), which states —

> The Electoral Commissioner must cancel the registration of a political party if the secretary of the party fails to comply with section 62KA.

Proposed section 62KA is obviously the subject of clause 39, which was just passed, and relates to annual returns for continued registration. I want to ask the parliamentary secretary something. Proposed subsection (2A) says that the Electoral Commissioner must cancel the registration. A party secretary has a requirement to submit an annual return of the nature identified in proposed section 62KA to the Electoral Commissioner between 1 June and 30 June—a period of 30 days. If they fail to do that, the Electoral Commissioner must cancel the registration of that political party. I make this point: this seems very hard and fast, with no scope for the Electoral Commissioner to provide for variations in certain circumstances. We have talked about this in the chamber today, and I think most recently Hon Dr Brian Walker raised the issue of the burden on minor parties. The administration of many of those minor parties would be entirely voluntary. Even my party, which is a long-established party, still has only one full-time equivalent employee, and at times in our history we have been entirely run by volunteers. It seems to me quite an extraordinary provision that does not give scope for the Electoral Commissioner to deal with exceptional circumstances that might arise, such as the death of the secretary, the incapacity of the secretary or a pandemic. A whole range of things could prohibit a registered political party from complying with the requirements under proposed section 62KA within that very strict 30-day period. As I read proposed section 62L in its completeness, it appears that there is no scope for the Electoral Commissioner to provide short periods of extension in extenuating circumstances, except perhaps for the notice period that arises from subsection (3), which I think has a period of 14 days following that. If my assessment so far is correct, what will happen if a party subject to proposed subsection (2A) and therefore the process identified in subsection (3), which is an existing provision, submits an annual return in that period? Will the Electoral Commissioner still have to cancel the registration of that party because it did not technically comply with proposed section 62KA by 30 June each year?

Hon MATTHEW SWINBOURN: We think that the provisions of subsections (3) and (4) will create a circumstance in which the kind of extenuating situation that the member talked about, which is that it was beyond their control, would effectively provide the Electoral Commissioner with a discretion to take into account what are described as objections to cancellation. For example, if, as the member described, some sort of catastrophic event were to prevent someone from complying with that provision, and that was brought to the attention of the organisation and it then took steps to lodge that information and raised objections to the cancellation on the basis that things had occurred that were beyond its control, the commissioner would be required to consider any objection made under subsection (3) before taking any further action on the cancellation. It would effectively, although it is mandatory to cancel registration for failure to comply with proposed section 62KA, be subject to those arrangements and the time limits that are built into that. We also have to consider that the period within which to lodge is not a day; it is over a whole month. I suspect everyone will work to 30 June, because that is how people work. It should be routine and organised, and political parties will have those actions in place. I do not think the commissioner himself will want to just strike out things at the first instance. As I said, there are existing provisions in the legislation that provide for that particular process.

Hon MARTIN ALDRIDGE: One of the other circumstances could be a cybersecurity incident. We know that political parties are increasingly becoming the target of cybersecurity breaches. Government agencies are also regularly subject to cybersecurity threats. One of our major hospitals had an IT-related issue today that affected

significantly the capacity of that hospital. I take the parliamentary secretary's argument about subsection (3) and some of the circumstances identified in subsection (2). For example, if the Electoral Commissioner formed a view that the party no longer exists, he would give notice, and of course somebody could object and say, "That's not right; the party does exist, and these are the reasons why the party does exist", so there would actually be something to argue about. If a party did not comply with proposed section 62KA by 30 June each year, I do not think it would be an arguable matter, because although they could lodge an objection, I think the Electoral Commissioner would disregard that objection, because the law is the law. Under this proposed amendment, the Electoral Commissioner will have no discretion. It states that the Electoral Commissioner must cancel the registration—not may, must. It is not a matter on which he can exercise his conscience or consider the circumstances of the situation, as extenuating as they may be, with respect to the grounds in subsection (2), under which he may well have the ability to accept arguments and objections as to the view that he has formed that has led to giving notice to cancel the registration of a political party. From my reading of proposed section 62KA, in conjunction with proposed section 62L(2)(a), it is black and white. There is no room to move.

Hon MATTHEW SWINBOURN: I do not support the member's interpretation of that. I do not think it is as black and white as that. Parliament has seen fit to include these provisions to give the commissioner the opportunity to give adequate consideration to the objections and, if the objections are raised on reasonable grounds, I think the commissioner would be bound to accept those. That is the way we read it. If a party has not complied with proposed section 62KA because it is simply wantonly not organised, obviously that is not a matter to be taken into consideration, but for the kinds of things the member has raised, the commissioner would certainly be able to take that into account before making a decision or recommendation to cancel or not to cancel.

Hon MARTIN ALDRIDGE: This is my last question, given the parliamentary secretary's response just now. Subsection (4) states —

> The Electoral Commissioner is to consider any objection made under subsection (3) before taking any further action in relation to the cancellation.

We have the period between giving notice, and providing people with 14 days and the right to object to the notice, and the proposal to cancel. The parliamentary secretary is saying that if a party secretary were to lodge the annual return on 13 July, in contravention of proposed section 62KA, the Electoral Commissioner would have the power to set aside that contravention of section 62KA and say, "Okay. It's late, but eventually you will comply, and I will allow you to continue to be registered." That is not my reading of the bill that is before us.

Hon MATTHEW SWINBOURN: If someone was merely late, absolutely the mandatory part of proposed section 62KA would come into it, but if there was some other act of God–type circumstance, some catastrophic event such as the member talked about, such as cybersecurity, that made it impossible, the commissioner would have a discretion to take those matters into consideration and make a decision to cancel or not to cancel.

Hon NICK GOIRAN: I turn to the blue bill. At section 62L(2), the government has decided to delete the word "may" and insert the word "must". What the honourable member has just taken the parliamentary secretary through warrants further consideration by the government. It is all well and good to refer to sections 62L(3), (4) and (5) and so forth, but they were drafted and passed by Parliament in circumstances in which Parliament has expressly said that the Electoral Commissioner "may" cancel the registration. They were not passed in circumstances in which Parliament has said that he "must" cancel the registration. From listening to the dialogue between the parliamentary secretary and the honourable member, it seems to be quite a strained interpretation to now suggest that we are effectively going to rely on other words in section 62L(2), which are "satisfied on reasonable grounds". If I am hearing the parliamentary secretary's explanation correctly, he is effectively saying to the honourable member that even though it says "must", the "must" is constrained by the phrase "is satisfied on reasonable grounds", and the Electoral Commissioner cannot satisfy himself on reasonable grounds until he has undertaken all the tasks set out for him in subsection (3) and onwards; in other words, that he has given an indication of a proposed cancellation, he has heard from the person within the 14-day time period, and he has then considered any objections and the like. After he has done all those things, he might then be satisfied on reasonable grounds, and, the instant that happens, he must cancel the registration. I have to say that is very tortuous, but maybe, just maybe, the government could get away with that.

However, that does not help us when we get to proposed subsection (2A). That is a separate provision altogether. For that subsection, there does not seem to be any arguable test of satisfaction on reasonable grounds. It seems more like almost a strict liability provision. Proposed subsection (2A) states —

> The Electoral Commissioner must cancel the registration of a political party if the secretary of the party fails to comply with section 62KA.

There is no mention of satisfaction. There is no mention of reasonable grounds. There is no mention of acts of God and the like such as the parliamentary secretary has referred to. I cannot read that into the provision at all. It appears on the face of it that the Electoral Commissioner does not have any discretion, if the indiscretion is a failure to lodge one of these new annual returns, keeping in mind that such things do not exist; we are inventing them for the first time now with the clause that has just been passed, which is new section 62KA. I wonder whether, in those circumstances, the government might pause on this particular clause to consider that. To insert new subsection (2A) in the middle of new section 62L, sandwiched in between what previously was a discretion to cancel, and then a series of provisions that qualified how that discretionary cancellation was to occur, and sandwiched in between that a mandatory provision without any discretion, does appear on the face of it to warrant further consideration. That is probably the most charitable way that I can explain it. I am not suggesting for a moment that it is beyond the remit of the government to determine that it should be a strict liability. I am not our spokesperson for this, but I can understand how the government might come to the view that if the secretary of a political party does not comply by 30 June on one of these matters, the registration will automatically be cancelled. However, if that is the government's policy position and if that is what it expects of the Electoral Commissioner, the government has a duty to say so and not confuse people now with this new provision that says not to worry about it too much because even though the legislation says "must" and there will be no test of reasonable satisfaction, the government does not think parties will need to worry about it because the Electoral Commission will give them 14 days' notice and the parties will be able to plead acts of God, espionage or some kind of data breach or data malfunction and so forth, and they will be all right because so long as it is done a few weeks later, the Electoral Commissioner will let them off the hook. If that is the way it is to be interpreted, we should say so now.

I think the simple solution to all this is to revert back to the original language, which was "may". It is not clear to me why we now need to insert "must" at section 62L and proposed section 62L(2A), but if the government is adamant that it must be "must", let us make that clear and not confuse anybody with these other provisions.

Hon MATTHEW SWINBOURN: As the member knows, the section should be read in its entirety as a matter of construction. We say that although there is tension between proposed section 62L(2A) and sections 62L(3) and (4), the intention is that they be read together so that it will continue to work. Sections 62L(3) and (4) are not qualified in any way. They are not qualified by saying that they apply to only section 62L(2), so we would say that those sections go together. We also say that the plain words of sections 62L(3) and (4) have the effect of the draft. This is obviously for *Hansard* and the record for anyone seeking the interpretation of the policy intention of the government here: it will continue to act by providing some discretion to the commissioner to do that matter.

Hon NICK GOIRAN: I respect that, parliamentary secretary. The position of the government is very clear. According to *Hansard*, the discretion exists for the Electoral Commissioner. If that is the position, why do we not just amend this to say "may" rather than "must"? Then there would be absolutely no confusion. The parliamentary secretary has just told us tonight that there is discretion. I note, albeit in the uncorrected proof from the other place, that what the parliamentary secretary has said tonight is completely consistent with what the Attorney General said in the other place in his capacity as Minister for Electoral Affairs. He was asked these types of questions by the Leader of the Opposition. She said, "Will it take discretion away?" Sorry, I will rephrase that. Hon Mia Davies asked Hon John Quigley —

> Will it take discretion away from the Electoral Commissioner?

He responded and said, "Correct." In actual fact, when I said that what the parliamentary secretary said is entirely consistent with what the Minister for Electoral Affairs said in the other place, it is the exact opposite. He said that the discretion will be taken away—clear words. I repeat —

> **Ms M.J. DAVIES**: Will it take discretion away from the Electoral Commissioner?
>
> **Mr J.R. QUIGLEY**: Correct.

It will take away the discretion. I have to say that on a plain reading of the text here, that is what we have been saying; that appears to be the case. Now there is an indication that there will be discretion. It will not be helpful for statutory interpretation to have one version of interpretation coming from the other chamber and a different version coming from here. Once again, I put to the government that this is probably a good time to pause on this particular clause. There are a number of other clauses to get through. I think we are up to clause 40. There would be nothing wrong with deferring consideration of clause 40. Let us get this right. At the moment, the Attorney General is saying one thing in one chamber and his hardworking representative in this chamber is saying a different thing. People will be completely confused. The Electoral Commissioner and the parliamentary and political parties will be confused. There is either discretion or there is not. Whatever the position is, I think we can safely say that the government will get the position it wants, but let us make it abundantly clear. I see no good reason why we cannot pause on this clause and consider the other matters.

Hon MATTHEW SWINBOURN: I think I am going to have to unravel this, member. I thank the member for bringing to my attention the *Hansard* of the minister in the other place. The member is correct that the minister could not have been more precise in his terms. He has made it very clear that the discretion of the Electoral Commissioner has been taken away with this provision. I think we were getting perhaps confused or at cross-purposes, in our defence, because of the circumstance in which, for example, under proposed section 62L(2A) the commissioner must still go through the provisions of those other areas to satisfy themselves. When a political party says it submitted it and provides proof of sending it by registered post but the Electoral Commissioner has not received it because it has been lost somewhere in the mail, it has complied with the requirements of the law and, therefore, its objection is that there is no justification for the commissioner to exercise their mandatory power under proposed section 62L(2A). I think the path that we followed for some 15 minutes or so prior to that, I was wrong. The Attorney General is correct: the discretion of the Electoral Commissioner in relation to that is removed.

Hon NICK GOIRAN: To be clear then, if a political party provides its annual return on 1 July, its registration will be cancelled.

Hon MATTHEW SWINBOURN: In the most simplistic terms, yes, member.

Clause put and passed.

Clause 41: Section 62Q amended —

Hon MARTIN ALDRIDGE: I want to ask whether the government had contemplated the penalties contained within section 62Q. This provision is titled "Offences relating to information" and says —

> (1) A person must not in an application under section 62E or 62J, 62K, in a return under section 62KA, or in response to a request under section 62P, make a statement or provide information that the person knows to be false or misleading.
>
> Penalty: $1 500.
>
> (2) A person to whom a request is made under section 62P must comply with the request.
>
> Penalty: $1 500.

Given that we have lifted the fee for registration of a party from zero dollars to $2 000, what is the relevance of $1 500 as a penalty? Given it looks like it was inserted into the Electoral Act some 20 years ago, did the government consider the relevance of that penalty acting as a deterrent for knowingly providing false or misleading information to the Electoral Commission?

Hon MATTHEW SWINBOURN: I suppose in one sense, no, but in another, yes. We did not change this because it is in the context that we have indicated that we wanted to do a broader review of the Electoral Act in its entirety. The member will note that preceding section 62O, for example, also has a penalty of $1 500 for a false representation as to a registration offence. The changes that were required in relation to the other matters that we are dealing with in the bill, rather than dealing with what would be the issue of an appropriate penalty. It gives rise to consistencies with other provisions and how we would deal with that throughout the rest of the bill. As I say, those issues will come under active consideration following the passage of this bill.

Hon NICK GOIRAN: Penalties have never before been associated with section 62K and/or information to be provided under section 62K. This bill will not amend section 62K in any way—not even a word. Why will we bring in 62K at this point in respect of penalties under section 62Q?

Hon MATTHEW SWINBOURN: I am advised that the original drafting that refers to section 62J was a drafting error from way back and so the original provision should have referred to section 62K all along. PCO has picked that up and this will correct that.

Hon NICK GOIRAN: On what basis do we know that, because that is not said at all in the explanatory memorandum?

Hon MATTHEW SWINBOURN: PCO raised it with the ministerial office and we concede it should have been in the EM for the exact reason the member has just raised; we probably would not be having this line of questioning regarding this point.

Clause put and passed.

Clause 42: Section 64 amended —

Hon TJORN SIBMA: While we are going through a process of disclosure and admitting to errors and mistakes and oversights, I would like to confess to some oversights, too. I initially advised the parliamentary secretary, and it was done with the best intention, but it was in error; I overlooked in the course of the second reading speech and clause 1 contributions, issues identified by Hon Nick Goiran at clauses 42, 52, 57, 64, 84 and 92. That is only

six clauses in addition to the ones that I previously identified. There is not that much in the sum total of clauses that we have identified that we had some interest in. That was an error on my behalf so I did not read *Hansard* nearly closely enough. I add that as we are going through the mea culpa process.

Hon NICK GOIRAN: He is a very kind man, Hon Tjorn Sibma. I thank my colleague.

Parliamentary secretary, clause 42 was one the parliamentary secretary identified when we were discussing clause 1 that was subject to specific consultation with the Electoral Commissioner. Did he raise any concerns?

Hon MATTHEW SWINBOURN: No, member, I think it would be best described that the interactions with the commissioner on the clause were of a general nature. No issue was raised with its drafting or effect.

Hon NICK GOIRAN: Help me understand this, because when we discussed it at clause 1, the parliamentary secretary identified a series of clauses—this was one of them—that were subject to specific consultation. If nothing was raised, why did it appear in the list? That is not clear to me.

Hon MATTHEW SWINBOURN: We were being as frank and full as we could be about the level of engagement we had with the commissioner. Hon Nick Goiran previously asked about those clauses that were subject to discussions or consultations. I think I gave descriptions before about the ongoing nature of that. There were discussions about some of the clauses. I can tell Hon Nick Goiran what the discussion was with the Electoral Commissioner. He pointed out that the timing of the dissolution of the Assembly affects the election date. If dissolution occurs after 1 November, a writ is issued on the first Wednesday of February and a general election occurs on the second Saturday in March. The issue of a writ prior to 1 November will trigger a different process under sections 71(3) and 64(1) of the Electoral Act 1907, and 26 July—those are the notes I had before. They are of a general nature. It was not, "This is a bad clause. I don't support it. Why are you doing it?", and all that sort of stuff.

Clause put and passed.

Clauses 43 and 44 put and passed.

Clause 45: Section75 replaced —

Hon TJORN SIBMA: Clause 45 involves the deletion of section 75 of the Electoral Act 1907 and the insertion of new words that effectively redefine what it means for the Electoral Commissioner to advertise. I will read the advice as it appears on page 17 of the explanatory memorandum. It is also repeated for a couple of subsequent clauses. It states —

> **replaces s. 75** to provide that **advertise** means to advertise on the Commission website and in any other way the Electoral Commissioner considers appropriate. This is included because due to declining delivery rates the West Australian newspaper can no longer be described as circulating generally in the State.

At that point, I want to ascertain: on what basis has the government made the quantitative assessment that *The West Australian*, the newspaper considered the paper of record in this jurisdiction, can no longer be described as circulating generally in the state?

Hon MATTHEW SWINBOURN: I think it is notorious, member, that the physical copy of *The West Australian* just does not get around as much as it used to. There are obviously online versions of it, but people do not tend to look at—this is anecdotal to some degree—the public notices in the online version, particularly if they are using the website rather than an online version of the physical paper. I do not know whether Hon Tjorn Sibma has *The West Australian* app and can download the paper as it would appear if he were holding it in his hands—largely anyway—but it does not have that reach. This arose at a number of points throughout the bill. It was originally raised with the Parliamentary Counsel's Office. It is the notorious issue of the way that government notices come across. It was raised by PCO, but the commissioner raised this as an issue. He obviously has firsthand experience of using *The West Australian* as a form of notice. The proposed new provisions do not prohibit the commissioner from using and continuing to use *The West Australian*—I suggest that he will probably continue to do that—but this will give him far greater flexibility to get the message out as far and wide as possible.

Hon TJORN SIBMA: Parliamentary secretary, I think we can form realistic views about consumer preferences when it comes to the consumption of media—we do not need to establish new ground there—but there was the possibility for the government to do it in a slightly more diplomatic fashion than appears and is repeated in the explanatory memorandum. I only make the point because an ex-colleague of mine made similar observations and was castigated and chased down by that paper and now it seems to be the position of record that the government adopts —

Hon Dan Caddy: He went a bit further.

Hon TJORN SIBMA: The government has gone a lot further by including it in its explanatory memorandum to a government bill, member. I hope it is not a pre-emptive death notice. I do not think I can let that pass without

acknowledging that the government's formal position is that *The West Australian* can no longer be described as circulating generally in the state.

Clause put and passed.

Clause 46: Section 76 amended —

Hon NICK GOIRAN: When we considered clause 1, the parliamentary secretary identified this clause as another of the clauses that was the subject of specific consultation between the government and the Electoral Commissioner. Were any concerns raised? If so, does this clause address those concerns; and, if not, do they still remain?

Hon MATTHEW SWINBOURN: The commissioner did not have concerns with the drafting or the proposed amendments; rather, the amendments themselves, in part, were at his suggestion in terms of the discussion we just had, when Hon Nick Goiran was out on urgent parliamentary business, about the consequences of *The West Australian* not being as widely circulated, noting the previous comments of Hon Tjorn Sibma about the potential political nature of that comment. It comes back to the idea of the printed version rather than its other reach. If members believe the paper's publicity, it has never had a greater reach than it currently has. All that aside, the Electoral Commissioner did not have any particular issues with the clause; in fact, as I said, the changes are consistent with what he was asking for.

Clause put and passed.

Clause 47: Section 78 amended —

Hon TJORN SIBMA: I have a couple of questions. I will be guided again by the EM because it seems to provide some rich content on occasion, as previous clauses have demonstrated. I want to get a sense of the drafting provisions. Nominations must be in an approved form. I do not know whether this is the insertion of another form or a continuation of work on approved forms yet to be designed and approved by the Electoral Commissioner. Can the parliamentary secretary confirm, specifically, where that process is up to?

Hon MATTHEW SWINBOURN: There is an existing form. If the member looks at the blue bill, he will see that the words that are being deleted are "Nominations may be in an approved form". If we are talking about forms more generally and the discussion that we have had about how that has proceeded, it is caveated by the fact that there will be a larger path to other reforms and the commissioner will be looking at other avenues for how those forms will be received by him and produced and those sorts of things. I hope that is of assistance.

Hon TJORN SIBMA: Indeed, it is. My next question concerns the insertion of proposed new section 78(1)(c), which requires nominations for unendorsed candidates to be accompanied by declarations in support of the nomination in an approved form, completed and signed by at least 250 electors entitled to vote at the election. Proposed new section 78(4) states —

> If the nomination forms for 2 or more candidates are accompanied by a declaration completed and signed by the same elector, the elector cannot be relied on by any of those candidates for the purposes of subsection (1)(c).

That seems frankly fair enough, but I want to introduce a potential matter. This is nomination of an ungrouped candidate to contest a particular election. Would it be possible for an elector to, on one hand, endorse the nomination of one of these ungrouped candidates, but on the other hand to have previously been an individual whose support was sought for the purposes of the registration of another political party? Let us say, for the sake of argument, that on 30 June 2024 an individual is amongst a group of 500 people upon whom the XYZ micro-party relies to maintain its registration. Would it be possible for that individual to also support the nomination of an ungrouped candidate, a person who is not associated with the XYZ micro-party—to endorse the candidacy of someone else, who is effectively an electoral competitor, but is not necessarily referred to as one of the ungrouped nominations who effectively cancel each other out? I hope that is clear; I just wonder whether some of these issues have been countenanced, and what the answer to that kind of scenario might be.

Hon MATTHEW SWINBOURN: Let me try to understand what it is the member is saying. We have the 500 unique members who are, themselves, electors. We then have the 250 electors for the independent, non-party candidate. The question is: is there the possibility that they could overlap so that they are both performing the role as a unique member and as a unique elector? The answer to that is no, they cannot perform both those roles. The reference in proposed section 78(4) is to candidates, and "candidates" includes a candidate who is both an eligible political party candidate and a non-party or independent candidate, for want of a better word. That is what happens. As I say, the member is both an elector and a member, so they have that dual characteristic.

Hon TJORN SIBMA: I thank the parliamentary secretary. I must say that that interpretation does not leap out at me immediately. I think there is still considerable fuzziness around that matter and that focusing on that dimension

will not get us very far this evening. I want to ask a few more questions. There is a dimension of time criticality. We have talked about the ongoing registration of parties and that they need to be there within 12 months of the writs being issued in some degree that is predictable, but no such provision applies to an individual who goes out to seek 250 unique electors to support them as an Independent or as part of an ungrouped ticket, so they have a bit more flexibility with timing. However, that timing could potentially be a risk. It is a reasonable proposition that an individual who might seek to run for office as an endorsed candidate might in good faith rely upon the bona fides of each of the 250 or more individual electors who are prepared to support that individual's nomination. It is unlikely that an individual would have the means or capacity to establish the bona fides of those 250 people. The parliamentary secretary has earlier identified that party lists, as it were, are to be held confidentially by the Electoral Commissioner in the process of registration and the like. By what means would an individual who is purporting to run for a seat as an ungrouped candidate reasonably establish the bona fides of the 250 electors upon whom they rely? I forecast that there will be some scrutiny applied to any individual who signs off as endorsing an individual ungrouped candidate. What reasonable means of establishing bona fides or contesting an election might that ungrouped candidate pursue if their nomination is invalidated on the basis of one of their supporters being ineligible to support them? I am just trying to understand where the natural justice provisions lie. What recourse would they have if this issue arises and is not resolved before the roll of nominations closes after the writs are issued?

Hon MATTHEW SWINBOURN: After nominations, if someone is on the ballot paper, they are on the ballot paper—that is it. If there is a defect in that there is a crossover, they will be very lucky. Individual electors will have to make that declaration and we anticipate that the declaration will say that the person is not a unique—I do not think that word will be used—member for the purposes of a political party and they have not endorsed another political candidate for the upcoming election. If someone signs that knowing that they are a unique member or a unique elector, they will be making a false declaration, and that is an offence and there is a penalty associated with that. Of course, there will be an onus on the candidate to ensure that the people they are seeking to endorse them in fact have the bone fides to do that. It will fall on them to do that. In New South Wales, where a similar provision currently exists, the Electoral Commissioner provides guidance to candidates about how they can ensure that all those people—whatever the number is in New South Wales—are eligible. Our expectation is that the Western Australian Electoral Commissioner will provide similar guidance to candidates. I know that the commissioner is not about trying to knock out candidates. He will be as facilitative as he possibly can be with the candidates. He will find those who are completely hopeless and no matter how much he helps to facilitate them, they will never get up to the bar. That is the ambit here.

The member has pointed out a number of times that the quota to get elected will be 2.63 per cent. The reward will be quite significant for a candidate to get elected, and we think it is a reasonable balance between the seriousness of being elected to the Legislative Council and the effort required for a candidate to make sure that they—again, for want of a better term—tick the boxes to ensure that the people who are supporting them are eligible to do so. One of the more practical ways that the New South Wales Electoral Commissioner does it is to tell the candidates to have a little more than 250 so that they have a little bit of fat in there in case someone has done the wrong thing or was confused. It is so they are not so close to the line. I do not pretend that it is going to be easy for people to get 250 and I do not think it should be easy for them; they should have that degree of support.

Hon TJORN SIBMA: This issue might be dealt with in a subsequent clause; and, if so, I am happy to be guided by the parliamentary secretary. Is it the intention that the provisions in clause 47, which amends section 78, will apply to regulate independence or ungrouped candidates below the line or above the line? Is it for one or the other or both?

Hon Matthew Swinbourn: It is for both.

Hon TJORN SIBMA: On that basis, can I understand—there may not be logic; it might just be a number that was appealing and, if that is the case, it would be worthwhile identifying it—what particular resonance 250 electors will have vis-a-vis the 500 we have talked about for party registration, when parties and individuals might be effectively fishing from similar political pools? Is there a rationale for 250 electors; and, if so, what might that be?

Hon MATTHEW SWINBOURN: The ministerial expert committee recommended at least 200 people. That was its recommendation. New South Wales, surprisingly, given some of the other provisions there, has quite a low standard, at 25; South Australia has 250; and the Senate has 100. We were guided by the range that was in existence and the recommendation that was made. The other issue whereby we will have a whole-of-state electorate with 37 members is also a consideration for having a higher threshold. But there is no direct correlation between the 500 people for party registration and the 250 for Independents. I would hazard a guess that it would be an easy enough thing. If two like-minded Independents can get 250 independent people together to sign, they might want to consider forming a political party if it was more than a year out from the election, but that would be up to them. As I say, there is no direct correlation between those two things.

Hon MARTIN ALDRIDGE: I have some questions following on from the line of questioning of Hon Tjorn Sibma about the verification of these 250 electors to support a nomination in the circumstances anticipated under proposed section 78(1)(c), but I am taking a different approach to it—that is, the Electoral Commission's approach. Who knows how many candidates are going to nominate for this whole-of-state electorate. We know that there are 19 parties. Who knows how many Independent candidates are going to get together and seek to be a group and other things. Keeping in mind that the whole-of-state electorate will have one returning officer, I understand that every Assembly district returning officer will also act as a deputy returning officer for the whole-of-state electorate. If I am not mistaken, this is something that we went over last week. This is going to be quite an acute period of activity. The writs will have been issued and the nominations will have closed and we will know who these people are and they will be about to be put on the ballot paper. There will be a very short period for the Electoral Commission to verify. At the moment the early voting period is quite long. As I recall, at the last election, nominations closed on the Friday afternoon and voting commenced on the Monday, or maybe it was a couple of days later on the Tuesday or the Wednesday, but it was a very short period.

Let us think about the job of the returning officer for the whole-of-state electorate. One person is going to have to verify all the nominations, conduct the ballot draw and arrange the ballot paper. They are going to be doing all these things, I assume with some support, but one of the things that they are going to have to do is to some extent establish the legitimacy of these 250 electors. It may not be verifying that every single one of them is legitimate, but at least for the purposes that the parliamentary secretary has outlined to Hon Tjorn Sibma, it would need to be established that two Independent candidates were not relying on the same electors. Indeed, it would need to be established that the 250 electors an Independent candidate was relying upon were not being relied upon to support the ongoing registration of a political party, because I think the parliamentary secretary just said that that will be prohibited. That is before we even get to the question of whether these 250 people are legitimate. Earlier, I asked a question about whether an approved form could be electronic, and I think the parliamentary secretary answered "not currently". All of this compounds the problem, which is that even if there is a small number, 10 or 20, of Independent candidates nominating on Friday afternoon in accordance with the writ, there will be a big, long list of handwritten names of 250, or 350 if they take the advice to have buffer electors. That verification process, even at its most basic, will be extraordinarily onerous. To what extent has the Electoral Commission raised concerns with its ability to comply with these provisions? What resources will be provided, particularly to the returning officer, for the whole-of-state electorate to comply with amended section 78?

Hon MATTHEW SWINBOURN: The Electoral Commissioner has not raised any specific issues with us about this. He has not said he will not be able to manage it or that there is a problem with it. If he was going to raise it, the matter was before him. In general terms, I understand that prior to an election year the Electoral Commission makes a budget submission for the resources the Electoral Commissioner feels are necessary to conduct the next election. There will be a discussion with Treasury. If he forms the view that he needs additional resources to manage this, he will obviously seek it from the government on those particular points. He has previously said he is able to absorb the auditing requirements for party registrations into his existing budgets, but obviously contemplating the quite legitimate things the member raised as last-gasp things. He will have to make an assessment about what he thinks the impact on his resources will be. As the member knows, leading into an election the commissioner literally employs thousands of people, and part of that will be for the burden that this provision will create.

Hon MARTIN ALDRIDGE: I do not think we are going to be able to go much further than this, but obviously the nomination process at the moment is relatively simple. It is obviously a process we all want to get right. We have to meet the requirements, we have to be on the electoral roll and as long as we have paid our money and put our form in, we are set to go. This will bring quite a different element that cannot be managed outside of election periods. For the 19 registered political parties, the ongoing registration requirement will resolve this outside the heat of an election, but for any number of Independent candidates contesting the election, this will put a significant burden—not to understate it—on the Electoral Commission, not to mention the candidates themselves. My concern is that that burden may be so significant that the Electoral Commission does not verify, cross-reference, data match or sample. That has to be done within a few days, which is really the time frame it has from the close of nominations to ballots being taken. I guess at the next election we will see to what extent the Electoral Commissioner is able to interrogate and verify candidates nominating consistent with this provision and whether they were practically able to comply with what was anticipated in this clause.

Hon NICK GOIRAN: How does clause 47 give the Electoral Commissioner the ability to design relevant forms?

Hon MATTHEW SWINBOURN: I do not think the clause itself gives the commissioner the power. Section 4 of the Electoral Act describes what an approved form is. It states —

> ***approved form*** means a form that —
>
> (a) is approved by the Electoral Commissioner; and

(b) has been published by the Electoral Commissioner by any means (including on the Commission website) that the Electoral Commissioner thinks fit;

I think the member's question was: what gives the power to the Electoral Commissioner?

Hon NICK GOIRAN: At page 17, the explanatory memorandum about clause 47 indicates that it amends section 78. One of the things the EM says this clause does is give the Electoral Commissioner the ability to design relevant forms, but that is not apparent when one reads the proposed amendment to section 78.

Hon MATTHEW SWINBOURN: When it is read in conjunction with section 4, which describes what an approved form is, we can say that a nomination must be in an approved form, an approved form being a form that is approved by the Electoral Commissioner. I think that really gives effect to the capacity of the Electoral Commissioner to design and decide what is in the approved form.

Hon NICK GOIRAN: Is it not the case that the Electoral Commissioner already has the power to design relevant forms?

Hon MATTHEW SWINBOURN: I think the member might be reading from the explanatory memorandum. It states that this amendment —

> … modernises the text, ensures consistency in nomination documents and gives the Electoral Commissioner ability to design relevant forms;

I think that is just a general description of what is happening. Section 78(1) already provides that nominations may be in an approved form. I think it is just a redrafting of that section. I do not think it is about achieving anything more than that. The explanatory memorandum is just giving a general description of that. I do not know that it would elevate it as high as what the member seems to be doing, to claim that this is the only source of power under which the Electoral Commissioner can design relevant forms.

Hon NICK GOIRAN: This is a comment, not a question. The explanatory memorandum states that clause 47 will do three things. First, it will modernise the text. That is not in dispute. Secondly, it will ensure consistency in nomination documents. Why does it say that? It is because from now on, everyone must nominate in the approved form, whereas previously they might have nominated in the approved form. It will do the first two things—modernise the text and ensure consistency in nomination documents. The EM then says that it will give the Electoral Commissioner the ability to design relevant forms. It is just simply not doing that. That is the point that is being made.

Clause put and passed.

Clause 48: Section 80 amended

Hon NICK GOIRAN: This is one of the clauses that the parliamentary secretary identified in the debate on clause 1 was subject to specific consultation with the Electoral Commissioner. He did not raise any concerns?

Hon MATTHEW SWINBOURN: The Electoral Commissioner did not take any issue with the drafting of the clause in terms of what was being proposed. It would be fair to describe the contact between him and the minister's office as just discussing some of the more general elements of other provisions of the section that have not changed at all.

Hon NICK GOIRAN: The basis for this particular provision did not come from the Electoral Commissioner; this was raised with him by the minister's office. Where did these amendments originate from?

Hon MATTHEW SWINBOURN: It essentially came from Parliamentary Counsel's Office and the desire to draft these laws with greater clarity. That is where that arose. In terms of the Electoral Commissioner, he saw draft versions of the bill, so he would have seen all the provisions. As I say, the discussions with him related to provisions that were not changed at all. For the sake of clarity, member, it did not come from the Electoral Commissioner; it came from Parliamentary Counsel's Office.

Clause put and passed.

The DEPUTY CHAIR (Hon Jackie Jarvis): Members of the opposition, the lead speaker did give a list of clauses earlier. Am I still fit to be guided by that?

Hon TJORN SIBMA: That is a reasonable guide.

Clause 49: Section 81 amended —

Hon TJORN SIBMA: This clause seeks to insert new requirements for deposits. My question pertains to each of the figures identified there, other than those concerning the deposit required for districts, which presumably refers specifically to Legislative Assembly seats. How were the figures of $2 000 and $10 000 designed, and how do they correlate with the operation of deposits in effect in other Australian jurisdictions?

Hon MATTHEW SWINBOURN: The MEC did make a recommendation to increase the fee for the Council. I think its suggestion—it was not a recommendation; it was a suggestion—was a nomination fee of $1 000. However, we

were guided by what happens in other jurisdictions. The nomination fee in New South Wales is $500; in South Australia, it is $3 000; and for the Senate, it is currently $2 000. That gave us some guidance. New South Wales also provides a capping provision, but given that its fee is less than $2 000, at only $500, I do not know what the cap is. It does have a cap, and that was considered appropriate by way of example from other jurisdictions.

Hon TJORN SIBMA: Is the $2 000 deposit a requirement for the nomination of a party list, or of each individual who is part of a party list? I want to determine that.

Hon MATTHEW SWINBOURN: It is per candidate, member. Obviously, once a party reaches the cap, it is $10 000. In the case of our party, there might be 25 or 30 candidates, and the maximum amount would still be $10 000.

Clause put and passed.

Clause 50: Section 82 amended —

Hon TJORN SIBMA: What is proposed here is the deletion of section 82(2) and the insertion of proposed subsection (2), which states —

> The withdrawal of the nomination of a candidate included in a group has no effect unless each other candidate included in the group has consented in writing to the withdrawal.

Without being unkind, it seems to me to fail the law of human dynamics, potentially. Can I get an understanding of the rationale for the inclusion of this proposed subsection? I can only presume that this relates to grouped Independents, but it does not refer to registered political parties such as the parliamentary secretary's party or mine or the National Party or the Greens, for example. To whom does it apply, specifically? What rationale is there for it? What ill is it designed to remedy or avoid?

Hon MATTHEW SWINBOURN: It applies to all candidates, but there is an existing requirement in the act. It is not a new requirement. The provisions here will strengthen the form of communication so that it must be put in writing rather given orally or things like that, which could lead to further disputation. The withdrawal of the nomination of a candidate included in a group has no effect unless each other candidate in the group has consented in writing to the withdrawal. As I said, it is not creating a new provision. I have been told that it will tighten it up.

Hon TJORN SIBMA: On the basis that that advice is to be considered properly, it is not a creation of a new obligation; it is a redrafting or clarification of an existing obligation. Has it ever been invoked? How would that process work? We are not dealing in the realm of unlikely hypotheticals. We know the kinds of colleagues we sometimes interact with. For argument's sake, if at the 2025 election, the government's party endorses its ticket of Labor candidates for the upper house and one of them decides that they want to withdraw their candidacy, will they be obligated to seek the consent of every individual listed on that ticket or will they be advised to seek the consent of a majority of their colleagues on that ticket? How will that information be conveyed and to whom?

Hon MATTHEW SWINBOURN: If the member has the blue bill before him, he can look at what will be deleted at section 82(2), which states —

> Where 2 or more candidates for an election in a region are included in a group, a candidate included in the group shall not, under subsection (1), withdraw his nomination except with the consent of the other or others.

All we are proposing with the redrafting is to place in the obligation that the consent must be in writing. We will not have a situation whereby consent can be disputed, because each candidate will have to give the consent in writing. There is obviously a significant consequence for a group of candidates when one candidate withdraws in that manner. If the others do not consent, the candidate will not get to withdraw. I think that is appropriate. If a candidate has entered into a bargain with everyone else that they will go into an election and on a whim the candidate decides to withdraw, it can fundamentally affect the chances of the other group candidates being elected. That is what we are trying to do here. That is where it comes from. As I said, if the member looks at the provision that will be replaced, he will see that all it does is put in place some structure and certainty and consequences around the decision that the consent must be put in writing, and we will not end up with a he-said, she-said type of situation.

Hon TJORN SIBMA: That is fair, parliamentary secretary, and I understand the answer. One of my questions was about the provision that is essentially struck through in the blue bill, which states —

> Where 2 or more candidates for an election in a region are included in a group, a candidate included in the group shall not, under subsection (1), withdraw —

It is antiquated, gender-specific language —

> his nomination except with the consent of the other or others.

My question is: has that ever been invoked? Has there been a circumstance in recent Western Australian political history when this issue has transpired?

Hon MATTHEW SWINBOURN: We do not know, member.

Hon TJORN SIBMA: I thank the parliamentary secretary. To some degree, I would have preferred that these issues were kept behind the closed doors of the Standing Committee on Legislation so that I would not have to ask them. At what point will this obligation be created? Presumably, this would happen post the end of the nomination rolls—I forget the actual stage—being concluded. Will the obligation be created at that point or at some other point? I will put to the parliamentary secretary another potential hypothetical scenario of an individual who wakes up on polling day and, for whatever family reason or some other determination, says, "Do you know what? My heart's not in this." What obligation will be put on that individual to advise the other candidates in writing? Will the obligation be to advise every other candidate or, for example, in a major party, will the obligation be to write to the state secretary of WA Labor and say, "I seek your consent to this"? I want to understand how the process will work. To whom will that information be conveyed?

Hon MATTHEW SWINBOURN: Obviously, nominations open. We have this process. We have a group that goes together, and then the nominations close. Once the nominations close, someone cannot effectively remove themselves from the ballot paper because the ballot papers are printed. Of course, if somebody was then elected, they could choose not to take their seat. That is possible, and that would create consequences. Effectively, it is up to the time of the close of nominations.

Hon TJORN SIBMA: Can I clarify the time line of decision-making? What period does this clause really operate under? It is not from the issuing of the writs. It is effectively from the receipt of nominations and the printing of the ballot paper. I just want to understand what time this provision applies to now it becomes a bit more predictable with the agreement to run regular four-yearly general elections.

Hon MATTHEW SWINBOURN: We have been focusing on section 82(2), but section 82(1) effectively provides —

> Subject to subsection (2), a candidate may withdraw his nomination by lodging with the returning officer notice in writing of withdrawal of his nomination at any time before the hour of nomination, and thereupon the nomination shall be cancelled and the deposit lodged with the nomination shall be forfeited to the Crown.

Effectively, that is the period from the time of nomination until—I think this is a technical term; let me get it right—the hour of nomination. The hour of nomination is dealt with at section 85(2) —

> The hour of nomination for an election is 12 noon on the last day for the nomination of candidates.

Hon TJORN SIBMA: That kind of specific guidance is exemplary. That is what we are here for.

Can I understand the introduction of the concept of consent by agreement? What about in the circumstances of an arrangement whereby consent is not given to the withdrawal of candidates within a group? Obviously, the individual concerned has indicated a desire not to be a political participant or sit, but what is the test? Is it the notice in writing or the issue of consent given to that express wish? Obviously, we appreciate the larger the group, the more difficult it becomes.

Hon MATTHEW SWINBOURN: The issue here is consent and the consent of the other candidates. If the other candidates do not provide consent, the withdrawal of nomination is of no effect. That is essentially what it is. As I said to the member before, it really comes back to the consequence of that person acting in that way for everyone else, particularly if they are not acting in good faith. There might be some circumstances in which everyone agrees, but the consequence is the group claim falls over, and that is obviously quite a serious thing.

Deputy Chair, can I ask that you leave the chair until the ringing of the bells.

The DEPUTY CHAIR (Hon Jackie Jarvis): Before we break briefly, I have a brief statement regarding services available tonight. From 11.00 pm, the lounges will close and a coffee, tea and biscuit trolley will be placed in the Legislative Council members' lounge. Hansard reporters will no longer be in the chamber should the house sit past 2.00 am. Recording will continue until the house rises with transcription starting on Wednesday. Security escorts to the members' car park will be available once the house rises. I will leave the chair until the ringing of the bells.

Sitting suspended from 10.03 to 10.19 pm

The DEPUTY CHAIR (Hon James Hayward): Hon Tjorn Sibma.

Hon TJORN SIBMA: At this late hour calling my name is quite a feat!

We are still at clause 50. My question before we move off and officially mark the more than halfway mark of this bill in terms of the number of clauses passed is the issue of consent. The parliamentary secretary just finished providing

an answer but I am still concerned about the necessity of the inclusion of a consensual agreement presumably on behalf of every member of a group to one member of that group withdrawing their candidacy. I understand the intention is to impose a bit of self-discipline in the management of parties and their vetting of candidates, but I can easily foresee an eventuality in which consent is not given and the status of the candidate is called into question in an unfortunate way and at a time when there would be uncertainty in voters' minds. Are there provisions in corresponding jurisdictions that necessitate consensus being reached to authorise somebody within a group to withdraw their candidacy? If the parliamentary secretary can point me to something that exists and is well tested in another Australian jurisdiction, we can move beyond this clause with a degree of some comfort, but otherwise I will reserve my judgement.

Hon MATTHEW SWINBOURN: I do not have an answer for the member about other jurisdictions because we have not changed the substantive effect of the original provisions. All we have done is provide for the requirement for consent to be in writing. All I can suggest in terms of making progress is that, as I have indicated a number of times, following the passage of this bill there will be a broader look at the provisions of the Electoral Act and if this matter activates the member's mind in terms of it being an issue, I encourage him to make submissions through whatever process is available at the time that this issue is worthy of dealing with.

Hon TJORN SIBMA: This is my final question on this clause. Will this necessitate the crafting of any new regulations? During earlier stages of the bill's contemplation, the parliamentary secretary indicated the need for the Electoral Commissioner to draft regulations. Is it possible at some stage—not tonight—to provide an indication of the regulatory workload that will emanate from the passage of this bill and an indication of when the regulations might be drafted?

Hon MATTHEW SWINBOURN: The member has asked a very broad question about the bill rather than this particular clause. There is no regulation-making power under this clause or relating to this clause. If the member is asking about the progress of the regulation-making power, there will be avenues for him to pursue that in questions on notice and questions without notice of which some notice is given. Obviously, once the commissioner appears before estimates and annual report hearings, the member will be able to deal with it there.

Hon NICK GOIRAN: Parliamentary secretary, what was the episode of consent being provided, but not in writing, that warranted the so-called strengthening of these provisions?

Hon MATTHEW SWINBOURN: I do not think some sort of precipitating factual event gave rise to this. It is simply looking at the provisions and making a firmer commitment to the requirement to do it in writing. It is not changing the whole nature of the provision or anything like that. It will simply raise the level so there is more certainty and reliable evidence to indicate that everybody consented.

Hon NICK GOIRAN: There was no episode to justify this change. It is not a matter that appears, as I understand it, in the ministerial expert committee's purported report, which was provided on 28 June. It has not been drawn to the attention of the Electoral Commissioner as a point of concern and it was not subject to specific consultation because it is not in the list of clauses that the parliamentary secretary kindly provided to me at clause 1. I am trying to go through all the different scenarios. Is this one of those that parliamentary counsel has drawn to the attention of the minister's office? The other scenario that played out earlier was that there were matters that the minister himself determined. Which one is this?

Hon MATTHEW SWINBOURN: It would be fair to say that this issue arose through the parliamentary drafting office, particularly given that it was redrafting section 80(4) and turning its mind to those provisions. It obviously turned its mind to the requirement for there to be higher evidence in relation to the withdrawal of a candidate and the consent of others.

Hon NICK GOIRAN: It is not clear to me why the government agreed to this change. Nothing came from the ministerial expert committee. The Electoral Commissioner did not raise it. Parliamentary counsel apparently drew this to the attention of the government, yet the government is not aware of any circumstance in which the provision has been invoked, let alone that some mischief of consent was provided, but not in writing, that created some kind of dispute. It seems odd, particularly when one considers the remarks made by the minister in the other place when other seemingly far more meritorious matters were drawn to his attention. It is not at all clear why this provision is necessary. That said, I accept that what is provided at proposed new section 82(2) is a substitution of what currently exists in the Electoral Act 1907. The language is different and, if you like, more elegant, but as the parliamentary secretary has described it, it inserts the provision of consent being provided in writing. Further to the question that was asked by my honourable colleague, if a candidate wishes to withdraw and consent is not provided in writing, as will be required under proposed new section 82(2), will it simply be the case that electors will be voting for a person in a group who actually does not want to participate as a candidate any longer, but is compelled to continue to participate due to the lack of consent of the other group members who will not agree to his or her withdrawal?

Hon MATTHEW SWINBOURN: Yes, member, but that is the existing law. That is what currently applies.

Hon NICK GOIRAN: I agree that that is the existing law, that the language has been modernised and that the provision, albeit for reasons other than that the Parliamentary Counsel's Office decided to insert the provision for consent to be in writing, is otherwise the same as it is at the moment. The point is that the government has decided to take the advice of the PCO and strengthen this clause to make sure that the consent must be provided in writing. In other words, it makes it even more difficult for a person to withdraw than it is under the current provision. That is the so-called strengthening of that provision, but no-one seems to have turned their mind to whether it is actually appropriate. It is one thing to say, "Well, PCO told us that it should be in writing, and we agreed to that; we think it would be better. In fact, when we have to defend it, we will justify strengthening the clause", but no-one has necessarily thought of the consequences. Is the provision a good one in the first place? I would have thought that was the most important part of the consideration process. Why have consent in writing in the first place? The parliamentary secretary indicated that it is very important because maybe some deals have been struck, and so forth. Is it not a higher consideration than any so-called deals that have been struck between group members that voters are actually voting for a person they know wants to participate in the process? I would have thought that the voluntary nature of the participation of the candidate putting themselves forward as a candidate for Parliament should be a higher consideration than whether some group members who may not even be members of Parliament have decided to provide their consent in writing to the withdrawal. The parliamentary secretary said in response to my colleague that there may be some bad faith. I think he said either "bad faith" or "good faith" in respect of this issue. But that concept might also apply to people not being willing to provide their consent in writing. There might be a group of candidates—particularly under the new provisions for the whole-of-state electorate, there could be 37 people in a group; someone might think that they will do so well at the election that they are going to take all the seats, so they have a group of 37—and one of them is actually participating in bad faith and will not allow one of the other people in the group to withdraw. That seems to me to be something that is worthy of some consideration, and it is not apparent that the government has given any consideration to that whatsoever. All it has decided to consider is whether the consent is in writing or not.

Hon MATTHEW SWINBOURN: I know what the member is saying. I do not have anything further to add in relation to this provision.

Clause put and passed.

Clauses 51 to 53 put and passed.

Clause 54: Section 88 amended —

Hon NICK GOIRAN: At clause 1 the parliamentary secretary identified clause 54, which seeks to amend section 88 of the Electoral Act, as one of the seven clauses the genesis of which did not arise from the recommendations of the Ministerial Expert Committee on Electoral Reform. That being so, where did it arise from?

Hon MATTHEW SWINBOURN: These provisions arise as a consequence of going to a whole-of-state electorate and having the potential for a situation in which the death of a candidate would necessitate re-running the entire election for the Legislative Council. Obviously, when we had six regions with six members, if that happened in a region, although it would still be serious, it would not be as serious as having the entire Legislative Council election essentially fail as a result of the death of a candidate after nomination. The member is correct: it did not arise as a recommendation by the Ministerial Expert Committee on Electoral Reform, because it did not turn its mind to the death of candidates. However, it recommended to go to a whole-of-state electorate, and our adoption of that led us to deal with some of the consequential issues—identifying the consequences of the death of a candidate under the existing provisions, and moving away from them.

Hon NICK GOIRAN: Under proposed new section 88(1), there is reference to a Legislative Council election "where the relevant number is more than one". In a Legislative Council election, would there not always be more than one seat to be filled?

Hon MATTHEW SWINBOURN: I am advised that that is not necessarily the case. A single member election may occur when vacancy processes fail—for example, when there is no consenting candidate or the Electoral Commissioner deems it impractical to fill the position by a recount.

Hon NICK GOIRAN: That being so, what has that type of election got to do with the death of a candidate after nomination?

Hon MATTHEW SWINBOURN: The member asked what that has to do with the death of a candidate, but I am a little unsure. Proposed section 88(1) says —

> If, in a Council election where the relevant number is more than one, a candidate dies during the relevant period and the candidates remaining are not greater in number than the candidates required to be elected, the returning officer must declare the remaining candidates duly elected.

Proposed subsection (1) does not deal with an election in which there is only one candidate; it deals with a situation in which there is more than one candidate. It says, "If, in a Council election where the relevant number is more than one". It does not specifically deal with that other circumstance that the member was talking about in which there would be only one.

Hon NICK GOIRAN: Again, that being so, at all the elections that that would take place, other than when the relevant number is one and a candidate does not die and the relevant number of candidates remaining is not greater than the number of candidates required to be elected, would the outcome not be the same? In other words, why are we specifically looking at a situation in which a candidate dies? I would have thought that if the number of people running was the same as the number of available vacancies, the same outcome would occur. It would not necessarily be contingent upon whether a candidate died.

Hon MATTHEW SWINBOURN: I am struggling to understand what the member is trying to get at here, because proposed section 88(1) deals with the death of a candidate after nomination. I think he was asking: why do we not just have a provision that deals with any circumstance rather than specifically the death of a candidate? Does the member want to interject?

Hon Nick Goiran: I have another way of asking the question.

Hon MATTHEW SWINBOURN: Okay.

Hon NICK GOIRAN: Maybe the better way to ask this question is: are there other provisions in the Electoral Act 1907 whereby the returning officer must declare the remaining candidates duly elected, other than this death-of-a-candidate provision at proposed section 88(1)?

Hon MATTHEW SWINBOURN: The answer is yes, but does the member want us to provide him with those provisions or is he happy with the answer that yes, there are provisions? We are looking for them, but in the interests of making progress, if he does not require us to identify them to him —

Hon NICK GOIRAN: It is not necessary to find the specific provision if the parliamentary secretary is saying that it does exist elsewhere. I am seeking to establish that proposed section 88(1) is consistent with that other provision. It might be in proposed section 87(4).

Hon MATTHEW SWINBOURN: I think the member answered his own question, so yes, there is. Again, the advisers were of the view that there might be something else in the act, but we were just having trouble locating it. It is the same consistent approach.

Clause put and passed.

Clauses 55 and 56 put and passed.

Clause 57: Section 99A amended —

Hon NICK GOIRAN: Clause 57 will amend section 99A. The parliamentary secretary identified this as a clause that had been subject to specific consultation with the Electoral Commissioner. What did he have to say about this clause?

Hon MATTHEW SWINBOURN: In this instance, the interchange between the minister's office and the Electoral Commissioner was to seek clarification from the Electoral Commissioner about the effect of the clause itself. It was seeking what the Electoral Commissioner thought. The information is that the Electoral Commissioner discussed the effect of this provision. Essentially, it provides that absentee votes are available to electors; if a voter is assigned to a district on enrolment, they can cast a vote in person at any polling place outside the district. We were seeking clarification from the commissioner about his understanding of the effect of the clause.

Hon NICK GOIRAN: One of the things that is being deleted from section 99A is the reference to section 87(4). We were looking at section 87(4) a moment ago. Although section 87(4) of the Electoral Act 1907 was deleted when we passed the earlier clause, we also inserted substantially the same provision in return. It is the one that provides that a returning officer must declare the candidates duly elected. Given that the substitution at section 87(4) is essentially the same as what was there before, why are we deleting reference to it from section 99A(2)?

Hon MATTHEW SWINBOURN: It is essentially because section 87(4) is redundant. Absentee votes do not make any difference to the outcome because the number of candidates is the same as the number of vacancies, so effectively they can be filled by the fact that there is no need to count the vote or anything of that kind.

Hon NICK GOIRAN: Would that not have been the case at the moment anyway, because before this bill passes, section 87(4) reads —

Hon Matthew Swinbourn: Yes, it would have. It is the same now, so it is a correction in relation to that.

Hon NICK GOIRAN: So in other words, there should be no reference in section 99A(2) to section 87(4) at the moment, yet there is, so this is remedying that.

Hon MATTHEW SWINBOURN: My advice is, yes, that is why it has been deleted.

Clause put and passed.

Clauses 58 to 61 put and passed.

Clause 62: Section 113 amended —

Hon TJORN SIBMA: In the second reading speech, it was identified that the bill contains measures to ensure that the size of the ballot paper is manageable. It states —

> On the divided ballot paper used for Legislative Council elections in Western Australia, Independent candidates are grouped below the line in the same columns to prevent the ballot paper from stretching horizontally in an unwieldy fashion. The government recognises that a new quota of 2.63 per cent could lead to an increase in the number of candidates; therefore, it is critical that the size of the ballot paper is managed so as not to repeat the chaotic tablecloth ballot that occurred in New South Wales. Managing the size of the ballot paper includes recognition that … a square above the dividing line on the ballot … is a privilege.

My first question is: are the measures referred to in this bill to ensure the size of the ballot paper is manageable, and obviously that is a qualitative judgement, contained solely in clause 62 or are they addressed in other parts of the bill?

Hon MATTHEW SWINBOURN: There are other provisions that manage the size of the ballot paper. If we cast our minds back to section 62J, a range of things were listed that we had quite a lot of discussion about, and those things largely arose out of the ministerial expert committee recommendations and the consultations with the commissioner about technical matters to help limit the size of the ballot papers. Obviously, other factors, like increasing registration fees and those sorts things, are also designed to limit the number of people who might frivolously throw their hats in the ring to have a go, so there is a higher hurdle for them to cover.

Hon TJORN SIBMA: Could the parliamentary secretary describe in basic terms what new powers are being created for the Electoral Commissioner to use an appropriate approved form rather than an appropriate prescribed form? On the interpretation provided in the explanatory memorandum and from answers previously given, the Electoral Commissioner can determine what is approved rather than what is narrowly described as being an appropriate form. I want to understand whether that is correct: it is effectively a conferral of a discretionary power on the Electoral Commissioner. Is that correct?

Hon MATTHEW SWINBOURN: In this clause, there are only two changes—the inclusion of the word "approved" and the deletion of the word "prescribed". Previously, the word "prescribed" was used because it was by regulation, so there were the ballot paper regulations—I do not recall the exact title of the regulations—that prescribed all that stuff. There is greater flexibility, but if we cast ourselves forward a little bit to proposed section 113B, it provides for some of the matters that were largely in the regulations. They are now being put into the act itself rather than being dictated by regulation. The commissioner will have additional discretion to manage the size of the ballot paper than in previous times.

Hon TJORN SIBMA: At an earlier stage in proceedings, the parliamentary secretary indicated that clause 62 was among the clauses on which the minister's office directly corresponded with the Electoral Commissioner. Can I get an understanding of the precis of the advice provided by the Electoral Commissioner on this draft clause?

Hon MATTHEW SWINBOURN: The consultation with the commissioner on this one was that the commissioner wanted the provision to be amended to be an "approved form" rather than a "prescribed form" on the basis that it would give the commission greater flexibility to design its own form instead of being constrained by prescribed forms. Accordingly, the Electoral (Ballot Paper Forms) Regulations 1990 should be repealed by way of the bill. That is consistent with the commissioner's desire to remove excess prescription in the act. Ideally, the act should contain core principles, but leave the commissioner to sort out specific features to resolve the size of the ballot paper.

Hon TJORN SIBMA: In any of the correspondence with the Electoral Commissioner on this issue, was there any insight into the capacity to design an approved form and how a ballot paper might change markedly in presentational aspect, aside from its size? I read all of this and the issue, as it was very clearly put in the second reading speech, is about size. Is there a size limit or a design brief that the Electoral Commissioner is working to that would provide further insight into what a ballot paper might look like in 2025 onwards as compared with the most recent electoral experience?

Hon TJORN SIBMA: There was no design brief, other than the general policy position that we want the ballot paper to be as manageable as possible. The commissioner has indicated that this is feasible for him in terms of the flexibilities that he is seeking under the act. There are a number of factors, obviously, that must be included, such as the names of the candidates, and boxes and the like, but in terms of the actual function of it, it is within his discretion. One of the commissioner's roles is to ensure the maximum degree of participation by people. That is part of the commissioner's general functions. Therefore, I am sure that in any design of the paper, he would want to make sure that it was—this is a terrible phrase—as user-friendly as possible.

Clause put and passed.

Clause 63: Sections 113A and 113B replaced —

Hon TJORN SIBMA: I have some very quick questions and my colleagues will probably have some more. If I am to read this as a non-specialist, the purpose of clause 63 is to replace sections 113A and 113B and insert a new section 113B. The substantive policy outcome of this clause is to abolish group voting tickets and introduce a version of optional preferential voting in this jurisdiction. Is that the correct interpretation to draw as a policy outcome of this clause?

Hon MATTHEW SWINBOURN: I think that is a fair comment on the member's part. The policy here is the abolition of group voting tickets and the introduction of optional preferential voting.

Hon TJORN SIBMA: I have waited for this opportunity, because what I think has sometimes been lost in the course of this debate is that the position from which we have scrutinised this bill is not to assess the bill as lacking merit in certain facets. Frankly speaking, this is the most positive attribute of this bill. The government could have introduced a bill that was an expanded version of clause 63, with the intended ramifications, and such a bill would probably have received the unanimity of the house, or, if not the unanimity, a sizeable majority, for its passage. That was effectively the justification for this bill. One of the perverse things about the group voting ticket system that we have been running in this jurisdiction is that there were a couple of what some would call aberrant, or unanticipated—they were anticipated to some degree, but not necessarily predictable—outcomes. In terms of actually cleaning up the voting system and—I hate to invoke irresponsibly these kinds of religious illusions—effectively chasing the money changers out of the temple, which I think is a reasonable categorisation of the preference harvesting business model, this is an aspect of the bill that is to be commended. It is an attribute that meets our full support in its policy outcome. That is not to say that there will not be a few more questions from us on this clause, but I did not want this particular issue to be glossed over. I also did not want the version to be put out subsequent to the passage of the bill that the opposition was opposed to every facet of this bill. Indeed, our point is that this is a meritorious aspect, and probably one on which we could all agree, but the rest of the bill is fatally flawed. I will limit my contribution to that.

Hon MARTIN ALDRIDGE: I want to take this opportunity to ask about new clause 113B (6). It states —

> If before polling day in a Council election a candidate is declared by a court to be incapable of being elected at that election, the returning officer may take any action in relation to the printing of the ballot papers the returning officer considers necessary as a consequence of the declaration, including the following —
>
> (a) causing the ballot papers to be reprinted;
>
> (b) causing notations or marks to be made on the ballot papers;
>
> (c) again applying the provisions of section 87(6).

I think this is a re-creation of former section 113B(5), which has similar provisions. Has this power ever been exercised by a returning officer; and how would it be exercised? If a court makes a declaration for whatever reason—I am struggling to contemplate the circumstances in which this might occur in this narrow window, effectively from close of nominations to the close of voting—one would assume that the affected person, the candidate, would have some right of appeal against that decision. That right of appeal would be somewhat redundant if the returning officer took an action that he or she deemed appropriate, including removing a person from the ballot paper. Perhaps the parliamentary secretary could provide some advice on whether this provision has been used and the circumstances under which it might be used in the example I have just provided.

Hon MATTHEW SWINBOURN: I am advised that the provision has never been used—the previous one—and that the Electoral Commissioner is of the view that it would be an extremely rare circumstance for it to be exercised. Of course, take into consideration that he may not always be the Electoral Commissioner and another Electoral Commissioner might use the powers that are here. He talked about a circumstance in which, in a council election, a candidate is declared by a court to be incapable of being elected. That legal process plays out and it would probably happen expeditiously, given the nature of council elections—the writs have been issued and the polling dates set. Someone has taken an issue, saying a person should not be on the printed ballot paper because they were not validly registered or whatever the terminology might be; they are not qualified to be on there. If the court agrees,

the Electoral Commissioner will have the power, under this provision, to deal with that. But if that person said, "Hang on, I don't agree with this court and I'm appealing it", it would be no different from what would happen currently in those circumstances. The person would go to a more senior court and seek to appeal if there were grounds and would probably seek a stay of the existing order and potentially an injunction, stopping the commissioner from taking further action until that matter was resolved. Whether that had any merit, of course, would depend on the circumstance, but it would be the same process until the person could get no further than the High Court and the High Court would obviously have the final say. Whether the person had any cause of action to take to the High Court would be purely speculative. Having not happened before, as far as we are aware, it is hard to describe it in circumstances other than how I have described it. People have trotted off to courts during elections before. I do not know whether the member did anything like that in his time as the party convener or chair or whatever his job title was. If the matter is pressing, courts tend to act with a degree of urgency and sit out of session or sit all night and things like that. God forbid if someone sits all night! I hope that deals with what the member was asking.

Hon NICK GOIRAN: Why does proposed section 113B(5) refer to the names of five or more candidates?

Hon MATTHEW SWINBOURN: I am not sure whether I heard the member's full question, but the reference to five or more candidates entitles candidates to have a square above the line. If the member is asking why we picked five—I think that was the question—I would have to get more advice. Like a lot of these types of things, there is no exact science for the number, but consideration was given to the recommendations of the Ministerial Expert Committee on Electoral Reform, which I believe was for a group of at least three candidates. We can look at what happens in other jurisdictions. In New South Wales, it has to be a group of 15 to get a square above the line and in South Australia and the Senate it is two. Given that the bill provides for 37 members and a quota of 2.63, we formed the view that five or more candidates was a reasonable mark to land on to earn a square above the dividing line on the ballot paper, which is a privilege and should be restricted to those who are able to demonstrate a genuine foundation of community support. If a party has five candidates, obviously it has managed to get together 1 250 unique electors to support that group, because each one would have that sort of thing. We do not think the number is unduly restrictive at five. As I said, it is not an exact science; it is about where we thought it should sit.

Hon NICK GOIRAN: The group that the parliamentary secretary referred to that requires 1 250 unique supporters excludes registered political party groups. Recommendation 3 of the ministerial expert committee report states —

- At least 3 independent candidates be required to form an Above the Line group.

When I asked earlier about the basis for all this, I think the parliamentary secretary quoted the *Hansard* of the other place when the Minister for Electoral Affairs spoke about the necessity of the ministerial expert committee to provide independence to the foundation of the reforms that are before us. Let us take that at face value. The ministerial expert committee was established. It made these so-called independent recommendations. It said that three candidates are required.

Hon Matthew Swinbourn: At least three.

Hon NICK GOIRAN: At least three candidates are required. The government came along and said it requires five candidates anyway. I do not want to say it makes a mockery of the process, but it seems to undermine the argument of the Attorney General, the Minister for Electoral Affairs, that the importance of the ministerial expert committee's report is to found this bill in a process of independence, and then we have the government coming along and doing whatever it wants to do anyway. I do not recall any other jurisdictions that the parliamentary secretary drew to our attention having five candidates. It seems like a number has simply been picked out of the ether. Perhaps the true explanation really comes in what the parliamentary secretary disclosed earlier: in order for someone to be elevated above the line, they will have to demonstrate they have 1 250 unique supporters. Interestingly, that is over and above the 500 they would need if they were a registered political party. Again, it seems rather odd that we would say to a group of Western Australians, "If you want to be above the line, you need to show you have 1 250 people supporting you, but if you have only 500, that's okay, we'll register you as a political party." The logic that applies to that is not at all obvious. Nevertheless, if that is the greatest explanation that can be provided by the government for the choice of five candidates for an above the line group voting position, that is what the record will reflect.

Clause put and passed.

Clause 64: Section 113C amended —

Hon NICK GOIRAN: During consideration of clause 1, the parliamentary secretary identified that this clause had been subject to specific consultation with the Electoral Commissioner. What did he have to say?

Hon MATTHEW SWINBOURN: It is another one of these provisions on which we sought clarification from the commissioner about the operation and effect of a provision that has not been changed. I think that was section 113C(1)(b). Clause 64 will amend section 113C and so the provisions that are changed by that clause were

not the subject of the discussion with the Electoral Commissioner; it was about the operation of the provision. That has not changed. We sought clarification on what that means, as he is the expert in this area. Clauses 48 and 64 have connections to sections 80(2A)(b) and 113C(1)(b). The commissioner explained these provisions. The act does not preclude candidates from different registered parties nominating for the same group. At the 1996 state election, there were joint Liberal–National groups in the Agricultural and South West Regions. That is really what that engagement was. It did not go to the substantive amendment in that section.

Clause put and passed.

Clauses 65 to 67 put and passed.

Clause 68: Section 128 replaced —

Hon TJORN SIBMA: This is not an inconsequential clause. I note, as the explanatory memorandum concedes, that this is not necessarily optional preferential voting, but the introduction of a semi-optional preferential voting scheme due to the obligation to mark a minimum number of squares, particularly as it pertains to the below-the-line votes. Can I ascertain how it was determined that marking an order of preference in sequence relating to 20 candidates was an appropriate threshold to set? Is there something important about using the number 20 to give an indication of an order of preference that is not otherwise indicated if, for example, we provided voters with the opportunity to mark numerals 1 to 12 or 1 to 10? Further, is there a corresponding requirement in jurisdictions that have whole-of-state electorates—namely, South Australia and New South Wales—and set a similar minimum benchmark?

Hon MATTHEW SWINBOURN: To start with the other jurisdictions, in New South Wales, a voter must fill out 15 for the ballot paper to be valid. The member will recall that in New South Wales, 21 members are elected at each election. In South Australia, six need to be selected for the ballot paper to be valid, with 11 candidates being elected at each election. The member will recall that the Senate is somewhat controversial, because the instructions are that a person must fill in at least 12, but the act provides that for a ballot paper to be valid, a person must fill in only six. I think Malcolm Mackerras made the comment about the dishonest ballot instruction. He was divining Hon Nick Goiran when he used that kind of language, but that is not really the point here. In terms of the 20 that we arrived at, the Ministerial Expert Committee on Electoral Reform, on page 34 of its final report, states —

> With 36 members —

We acknowledge that we will have 37 —

> to be elected, where some parties may aspire to elect as many as 22 candidates, the Committee considers that electors should be instructed to number at least 20 preferences. With 18 members to be elected, where some parties may aspire —

That is, if we had gone to a half arrangement —

> to elect as many as 12 candidates, the Committee considers that electors should be instructed to number at least 12 preferences. This would be consistent with the BTL system in the Senate. It would also ensure that a BTL vote would very likely elect the full list of candidates that the BTL voter was seeking to have elected.

It will also increase the likelihood of filling most seats with a full quota. If we had a much lower figure, it would be possible that fewer full quotas would be met. We think it is desirable to have more full-quota candidates elected.

Hon MARTIN ALDRIDGE: This will lead to, perhaps, greater examination in later clauses of the risks of informality. During my second reading contribution, I expressed concern about the way the government is changing the voting system and said that, in effect, after this bill passes, we will have three forms of preferential voting in Western Australia. We will have full preferential voting in the Assembly, optional preferential voting above the line in the Council and semi-optional preferential voting below the line in the Council. At the same time, last week the government announced preferential voting of some form—I am not sure of the details—for local government. My concern is about the extent to which the government has contemplated the risks of informality that might arise. Two of the key performance indicators of the Electoral Commissioner are getting people to vote and getting them to vote formally. They are the two main key performance indicators of any Electoral Commissioner and, in that regard, at the last election, the rate of informal votes for the Legislative Council was half of those for the Assembly. I think it was less than two per cent of all votes cast for the Council. This risk is worthy of some contemplation by the government. I want to understand to what extent the government has considered and taken advice on this issue.

Hon MATTHEW SWINBOURN: I think, member, the ministerial expert committee did consider informality and reducing informality in its report, but I do not have the exact reference here. Under the current system, of course, for the Legislative Council, when someone votes, as we all know, if they mark "1" above the line for their preferred candidate, their group ticket voting means all their preferences are allocated. A low level of informality arises out of that, because it is a very simple thing to do.

Hon Martin Aldridge: That is what it was designed for.

Hon MATTHEW SWINBOURN: Yes, but other consequences arise in how that is gamed. There is that element, but it is acknowledged that with the current system, when someone votes below the line, they have to fill out every single box. For South Metropolitan, for example, at the last election, they had to fill out every box, which was 64 candidates, so there was a high likelihood of informality. Because we are now limiting it to only 20, we think that the level of informality will reduce, but it is acknowledged that with the introduction of a new voting system, which is what we will have in the Legislative Council, a consequence may be that a degree of informality arises because of the change. I cannot quantify that. If we do good education programs, it should hopefully be ameliorated. If the Electoral Commission is able to design a ballot paper that is as easily understood as possible, that will ameliorate that as well, but I think that issue of informality is always at the forefront of the commission's mind, and certainly ours. Nobody wants people who have gone to the effort of voting to have their vote not count.

The other issue with assessing informality, of course, is that some people—the member has done scrutineering—deliberately foul their ballot paper, which makes their vote informal. It is a free exercise of their choice to cast their vote in that way. It would be an interesting academic pursuit to look at how many of those invalid or informal votes actually appear to be deliberately marked so, and how many are done by error or omission by someone. I do not have an answer for that, but I am sure that people have done studies on it before.

Hon Martin Aldridge: A breakdown of that is in the electoral report of the Electoral Commission.

Hon MATTHEW SWINBOURN: Yes, but I am not sure how detailed the analysis of it was. Both participation and informality are increasing problems in elections. It is not a problem that is unique to the Western Australian jurisdiction. Some of this stuff will invariably increase informality; other parts will reduce it because of the nature of the changes.

Hon MARTIN ALDRIDGE: The other matter that I wanted to raise at this point is vote exhaustion. I think that we are probably going to see higher rates of vote exhaustion, particularly with above-the-line voting. I said earlier in the debate that I have changed my view over time from a view that vote exhaustion should be avoided at all costs; of course, there is going to be some vote exhaustion when we get to the end of the process, because someone, who does not get elected, will end up with a stack of votes, and they will effectively be exhausted. I have come round to the view that there may be some cases in some elections whereby voters will want to vote for people but also potentially vote against others, and therefore will want to have the flexibility to vote for those people whom they would like to get elected in a preferential way and not allow a vote to flow to a party or candidate that they do not seek to be elected, which, obviously, was not available to them under the current system, whereby effectively group voting tickets meant that a vote would end up with somebody at the end of the day, whether it was all below the line or a voter has numbered every box.

I would like to know the government's understanding of the exhaustion of votes. My greater concern is above-the-line voting, which I think people continue to do, particularly given they only need to number one box above the line. I would probably have been more inclined to look at something more like the Senate model, whereby there are may be six boxes or a number of boxes above the line as a minimum requirement. But I think there will probably be higher rates of vote exhaustion, which I think will in turn lead to a lower quota requirement for election with the number of votes that are exhausted. It is predicted that that will have an impact on the 2.63 per cent, particularly if there is a high number of votes for perhaps more popular single-issue parties that ebb and flow at elections. I think I predicted in my second reading contribution that the No Mandatory Vaccination Party might perhaps achieve a bit more support at the next election. Of course, if people just vote "1" for that box and those votes end up getting stranded, what impact might that have on the overall election and, particularly, on the very low threshold which I think at the moment is predicted at 2.63 per cent, down from 14.85 per cent, which is the current requirement in our region-based system?

Hon MATTHEW SWINBOURN: We have to concede that there will be a higher level of vote exhaustion—I think there is a bit of member exhaustion!—creeping in, because that is the nature of optional preferential voting. Voters will be able to decide whether their vote continues on, or whether they want to limit it to one group above the line, or the minimum of 20 below the line. So, yes, that is a consequence of this system. Mathematically, that will have a consequence for those who are at the tail end of picking up the last few positions of the 37 seats. The total number that will apply to will, of course, only be known at each election because it will depend on voter behaviour. Obviously, in an election where voters fill out lots of boxes, there will be less likelihood of people being elected at the very end on less than a full quota; but if voter choice is to go the other way, yes, that will lower the quota to 2.63 per cent. It is worth noting that it is not an unintended consequence; we were aware that this was going to happen. Apparently four currently sitting senators were elected on less than a full quota, so it happens in the federal system as well.

We know that those last few places will be filled with people who will still have to have significant support in the community—perhaps more than 98 votes, as happened in the most recent election.

Hon MARTIN ALDRIDGE: This is my last question on clause 68. We have all engaged with voters at the polling booths and many of them need assistance in understanding the ballot paper; I am not sure that vote exhaustion is at the top of their mind as they go into a polling place. If I accept the parliamentary secretary's argument that this is about giving power to the voters and allowing their vote to exhaust if that is what they choose, and that it should be up to the voter, given that it takes five Independent candidates to be grouped together above the line, why did the government not land on five as the minimum number below the line? Instead we have gone for a number four times that amount.

Hon MATTHEW SWINBOURN: With five there would be a lot more exhaustion of preferences than there would be with 20. We think 20 is desirable. The Ministerial Expert Committee on Electoral Reform recommended 20 and we have adopted that position. When I say "recommended", that is what the committee discussed; I do not think it was a specific recommendation. For the reasons I explained earlier, we think that that is just about the right spot. Five is very low, but we could go for 25 or we could go for seven. I think 20 gives us a more robust guarantee that those who choose to vote below the line will have sufficient preferences to pass on to ensure that we do not have half the candidates being elected on less than a full quota.

Hon NICK GOIRAN: When the parliamentary secretary says that the ministerial expert committee recommended 20, which provision of the report says that? There is paragraph 3.1.6 at page 23, but that is referred to in the second dot point of recommendation 2 on page 39. Is it correct to say that it recommended 20?

Hon MATTHEW SWINBOURN: I think I corrected myself to say that it was not a recommendation; it was part of the discussion in the report. Recommendation 2, which I am sure the member has in front of him, says —

- **For voters Below the Line, to mark a specified minimum number of squares. explained in Section 3.1.6 of this Report …**

I read out the second paragraph at the top of page 34, which states —

> With 36 members to be elected, where some parties may aspire to elect as many as 22 candidates, the Committee considers that electors should be instructed to number at least 20 preferences.

That is not an official recommendation as such, but obviously the committee is directing us to what it thinks is appropriate, and that is what we have adopted. The member is making strange faces.

Hon NICK GOIRAN: There is one thing that is confusing. Recommendation 2 says —

- **For voters Below the Line, to mark a specified minimum number of squares. explained in Section 3.1.6 of this Report, this number will depend on the number of candidates being elected.**

If we look at paragraph 3.1.6 on page 32, it is not evident where the ministerial expert committee is trying to draw our attention to.

Hon Matthew Swinbourn: Paragraph 3.1.6 goes over the page and finishes at the start of paragraph 3.2. I think it is because of the size of the table. It is a formatting thing.

Hon NICK GOIRAN: It does not end at the end of page 32; it continues on to page 34.

Hon Matthew Swinbourn: Yes.

Clause put and passed.

Clauses 69 to 72 put and passed.

Clause 73: Sections 146E and 146F replaced —

Hon NICK GOIRAN: The parliamentary secretary identified this clause as one of the seven clauses whose genesis did not arise from the recommendations of the ministerial expert committee. What is said to be the basis for this clause?

The DEPUTY CHAIR (Hon Dr Sally Talbot): Parliamentary secretary.

Hon MATTHEW SWINBOURN: Thank you, deputy chair; it is nice to see you this evening.

The DEPUTY CHAIR: It is nice to see you, too, parliamentary secretary.

Several members interjected.

Hon MATTHEW SWINBOURN: Okay; I take that back.

I think the thrust of the member's question is about the genesis of this clause. It is a consequence of removing group voting tickets and moving to optional preferential voting. The clause did not arise directly from a recommendation; it largely arose from the consequences of abolishing group voting tickets and moving to optional preferential voting.

Clause put and passed.

Clauses 74 to 83 put and passed.

Clause 84: Section 156C amended —

Hon NICK GOIRAN: Clause 84 provides that the Electoral Commissioner will advertise the vacancy in the Council —

> on the Commission website and, in any other way the Electoral Commissioner considers appropriate,

This provision is included because of declining delivery rates of *The West Australian*, which can no longer be described as circulating generally in the state. The provision recognises that the Electoral Commissioner has responsibility for the proper conduct of elections and is therefore responsible for promoting awareness of a Council election arising from the vacancy. What did the Electoral Commissioner have to say about this clause?

Hon MATTHEW SWINBOURN: It is consistent with what we have seen in relation to the other clauses that deal with the diminishing circulation of *The West Australian*. It was identified as one of the clauses that relates to advertising and it introduces flexibility. The member might recall that we dealt with that issue under a number of other clauses in the bill. Hon Tjorn Sibma made some pointed comments about the utility, or wisdom, of mentioning *The West Australian* in the explanatory memorandum. I will try not to be flippant. It relates directly to the commissioner's comments about wanting to have flexibility.

Clause put and passed.

Clauses 85 to 88 to put and passed.

Clause 89: Section 213 amended —

Hon MARTIN ALDRIDGE: Clause 89 deletes sections 213(3) to (8). Subsections (3) to (8) relate to the prescribing by regulations of the ballot paper. It is obviously a redundant power now because the key instructions for the ballot paper will be contained within the legislation itself, once it has passed, giving the Electoral Commissioner discretion over certain matters of the finer design of the ballot paper. I contemplate the transitional provisions that are upcoming, I think in part 9 of the bill, "Transitional provisions for Constitutional and Electoral Legislation Amendment (Electoral Equality) Act 2021". That contemplates vacancies occurring in representation in the Legislative Council. I understand that vacancies are traditionally determined by recount, but a recount may fail and a fresh selection may be required. Given we still have three and a half years to run until the next election, how would a fresh selection for the Legislative Council in the next three and a half years occur, given we are about to abolish the regulation-making power for a ballot paper?

Hon MATTHEW SWINBOURN: The regulations will continue on in a form by virtue of the operation of a new section 216 of the transitional provisions in part 9. This is that provision. Proposed section 216 is "Vacancies and representation in Legislative Council". It states —

> Despite the amendments made to this Act and the *Constitution Acts Amendment Act 1899* by the amending provisions, the former provisions and the previous electoral distribution continue to apply in respect of —
>
> (a) the filling of a vacancy in the Council under sections 156C and 156D before 22 May 2025; and
>
> (b) the representation of electoral regions by members of the Council elected —
>
> (i) before the commencement of the amending provisions; or
>
> (ii) as referred to in paragraph (a).

That would essentially mean that there are "transitional regulations". I do not think Hansard picks up air quotation marks, but that is what I did!

Hon MARTIN ALDRIDGE: I see that proposed section 216 provides that when a vacancy occurs, the vacancy will continue to occur under section 156C and 156D and representation of electoral regions will continue until the next election. If we turn to sections 156C and 156D, we will see the provisions there. Section 156C is titled "Electoral Commissioner's duties when informed of vacancy; nominations of candidates for vacancy being filled by re-count" and section 156D is "Vacancy being filled by re-count, procedure at close of nominations". Section 156E, "Vacancy being filled by fresh election, writ for", refers to circumstances that would occur under sections 156C(1)(b), 156D(2) or 156D(13). Section 156C reads —

> (1) Where the Governor receives or takes notice of a vacancy under section 156B the Governor shall inform the Electoral Commissioner who shall —
>
> ….
>
> (b) by notice signed by him, inform the Governor that he is not satisfied that it is practicable to fill the vacancy under this section and section 156D.

Section 156D(2) reads —.

> If there is no consenting candidate for the vacancy the Electoral Commissioner shall, by written notice, inform the Governor accordingly.

Section 156D(13) reads —

> If no re-count under subsection (4) or (6) results in the election of a consenting candidate the Electoral Commissioner shall, by written notice, inform the Governor that the vacancy has not been filled under this section.

The act envisages three circumstances in which a recount may not occur, for a range of reasons. In that case, a fresh writ for an election in an electoral region will be issued.

We are about to abolish the power to make, by regulation, a ballot paper for that fresh election. If that circumstance were to arise in the next three and a half years, under what power would the Electoral Commissioner print a ballot paper to comply with the conducting of a ballot at a fresh election?

Hon MATTHEW SWINBOURN: Under the transitional provisions, the definition for "former provisions" states —

> ***former provisions*** means this Act and the *Constitution Acts Amendment Act 1899* as they were enacted immediately before commencement day;

That would include any regulations that were made under those provisions. The regulations would continue to have force up until 2025 to the point that we could no longer have an election for the circumstances the member described, which would be the issuing of the writs for the 2025 election.

Hon MARTIN ALDRIDGE: That clause is qualified because it says that it will continue to apply in respect of —

> (a) the filling of a vacancy in the Council under sections 156C and 156D …

Will they apply for the purposes of a fresh election as required by section 156E?

Hon MATTHEW SWINBOURN: My advice is yes.

Hon MARTIN ALDRIDGE: This is another provision on which the parliamentary secretary and I will have to differ, because that is not what the bill says. I do not think the government has anticipated, as rare as this occurrence may be in the next three and a half years, that this clause will abolish the ability for a regulation to exist for a ballot to be printed for the purposes of a fresh election for a region in the Legislative Council prior to the next election. The provision that the parliamentary secretary has referred me to, which is what we will deal with next at new part 9, does not contemplate a fresh election consistent with section 156E. I do not think anyone could reasonably suggest that it does.

Hon NICK GOIRAN: This is one of the clauses that the parliamentary secretary indicated the Electoral Commissioner had been consulted on. Did he say anything on this topic that might shed light on the matter that the honourable member just raised?

Hon MATTHEW SWINBOURN: The position of the Electoral Commissioner was that he agreed these provisions could be deleted on the basis that they are only to prescribe forms. He said that ideally, they would contain core principles but leave the commission to sort out specific features to resolve the size of the ballot paper. It is not particularly relevant, but I have read out in full what is in front of me.

Clause put and passed.

Clause 90: Part 9 inserted —

Hon MARTIN ALDRIDGE: Clause 90 inserts part 9 into the Electoral Act 1907. In proposed section 215, "Terms used", there is a definition of "former provisions". I quote —

> … means this Act and the *Constitution Acts Amendment Act 1899* as they were enacted immediately before commencement day;

This bill amends three acts. The act that is not mentioned is the Constitution Act 1889. Is that relevant to this section?

Hon MATTHEW SWINBOURN: The provisions that are amended in the Constitution Act 1889 do not relate to the transitional provisions. They will come into effect only following a general election.

Clause put and passed.

Clause 91 put and passed.

Clause 92: Schedule 1 amended —

Hon NICK GOIRAN: Clause 92 amends schedule 1. It is not a matter that arose from the recommendations by the so-called ministerial expert committee. What gave rise to these amendments to schedule 1?

Hon MATTHEW SWINBOURN: There are probably two main things. It is a consequence of moving to optional preferential voting, so some of the changes are consequential to that, and some of the other changes relate to going to a whole-of-state electorate. The ones that relate to optional preferential voting are, I think, items 8B and 13, and in relation to the whole-of-state, it is item 20.

Hon NICK GOIRAN: In reference to item 8B, there is an 8(b) and an 8B.

Hon Matthew Swinbourn: It is 8B, sorry.

Hon NICK GOIRAN: What did the Electoral Commissioner have to say about these changes to schedule 1?

Hon MATTHEW SWINBOURN: The commissioner gave some feedback and said that schedule 1 countenances a candidate who is elected on less than a quota, but that the legislation needs to provide for the concept of exhausted preferences. He agrees that no further changes are required and is comfortable that the new item 8B deals with exhausted votes. When I said that he was comfortable, that means that he agrees no further change is required. That relates specifically to the issue of exhausted preferences. It was not in relation to the entire clause, because there are other consequential changes. There was some discussion with him regarding those matters and he was comfortable that the new item 8B deals with the exhausted votes.

Hon NICK GOIRAN: I do not believe that this bill will change section 146E(7), yet we are now making reference, seemingly for the first time in schedule 1, to a scenario when that section will apply. Why are we doing that now when we are not amending section 146E(7)?

Hon MATTHEW SWINBOURN: It relates to the death of a candidate after the close of nomination and before the close of a poll. If more than one seat is to be filled, the votes for the deceased candidates are reallocated to the candidate next in order of electors' preference, as set out in section 146E(7) and item 20 of schedule 1 of the Electoral Act. Because of the archaic nature of the drafting of the act, apparently, it has to be dealt with in this manner; it could not be dealt with in clause 88, where it might more reasonably be placed. I think it comes back to the point that we consistently think that the act is long overdue for a more general update because of its archaic language and some of its structure. At times the member indicated that some more elegant drafting has been proposed in amendments because of the recognition of the way that it is drafted.

I do not know whether that response makes a great deal of sense to the member. I do not think we are trying to do much more than address a drafting issue.

Hon NICK GOIRAN: If we are not changing section 146E(7) of the Electoral Act 1907 in this bill, how will votes be counted in a situation within which section 146E(7) applies at the moment?

Hon MATTHEW SWINBOURN: Under the current section 88, we would have to go to a fresh election on the death of a candidate, whereas now it allows for the possibility of a recount.

Clause put and passed.

Clauses 93 to 97 put and passed.

Title put and passed.

Report

Bill reported, without amendment, and the report adopted.

Third Reading

HON MATTHEW SWINBOURN (East Metropolitan — Parliamentary Secretary) [12.18 am]: I move —

That the bill be now read a third time.

The PRESIDENT: Members, I have received from the Deputy Chair of Committees a certificate in writing that this is a true copy of the bill as agreed to in the Committee of the Whole House and reported.

Members, before I put the question, the third reading of this bill requires an absolute majority pursuant to section 16M of the Electoral Act 1907. If there is a dissenting voice when I put the question on the third reading, I will divide the house.

HON TJORN SIBMA (North Metropolitan) [12.19 am]: The scope of the third reading debate is very clearly delineated in our standing orders. Considering the period of time we have just been through on the sitting day of Tuesday, 16 November, which has now traversed into Wednesday, 17 November, I will keep my third reading contribution on the Constitutional and Electoral Legislation Amendment (Electoral Equality) Bill 2021 suitably brief, other than to acknowledge that the inevitability of the final passage of this bill is a lamentable outcome. It is one, unfortunately, that cannot be, and could never have been, effectively opposed let alone sensibly amended or tempered, and I find that to be a regrettable outcome.

I will conclude my remarks by making observations made through the course of this debate that irrespective of the fact that the government will use its numbers in this chamber tonight to pass this bill, which is a fundamental rewrite of the Electoral Act and other acts, the government still does not possess a mandate for this bill. This bill has arisen out of 120 years or more of thwarted political ideology, but it has been sparked by the unique circumstances of the most recent election, conferring on the government an almost irresistible pull of using its numbers wherever, however and whenever it wishes to. I think this is a suitable demonstration of naked political opportunism, the likes of which, unfortunately, we will probably see more of over the next three years. I will reflect very briefly on the fact that the government has attempted to provide this bill with a measure of legitimacy. It initiated a confected process of expert evaluation and consultation through a committee that largely wrote its own terms of reference. That was established quite clearly in the parliamentary secretary's second reading reply speech and replies to debate questions put at clause 1. The so-called independence of the committee and the objective nature of that report, I think, has been and should continue to be called into question. We can do that without impugning the reputations of the individuals involved.

I will also note that in the other chamber and in this chamber, endeavours were made to at least refer this bill to a suitable committee. The consequence of not doing that is the eventuality of how we spent Tuesday, 16 November. That was at times a difficult and unedifying series of events. Key questions around the technical operation of the bill could not possibly be answered, even by a parliamentary secretary who I think distinguished himself in carrying something that I consider to be almost indefensible—in fact, largely so. There were periods of great and prolonged silence. I thought those silences indicated the very abbreviated and expedited approach that the government has taken to constructing a bill that has an enormous array of consequences.

I will also put the obvious point that although we are limited, completely circumscribed, from recommending that the government take this to a referendum—we could not do so from this chamber—it still is a policy option, albeit very dim now, that the government possesses. I personally think that it is ethically obliged to do that.

It is unfortunate that, eight months since the election, this is a low watermark for the conduct of debate and the management of legislation in this chamber. I fear that the future, unfortunately, looks more grim than it has been in the last few weeks.

HON DR SALLY TALBOT (South West) [12.24 am]: My remarks in the third reading debate of the Constitutional and Electoral Legislation Amendment (Electoral Equality) Bill 2021 will be significantly different from the downbeat account we just heard from the opposition. President, all the work of the Legislative Council is significant, but some bills stand out from others, and this is one of them. The bill that will be now read a third time contains a set of provisions that will finally enshrine some fundamental values in our electoral laws in Western Australia. Those two fundamental values are that all should vote and all should vote equally—what has been known in the Australian Labor Party for 120 years as one vote, one value—and that the number of votes should equal the number of seats.

Just bear in mind those two basic premises. Once this bill is enacted, Western Australia will have two houses of Parliament that reflect those two principles, but, at the same time, it will keep the uniquely defining feature of the Legislative Council. That defining feature, of course, is proportional representation. Proportional representation in the upper house is the practical implementation of those two basic values—one vote, one value, and the fact that the number of votes should be reflected in the number of seats. We will see the Legislative Assembly keep its identity as the chamber in which we see place-based politics and place-based policy, and in which local identities and local communities find a direct voice. That is the role of the Legislative Assembly quite properly.

The Legislative Council, from this time on, will become a true house of review. It will become the place in which understanding and protecting the interests of all Western Australians will be the prime responsibility of all thirty-seven members of the upper house. No modern democracy should be based on some votes being worth more than others. With this bill, Western Australia takes its place as truly a modern democracy.

HON DARREN WEST (Agricultural — Parliamentary Secretary) [12.27 am]: I also rise in support of the third reading of the Constitutional and Electoral Legislation Amendment (Electoral Equality) Bill 2021. As Hon Dr Sally Talbot eloquently put it, we have a very different take on the potential passage of this bill than the opposition. Just as we look with incredulity at a time when Aboriginal people and even women were forbidden to vote, future generations will look with incredulity at the time when one person's vote was of a heavier weighting than another's because of where they lived. I think people in the future will look at that with some wonderment and think, "Why would we ever have had such a system?" But that is what we have had for a very long time—an electoral system that weighted votes according to where people lived. That will change. It caused this Legislative Council to be the most undemocratically elected house in Australia; but with the passage of this bill, that will no longer be the case. Historically, when other states have moved to a one vote, one value system and a statewide-based voting system, those reforms have remained. In New South Wales, they have been in place since the 1970s. Once a state gets to a fair and equitable system, it stays; that is what we consider will happen here.

Looking back at the last 20 elections, vote weighting caused a warped system that favoured one side of politics greatly over the other. The conservatives won 11 of the last 20 elections yet had control of the upper house 15 times. Even on those occasions when they did not win the election, they still had control of the Legislative Council. Conversely, Labor won nine of those elections and controlled the Legislative Council only once, and that is now. On four occasions, neither side controlled the Council and the crossbench had the numbers. For generations, that has been a handbrake on progressive action in Western Australia. It resulted in a house that was dominated by conservatives, who controlled what legislation was passed and how it was amended. That is not fair, and for that reason we will now have a Legislative Council that truly reflects either the progressive or conservative mood of the electorate from election to election.

The arguments against the Constitutional and Electoral Legislation Amendment (Electoral Equality) Bill 2021 were very weak whereas the arguments for electoral equality were very strong. One of the arguments was that the government should have held a referendum on this issue. If members think about that, everyone gets an equal say in a referendum. The proposal that we put a referendum to the people would have involved everybody having an equal say about whether everybody gets an equal say, which is actually quite ridiculous. There was no need for a referendum because people would have voted for an equal say.

This is a historic moment for democracy in Western Australia. It has been a long-term goal of the Western Australian Labor Party and the Australian Labor Party to have fairness, equality and equal opportunity for all. I note that in years gone by, letters were sent to the editor of *The West Australian* by none other than Gough Whitlam, who was looking for what we are about to achieve when this bill passes. A lot of hard work has gone into this bill. I want to acknowledge the efforts of the Minister for Electoral Affairs, Hon John Quigley; the parliamentary secretary, Hon Matthew Swinbourn; and, of course, the Ministerial Expert Committee on Electoral Reform and all the advisers and those who have been involved in drafting this bill. It is truly historic and we should very proud of what we have achieved.

HON KYLE McGINN (Mining and Pastoral — Parliamentary Secretary) [12.31 am]: I, too, rise tonight to show my support for the Constitutional and Electoral Legislation Amendment (Electoral Equality) Bill 2021, which has now completed its passage through the Committee of the Whole House. Obviously, my third reading contribution will be very similar to those just given by my two colleagues. As they said, some of the positions and arguments put forward by the opposition throughout this process have been very eschewed and twisted. The opposition referred to the hysteria that this bill has caused in regional WA, but as it has been pointed out to me by people in my electorate—I can assure members of this—that has not been the case in my electorate office. I can probably assure members that that has not been the case in many electorate offices across regional WA.

Before we got into debating the bill, a petition was tabled by Hon Steve Martin. Hon Neil Thomson spruiked the tabling of that petition many, many months ago across the electorate. I have not seen the petition but it contains 387 signatures. I doubt that 387 signatures throughout rural and regional WA represents hysteria across regional WA and means that everyone is up in arms about electoral reform. Hon Neil Thomson, I think that is a fair comment to make.

In passing this bill, one of the key things that we will achieve is getting rid of preference deals. When people vote, they do not fully know about or understand all the deals that have been done behind closed doors, although sometimes such deals appear on the front page of the newspaper. That system has had its day. Voters wants to know who they are voting for and who they are going to get in the Legislative Council, which, I think, will make a fairer Legislative Council moving forward. During the debate on a past motion, I spoke about supporting this bill. After seeing the end of the committee stage, I commend the parliamentary secretary for his work on this bill and the scrutiny that it stood up to. I would like to finish by saying I wholeheartedly support this bill.

HON DR BRIAN WALKER (East Metropolitan) [12.33 am]: First of all, I would like to say from the crossbench that I very much admired the discussions on the Constitutional and Electoral Legislation Amendment (Electoral Equality) Bill 2021 by both sides of the house. I also very much give my appreciation to Hon Matthew Swinbourn for the excellent work he has done. It is our clear statement here, at least from this side, that the concept of one value, one vote is certainly something that we heartily agree with. The general tenor of the electoral reform is something that I would welcome; in fact, it is something that I mentioned at the moment of the declaration of the seat I had won. However, I do not think anyone here will be able to say with their hand on their heart that the bill is perfect. There is always room for improvement. One area that I would like to caution members on is that the concept might be brought out that we have just two parties here—the government of the day and the opposition. In fact, what we find in society is that a sizeable proportion of people are actually neither one nor the other. There are differing views. The crossbench is incredibly important for reflecting those views in a democratic society where all voices can be heard. I would like to place on record my concern that although equality has certainly been given, and I approve that, equity has resulted in the smaller, minor parties having a higher burden of work financially and with the manpower needed that will not equal the strength that the two major sides have. Therefore, this potentially large crossbench area for people in society who would vote for neither one party nor the other but would rather have an option in between are going to find their voices disproportionately reduced. That is something we might want to reflect on in the future if we come to make amendments to this legislation.

With my support for this bill, I would caution that there are areas for improvement, and I will put my voice up on behalf of my colleagues on the crossbench that things could be better, but I congratulate the government heartily for what it has achieved so far.

HON SHELLEY PAYNE (Agricultural) [12.36 am]: The election results earlier this year in the upper house exposed a broken, undemocratic system. In the recent election, we know that the Daylight Saving Party won a seat with only 98 primary votes, while other parties with tens of thousands of votes did not win a seat. A party that receives just 98 votes should not be elected to Parliament. The current system allows parties to make secret preference deals, meaning votes can be passed from one minor party to another without voters' knowledge or consent. The reforms we have been considering will limit the ability of minor parties to game the system and get people elected to Parliament with a handful of votes, like we saw in this past election. Preferences will now be transferred according to the voter's preference and not under a secret deal. Western Australia will finally join other states, including New South Wales and South Australia, and the commonwealth in abolishing group voting tickets and introducing optional preferential voting to diminish the impact of secret preference deals.

These reforms will also make one other important change to the current electoral system. The Electoral Act 1907 is outdated and has become unfair. All Western Australians want a system that is fairer. One person's vote should not be worth more than another person's just because of where they live, and this is not just a regional–metropolitan discrepancy. The value of a vote in the upper house varies widely across our regions. This new model will mean that the proportion of votes that a party receives will determine the proportion of seats that they win. We cannot be fairer than that. No matter where someone lives in regional Western Australia, their vote will now be equal to every other person voting in regional Western Australia.

The Legislative Council is currently the most undemocratic of any state or territory in Australia. It lags behind most Parliaments in the developed world and has become a sore point for our state on the national and international stage. Let me run members through the current state of affairs for our electoral system and how unfair it is for people in the regions. A vote in Kalgoorlie is worth nearly three and a half times more than a vote in Albany, Boyup Brook, Manjimup or Nannup. A vote in Kalgoorlie is also worth nearly one and a half times more than a vote in Esperance, Narrogin or Katanning, or even Lake Grace or Dumbleyung. How can we call that fair and equal when it is so clearly not? When I speak to people and explain how the system is so unfair across our regions, they understand why we are making changes. It is disappointing that not one member across the room has acknowledged this problem of inequity in the voting system across our regions. The new model we are implementing will remove the three metropolitan regions and the three non-metropolitan regions and replace them with one whole-of-state electorate. This model is already in place in the New South Wales and South Australian Legislative Councils, and the voters in WA already use this system to elect federal Senators, whereby elected members become Senators for Western Australia, not for a particular district or region. Currently in WA the six regions each return six Legislative Councillors, despite each region having wildly different populations.

We have heard talk from the other side about how we should not call the current system "undemocratic", because some here in this house voted for its original implementation. However, it was not acknowledged that the problem with the current system occurred since its adoption due to the movement of people both within the regions and to Perth. It has not been acknowledged that a system such as the one we have now for the upper house, based on regions, even if adjusted again now would continue to need adjusting into the future. The current system may have worked

well when it was first implemented, but perhaps lacked the foresight to see the need for flexibility around fluctuations in our population across the state. The system we are proposing, with one electorate, will remain fair, no matter where people continue to move about the state.

The McGowan government is implementing the recommendations of the independent Ministerial Expert Committee on Electoral Reform in the interests of fairness and democracy, while the opposition sits there, criticising these sorely needed reforms. The independent Ministerial Expert Committee on Electoral Reform found that the best way to overcome this unfair vote weighting was to implement a single statewide electorate. Every vote for Legislative Council candidates will carry equal weight. Under a whole-of-state electorate, all members can engage with all regional constituents, no matter where they live. They can take on issues they are passionate about and not be restricted to just the region they represent.

When I talk to people in the regions, they want fairness and they want a government and members of Parliament who will deliver for regional WA. I can say that not one of the regional Labor MLCs here in this house today has their office in West Perth. The closest office is in Northam, 100 kilometres away. I can guarantee that the regional Labor MLCs in this house are very much connected to their regional communities, and are out there, living in the regions.

The opposition has been trying to say that the McGowan government is introducing this bill to benefit the Labor Party. If this electoral system was used during the 2021 election, it is likely that both Labor and Liberal would have won the same number of seats in the upper house as they did under the current system. Minor parties like Legalise Cannabis WA, One Nation and the Shooters, Fishers and Farmers Party WA would all have won seats based on the percentage of votes they received. Any candidate with genuine community support will still be able to win a seat. In fact, the new system might help minor parties, as they will not be restricted to gaining votes from just one of the six regions; they will now be able to pick up votes from across WA.

We heard criticism from the other side of the fact that minor parties might get a chance to be represented here in this house, which I think is terrible. If a party has genuine support from the community, the community should have the opportunity to have a voice in this house, regardless of their platform. I can see Hon Wilson Tucker digging out his big sun suit and traipsing the streets of Perth prior to the next election, as he will be able to get support from across the whole of WA and may well be back to continue his goal of daylight saving for the state.

This government will continue to have members who are based in the regions. Currently, this government has the most regional MPs of any party, and they are living in the regions, with their offices in the regions. I have my office in Esperance, but there are offices Kalgoorlie, Albany, Collie, Margaret River, Bunbury, Eaton, Pinjarra, Dawesville, Mandurah and Northam—and that is just the southern half of WA. We also have offices Geraldton, Karratha, Port Hedland, and Broome in the north. WA Labor has 21 regional members across both houses of Parliament. We are proud to be a strong voice for regional WA. We are the party for all Western Australians, and we will continue to fight for the interests of our regional communities.

The opposition's arguments imply that our government will select candidates to represent the regions while living in the city. This argument is not substantiated in any way. The proof is in my new regional Labor colleagues sitting around me, representing their regions. Hon Jackie Jarvis has her office in Margaret River; Hon Rosie Sahanna has her office in Broome; Hon Peter Foster has his office in Karratha; and Hon Sandra Carr has her office in Geraldton. Then there are the returning members: Minister Dawson has his office in Port Hedland; Hon Kyle McGinn has his office in Kalgoorlie; Hon Darren West has his office in Northam; Hon Dr Sally Talbot has her office in Eaton; and Minister MacTiernan has her office in Albany.

During our last sitting week Hon Alannah MacTiernan talked about how our party is organised, and I am confident that this government is smart enough to organise ourselves to ensure we represent all people living across Western Australia. With the ability to take on statewide issues, I am confident that the Legislative Council will do an even better job of representing the diverse people of Western Australia after the next election.

There is one other point that still needs to be made here. As we hear the other side lay criticism and responsibility on the party to ensure that regions are represented, it also takes people living in the regions to stand up and represent their communities. I am one example. I became involved in the Labor Party because I wanted to ensure that regional voices were heard. I have lived in Esperance for the past 20 years. I have raised my three children there. Prior to the 2021 election, I was representing my community in Esperance on local council. I was supported by the Labor Party to represent the Agricultural Region and to represent the interests of people living in regional Western Australia. My story is similar to my other new regional Labor colleagues.

We heard Hon Steve Martin talk about just how long it has taken him to get here and how he is finally here representing regional people. I think it is a poor reflection of the Liberal Party that it has taken him so long to be selected in a winnable seat to represent the people of regional WA. I commend the McGowan government for its selection of regional candidates who are living in and committed to the regions. I strongly believe that no matter

where the lines are drawn, or whether they are drawn at all, at the end of the day, it is up to the party to decide which candidates will make up its team and whether the party is truly committed to representing those living in regional Western Australia. This government has demonstrated that it has done that.

One final point I would like to make is about the provisions in the Electoral Act for large regional lower house electorates of over 100 000 square kilometres that help account for the size of the electorates. The large district allowance means that the larger the lower house electorate, the fewer the number of voters required to make up that electorate. For example, the lower house electorate of Roe, where I live, has fewer than 25 000 voters compared with around 30 000 in many metropolitan electorates. The electorate of North West Central, our largest lower house electorate, has fewer than 11 000 voters due to its size. The act also has provisions to allow the number of electors in these large electorates to dip to 20 per cent below the required number, rather than the 10 per cent for all other seats, before triggering a redistribution of the seat. This allows for larger fluctuations in regional populations. In addition, members representing these large electorates are permitted two electorate offices, a larger member's allowance to cover their higher costs of servicing the larger electorate, a larger vehicle allowance and an aircraft charter allowance, along with unlimited commercial flights between their home base and Perth and within their electorate.

We have heard talk that the upper house should account for the size of our regions, but at the same time there has been a failure to acknowledge that these provisions are already in place in the act for the large lower house seats. As Minister MacTiernan raised recently, there are many reasons why people may be disadvantaged, and it is not only because of where they live, and it is important that a government recognises that.

In closing, these are responsible and proportionate reforms that will enhance fairness for all Western Australians and implement electoral best practice from interstate and overseas. This government has proved, through the members sitting here in this house, that it is truly the party committed to the regions. I commend the government for bringing forward these important reforms.

HON NEIL THOMSON (Mining and Pastoral) [12.47 am]: I will make my message on the Constitutional and Electoral Legislation Amendment (Electoral Equality) Bill 2021 very short. Whatever the rhetoric and whatever the debate, this bill will always be remembered for the deceit prior to the election. Whatever the rhetoric, whatever the debate and whatever points of view have been put in this place, the people of Western Australia will remember that the Premier did not have the temerity or the openness to say, when asked seven times, that this was on his agenda. It is a very simple message. It is one that the people of Western Australia will remember.

Whatever the outcome or the sense of victory here today by those opposite, there will be a hollow feeling that this Premier did not have the temerity or the openness to present his case to the people of Western Australia before the election. There was no referendum. I presented in my contribution to the second reading debate that there were referendums in other jurisdictions when major electoral reform occurred. But there will be a referendum in 2025, and it will be up to the people to judge. We can make our own comments in this chamber tonight, but it will be the people who will judge whether they agree to this reform when they select members for a statewide Legislative Council. Four years after the event, the people will get an opportunity to decide on whether this reform was in accordance with their will and their thoughts and their beliefs on how this place should operate. Thank you.

HON NICK GOIRAN (South Metropolitan) [12.50 am]: I rise to oppose the third reading of the Constitutional and Electoral Legislation Amendment (Electoral Equality) Bill 2021. I did not have the opportunity to speak on the second reading debate due to other urgent parliamentary business, although I did at the time contribute to a motion moved by one of my colleagues to seek referral of this bill to the Standing Committee on Legislation. The *Hansard* reflects, of course, that that motion was ultimately unsuccessful.

I have had the opportunity to spend a considerable amount of time looking at the various provisions of this bill in all 97 clauses. At the outset, I want to acknowledge the work done by the government's representative, the Parliamentary Secretary to the Minister for Electoral Affairs. It was an arduous task required of him to answer all the questions about this bill put by members. It was not the way in which these bills are best conducted; it would have been far more preferable for it to have been dealt with in a different way, but that was not available, so I commend the honourable member once again for the way in which he conducted himself in respect of this bill.

I find it interesting that some members opposite seem to have recovered from their political laryngitis, but they have not recovered some of their memory loss. I will take the opportunity now to remind them of some salient points. Before I get to that, President, I should recognise that some members opposite, including, in particular, Hon Dr Sally Talbot and Hon Darren West, have extolled the virtues of the bill before us, which I might add is identical to the bill that was second read. There have been no amendments, and I will get to that in a moment. The members have extolled the virtues of this particular bill and in effect decried the existing regime by which, ironically, they sought to be elected to this place. According to them, the current system is highly undemocratic. I think some members have suggested that it is the most undemocratic system, yet it is the system by which they find themselves

sitting in this place this morning considering this bill. The people of Western Australia elected them with that apparently highly undemocratic system and that now gives them the opportunity to vote at the third reading of this bill.

Of all the virtues that have been extolled by those members who have just spoken, it appears that none have thought to reflect for a moment on another virtue, and that is trust. The Premier, prior to the election—as was just mentioned by my colleague—was repeatedly asked about whether this type of reform was on the agenda. I note that this attracted the attention of ABC journalist Jacob Kagi. On 16 September this year, he said —

> Mark McGowan grew exasperated at the question he faced over and over again on the campaign trail.
>
> "I have answered this question many times," the WA Premier said days from his March election landslide, when asked if he would overhaul the state's electoral system if Labor won a second term.
>
> "I have been clear and I will be clear again.
>
> "It is not on our agenda. Enhanced regional representation will continue."
>
> Six months later, that enhanced regional representation is dead—at least in the Upper House—and WA's electoral system is getting its biggest overhaul in 15 years.

It is how this article, entitled "Mark McGowan's regional voting decision set to face a backlash in the bush" begins, yet none of the members opposite who have extolled the virtues of this bill have thought to reflect for a moment on the broken trust with the electorate.

As I said, I did not have an opportunity to speak in the second reading debate on this bill, and I have no problem whatsoever with members opposite criticising the existing system or critiquing it. Indeed, as I think Hon Dr Sally Talbot mentioned, this has been on the platform for quite some time. She was extolling the virtues of what is said to be one vote, one value. I have no problem with any of that whatsoever. But the big problem I have is when the Premier of Western Australia tells Western Australian voters one thing prior to the election and proceeds to do the exact opposite afterwards. He could not have been asked more times whether this was on the agenda or not, and he could not have been clearer to say it was not. Yet, here we are, on 17 November. Our sitting day began on 16 November and here we are still continuing on 17 November because, according to the government, as at 17 November 2021, with less than the first calendar year completed after the election, this is one of the government's greatest priorities. It is such a priority that the government says that the Legislative Council should extend its sittings beyond the ordinary course. If this had been taken to the people prior to the election and the honourable Premier had said to the people of Western Australia, "We will be bringing in this reform after the election if we win, it will be expedited by us, it will be a top priority and we will do whatever it takes to get through", there would be no problem. So my greatest criticism about this matter is the process that has been embarked upon, which is smeared in broken trust. Hon Kyle McGinn made similar remarks to his colleagues. He is another member who has recovered from his political laryngitis. I have no problem with that, but I ask members opposite to reflect for a moment on whether it is fair and reasonable to have a Premier of Western Australia tell people one thing prior to an election and then do the exact opposite. Is it appropriate in those circumstances to then find that this would be expedited and prioritised over virtually every other piece of legislation?

There will be another occasion for the opposition to highlight the wrong priorities of this government—things like elder abuse reforms that were promised more than 1 700 days ago—but tonight, or I should say this morning, is not the time for that. We need to consider in the third reading at this time the form of the bill currently before us and the extent to which it is any different from what was before us at the second reading stage. I want to draw to members' attention some of the remarkable revelations that occurred during the Committee of the Whole House process. The bill that arrived in the Council was enumerated as 47–1; in other words, no amendments were made in the other place and there have been none still to this point. Members who have been following the course of this debate may be aware that a number of amendments were put forward by the opposition on the supplementary notice paper. None of those amendments were successful; consequently, the 97-clause bill we were presented with remains in the same form.

When we were considering clause 1, something was very interesting. Two matters are worth reflecting on. First, if members have had the opportunity to consider the second reading speeches delivered by the Minister for Electoral Affairs in the other place and his hardworking parliamentary secretary who represents him in this place, they will see that the government has gone to some length to emphasise the importance of the ministerial expert committee. During debate on clause 1 in Committee of the Whole we heard that the Ministerial Expert Committee on Electoral Reform was established by a decision of cabinet. We were told by the parliamentary secretary that at page 45 of the MEC's report, a document titled "Annexure 1: Terms of Reference" was a faithful reproduction of the MEC's terms of reference. The President might be interested to note that it was revealed that the term of appointment was for eight weeks from the date of the cabinet appointment. We were told that the cabinet appointment was made on 28 April 2021, and that the faithful reproduction at annexure 1 indicated that the term of appointment was eight weeks from the date of the cabinet appointment.

Without any prompting from the opposition, the parliamentary secretary introduced this concept of the committee being functus officio. The context in which he raised that was one of my parliamentary colleagues asked him about the circumstances in which members of the ministerial expert committee had been asked to comment on various iterations of the bill. The bill before us is apparently not the first draft. Members of the ministerial expert committee had been asked to comment on this draft, and the reasonable question asked was: in what capacity were they doing that? Without any prompting from the opposition, the parliamentary secretary indicated that it was not because the ministerial expert committee continued to be in existence; according to him, quite rightly, the committee was functus officio. I thought that was of particular interest because at page 2 of the ministerial expert committee's final report is a letter signed by Malcolm McCusker to Hon John Quigley, in his capacity as Minister for Electoral Affairs, dated 28 June 2021. The parliamentary secretary conceded that it was on that date that the ministerial expert committee provided its report, which was two months after the cabinet appointment. In other words, at the time the report was provided to government, the ministerial expert committee was functus officio. The parliamentary secretary took exception to my observation during Committee of the Whole House that this in effect meant that the report was unlawful and there was no power at law for the ministerial expert committee to provide its report to government. That was rather inconvenient for the government and this point has still not been addressed. Yet it was the foundation stone for the entire bill.

The second reading speech repeatedly mentions the ministerial expert committee and its recommendations. The bill was provided to the Parliament in an expedited fashion—a bill that, prior to the election, the Premier promised would never happen. He promised prior to the election that it would never happen; it then appeared in an expedited fashion. It was said to be founded on a ministerial expert committee whose report was issued in circumstances in which it was functus officio. If one was going to try to script some kind of political comedy, they would be the key elements: a leader who says one thing to the people and does the exact opposite, then not only does he do the opposite, but he does it in an expedited fashion. Then, under the pretence of an independent ministerial expert committee, we find that the committee did not even exist at law at the time it handed its report to the government. That is the set of circumstances in which the members opposite say they are proud to support the bill, despite the breach of trust to the people of Western Australia.

The other revelation that occurred during the Committee of the Whole House process was that none of the clauses had been taken up from the Electoral Amendment Bill 2020. Those members who were here in the fortieth Parliament will remember that the government had sought to proceed with an electoral amendment bill, which found its way to the Standing Committee on Legislation. The committee then made a number of recommendations and the bill never saw the light of day again. You would think, President, that having had the benefit of a standing committee enhance and improve the bill in the form of some recommendations, government members who say they are still committed to elements of that bill would pick them up and run with them in the forty-first Parliament, but not the McGowan Labor government. They did not do that. Government members did the exact opposite of what they told the people of Western Australia beforehand. It was interesting to note that the parliamentary secretary indicated that the Minister for Electoral Affairs said that he still intends to pursue those matters, which ironically have their history in 2017 election commitments. Prior to the 2017 election, members of WA Labor told the people of Western Australia that they would implement certain reforms to the Electoral Act. They proceeded with the bill but did not finish it. In the lead-in to the 2021 election, government members said that electoral reform would not be on the agenda, then they proceeded with it anyway. In two consecutive elections, WA Labor said one thing then did the opposite. In 2017, it was, "We're going to bring in reforms", but government members did not do it; in 2021, they said, "We're not going to bring in reforms" and now they have done it anyway.

It is rather remarkable that, in those circumstances, this morning a number of members recovered from their political illness and suddenly promoted the virtues of this bill. They will perhaps forgive me if I do not share their enthusiasm for this bill, particularly in the circumstances in which it has been brought in.

I will finish on this point. What I also find particularly interesting about this 97-clause bill is that, if members take the opportunity to consider clause 2, they will see that the operative provisions will commence on the day after the act receives royal assent. In other words, it will come into operation immediately, yet the provisions of the bill will have no bearing on anything for another three and a half years. Perhaps one of the members opposite who is yet to speak, maybe even the parliamentary secretary in reply, might be able to explain to the opposition and, perhaps more importantly, the people of Western Australia how it could possibly be that this could be the government's top priority for 17 November 2021. How can this bill, which cannot achieve anything for another three and a half years, be considered the top priority for 17 November 2021, unless the real reason is that the government is aware that the people of Western Australia were misled in March? They were told one thing but the exact opposite has happened. Therefore, it is politically imperative for the government to make sure that this matter is dealt with as expediently as possible. The absolute worst thing that could happen for the people of Western Australia, particularly in the regions, is to be repeatedly reminded that, according to an ABC journalist, Mr McGowan, the Premier and member for

Rockingham, was exasperated that he had answered this question many times when asked it over and over again on the campaign trail. If that is the case, it is perhaps no wonder that the government wants to expedite this bill at the expense of several other meaningful reforms that are yet to see the light of day.

Some members opposite will quite rightly say that the reasons I have mentioned do not address the substantive matter of reform, because before we get the opportunity to debate the substantive reforms, we need to deal with the issue of whether the people of Western Australia have been misled. The entire process has been broken by a WA Labor team that has insisted on doing the exact opposite of what its leader told the people of Western Australia he would do. The government has expedited the process through a ministerial expert committee that ultimately tabled its report and provided it to government when it had no power to do so. Until members opposite can deal with those particular substantive matters of process, it is inappropriate and, I would say, premature, to be debating the substantive issue of reforms.

HON JAMES HAYWARD (South West) [1.11 am]: I stand to indicate that I will not support the third reading of the Constitutional and Electoral Legislation Amendment (Electoral Equality) Bill 2021. During the second reading debate, I asked members of the Labor Party to stand up and explain to the Parliament and the community the benefits these changes will bring to their constituents who live in regional Western Australia. What benefits will they get out of the passage of this bill? Over time, not a single member has stood up and explained how there will be a single benefit to their constituents. They are the people who voted members in and who members are sworn to represent. Government members have failed to explain how this change will benefit those people. We heard a lot of talk about how it is fair legislation and that it has long been a dream of the Labor Party to bring these changes about and bring in one vote, one value, but the Labor Party has failed to explain how the people who live in regional Western Australia will be better off with less regional representation. We heard tonight from members that they are standing up for the people of Western Australia. They have an opportunity to stand up for the people of Western Australia in a few moments when this bill will be voted on. At that point, those regional members who were elected by the people of regional Western Australia to stand up for the people of regional Western Australia will have a chance to stand up and vote this bill down, and I encourage them to do that.

HON MARTIN ALDRIDGE (Agricultural) [1.13 am]: I rise to conclude the third reading stage by putting on the record my opposition to the Constitutional and Electoral Legislation Amendment (Electoral Equality) Bill 2021 that is before the house this morning. I intend to do that for a number of reasons. I certainly will not be making a second reading contribution, like some other members have done, in the early hours of this morning.

I first want to talk about the flawed review process that led to this bill coming before the Legislative Council. This was something that the Committee of the Whole contemplated to a significant extent during consideration of clause 1 of the bill. It was clear and it is undeniable that the independence of the Ministerial Expert Committee on Electoral Reform's examination cannot be sustained. In fact, the independence of the committee was qualified by the parliamentary secretary during his second reading speech as being significantly constrained by its terms of reference. As we know, the committee undertook—this is somewhat disputable—a seven or eight-week review, as approved by cabinet. Two weeks into that review—about halfway through the public consultation process, which was the entire public consultation process undertaken on this bill—it released a discussion paper. It was clear from the evidence provided during consideration of clause 1 that there was no dedicated engagement, and no members of the ministerial expert committee resided in Western Australia. The entire advertising association with this so-called public consultation process resulted in three advertisements in *The West Australian*. It is interesting that this was the sole advertising mechanism of the government. Under the explanation of several clauses in the explanatory memorandum, it discounted *The West Australian* as being suitable for the purposes of providing public notices under the Electoral Act because it is a paper that is no longer circulating generally in Western Australia.

It is interesting also that during consideration of clause 1, the government continued to refuse to provide confidence in the political independence of the ministerial expert committee members. After repeated questions were asked, the government would not deny either former or current political affiliations of political members. It is interesting to note that one of the reasons this bill did not proceed, in the government's view, for greater examination by a standing committee was that there was no need for further consultation because consultation was entirely done and contained as a result of the ministerial expert committee process. That committee did not travel to the regions, it did not consist of regional members and it advertised three times in *The West Australian*, a newspaper the government says is no longer relevant in Western Australia.

We also learned that there was no need to expedite the passage of this bill this morning. No reasonable argument was made during consideration of clause 1 or, indeed, during any other clause of the bill being considered, that would support a view that this bill should have been the highest priority of the government, particularly when we have a COVID-19 emergency powers bill sitting on the notice paper, which I understand the government will declare urgent tomorrow. It has been sitting on the notice paper since the last sitting week. We still have not passed the

state budget. Despite those two things, amongst others, this remains the highest priority of the government on this Wednesday morning.

The other thing that became immensely clear during the committee stage was the lack of involvement of the Electoral Commissioner of Western Australia through this entire process. In fact, if it was not clear from the ministerial expert committee report, which consulted on one occasion very late in its short, sharp seven or eight-week review with the Electoral Commissioner, it was obvious during Committee of the Whole. RUN ON

Despite expressing a desire to the parliamentary secretary in the last sitting week when we were in committee that the Committee of the Whole stage would be better advanced if a representative of the Electoral Commission could be available at the table to provide technical advice, that was not forthcoming during this sitting Tuesday. As we saw during Committee of the Whole today, as we reached the back end of the consideration of this bill, there were a number of significantly technical matters and other matters that went directly to the operations of the Electoral Commission that were, I think, inadequately answered or were not answered at all. That concerns me, particularly given not only the nature in which this bill came to this house, but also the importance that should be placed by Parliament on getting our electoral system right.

One aspect of the ministerial expert committee report—I think it was found at chapter 4, culminating in recommendation 5—went to how the government could ensure regional representation under a whole-of-state model. This was something that we could not escape through the entire bill. When we were in Committee of the Whole, there were significant questions, particularly at clause 1 but at other clauses as well, about how the government would respond to the concerns that were expressed to the ministerial expert committee and the views and the recommendations of the ministerial expert committee report. We learnt that the government's response is that the Premier has a draft letter waiting to go to the Salaries and Allowances Tribunal. Clearly, that response is grossly insufficient in ensuring that these new 37 members at large, under this system that this bill provides, will ensure some semblance of regional representation under this model.

We have heard from the third reading debate tonight, particularly from those government members, that it has great confidence in their party to ensure that regional areas will continue to be well represented in Parliament. Let me say this: Where were they when the government proposed to close the Moora Residential College? Where were they when the government proposed to close the Schools of the Air? Where were they when the government proposed to sell off camp schools, amongst a range of other matters? Where were they? They were toeing the party line!

Fairly early in the Committee of the Whole stage, we came to a clause about increasing the number of members of the Legislative Council, which is not a matter that was recommended by the ministerial expert committee but which is certainly a matter that was contemplated by cabinet. If we review the remarks of particularly the Minister for Electoral Affairs in the other place, it is quite clear that this is, as the explanatory memorandum makes out, to make it easy for governments to form a majority in this place. It is plainly clear from the explanatory memorandum. Despite that, a number of other justifications were given, and sometimes even greater emphasis was put on them, such as giving you, President, a more meaningful vote, whatever that might mean, and avoiding deadlocks. That is a poor choice of words by the government because with an even number of members in the next Parliament, I think we will see a greater occurrence or greater potential for tied votes in the Committee of the Whole, which is when the majority of our divisions and decisions occur.

One of the other things that we were not able to establish was the cost of this bill. We know that it is an appropriation bill; it carries a message from the Governor requiring appropriation. The only cost that we were able to establish to some extent was the cost of the ministerial expert committee, which is somewhere between $40 000 and $50 000. That figure has not been settled yet, because there seems to be some strange invoicing arrangement going on between the state government and three universities in Western Australia. We do not know the costs of adding an additional member of Parliament, but we are told that it will be somewhere between $500 000 and $1 million per annum. I suspect it will be closer to the latter than the former figure. All these things should be easily answered in a debate of this kind.

On the point of increasing the size of the Legislative Council, I challenge any member to rise, particularly those who have found their voice in the third reading debate, to provide just one example of a constituent who has come to them saying, "I want you to increase the number of members of Parliament in Western Australia."

That leads me to my final point, which is that this government has no mandate for this reform. In fact, the passage of this bill this morning will, in my view, be breaking an election commitment to the people of Western Australia. Despite that, the third reading contributions that we have heard so far from members of the government have all talked about this long-held, century-old principle that the Labor Party has. They have not talked about this issue. They have barely talked about the regional impact of this bill passing. There are two issues that they tend to gloss over, because we know that before the last election members of the government were silent on this matter.

We know that the Premier said seven times on 9 March 2021 that this was not on the agenda and that this was just another smokescreen by the Liberals and Nationals. We know on 21 February Hon Darren West said —

> If you're considering voting WA Labor for the first time, Mark McGowan makes this commitment to you.
>
> I've known Mark for over 20 years. He keeps his commitments.

We know that on 29 February 2021, when talking to the ABC South West WA, the then candidate and now Hon Jackie Jarvis said —

> I won't be supporting a reduction in representation for regional people, No. And I think Mark McGowan has made it clear that One Vote One Value is not on the agenda,

We know that on 5 May, Hon Kyle McGinn said that he would take on board what his electorate said. Before too long we will see where those members stand on this bill.

I want to leave the house with this last matter. Earlier in the debate, Hon Dr Sally Talbot said that the number of votes should equal the number of seats and that that principle has been now achieved. Members, in reflecting on the votes from the last election, the Labor Party achieved a primary vote of 60.34 per cent and achieved 61.11 per cent of the seats in the Legislative Council. That is almost perfect according to the principle of Hon Dr Sally Talbot. In the Legislative Assembly, the Labor Party achieved 59.92 per cent of the primary vote, but achieved 89.8 per cent of the seats. Where is the outrage from the government about that? Where is government members' outrage about ensuring that those votes elect an equivalent number of people? We keep hearing arguments about Wundowie, Wooroloo, Manjimup, Esperance and Kalgoorlie. Where were those members prior to the last election? If they feel so strongly about this, where were they? For all those reasons, this bill cannot be supported and should not be supported by members of the Legislative Council this morning.

HON DR STEVE THOMAS (South West — Leader of the Opposition) [1.29 am]: I confirm to the house that obviously the opposition will not be supporting the third reading of the Constitutional and Electoral Legislation Amendment (Electoral Equality) Bill 2021, which may come as a surprise to some members of the government. I listened intently to some of the comments made by members. Having heard some regional Labor members speak, I probably understand why they have not said a lot to date. Hon Dr Sally Talbot said—I apologise if I have not got this quote exactly right; I was trying to scribble it down very quickly—"No modern democracy should be based on one vote being worth more than another." It was kind of repeated by Hon Shelley Payne who said—again, apologies for an incorrect interpretation—"One person's vote should not be worth more than another in a different region." Those comments were probably topped off by Hon Darren West's comment that in the future, people will look back at vote weighting with incredulity. That being the case, I shall be looking forward to members of the Western Australian Labor Party fighting strenuously for one vote, one value in the Senate. If they are so opposed to vote weighting that they will be looking back in history with incredulity that there was at some point vote weighting, obviously the Senate will reflect a similar outcome. I heard two government members suggest that malapportionment in Western Australia is the worst in the country. I think members talked about six to one. The state of Tasmania has about half a million people, while the state of New South Wales has a bit over eight million people. My simple calculation says that that is about 16 to one. Those regional ALP members who stood up and said that this upper house has the worst malapportionment in the country obviously got that bit wrong. I heard that twice. Having said that in the future we will look back at any malapportionment with incredulity, obviously the Senate will change significantly.

The most interesting part about the conversation tonight—or this morning—was the fact that Labor members' contributions to this debate were not about the communities and people of regional Western Australia. This is the bit that we forget. I heard lots of talk about the impact on political parties. It is absolutely the case that that has been the focus in not just this electoral reform, but also the one I experienced in 2005 in that other place. The entire debate and focus was on the outcome for political parties, and it is no wonder, as we have heard numerous times. I was at the press conference when the Minister for Electoral Affairs said that this was the achievement of 120 years of aim and target of the Labor Party. This is a political gain for the Labor Party. It is no doubt a good day for the Labor Party. It is a bit late for popping champagne corks tonight but I imagine that there will be some celebrations. It is a very sad day for regional representation, regional communities and regional families because we are actually here to look after them. It may come as a surprise to members to realise that we are not here to look after political parties and we are here not to look after ourselves—we are here to look after them. Those regional communities have disadvantage purely on the basis of being regional. One government member recognised that in their third reading address tonight. The Minister for Regional Development acknowledged regional disadvantages in the debate but said that that is not the one we should be focusing on. I accept that there are other disadvantages that people are subject to, but I do not remember a situation in which two wrongs make a right; in which we ignore regional disadvantage and actually make it worse because it is politically convenient for the Australian Labor Party. We have forgotten that we are actually here to serve the people of Western Australia, including regional people. If anybody suspects that

regional Western Australians have better services and facilities or better health and mental health outcomes, they are kidding themselves—they are not actually out in regional communities talking to people. We do not have the same level of service, we do not have the same facilities and we do not have the same health outcomes. How do we deliver those services and health outcomes? We do that, as much as anything else, by lobbying regional representatives.

It will be the case, and I am sure that the Labor Party would have to acknowledge, that there will be shifts of representation from regional Western Australia to metropolitan Western Australia, because it believes in one vote, one value. That was the direction given to the expert panel. The expert panel was not told to find the best outcome for Western Australia; it was told to deliver, quite specifically, one vote, one value. I do not hold that against the panel. That is what it was told to deliver and that is what it did. It was not asked to look after regional Western Australia and it was not asked to consider the impacts on regional Western Australia; it was told to deliver one vote, one value, because that was of greatest benefit—but not to regional Western Australia, not to the people I represent or our regional members represent, and not to the people the government's regional members represent either. Tonight, the government does those people an enormous disservice, because it takes away part of their voice. That, apart from all the other things my colleagues have mentioned, which I do not need to mention a second time, will be the legacy that this government leaves. It is taking away a part of the voice of regional Western Australians—those families and communities who already do it tougher than people in the metropolitan area. For that reason, President, every regional member and every thinking member should be opposed to the third reading of this bill.

Division

Question put and a division taken with the following result —

Ayes (20)

Hon Klara Andric	Hon Sue Ellery	Hon Kyle McGinn	Hon Matthew Swinbourn
Hon Dan Caddy	Hon Peter Foster	Hon Shelley Payne	Hon Dr Sally Talbot
Hon Sandra Carr	Hon Jackie Jarvis	Hon Stephen Pratt	Hon Dr Brian Walker
Hon Stephen Dawson	Hon Alannah MacTiernan	Hon Martin Pritchard	Hon Darren West
Hon Kate Doust	Hon Ayor Makur Chuot	Hon Samantha Rowe	Hon Pierre Yang *(Teller)*

Noes (8)

Hon Martin Aldridge	Hon James Hayward	Hon Tjorn Sibma	Hon Neil Thomson
Hon Nick Goiran	Hon Steve Martin	Hon Dr Steve Thomas	Hon Colin de Grussa *(Teller)*

Pairs

Hon Lorna Harper	Hon Peter Collier
Hon Rosie Sahanna	Hon Donna Faragher

Question thus passed with an absolute majority.

Bill read a third time and passed.

House adjourned at 1.41 am (Wednesday)