

Hon Nick Goiran; Hon Sue Ellery; Hon Martin Aldridge; Hon Michael Mischin; Hon Aaron Stonehouse; Hon Peter Collier; Hon Alison Xamon; Hon Simon O'Brien; Hon Dr Steve Thomas

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**SALARIES AND ALLOWANCES AMENDMENT (DEBT AND DEFICIT REMEDIATION) BILL 2017**

*Committee*

Resumed from 6 December. The Deputy Chair of Committees (Hon Matthew Swinbourn) in the chair; Hon Sue Ellery (Leader of the House) in charge of the bill.

**Clause 2: Commencement —**

Progress was reported after the clause had been partly considered.

**Hon NICK GOIRAN:** Last night, we adjourned Committee of the Whole after partly considering clause 2. Members have had the opportunity to review clause 2 and it is readily apparent that the government, for no reason, has sought to leave this very important new law that it wants to implement to freeze the salaries of a range of people, including every member of this chamber, which last night the minister told us was necessary. One of the reasons that it is necessary is to send a message to the rating agencies, yet the government has sought to leave this law at the whim of the member for Rockingham. When he has finished opening his Christmas presents and enjoying his luxurious salary, which is double his normal salary, the highest amount that he has ever earned in his life, he might decide to run down to the Governor's office and have this law implemented. To me, that seems contradictory to what the minister was indicating to the house yesterday. I have little confidence in the shiftiness of this government, so I have given notice to the house of an intention to move an amendment that will address this issue. Since the government is very enthusiastic to make sure that the rating agencies are given a strong message, I think they should be given that message as soon as possible. Since a range of members in this place are enthusiastic to see their pay frozen and since I am ambivalent on the issue, it seems to me that this should happen as soon as possible.

I move —

Page 2, lines 8 and 9 — To delete the lines and substitute —

(b) the rest of the Act — on the day after that day.

**Hon SUE ELLERY:** I made a commitment to the house last night that I would follow up on whether we could agree to amend clause 2, "Commencement". Though I do not accept any of the assertions in the honourable member's preamble, I am pleased to report that we are happy to support the amendment.

**Amendment (deletion of words) put and passed.**

**Hon NICK GOIRAN:** I draw it to members' attention that if the part of my amendment to substitute the words is not supported, the whole bill will fall down because all that would be left is —

(a) sections 1 and 2 — on the day on which this Act receives the Royal Assent;

There would be no further words. I leave it at that.

**Amendment (insertion of words) put and passed.**

**Clause, as amended, put and passed.**

**Clauses 3 to 6 put and passed.**

**Clause 7: Section 8 amended —**

**Hon NICK GOIRAN:** I foreshadowed yesterday evening that I have some questions on clause 7 and I indicated to the minister that I also had questions on clauses 8 and 9. I am pleased to indicate that I no longer need to ask my question on clause 8. I have questions only on clauses 7 and 9. I note that clause 7 seeks to amend section 8 of the act. I draw to the Leader of the House's attention clause 7(2) of the bill, specifically, where it indicates that the tribunal is not required to make an annual determination or an annual report. Is the minister able to confirm for the house that, therefore, this is a discretionary provision for the tribunal?

**Hon SUE ELLERY:** I confirm that that is the case.

**Hon NICK GOIRAN:** Proposed section 8(2)(b) indicates that the tribunal must not make a determination under section 7C(2). Why is this a mandated provision, yet proposed section 8(2)(a) is a discretionary one?

**Hon SUE ELLERY:** The member is right to draw the distinction. Proposed section 8(2)(b) states —

the Tribunal must not make a determination under section 7C(2) that comes into operation while section 10F applies.

I take the member back to the act; I do not know if he has it open in front of him.

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**Hon Nick Goiran:** I do.

**Hon SUE ELLERY:** Section 7C, “Determinations as to remuneration of certain executive officers of Government entities”, relates to government trading enterprises. That is why there is the difference. The details for government trading enterprises are yet to be brought in under the Salaries and Allowances Tribunal, and that is why there is the difference. I am not sure whether the member asked this question, but I have additional information if he would like it. Section 10F, referred to in proposed section 8(2)(b), relates to the provisions under which the tribunal will deal with the GTEs during the freeze, once they are brought in.

**Hon NICK GOIRAN:** I thank the minister. I understand from that that a different regime will apply in respect of those two things, and that although the government trading enterprises have a different regime, it is still addressed by way of section 10F. So section 10F will temporarily apply and subsequently things will return to normal.

I refer again to clause 7(2) which also seeks to insert proposed section 8(3), which states —

Subsection (2)(a) does not prevent the Tribunal from making a determination or report referred to in that subsection if the Tribunal considers the circumstances require it.

The minister advised the house earlier that proposed subsection (2)(a) is discretionary; if it is discretionary, why is proposed section 8(3) necessary?

**Hon SUE ELLERY:** To make it explicit that it is not prevented from making a determination.

**Hon NICK GOIRAN:** Would that not already be obvious from the fact that proposed subsections (2)(a) and (2)(b) use different language—one provides that the tribunal is not required to make an annual report, and the other one provides that it must not make a determination? It would seem obvious, on the face of it—the minister and I have agreed in the short course—that proposed subsection (2)(a) is discretionary and (2)(b) is mandated, so proposed subsection (3) is not necessary.

**Hon SUE ELLERY:** I see the point that the honourable member is making. However, he asked the question in the first instance about whether it was discretionary or not. Parliamentary counsel’s advice is that it is to make it absolutely clear to anyone else who chooses to read this and is looking for an explicit explanation—that is why proposed subsection (3) states “Subsection (2)(a) does not prevent”. That was put in there for the purpose of making it completely explicit that the tribunal is not prevented from making a determination.

**Hon NICK GOIRAN:** I am concerned here; lines 21 to 24 will probably invoke the wrath of Hon Aaron Stonehouse because we are now going to have additional legislation that is unnecessary. It is plain that proposed subsection (3) is not needed; it has been provided for superfluous reasons. The government does not need it, and the bill would be improved if lines 21 to 24 were to be deleted.

**Hon SUE ELLERY:** I cannot accept that the lines are not needed. The advice from parliamentary counsel is that it is to make it explicit. One could argue that it is not necessary, and, clearly, that is what the member is arguing, but the advice from counsel is that it is to make it explicit to the tribunal and anyone else who is interested that it does no damage to add that, to make it clear.

**Hon NICK GOIRAN:** I will make my last comment on this point and indicate to the chamber that had the bill been referred to the Standing Committee on Legislation, I would like to think that the committee would have looked at this provision, amongst other things, and recommended that those lines be deleted. That is not going to happen. The government wants to rush this legislation through today in the remaining hours we have, despite the fact that we have already passed an amendment to clause 2, so the bill will have to go back to the Assembly anyway, which is not sitting again until February. I do have a proposed amendment ready to delete those lines, but it seems unnecessary for me to move it because I get the impression from the minister and the government that they are not enthusiastic about it. They prefer to have larger legislation than is needed, and since it will do no harm to have it in there, and since we are enthusiastic to finish today rather than tomorrow or some other later stage, I suggest we leave it at that.

**Hon MARTIN ALDRIDGE:** Clause 7 amends section 8 of the act. Section 8 provides for the tribunal’s requirement to report and make a determination annually. Could the minister tell me how the tribunal issues or presents those determinations?

**Hon SUE ELLERY:** Could the member be more explicit about the information he is seeking?

**Hon MARTIN ALDRIDGE:** The tribunal is required to issue a determination, with not more than a year elapsing between one report and another under section 7(1). I am just wondering how the tribunal issues its determinations. How does it publish its determinations?

**Hon Sue Ellery:** You don’t know?

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**Hon MARTIN ALDRIDGE:** I am asking the question.

**Hon SUE ELLERY:** It is required to be gazetted.

**Hon MARTIN ALDRIDGE:** I assume the minister is referring to the requirement under section 6(3) of the act, which states —

A copy of every determination made by the Tribunal, shall be published in the *Government Gazette*.

Is the minister or her advisers aware of any occasion on which the tribunal has been in breach of that provision?

**Hon SUE ELLERY:** No, my advisers are not aware.

**Hon MARTIN ALDRIDGE:** I have an issue with the answer the minister provided, although I agree with it. On 16 May 2017 in this place the minister provided an answer to my question without notice 18. I was pursuing a matter relating to motor vehicle allowances that had been paid to ministers of the Crown. In her response, the minister said —

The determination by the Salaries and Allowances Tribunal was made on 1 December 2016 under the previous government, the government to which the honourable member belonged, and was not made public.

The minister went on to say —

It is disappointing that this was kept secret and it is disappointing that this government has been forced to clean it up.

Is that statement correct?

**Hon SUE ELLERY:** This is the time when we examine in detail the provisions of the bill that is before the chamber. There are other mechanisms through which the member may pursue an answer that I have given during question time if he does not believe it to be correct, and I am happy for him to do so. I do not have in front of me the question the member just referred to and I would have given that answer in a representative capacity in any event. I am not sure that I can take this much further, other than to say that if the member wants to have a conversation with me behind the Chair or if he wants to raise the matter in the other ways available to him in this chamber, if he believes I have given an incorrect answer, I am happy for him to do so. I am not sure this is the time to argue about that and I am not sure that I can provide the member with much more information about that.

**Hon MARTIN ALDRIDGE:** The minister may argue that, but I am confused because I am presented with two different answers from the minister about the way in which the Salaries and Allowances Tribunal issues its determination. On one occasion in May this year, the minister said to me that the tribunal issued a determination that the government at that time kept secret. The minister has just told me in an answer to this place that all the determinations of the tribunal are required to be gazetted in the *Government Gazette* and made public and that she is not aware of any occasion when that has not been followed. At this point we are dealing with clause 7 of the bill, which amends section 8, the requirement for the tribunal to issue a determination, and I am confused about which answer is correct.

**Hon SUE ELLERY:** As I have said, I answered the question that the member just asked about the provisions of the bill before us based on the advice that I was given by the advisers. I was asked whether I was aware of any occasions on which the tribunal did not do that. If the member wants to take issue with the answer he was given to a question, which clearly he does, there is another mechanism and another way—probably several ways—for him to do that, and I invite him to do that. The discussion in Committee of the Whole about the provisions before us in the bill is not the place to have the argument about that and how I might address it if I gave an incorrect answer. I have answered the member's question about the provisions in the bill before us based on the information available to me. I am not sure that I can give the member anything further, other than the information that is available to me. If that confirms in the member's mind that he was given an incorrect answer from me in a representative capacity at an earlier date, I invite the member to use the mechanisms available to him to pursue that. I will give him my undertaking that I will check whether that was the case and report back to the chamber in due course. But I cannot take it any further in a discussion about the provisions of the bill that we are debating today.

**Hon MICHAEL MISCHIN:** I have just a couple of questions regarding clause 7 of the bill, leaving aside proposed subsection (2)(b) and focusing on proposed subsection (2)(a) in clause 7(2) of the bill. Proposed subsection (2)(a) states —

the Tribunal is not required to make an annual determination under section 6(1), or an annual report under section 7(1), before 1 July 2021;

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However, proposed subsection (3) states —

Subsection (2)(a) does not prevent the Tribunal from making a determination or report ... if the Tribunal considers the circumstances require it.

In the minister's second reading reply, she mentioned some of the circumstances that the tribunal considers might require a determination, but that is to be read with proposed section 10D(3), as I understand it, which is one of those new sections introduced into clause 9, which states —

The Tribunal must not make a determination under which the remuneration to be paid or provided in respect of an office or other position referred to in section 6(1) is more than the remuneration paid or provided in respect of the office or position immediately before commencement day.

I understand how that is meant to work, but given the breadth of the definition of remuneration in the act, would the minister agree that apart from salary, it also includes allowances, fees, emoluments and benefits, whether in money or not? What sort of circumstances might require the tribunal to make a determination, notwithstanding that there is a limit to the determinations that it can make?

**Hon SUE ELLERY:** I did spell out in my second reading reply that the bill provides that the tribunal is not required to make a determination but may do so if the circumstances require it. That is to ensure that during the freeze, the tribunal may still issue determinations when new offices are created, when the tribunal sees fit to reclassify a special division office based on significant changes in work value, and when the tribunal needs to vary its determination to account for changes in office holders. The tribunal may also see fit to adjust the amounts of remuneration without increasing the overall remuneration provided to an office holder. It is put there as a safeguard to ensure that the tribunal is not prevented from issuing determinations if they are needed in the circumstances that I have just outlined.

**Hon MICHAEL MISCHIN:** Can the minister hear me out and give me an idea of how the tribunal might think it necessary to adjust the amounts of remuneration without increasing remuneration?

**Hon SUE ELLERY:** Without being prescriptive, the kinds of examples that have been given to me are, for instance, when part of the component of the office holder's remuneration package is determined by an external body. Say there was some particular superannuation arrangement, for example, or other part of their package that is set outside the provisions of the state. The tribunal may consider it necessary—this is hypothetical; this is “may”, not “will”—to adjust the package to take account of that. I am not able to give the member a more specific example than that, other than it was put there to ensure that the tribunal has the flexibility to deal with occasions such as the one that I have just set out whereby it is seeking to balance out a component of the remuneration that is set externally. The example I have been given is that there has been an instance in which there was some issue around superannuation in particular, and I am advised that this clause is to give flexibility to the tribunal to deal with that if it is necessary, but it is not envisaged that it would be something that would be frequently relied upon.

**Hon MICHAEL MISCHIN:** Theoretically, would that involve, say, salary sacrifice opportunities—some additional ability to sacrifice salary that would give a benefit or reduce the taxation burden and the like?

**Hon SUE ELLERY:** I am not sure that I am able to be any more specific. Salary sacrifice arrangements, for example, exist now, so I am not sure that I can give the member anything more specific than that. As I said before, I am advised that it was to give flexibility for what I am told might be the odd circumstance in which, because some external component of the package needs to be taken into account, the tribunal has the flexibility to deal with it.

**Hon MICHAEL MISCHIN:** Just to take that a little further, let us say the commonwealth was to remove tax deductibility for some specific item, resulting in an erosion or an increase in one's taxable income, and increases the amount of tax that is drawn from one's income, hence effecting a reduction in remuneration. The tribunal can look at that and do a determination, but it cannot increase remuneration, so we are just going to have to suffer, especially if that affects our electorate allowance. We could end up with people being significantly worse off, with no way of addressing the problem. Would it be fair to say that?

**Hon SUE ELLERY:** I am not trying to be difficult, or to prevent the member from getting information that he needs, but I do not think that I can give him any more information. The proposition he just put to me is hypothetical. I am advised that this was not inserted into the bill before us with a view to being able to do a double shift around taxation changes. That is not why it was inserted into the bill. I am not sure that I can provide the member with any more information about that, and I am not in a position to respond to the particular hypothetical proposition that he has just put.

**Hon MICHAEL MISCHIN:** In substance, the tribunal still has a function. It can decide that circumstances have changed significantly, and it needs to do a determination based on a need for some kind of look at remuneration, but it cannot be additional remuneration, to address a particular problem. That would be right, would it not?

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**Hon SUE ELLERY:** In a general sense, yes. I have already set out, in my second reading reply and again when I answered the member's question a few minutes ago, the circumstances in which it is envisaged these provisions would be relied upon by the tribunal. It goes to reclassification, new positions and the various other things that I set out when I gave my response on both those occasions.

**Hon MICHAEL MISCHIN:** I move —

Page 3, line 16 — To delete “2021” and substitute —  
2019

I do not intend to speak much on this amendment, but simply refer to the comments I made about the arbitrary nature of the four-year time limit that has been set. It is inflexible and does not accommodate changing circumstances. As the bill currently stands, there is no prospect of any sensible review of changes in circumstances, which would be the case with the Western Australian Industrial Relations Commission and other matters. I indicate that if this amendment fails, I will abandon the similar amendments. The amendment proposes a reduction in the period of time to 2019.

**Hon SUE ELLERY:** Effectively, the amendment moved here and the one proposed for clause 9 would extend the freeze for 18 months only, from February 2018 to 30 June 2019. That is too short a period, from the government's point of view. For that reason, as I indicated in comments last night and in my second reading reply, the government will not support the amendment.

**Amendment put and negated.**

**Clause put and passed.**

**Clause 8 put and passed.**

**Clause 9: Part I Division 4 inserted —**

**Hon NICK GOIRAN:** As I foreshadowed yesterday evening and earlier this afternoon, I have a number of questions on clause 9. I take the minister to page 5 of the bill. This clause seeks to insert a new division 4 into the act, including new section 10C, which deals with the freezing of the Governor's remuneration for the next four years. I specifically draw the minister's attention to proposed section 10C(4), which refers to the tribunal specifying in a determination a method of altering, from time to time, the remuneration payable to the Governor. That is a power that exists under the act at the moment, and the purpose of the provision that the government wants to insert into the act is that, if the tribunal has specified a method, it must not specify a method that allows for the remuneration to be increased for the next four years. Does such a method currently exist?

**Hon SUE ELLERY:** The answer is yes. If the member has a copy of the act in front of him, the relevant provisions are set out in section 5A, “Inquiry into and determination of remuneration of Governor”.

**Hon NICK GOIRAN:** The act gives the power for that to happen, but I want to be clear that there is actually a method in place at the moment. I understand that the act provides that, before the government appoints a Governor, the tribunal has to make a determination in respect of the Governor. That is fine, but it can also make a determination to specify a method for altering that from time to time. My question is: has the tribunal gone to the second stage, and is there currently a determination in place that specifies a method for altering the Governor's remuneration from time to time?

**Hon Sue Ellery:** So that I understand the question, have they used their variation powers?

**Hon NICK GOIRAN:** Section 5A(3) of the act states —

The Tribunal may, in complying with a request made under subsection (1), in its determination specify a method of altering from time to time the remuneration payable to the Governor during the subsistence of the appointment referred to in that subsection.

The tribunal does not have to do that; it can do that if it wants to. This provision that the government wants to insert into the act places, to use the Leader of the House's language, a fetter on that for the next four years. I would like to know whether that is in place at the moment.

**Hon SUE ELLERY:** I thank the member for clarifying the question. Yes, within the current determination for the Governor there is a method of altering the remuneration. It is linked to the arrangements in place for the judiciary. That is the method that is in place.

**Hon NICK GOIRAN:** What does that mean for the current Governor? The Governor is obviously entitled to a level of remuneration. The tribunal has specified a method for altering that, which the Leader of the House has

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said is linked to the judiciary. During this four-year period, the method that is linked to the judiciary will continue. What is the Governor's remuneration at the moment and how will it change over the next four years?

**Hon SUE ELLERY:** This bill will effectively freeze the remuneration arrangements for the current Governor because they are linked to the judiciary, and the freeze applies to the judiciary. I am advised that that link is how we give effect to the freeze.

**Hon NICK GOIRAN:** Has the government got advice on this specific point?

**Hon SUE ELLERY:** I have just got advice on that specific point. Is the member asking me whether the Public Sector Commission sought advice?

**Hon Nick Goiran:** What advice have you got on this particular point, other than the verbal advice you have just received—none?

**Hon SUE ELLERY:** I am advised that the specific question was considered between the Public Sector Commission and the Parliamentary Counsel's Office. If the member's question is about whether they sought some external advice outside government, I am advised that the answer is no. The advice to me is that this specific issue was discussed and considered between the Parliamentary Counsel's Office and the Public Sector Commission.

**Hon NICK GOIRAN:** I think that is going to be a problem. It is not my problem; it is the government's problem. I find it rather interesting that this particular provision is abundantly unclear on that point, yet moments ago we dealt with clause 7, to which Parliamentary Counsel has decided to add an extra point to make sure that it is crystal clear to anybody who cannot read the English language. It is totally unnecessary, but Parliamentary Counsel wanted to do it on that one. However, it is not at all clear for the Governor's remuneration and the method, and the apparently secret link between that and the judiciary, which will freeze it over the next four years. I am not sure there is the power to do that in the bill, but that is not my problem. If it becomes a problem, it will be because, firstly, the government chose not to consult with the Governor on this matter—in fact, it consulted with nobody—and, secondly, it decided, in its wisdom with its other friends in this place, to ensure that this matter never went to a committee to ensure that it was done properly. As I say, it is not my problem. When the Governor has questions about this, I recommend that the Governor have a chat to the Leader of the House.

**Hon MARTIN ALDRIDGE:** I have one question on this clause. This clause will insert proposed section 10D, "No increases in remuneration under s. 6 before 1 July 2021". It basically refers to the remuneration determined by the tribunal. Remuneration is obviously defined in part I of the act, and includes salary, allowances, fees, emoluments and benefits, whether in money or not. I refer to the tribunal's annual determination for members of Parliament. It determines a whole range of things, including salaries, allowances and entitlements for members of Parliament. It determines a number of things that are specific to the costs incurred by regional members of Parliament. To what extent did the government consider the impact on regional members that will not be felt by metropolitan members because they do not receive those travel and accommodation entitlements?

**Hon SUE ELLERY:** Yes, they were considered and I am advised that that is why proposed section 10D(9) has been inserted. It states —

The regulations may prescribe a kind or class of remuneration to which this section does not apply.

It is there as a safety net. If it becomes clear to the tribunal that there is some reason—for example, travel costs —

**Hon Nick Goiran:** Not the tribunal—the government.

**Hon SUE ELLERY:** The regulations will set out how it is to be done.

In the example that the member used, if there is an increase in travel costs, members can put a case that a determination ought to be issued in respect of that because something extraordinary has happened—for example, a member can get around their electorate only by plane. That was what was envisaged with the provision in proposed section 10D.

**Hon MARTIN ALDRIDGE:** If I am correct in interpreting what the Leader of the House has just said, the passage of this legislation will likely impact regional members to a greater extent because they have a greater number of entitlements that will be impinged upon by the passage of this legislation and we will need to make an argument to the government under the provision that she has identified to exempt the transport and accommodation-related provisions in particular from the determination, rather than making the case to the tribunal—the independent body that determines and assesses whether the entitlements that are provided are reasonable.

**Hon SUE ELLERY:** There are two ways in which this can be taken into account. I preface my remarks by saying that the government has a large number of regional members. I imagine that our regional members will let the

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government know quick smart if there is a serious problem. In any event, there are two ways. The tribunal can still receive submissions. That avenue has not been blocked —

**Hon Martin Aldridge** interjected.

**Hon SUE ELLERY:** Let me finish. The tribunal can still receive submissions. The government might decide that a prescription of regulations needs to be made to take account of it. The government can consider advice from the tribunal if it has received submissions about that. It can go two ways. A submission can be made to the tribunal and a submission can be made to government. The government, in its consideration of a matter such as the one that Hon Martin Aldridge used as an example, can ask the tribunal whether it has received any submissions and whether it has any advice to give on the matter. It is still possible for issues of the kind that the member identified to be dealt with, if it is necessary, during the period of the freeze.

**Hon AARON STONEHOUSE:** I move —

Page 5, after line 11 — To insert —

**10CA. No increases in remuneration for Members of Parliament until General Government Sector Net Operating Balance is in surplus**

(1) In this section —

*General Government Sector Net Operating Balance* means the measure, in accrual terms, of the difference between the government's expenses and revenue for a given financial quarter or financial year.

(2) This section applies to a determination made by the Tribunal under Section 6 after 1 December 2017, other than a determination made under Section 6(1)(c), (d), (ea) and (e).

(3) The Tribunal must not make a determination under which the remuneration to be paid or provided in respect of an office or other position referred to in Section 6(1) is more than the remuneration paid or provided in respect of the office or position immediately before commencement day unless and until the General Government Sector Net Operating Balance is in surplus.

(4) The Treasurer must within 30 days of the end of each financial quarter cause to be tabled in both Houses of Parliament a report containing the General Government Sector Net Operating Balance for that financial quarter.

(5) If either House is not sitting during the 30 day period referred to in subsection (4) the Treasurer may transmit the report containing the General Government Sector Net Operating Balance for that financial quarter to the Clerk of that House.

(6) A copy of a report transmitted to the Clerk of a House is to be regarded as having been laid before that House.

(7) The laying of a copy of the report regarded as having occurred under subsection (5) is to be recorded in the Minutes, or Votes and Proceedings, of the House on the first sitting day of the House after the Clerk received the copy.

It is great to see some more enthusiasm, scrutiny and interrogation now that we are back on the salaries and allowances bill. I wish I saw this level of scrutiny and passion from the Liberals during debate on the payroll tax bills. Nonetheless, my amendment is simple; it is designed to freeze the pay of parliamentarians until the state budget is balanced. During my second reading contribution, I drew on public choice theory, or at least one aspect of public choice, which explores the relationship between economic self-interest and politics. To summarise my argument, although most MPs agree that spending should be cut and the budget should be balanced, they lack the necessary incentives to take action. The benefits of spending are enjoyed right now while the costs are spread out over the future. MPs are currently incentivised to spend in their own electorates while spreading the costs across the entire state, and we wonder why we have trouble passing budget saving measures. Few MPs would vote to cut spending in their electorate or to cut a program that is popular with their constituency. They are addicted to other people's money. Let us not forget that. It is other people's money after all—taxpayers' money. I am reminded of one of my favourite quotes from TV libertarian character Ron Swanson, who said —

It's never too early to learn that the government is a greedy piglet that suckles on a taxpayer's teat until they have sore, chapped nipples.

My amendment will give MPs an incentive to do the right thing—to rein in government debt and hold the government accountable for its management of the state's finances. The Premier has spoken about implementing new key performance indicators for the public sector and tying director general and chief executive officer pays

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to their performance. It is time that we adopted the same principle for MPs. Shortly after I was elected, I gave an interview to Andrew Burrell from *The Australian* in which I said, firstly, that I would oppose any tax increase, which I have done at every opportunity; and, secondly, that the government's plan to freeze MPs' pays did not go far enough and that MPs' pays should be frozen until the budget is back in surplus. I said that in June and I meant it. I am willing to put my pay on the line in an attempt to repair the budget and hold MPs to account. The record will show which MPs cared about the taxpayers of Western Australia and which MPs cared more about their own pay cheque.

**Hon NICK GOIRAN:** I will be opposing the amendment moved by Hon Aaron Stonehouse, a member of Parliament whom I hold in high regard. On this occasion, I strenuously disagree with him and I disagree with his assertion that somehow however I vote on this might be a reflection of my care for this job or for the people of Western Australia. I say to Hon Aaron Stonehouse, if he is so serious about this, let us make sure that members of Parliament get paid nothing—starting tomorrow, let us get paid nothing. We will all do it pro bono; I am happy with that. Is Hon Aaron Stonehouse happy with that? Then we will see how serious he is about this. I strenuously oppose any suggestion that because some of my colleagues might vote against this particular amendment they somehow care less about the people of Western Australia and more about themselves. Nothing could be further from the truth. This amendment is wrong in principle. For starters, members of Parliament do not have control over the state of the budget; government members and those in cabinet have a say about that. The rest of us, particularly those of us in the Legislative Council, have no say. I will vote against this amendment, and I hope that however the vote is cast, there will be a division.

**Hon PETER COLLIER:** I could not have said it more articulately than Hon Nick Goiran, and for those reasons, all of the above, the Liberal Party will definitely oppose this amendment.

**Hon ALISON XAMON:** As I indicated in my second reading contribution, I am also very unsupportive of this amendment. I disagree with the whole premise of this amendment, which is that effectively the sorts of things that we advocate for in this place are driven only by what is in our pay cheque. I am not quite sure about the sorts of people the honourable member surrounds himself with who are clearly motivated by that incentive. However, it makes no difference to me and my advocacy. I am only interested in being here to uphold values that support people, particularly vulnerable people, and issues of integrity in government and environmental protection. They are the things that I will advocate for regardless of what is done with my wage and regardless of the state of the budget. It is a cynical and sad amendment because of the assumptions behind why people decide to come to this place and what they advocate for. I certainly will not support this amendment and that is because, for the record, I am here to advocate for human beings and what is best for human beings. I am not driven simply by what is in my pay cheque.

**Hon SUE ELLERY:** The government cannot support the proposition moved by Hon Aaron Stonehouse. The government's position is that the freeze should apply to all affected parties consistent with our commitment to sharing the burden. This amendment would have the effect of terminating the freeze in a particular set of circumstances, but only for members of Parliament. To that extent, the government is not in a position to support it. I put on the record that I understand that marriage equality has passed the federal Parliament, and that means, apart from anything else, that Hon Stephen Dawson can actually get married!

*Division*

Amendment put and a division taken, the Deputy Chair (Hon Matthew Swinbourn) casting his vote with the noes, with the following result —

Ayes (3)

Hon Robin Scott	Hon Colin Tincknell	Hon Aaron Stonehouse ( <i>Teller</i> )
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Noes (28)

Hon Martin Aldridge	Hon Stephen Dawson	Hon Colin Holt	Hon Matthew Swinbourn
Hon Ken Baston	Hon Colin de Grussa	Hon Alannah MacTiernan	Hon Dr Sally Talbot
Hon Jacqui Boydell	Hon Sue Ellery	Hon Kyle McGinn	Hon Dr Steve Thomas
Hon Robin Chapple	Hon Diane Evers	Hon Michael Mischin	Hon Darren West
Hon Jim Chown	Hon Donna Faragher	Hon Simon O'Brien	Hon Alison Xamon
Hon Tim Clifford	Hon Nick Goiran	Hon Samantha Rowe	Hon Pierre Yang
Hon Peter Collier	Hon Laurie Graham	Hon Tjorn Sibma	Hon Martin Pritchard ( <i>Teller</i> )

**Amendment thus negated.**

**Hon MICHAEL MISCHIN:** I want to ask a question about the minister's comments on the operation of proposed section 10D where the tribunal, in combination with the amendments to section 8 of the act, may, if the

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circumstances require it, make a determination or, in the case of judicial salaries and allowances, a report, but under 10D(3) must not make a determination under which the remuneration to be paid or provided is more than that immediately before the commencement date of this bill. The minister goes on to say, though, that regulations may be prescribed to exempt a kind or class of remuneration. We heard a lot over the last couple of days about how it is up to Parliament to determine the parameters for the Salaries and Allowances Tribunal to do its function, and that this is not an interference in its independence; yet, to the extent regulations can be prescribed by the minister and government of the day, it takes it out of the hands of Parliament, does it not, and puts it in the hands of the responsible minister? Rather than simply affecting the independence of the tribunal in that respect by putting a broad cap in the hands of Parliament when it was meant to be out of the hands of Parliament, it goes further to allow certain exemptions in the event the government of the day would like to make those exemptions—would the minister agree?

**Hon SUE ELLERY:** No, the minister would not agree. We have already debated several times whether this constitutes political interference. In any event, the specific example that the member gave this time was a regulation. The honourable member is well aware that a regulation is a disallowable instrument. The matter would come back before the Parliament if that is what a single member or other members of the Parliament wanted to happen.

**Hon SIMON O'BRIEN:** Further to that point, I am not sure that the validity of the power of Parliament in disallowing regulations in recent years or even recent decades has not been seriously undermined. I have referred to that in the past, so I note that in passing. I have a far less hostile question to ask. There are several occasions in the proposed new sections for division 4 that provide a head of power to make regulations. I am sorry if it has been alluded to before in this very protracted debate, but can the minister give any indication of any regulations that are contemplated, perhaps in a more general rather than a specific sense, I should think; and/or can she give me examples of the sort of thing the government anticipates might be employed by these regulations?

**Hon SUE ELLERY:** I thank the member for the question. I am advised that discussions have already begun and advice has been sought from the tribunal about how regulations might be put in place for superannuation and fringe benefits tax, for example; bearing in mind I am advised that the conversations so far have been about how there might be regulations around external components over which the state government has no control.

**Hon SIMON O'BRIEN:** Further to that, and briefly—to help my leader's ulcer subside a little!—there is reference to those sorts of things, of course, in some of the explanatory material that was provided when the Leader of the House read the bill in, and I think it might even be in the second reading speech. That seems to say to me that we are pretty sure there are going to be unforeseen consequences that will need to be addressed, so it is prudent to provide some mechanism for that flexibility. That is what the Leader of the House has just asserted, and I would not disagree with that. One might also take the point of view that this is further evidence that the matters under consideration have not been adequately explored and the government has rushed to issue a press release and then contemplated what it can do about fixing the policy. That is a consistent theme throughout this debate. I am not going to labour that point anymore, but here is some further evidence of why it is necessary to refer this matter to a committee for examination in plenary session if it were to fall to the house when it came back.

**Hon MICHAEL MISCHIN:** The minister has explained that any regulations exempting certain types of remuneration from the cap that is going to be prescribed in proposed section 10D can be disallowed. I again emphasise that we are talking about not only salaries, but also various allowances that enable us to do our jobs. Can the minister indicate anything in the legislation that allows or requires the Salaries and Allowances Tribunal to independently turn its mind to any anomalies or unforeseen circumstances that might require an exemption under the regulations that is not going to be solely in the hands of the relevant minister? It might very well be that by some informal process the tribunal comes to realise that there is a problem with some element of remuneration—some kind or class of remuneration for which it is prohibited from making a determination that increases it—but all that can stop with the Premier, who can decide that this works in favour of government members but not other members and that he will not make any regulations to submit to Parliament to exempt that kind or class of remuneration. Does the minister agree?

**Hon SUE ELLERY:** I do not agree with the assertions made by the honourable member, and I have said that before. The tribunal will still have the power to conduct inquiries itself and to provide advice and reports to the government. Nothing in the bill prevents the tribunal from doing that. We have debated the essential assertions behind the member's proposition on a number of occasions and I do not accept the assertions that he makes.

**Hon MICHAEL MISCHIN:** Lastly, on that point, is it correct that doing anything about those recommendations and reports lies solely in the hands of the Premier? He can choose whether to make regulations.

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**Hon SUE ELLERY:** Correct.

**Hon MICHAEL MISCHIN:** I simply rise now to indicate I will not be proceeding with the other amendments on the supplementary notice paper—that is, serials 4/7, 5/9, 6/9, 7/9, 8/9, 9/9, 10/9, 11/9, 12/9, 13/9, 14/9, 15/9, 16/9 and 18/9.

**Hon SUE ELLERY:** I move —

Page 10, lines 11 to 17 — To delete the lines and substitute —

- (2) The Tribunal must not make a determination under section 5A, 6 or 7C, or a report under section 7, which —
  - (a) has the effect of providing for the payment or provision of remuneration on the basis that the remuneration was not paid or provided before 1 July 2021 by reason of the operation of section 10C, 10D, 10E or 10F (as the case requires); or
  - (b) takes into account any increase in the cost of living that occurred between commencement day and 1 July 2021.

Clause 9 of the bill in its current form inserts a new section 10G into the Salaries and Allowances Act 1975 that will apply to determinations or reports of the tribunal that come into operation on or after 1 July 2021—that is, once the freeze has concluded. New section 10G explicitly prevents the tribunal from providing for compensatory remuneration to recover or recoup amounts that may have been paid but for the freeze, which is the new section 10G(2). As now structured, from 1 July 2021, the tribunal would resume being required to consider for certain officers government financial matters, including the *Government Mid-year Financial Projections Statement*, the “Government Financial Strategy Statement”, any submissions made by the government to the tribunal and any public sector wages policy statement issued by the government. The tribunal would otherwise be unrestricted subject to the non-compensatory measure under proposed section 10G(2) in taking into account all changed economic circumstances when making future determinations or recommendations once the freeze ceases. The proposed amendment seeks to ensure that changes to cost of living that may have occurred over the four-year freeze period cannot be taken into account by the tribunal in determining a remuneration increase with effect from 1 July 2021 onwards or determinations that are made at any time thereafter. When remuneration for an office has been determined on the basis of a long-established nexus or to other roles not subject to the freeze, new relativities will be established. The conclusion of the freeze will establish a new base from which to move forward for the remuneration of those officeholders dealt with by the tribunal.

**Hon SIMON O'BRIEN:** I did not realise that the vote was going to collapse so quickly, so I am glad I just caught your eye, Mr Deputy Chair. Members have to understand what this does. I referred to this provision in my earlier remarks, and I did not refer to it very kindly. When this bill was created, read as per the bill we have in front of us—bill 34–1, on page 10, lines 11 to 17—we saw what was substantially paragraph (a) of proposed section 10G(2). To that has been tacked the new paragraph (b), which states —

takes into account any increase in the cost of living that occurred between commencement day and 1 July 2021.

To put this in colloquial terms, I think it is to prevent any catch-up after the freeze is over. What does “catch-up” mean? Let us say for argument’s sake that there was a 1.5 per cent increase in the consumer price index for each of the four years contemplated by this bill. Without compounding in any way, let us call around six per cent the difference in base pay for whichever class of officer, from the Governor down, will have their wages frozen. What happens at the end is that some sort of parity is pegged back by whatever benchmark the tribunal may have used in the past such as federal members, members in other states or what judges get in South Australia or New South Wales—I do not know. We would think that after the freeze has been done and completed we would then return to that sort of parity that has always existed and is one of the reasons that we have the Salaries and Allowances Tribunal. That is provided for in bill 34–1 as drafted. Someone got hold of the media—I think it might have even been the opposition—and said, “Hang on, what’s going on here?” It then became a big thing and the Premier, on the run, said that this is the bit that it would amend in the upper house. How is that for policy on the run? The government has put forward this proposal, which basically inserts the words —

- (b) takes into account any increase in the cost of living that occurred between commencement day and 1 July 2021.

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Let me be clear about this; I do not agree with the bill full stop. Members know that and I have spoken about why. But when it comes to catch-up clauses, obviously, there is something here that needs to be avoided. If we get to the end of, say, the fourth year and everything returns to normal, it would be nonsense to then give everyone subject to this freeze four years' back pay as a lump sum as though nothing had ever happened. That clearly is not a wage freeze, and I think that what was in the bill, as drafted, respected that. This now goes far beyond that—correct me if I am wrong—because, in effect, after the wage freezes over for all time, the notional six per cent, or whatever it is, is going to be welded in to all future Salaries and Allowances Tribunal determinations. It will be not only a freeze, but also a reduction in all pay and remuneration for all classes of officer—from the Governor down—for all time. That is absolutely silly and it is completely unsustainable.

It used to be that the salaries of members of Parliament in this state were actually tied, I believe, to the salaries of magistrates. Gee, that would be a long time ago! It was probably a reasonable thing to peg them to. However, because there is an insistence that members' entitlements—I am talking about members of Parliament rather than judges or Governors, because that is what I am more familiar with—have to be chipped away for all time, then this government, too, is joining the rush and wants to do it to itself and its members and all those who will follow. It will not be sustainable for a future tribunal, after this reign of terror is over, when it contemplates striking a reasonable balance for the remuneration of judges, Supreme Court judges, members of Parliament and all the fat cats in whatever department Hon Sue Ellery has at that stage. Its starting point will be the contemplation of four years of CPI. It will say, "Right, there's a permanent reduction. That's not sustainable." That, in a nutshell, is the amendment that is before us right now. It is this amendment that members really must reject. Even if I could not appeal to the judgement of all my colleagues on the second reading, it is this one in particular that should not be agreed to, and I think everyone probably knows it.

**Hon PETER COLLIER:** This issue was identified in the other place after the horse had bolted. It identified an oversight on the part of the government that the SAT, having had its authority removed for four years, would have a capacity to play catch-up. The government wanted to make sure that did not occur, based again on the optics of ensuring, as I keep saying, that according to the government we are all going to do our bit. That is purely what this is all about. The government could not give back the SAT its legitimate authority, but in fact has removed that authority once and for all. I have to say I agree with Hon Simon O'Brien. This identifies yet again the flawed logic behind this whole legislation. We, reluctantly, did not oppose this legislation.

Having said that, one of the major contributing factors in getting this legislation through this place and getting it through the Parliament was of course to ensure that if the opposition opposed it, the government would not have the great opportunity to go out and bleat on about how we were going to have our noses in the trough. It is nothing more and nothing less than that. That is exactly what a lot of this is all about. As I said, when I made my very lengthy second reading contribution, I commented on this particular aspect of the bill and said that we reluctantly did not oppose it. Likewise, with this particular amendment—we will reluctantly support it. But we will only reluctantly support it because, if anything, it reinforces how flawed this whole bill is. It is nothing other than a cosmetic stunt and it really will do nothing to contribute to budget repair whatsoever.

**Hon SUE ELLERY:** I do not accept all the assertions that have been made. I do accept, though, that very late in the piece consideration was given to ensuring that the original construction of clause 9 needed to go further; that was, to ensure that the freeze was indeed a real freeze and not just a freeze that could be overturned the minute we got to the end date of the freeze. We are not going to be able to agree on some assertions that have been made, but I will ask the chamber to consider supporting the amendment.

**Amendment put and passed.**

**Clause, as amended, put and passed.**

**Clause 10 put and passed.**

**New clause 11 —**

**Hon MICHAEL MISCHIN:** I move —

Page 10, after line 22 — To insert —

**11. Section 13 inserted**

After section 12 insert:

**13 Review of Salaries and Allowances Amendment (Debt and Deficit Remediation) Act 2017**

**Extract from Hansard**

[COUNCIL — Thursday, 7 December 2017]

p6700b-6711a

Hon Nick Goiran; Hon Sue Ellery; Hon Martin Aldridge; Hon Michael Mischin; Hon Aaron Stonehouse; Hon Peter Collier; Hon Alison Xamon; Hon Simon O'Brien; Hon Dr Steve Thomas

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- (1) The Minister must carry out a review of the operation and effectiveness of the *Salaries and Allowances Amendment (Debt and Deficit Remediation) Act 2017* as soon as practicable after the 2<sup>nd</sup> anniversary of the day on which this section comes into operation.
- (2) The Minister must prepare a report based on the review and, as soon as is practicable after the report is prepared, cause it to be laid before each House of the Parliament.

This new clause provides for a review period. The importance of this new clause has been emphasised on a couple of occasions now. Firstly, this new clause does not affect the policy of the bill in the slightest, but will monitor its effectiveness and operation. Secondly, the minister has said on numerous occasions that this is a relatively short freeze—only a matter of four years—yet, we have just heard that, in fact, with the last amendment, it could go well beyond the four years specified in the legislation. In fact, it is a permanent freeze below whatever the changes in circumstances might be into the future and indefinitely. Indeed, not just salary, but also, equally if not more importantly, the allowance necessary for us to serve our electorates will always be set at a figure below the current calculation of the consumer prices index. That is not a sensible way for the tribunal to do its job, which is to strike an appropriate level of remuneration by way of not only salary, but also allowances. The only way to determine whether anything is going to have that, rather than at the whim of the government, is to have an appropriate review period. I have moved the amendment so that will be the case rather than leaving it to the discretion of a minister who, quite plainly, when this matter was even before the Assembly, realised that he had overlooked something that might look good in the media and the public. He then rushed in an amendment in this place and was not prepared for the Parliament to have any scrutiny of this bill.

**Hon SUE ELLERY:** The government will not be supporting this proposed new clause. The requirement to review the operation of the freeze, effectively as at February 2020, would appear to serve little purpose since it would be scheduled to run for only a further 18 months. I am not sure that a review would have any real impact. For those reasons, we will not be supporting the proposed new clause.

**New clause put and negatived.**

**Title put and passed.**

*Report*

Bill reported, with amendments, and, by leave, the report adopted.

*Remaining Stages — Standing Orders Suspension — Third Reading*

On motion without notice by **Hon Sue Ellery (Leader of the House)**, resolved with an absolute majority —

That the standing orders be suspended so far as to enable the bill to be read a third time.

*Third Reading*

**HON SUE ELLERY (South Metropolitan — Leader of the House)** [3.52 pm]: I move —

That the bill be now read a third time.

**HON Dr STEVE THOMAS (South West)** [3.53 pm]: I will be very short. Members will be aware that I have asked a fair number of questions in recent weeks to mine information, via the Minister for Environment, from Treasury and the Leader of the House regarding the Public Sector Commissioner. I know the Minister for Environment is particularly interested in economic debate and I would hate to deprive him of the information. I know that most members do not have the time to go through it in such detail. I seek leave to table, in chart form, the results of that information relating specifically to public service wages increases over time.

Leave granted. [See paper 994.]

Bill read a third time, and returned to the Assembly with amendments.