CONSTITUTIONAL AND ELECTORAL LEGISLATION AMENDMENT (ELECTORAL EQUALITY) BILL 2021

Committee

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

Clause 12: Section 10 replaced —

Committee was interrupted after the clause had been partly considered.

Hon TJORN SIBMA: When we last discussed this clause, I think we were finalising discussion on the further refinement of the tasks and responsibilities of presumably the 59 returning officers at the next state election. Is it correct that returning officers are, largely speaking, casually employed individuals who do not represent a permanent staffing complement?

Hon MATTHEW SWINBOURN: Based on advice provided to the minister from the Electoral Commissioner, my understanding is that there will be a returning officer for each district. None of those officers were a permanent employee at the last election.

Hon TJORN SIBMA: I imagine that those arrangements will be repeated. I note that the parliamentary secretary does not have an adviser from the Western Australian Electoral Commission assisting him at the table, but he might be able to extract this next bit of information by some means. Bearing in mind the responsibilities with which these returning officers are charged, could the parliamentary secretary explain the training or the preparation that goes into assisting these individuals to perform their duties ahead of the issuing of election writs, for example? What was largely the experience at the most recent state election in terms of the employment and training of the individuals concerned?

Hon MATTHEW SWINBOURN: I cannot go into the specific training that the commissioner does from an operational perspective, but my understanding is that he would provide the same sort of training that is provided to any person engaged in the public sector regarding things like ethics, accountability and integrity. I am also advised that the current commissioner was responsible for the accountable and ethical decision-making training whilst he was at Department of the Premier and Cabinet, so I suspect he is quite well versed in this area and it is drilled into his people.

Hon TJORN SIBMA: Thank you, parliamentary secretary. Quite rightly, ethical conduct is absolutely a concern or a priority for all of us who value the operations of an impartial, nonpartisan and independent statutory authority. I suppose my initial interest in the employment of casual staff to perform the function of deputy returning officer is around the technical training. I would imagine that there is from time to time a pool—that a number of the deputy returning officers at the last election had been employed in previous elections. They seem to be the same kinds of people. I say that with respect, but there is a particular form of person who is deeply interested in these matters, and that is to be welcomed and encouraged. We addressed this in passing in the debate on clause 1, and perhaps there are other points to get to, but noting the changes—the introduction of an optional preferential voting system, and the composition of the ballot paper, which is yet to be determined, and the like—does the Electoral Commission anticipate the retraining of previously employed deputy returning officers; and, if so, could the parliamentary secretary provide an indication of when that training process might commence? Will a deputy returning officer need to demonstrate a degree of competency or comprehension of the model in order to satisfy the Electoral Commissioner that they are properly trained for the duty with which they will be entrusted?

Hon MATTHEW SWINBOURN: I think part of the issue is that we have not passed this law yet, and obviously the Electoral Commissioner, as an independent statutory officeholder, is not going to put any of these things in place until the law of the land changes. I have previously given advice on some of the matters that have arisen under the bill that the Electoral Commission would be able to deal with within its own structures and things like that. It did not flag any particular issues with training and those sorts of things. The member is asking very specific questions about operational and technical matters, which he is entitled to do, but I do not think we can reasonably give the member answers, because those will be largely at the discretion of the commissioner himself. I suspect that can be pursued further in other forums once the law is passed, through estimates or annual report hearings and those kinds of things, to get to the bottom of how he proposes to put those things in place. I am not trying to be difficult with the member, but as an independent officeholder, the best we can rely upon, from the advice that we have got back, is that he has not indicated to us that he will have any issues dealing with the changes to the law that we are talking about here.

Hon TJORN SIBMA: I thank the parliamentary secretary for that contribution. This is not so much a technical issue, although it might lead into that, but, generally speaking, what are the employment conditions of deputy retuning officers? I will put it more directly. I imagine that there is either an explicit expectation, or at least one that is very

deeply implied, that a returning officer, as a casual employee, has not previously been a member of a political party or worked for a minister or a member of Parliament, bearing in mind that we want to avoid the apprehension of bias. Is that actually the expectation; and, if so, can the parliamentary secretary direct me to where I might find that?

Hon MATTHEW SWINBOURN: I draw the member's attention to section 16 of the Electoral Act, "People not eligible to be officer etc.", which states —

> (1) No candidate, and no person holding any official position in connection with any political organisation or election committee, shall be appointed an officer under this Act.
>
> (2) If any such officer knowingly becomes a candidate, or is elected, appointed, or otherwise becomes an official of any political organisation or election committee, he —

excuse the gendered language —

> shall be deemed to have vacated the office held by him under this Act, and some other person shall be appointed in his stead.

Those are the things that deal with that. We are not changing the existing section 16, so the disqualification provisions will remain the same in relation to any person holding an official position—sorry, any officer; I use that word.

Hon TJORN SIBMA: Thank you, parliamentary secretary. This is my final question on this theme. I gather from the answer that the parliamentary secretary has just provided that those conditions will apply equally to both casual employees and permanent staff of the Electoral Commission, from commissioner to deputy commissioner. Is that correct?

Hon MATTHEW SWINBOURN: Yes. Anyone one who holds the status of officer, regardless of their employment engagement, would be subject to the provisions of the act in that regard.

Clause put and passed.

Clause 13: Sections 13 and 14 replaced —

Hon MARTIN ALDRIDGE: Clause 13 seeks to replace sections 13 and 14 of the Electoral Act 1907. My interest at this point is in proposed new section 14. That has three subsections. The first applies to a returning officer for the whole-of-state electorate, the second to a returning officer for a district for a Council election, and the third to a returning officer for an election for that district. I assume that the reason we have those three categories, particularly the second one, is that the returning officer for a district is a deputy returning officer for a Council election. Is that the reason that three categories of returning officer are defined in that new section?

Hon MATTHEW SWINBOURN: Yes, member.

Hon MARTIN ALDRIDGE: Last night, we canvassed the issue of the failure of a Council election. I guess in the hopefully uncommon circumstance in which we needed a fresh election, it would be a fresh election for just the Council. How would returning officers be appointed for a Council-only election, when we would not be able to rely upon 59 deputy returning officers, whose first job it is to be the returning officer for an Assembly district, because of course we would not have an election in place at that time for the Assembly? Hon Tjorn Sibma talked earlier about some of the challenges that we encounter as upper house members in liaising with our current regional returning officers, particularly the length of time it takes to count the vote, which is something that we will encounter later in the bill when we come to the construction of the ballot paper and the like. What will the structure be, and how will it be resourced in the absence of those 59 district returning officers acting as deputy returning officers?

Hon MATTHEW SWINBOURN: If I understood the question correctly, the existing deputy returning officers would continue to perform those functions at that later Council-only election. It is not the case that it would be strictly for that election; it is the term of their engagement rather than the term of the election, if I can describe it in that way. That is subject to the note that is being written by my adviser. I am advised that there will be no change from what happens now. In the circumstances the member described, in terms of a whole-of-state electorate as opposed to a region, the same issue could happen: if an election failed for a region, the deputy returning officers would be available for the districts that were subject to that region. They would continue to act as deputy returning officers for the failed following election.

Hon MARTIN ALDRIDGE: Perhaps I can ask the question in this way: when does a district returning officer cease to hold office? Is it somehow linked to the return of the writ? Does that person hold that office until that time?

Hon MATTHEW SWINBOURN: My advice is that the existence of a returning officer or a deputy returning officer is not subject to a precondition, for example, of the issuing of a writ. It is a position that can be in existence year on year, if you like, but of course we do not do that because we do not want 59 district returning officers sitting around; they are usually engaged on a casual basis. The Electoral Commissioner could engage new returning officers for a district at any point in time and they would subsequently become deputy returning officers by virtue of the

provisions of proposed section 10. They can be engaged and let go on an ad hoc or at-will basis, but there is not a precondition that a writ must be in existence for the role to be in existence, if the member catches my drift on that.

Hon MARTIN ALDRIDGE: Let us say that an election is done and dusted, the writs have been returned, everyone has been sworn in and taken their places and then somebody exercises their right, under section 158 of the Electoral Act, to petition the Court of Disputed Returns, which has to be filed within 40 days after the return of the writ. That is obviously a time-limited opportunity, but once it is filed, I cannot see any time limit on the court's deliberations about that petition. Several months, if not perhaps even longer, down the track, a court could find that the election was invalid. I would suspect that those district returning officers would be long gone. There would be a fresh election and we would have a returning officer for the whole-of-state electorate. The parliamentary secretary has told me that it is within the power of the Electoral Commissioner to appoint a number of district returning officers. Notwithstanding that an election of the Legislative Assembly is not occurring, the Electoral Commissioner has the power to appoint district returning officers who then act as deputy returning officers for the whole-of-state electorate; is that correct?

Hon MATTHEW SWINBOURN: Yes, member.

Hon MARTIN ALDRIDGE: It is rather unusual. Section 6 of the Electoral Act relates to the appointment of returning officers. Section 6(1) states —

> The Electoral Commissioner may appoint such enrolment officers and returning officers as may be required for the effective administration of this Act.

I suspect that is the section the parliamentary secretary is relying on when he provided the advice that he just gave. Under that statutory power, would the Electoral Commissioner have the ability to appoint any number between one and 59 district returning officers for the purpose of acting as deputy returning officers for the whole-of-state electorate?

Hon MATTHEW SWINBOURN: The answer is yes, member.

Hon MARTIN ALDRIDGE: It could be the case that the Electoral Commissioner does not require 59 of these deputies, but I suspect in that circumstance, he or she will need more than one. The commission would be dealing with the same number of polling places and probably hundreds of candidates and dozens of parties or groups contesting the whole-of-state electorate for the Legislative Council. In relation to the appointment of the returning officers, is it usually the practice that the Electoral Commissioner or somebody acting in his or her role would specify a commencement and a cessation date for their appointment; would the appointment of a returning officer specify those dates?

Hon MATTHEW SWINBOURN: Member, we do not have access to the contracts that are issued by the commissioner in relation to those sorts of things. As the member can imagine, if it is a casual contract, it will describe the term of the casual engagement, and if it is a permanent, ongoing position, obviously that person will be available for the Electoral Commissioner to use for the purposes of administration of a later election. Also, as with the nature of all casual contracts, the Electoral Commissioner could then engage further casual returning officers or deputy returning officers in that regard. But we do not have access to the specifics of contracts that the current Electoral Commissioner issues.

Hon MARTIN ALDRIDGE: Therefore, is their engagement solely the offer and acceptance of an employment contract? I would have thought the engagement of a returning officer would certainly involve an offer and acceptance of an employment contract, but I would have thought that their appointment, consistent with section 6 of the Electoral Act, would be an instrument that would sit separate to an employment arrangement, so it would probably be a simpler declaration by the Electoral Commissioner that John Bloggs or Josephine Bloggs has been appointed as the returning officer for the district of Dawesville and the appointment commences on the date there undersigned and ceases on the date on which the writ is returned to the Assembly—something of that nature. But the parliamentary secretary is saying that it is entirely a feature of the employment contract.

Hon MATTHEW SWINBOURN: Member, strictly speaking, somebody could be engaged as a returning officer and not seek to be engaged as an employee; for example, they could do it as a volunteer and it would not be contained within an employment contract per se. I am sure the member is familiar with many terms of engagement, particularly within government. It will usually be a combination of the statutory underlying powers, so they have been appointed as a returning officer under section X or Y of the Electoral Act. Their term of engagement will be on a casual basis and these are the duties and responsibilities. Their remuneration will be determined by X, Y or Z. It will have those kinds of things. Nothing in the bill will change the existing arrangements or current practices of how a person might be engaged. It is an operational issue for the Electoral Commissioner himself as to how he structures that. But as I say, nothing that we are proposing today changes the manner in which someone would be engaged to perform those roles. Obviously, there are some changes in relation to the clause that we are currently dealing with in terms of restrictions of resignation and the replacement of a returning officer after an issue of a writ.

Hon MARTIN ALDRIDGE: I guess that gives me comfort to some degree. When the parliamentary secretary talks about usual arrangements for an appointment, the first thing that comes to the mind is the appointment of four members of the Ministerial Expert Committee on Electoral Reform. Their appointment, arrangement and payment is a rather dubious set of circumstances that I would think is not regular in any sense. As we delve into the more technical detail of the Electoral Act with the remaining clauses, I think it would be more useful if the parliamentary secretary would consider having somebody from the Electoral Commission present at the table to give the technical advice that the chamber may need as we progress through the remaining clauses of this bill.

Clause put and passed.

Clause 14 put and passed.

Clause 15: Part IIA Division 2 replaced —

Hon TJORN SIBMA: The parliamentary secretary will note on the supplementary notice paper that I have indicated an amendment to delete this clause, which I consider to be the pre-eminent offending clause. Nevertheless, it is a clause absolutely consistent with the purpose of the bill. I have found, and the opposition has found, the purpose of the bill to be completely objectionable for a range of reasons. One of the reasons is that this issue was not taken to the election and was in fact denied at the election —

Hon Nick Goiran: Other than the group voting ticket.

Hon TJORN SIBMA: — other than the group voting ticket. We have canvassed the matter of the group voting ticket and will continue to support it. We will indicate our support again when we get to the appropriate clause. My intention here, however, is not to use this opportunity in an undignified fashion to basically have another crack at my speech in the second reading debate; it is to understand some of the implications within this clause. I will go through the explanatory memorandum because I want to understand or unpick to a degree the relationship between both the Legislative Council and Legislative Assembly because they are both referred to. For the benefit of members who do not have the explanatory memorandum at their disposal, clause 15 gives rise to a new division 2 within the Electoral Act 1907, which introduces the whole-of-state electorate and electoral districts. This again emphasises the fact that even though this has been presented to us and the general public as a bill that reforms the upper house, it absolutely has implications for the Legislative Assembly as well, and will continue to have implications, potentially, for how district boundaries are drawn in the future.

Parliamentary secretary, I would like to understand the logic addressed in the EM on page 10, under clause 15(b). It says —

> … section 16D to provide that the State must be divided into the same number of electoral districts as the number of members prescribed by s.18(1) *Constitution Acts Amendment Act 1899* and each district will return 1 member to serve in the Assembly.

Can I get a further insight into what advance has been made here? I am not necessarily sure whether the intent here is to clarify something that is already pre-existing or whether it attempts to introduce something new.

Hon MATTHEW SWINBOURN: I am told that the member has raised a drafting issue that was picked up by the Parliamentary Counsel's Office, in that the reference to the number of positions is more properly contained within the Constitution Acts Amendment Act than the Electoral Act, in which it currently sits. The other comment I received from the advisers was that the PCO has modernised the language.

Hon TJORN SIBMA: Thank you, parliamentary secretary. I asked for that clarity because I am not and never hope to be a constitutional lawyer. It is one aspiration that I do not hold.

Hon Darren West: Senior Counsel.

Hon TJORN SIBMA: I did hear the vibe invoked in a way that sent a shiver down my spine the other day. I do not know who did it.

Parliamentary secretary, is what is embedded in proposed section 16D(1) and (2) on page 9 of the bill under contemplation effectively just a redrafting or recasting of the status quo?

Hon Matthew Swinbourn: Yes.

Hon TJORN SIBMA: Thank you.

Hon NEIL THOMSON: I am seeking the parliamentary secretary's guidance here. As I indicated in the clause 1 discussion, I want to interrogate a little more the impact of this reform on the lower house districts. Could the parliamentary secretary let me know whether he will indulge me in having a fairly free-ranging discussion on that at clause 20 or under proposed section 16D? I am happy to pick up on that. I suppose I am seeking the parliamentary

secretary's guidance on whether it is okay to further interrogate the impact of the configuration and size of those districts into the future.

Hon MATTHEW SWINBOURN: I think the things the member is interested in more properly arise under clause 19, because this clause is not the clause in terms of the impact that he is getting at.

Hon NEIL THOMSON: I will take the parliamentary secretary's advice on that. Thank you.

Hon PETER COLLIER: I will leave most of the debate on this bill up to my learned colleagues; they are doing a very good job on it. I just want to pick up on something the parliamentary secretary alluded to in his response to the second reading debate and was in the final report of the Ministerial Expert Committee on Electoral Reform. To what degree was the structure of the Senate used in developing option 1A with a total of 37 members, as opposed to having the regions? To what degree was the Senate used as an example?

Hon MATTHEW SWINBOURN: I might be a little off track about what the member actually asked about how the Senate was used. The report speaks for itself in terms of its own analysis and conclusions. Western Australian senators are representatives of the whole of the Western Australian state. That happens; there are obviously 12 senators. I do not know whether the member is talking about it more broadly as in the separation between each of the existing six states and territories and having the regions done in that way. I seek a bit more clarity from the member.

Hon PETER COLLIER: How is the current structure of the Senate, in terms of the representation of the various smaller states—each state has 12 senators, including New South Wales and Victoria—any different from the current structure of the Legislative Council and its six regions?

Hon MATTHEW SWINBOURN: Superficially, the member can equate the regions to the different states, but I think that fundamentally ignores the history and development of the Senate and the commonwealth Parliament over time. The Federation of the Australian commonwealth in 1901 was the result of an agreement between the autonomous colonies, which had self-government. The regions are not and have never been autonomous self-governing areas, so they are not the same. Effectively, the arrangement in the Senate is from a bargain made between those self-governing colonies, which were each apportioned equality with each other notwithstanding the differences in their population. They are a product of that bargain. They are also a product of the referendums that occurred I think in 1899 and 1900 that then led to the Federation in 1901 in that regard. Obviously, it also has the endorsement of the referendum and is embedded in the Australian Constitution, whereas the regions are a product of this chamber. They have always been a product of this chamber, once we had responsible government going forward. This chamber created them and this chamber is therefore able to adjust them and has adjusted them over time. As I say, the Senate is the creation of the colonies, which are now the states. Obviously, the territories did not have a part in it, but they have been recognised. The Legislative Council is not a creation of the individual regions in the same way. Our decision to go to a whole-of-state electorate is not a reflection or a judgement on the Senate system; that stands on its own. I think in the member's contribution to the second reading debate he talked about the US, which has two senators for each state. There is obviously a degree of malapportionment between those states. Those arguments are separate and for those who want to make reforms in that area. We are responsible for the Western Australian electoral system, the Western Australian Parliament, and the Western Australian Legislative Council. As I say, I can see the connection that people make I think at a superficial level. I do not mean that in an insulting way, but we do not accept that the Senate argument is applicable in these circumstances.

Hon PETER COLLIER: The reason I brought it up is obviously that it is contained quite explicitly in the report. It says —

> In Federal Senate elections, the whole of WA is one electorate, and those elected are Senators "for WA", not for any district or region of WA.

I take the points that the parliamentary secretary raised just now and also in his response to the second reading debate, in particular that the Senate is the states' house. He is half right; the Senate is also the house of review. It is based on the bicameral system of Westminster but, of course, the United Kingdom does not have states. There is an upper house that is a house of review. As the Senate has evolved, and I take on board the point the parliamentary secretary raised, it has become much more of a party house. Now the Senate has come to represent the parties more than the states, even though structurally it still represents the states. In fact, the very first time political parties were ever mentioned in the Constitution of Australia was in 1977, when there was an amendment to the Constitution to ensure that a Senate vacancy was replaced by someone from the same party. That was after the casual vacancy in 1974. So it has become very much a party house. I am making a point here more than asking a question.

Hon Alannah MacTiernan interjected.

Hon PETER COLLIER: I beg the member's pardon?

Several members interjected.

Hon PETER COLLIER: It happened in 1977. There was an amendment to the Constitution, and that is the very first time.

Hon Alannah MacTiernan: I was thinking of who the culprit was here. It was a Liberal–National government.

Hon PETER COLLIER: Okay, we will go all day if the minister likes; I do not mind. I could talk about this all day.

Hon Nick Goiran interjected.

Hon PETER COLLIER: Yes. That is right, I can get petulant just like the minister. She can drag this on and the Leader of the House will be absolutely delighted!

Hon Matthew Swinbourn: Member, I am listening intently to what you are saying.

Hon PETER COLLIER: Good, I thank the parliamentary secretary.

As I have said, I take on board the points the parliamentary secretary raised in his response, but I do not think they are valid. They are not valid with regard to this clause. The simple fact of the matter is that the Senate in its current structure, much like the Senate in the United States, is based on being a house of review. It is based on being a house of review to ensure we have a legitimate bicameral system of government. I have brought up the United States. In the United States, we do not hear about senators who represent small states; we hear about so many senators being Republicans and so many being Democrats. That is what they are. It is the same here. The fortunate part about it is that when we structured our Constitution, we had a bicameral system of government, so the Senate has evolved over time. I do not hear too many people from the Australian Labor Party in the current state government asking for there to be a reform of the Senate. That is my point. The Senate has evolved over the last 121 years. It has evolved to the point at which technically it is still in part the states' house, but practically now the Senate is more of a house of review. My point is if we take that, there is no change. There is almost a double standard here. There is no call for a change of the Senate, but government members do not mind using the Senate as a poster boy in the report as a reason to have all-of-state representation.

I turn to the second reading speech for the bill that constructed the electoral system we have at the moment—that is, the one that constructed six regions back in 2005 under the former Labor government. The second reading speech for that bill sounds in part peculiarly like the second reading speech for the bill before us. There is one little addition in that part. Hon Jim McGinty was talking about this wonderful new democratic system—in his words, not the words of the Premier, of course, who calls it corrupt—he said —

> One impediment to representative democracy that was not removed, and which remains in place today, is the malapportionment of electorates. It is this impediment that the bill seeks to remove and, thereby, finally achieve for all Western Australians a system of representative government in this state. In doing so, the bill takes into account and expressly provides for the interests of Western Australian voters who are in the state's remote and regional areas.

Of course, he is referring to the Legislative Council. I repeat that —

> In doing so, the bill takes into account and expressly provides for the interests of Western Australian voters who are in the state's remote and regional areas.

Hon Jim McGinty actually got it. There is an electoral system created back in 2005 that removed members of the Legislative Assembly from the regions, and it was ensured that there was representation retained in the Legislative Council. Yet again, by design, the evolution of our Legislative Council has moved from a house of gentry, which no-one would agree with today, to a house of universal suffrage, which everyone would agree with, to a house with the regions and metropolitan area equally represented, yet, that will all be removed, which is completely contrary to the system we have in the Senate. I do not know whether the parliamentary secretary can even add to that, but my point is, and I stand by this, that the government cannot have it both ways. It cannot refer to an upper house at the national level, upon which the state system, the structure, is fundamentally based, and say it has to reform one of the houses, which just happens to be the state Legislative Council, but not worry about the Senate, even though it is run with disproportionate representation on exactly the same principles that the parliamentary secretary has espoused.

The parliamentary secretary cannot possibly say that 12 senators in Tasmania have the same representation as the people in Queensland, New South Wales or Victoria; it is the same with Western Australia. That is the beauty of the system we have at the moment. The system we have at the moment is that the Legislative Council in its current structure has evolved over the last hundred or so years and the current structure was created by a state Labor government. In the second reading speech for the bill of the system's creation, the then electoral affairs minister, the then Attorney General, spoke about the necessity of having representation where it is most needed, and that is in the regions. To now go to this all-in-one system seems a contradiction in terms. With all due respect to the parliamentary secretary, I do not think his argument is legitimate. If the government is going to get rid of the electorates in the

regions of Western Australia on the premise that there needs to be one vote, one value, but the parliamentary secretary does not use the same argument for the Senate, his argument is flawed. The parliamentary secretary does not have to respond. I just make that point.

Division

Clause put and a division taken, the Deputy Chair (Hon Peter Foster) casting his vote with the ayes, with the following result —

Ayes (21)

Hon Klara Andric	Hon Peter Foster	Hon Dr Brad Pettitt	Hon Dr Sally Talbot
Hon Dan Caddy	Hon Lorna Harper	Hon Stephen Pratt	Hon Darren West
Hon Sandra Carr	Hon Jackie Jarvis	Hon Martin Pritchard	Hon Pierre Yang *(Teller)*
Hon Stephen Dawson	Hon Alannah MacTiernan	Hon Samantha Rowe	
Hon Kate Doust	Hon Kyle McGinn	Hon Rosie Sahanna	
Hon Sue Ellery	Hon Shelley Payne	Hon Matthew Swinbourn	

Noes (11)

Hon Martin Aldridge	Hon Nick Goiran	Hon Tjorn Sibma	Hon Wilson Tucker
Hon Peter Collier	Hon Steve Martin	Hon Dr Steve Thomas	Hon Colin de Grussa *(Teller)*
Hon Donna Faragher	Hon Sophia Moermond	Hon Neil Thomson	

Pair

Hon Ayor Makur Chuot	Hon James Hayward

Clause thus passed.

Clause 16 put and passed.

Clauses 17 to 19 put and passed.

Clause 20: Section 16I amended —

Hon TJORN SIBMA: My interest in this clause concerns not so much the policy of the bill—that has been well and truly established by now—as the Electoral Distribution Commissioners' contemplation when dividing Western Australia into electoral districts. Here we are making a specific reference to the 59 seats of the Legislative Assembly. On either Tuesday evening or yesterday, the parliamentary secretary ran through a series of factors that are contemplated when determining the boundaries and such like. That was a list, but it is not as exhaustive as was previously the case. Under the matters that the parliamentary secretary outlined upon the passage of the bill, how will distinct regional and metropolitan areas be preserved? How will those communities of interest be maintained? My interest is those seats that envelop the metropolitan boundaries of Perth. I would hate to see as an outcome of the passage of this legislation, not only the erosion of specific regional representation in the upper house, but also the potential for regional representation in the lower house to be diluted. I would like to understand, if at all possible, how metropolitan communities and seats will be preserved and how regional communities and seats will be preserved.

Hon MATTHEW SWINBOURN: Section 16I of the Electoral Act has a range of matters that the Electoral Redistribution Commissioners shall give due consideration to, of which the community of interest is one. They must do that. It always has been their job to take the community of interest into account, and that will continue to be the case. Other considerations include land use patterns, means of communication, means of travel and distance from the capital, physical features, existing boundaries of districts—obviously, the reference to the regions will be removed—existing local government boundaries, and the trend of demographic changes. Those considerations do not specifically include the metropolitan area of Perth, obviously, which currently, in one sense, would happen because of the existence of the boundaries for the three metropolitan regions. Although, existing boundaries are a continuing consideration.

I think the member referred to the preservation of regional representation and those sorts of things. I do not think that ever has been a specific matter, other than the commissioners having to specifically take into account the reference to the distance from the capital. Structurally, because of the way the metropolitan boundary worked, they had to take that into account. However, they currently take into account the 10 per cent above and 20 per cent below rule, plus the large district allowance. If the commissioners are of the view that under the current arrangements a regional seat no longer fits within that requirement—inclusive of the large district allowance, it was 20 per cent less than the average—the commissioners would be compelled by law to make a decision on moving a seat from wherever that consideration failed into what is a constrained area in the metropolitan region. They would have to squeeze it in there. They would be required to do that. I will read from the *2019 Review of Western Australia's electoral boundaries*. It states —

In practice they —

The factors for consideration —

> can apply in varying ways. For example, major transport routes can serve to divide communities in some circumstances yet unite them in others. Land use patterns may be distinctive or mixed. Local government and locality boundaries, sometimes cited as an indicator of community of interest, may be diminished in importance over time through the construction of adjoining housing corridors or by the construction of major thoroughfares. Even existing State electoral boundaries can become less of a marker where major population growth has taken place since the previous Distribution.
>
> Where practicable the Commissioners may also have regard to anticipated future trends, where anticipated population growth over time may push a district outside of the limits that applied at the relevant day.

The function of the Electoral Redistribution Commissioners has never been the proposition to which the member referred of preserving the regions. Obviously, they have had to fit the districts into each of the existing regions by virtue that we cannot have a district that crosses over a regional boundary, but all the other factors remain in place. In effect, the local government boundaries for those metropolitan areas are the actual boundaries of the metropolitan region scheme. If I recall correctly, in the East Metropolitan Region, the boundaries of the Shires of Serpentine–Jarrahdale and Mundaring, and the Cities of Kalamunda, Swan and Wanneroo are the outside boundaries of the MRS. How the commissioners take that into consideration as the boundaries is a matter they will have to determine as they go through that, as they have always done.

Hon TJORN SIBMA: If we were to make it explicit that one of the considerations should be that in dividing the state into certain districts, commissioners should essentially attempt to ensure that a district is either wholly within or wholly outside the Perth metropolitan area—as it is so described under the Metropolitan Region Town Planning Scheme Act—would such an insertion into the bill be problematic insofar as it impedes the policy of the bill? Essentially, the policy position has been around Legislative Council reform. The bill potentially implicates the Legislative Assembly boundaries almost axiomatically. The parliamentary secretary will see that I have an amendment on the supplementary notice paper. Firstly, will that be problematic to the purpose of the bill; and, secondly, will that unnecessarily encumber electoral commissioners in the performance of their duties?

Hon MATTHEW SWINBOURN: The member has not moved his amendment but he will perhaps get to it at some point. It would be problematic in so much as we will not be supporting his amendment. Regardless of whether, on analysis, it goes back to the overall policy of the bill, it is a necessary consequence of moving to a whole-of-state electorate that we have to make these particular reforms. Other necessary consequences arise from that; this is one of them and we do not want to import it back into the bill by way of the amendment that the member proposes to move.

Hon NEIL THOMSON: It is interesting that the parliamentary secretary says it is a necessary consequence. The need for this bill and the nexus—being the bill before us—are not properly joined together. As I said in my clause 1 debate, this bill impacts just as heavily on the Legislative Assembly. I do not think that the people of Western Australia really understand that and I will give members an example. At the moment, the Mining and Pastoral Region contains four Assembly seats with a regional boundary that pretty much follows the rabbit-proof fence—with some minor variations, but it covers the pastoral region. In future, the seat of Kalgoorlie—I do not think that the good people of Kalgoorlie know this yet—could just as readily include Esperance. Another change that might occur is that the seat of North West Central might take in quite a bit of the seat of Moore or even slip down to the outer metropolitan region of the seat of Geraldton. That would give capacity for seats like Pilbara to move south and for Kimberley to incorporate Port Hedland. I would be happy to make the prediction that something like that will occur. I will not labour the point, but as I said earlier in my clause 1 debate, the federal seat of Durack is not constrained by regions, and in its definition it includes Bullsbrook and Kununurra, with the redistribution of the Bullsbrook component to get its population numbers up. The important point for members to know when they vote to support this bill is that we are fundamentally changing the other place because the Electoral Distribution Commissioners will not be constrained in the way that they are at the moment.

Clearly, this was not a factor considered in the ministerial report—this academic assessment of the upper house. As I said earlier, the need for this bill was predicated on reform of the Legislative Council. Has there been an assessment of the likely impact of the distribution of those lower house seats? Just before the parliamentary secretary answers the question, I note that he talked about the large district allowance. We know that currently in my region, the Mining and Pastoral Region, there are some tolerances and that enables the number of electors per seat to be quite low by comparison, but once we do away with these regions, those tolerances will not be needed to the same extent. I suggest that the lower parts of those tolerances are applied rather than the higher parts of those tolerances. Has any modelling been done on the likely impact that this will have on the Assembly?

Hon MATTHEW SWINBOURN: The short answer is no. It would be pointless to do modelling in the way that the member has described because Electoral Distribution Commissioners are independent and they will decide how to do their redistribution. It would be simply conjecture for us to say that this is what will or will not happen. At the beginning, the member talked about Kalgoorlie and Esperance and those sorts of things. Under the existing laws, the tolerances the member also referred to are all in there. In the redistribution before last, the seat of Eyre, under the current laws, was moved out of the regions—as the member described them—and into the Perth metropolitan area with the creation of the seat of Baldivis. If everyone is watching the numbers now under the existing system, it would not be unreasonable to apprehend that if we made no changes to the law, another seat could end up in the metropolitan area because of demographic changes. That is a product of the way that the current system works. It is possible under the existing system that Kalgoorlie and Esperance could be in the same seat. I am not saying it is likely; I am saying it is within the reams of possibility depending on where the independent commissioners decide to draw boundaries and how they decide to start. We have not done any modelling around those things because it would be of no real value as the decision is made by an independent body. The executive government does not decide where those boundaries sit. I refer the member back to the provisions that are still there—the community-of-interest provisions, the distance from the capital, land-use patterns, physical features, existing boundaries, existing local government boundaries, the trend of demographic changes—and will continue to be matters of consideration for those commissioners. There will be changes in the boundary because of a demographic change. If, in the future, a regional area like Geraldton, Albany, Esperance or Kalgoorlie had a demographic change of a significant number because of another gold rush or some industry opening in that area, the distribution commissioners would consider those changes at the next redistribution. What we are doing here does not radically or, as I think the member said, fundamentally change the role that they are taking on.

Hon NEIL THOMSON: I would have to disagree when the parliamentary secretary talks about the independence of the Electoral Distribution Commissioners being a reason not to do modelling. That is simply not a sustainable argument in my view. The parliamentary secretary can disagree if he likes. My point is that we are enacting a bill in this place that will give effect to an outcome that the independent Electoral Commission will be guided by. We are giving a head of power for that particular outcome. I contend that that will fundamentally change that outcome. I do not think the people of Western Australia have fully comprehended the degree to which that is likely to occur.

Another point the parliamentary secretary made in relation to the movement of a seat such as Eyre into the metro region is that of course that can happen under the existing system when the total tolerance is exceeded in those local government areas. Under that formula, we could not sustain another seat in that region, so the seat of Eyre had to be abolished, and two seats were then joined together in the Agricultural Region. But I certainly would ask the question, and I have other points to make: has there ever been a situation in the history of this place when a lower house seat has straddled the regional boundary? I do not think there has.

Hon MATTHEW SWINBOURN: Member, there has not been a uniform standard over time in the composition of the upper house. I am trying to think. I am not sure when the member migrated to Australia, but the Legislative Council used to have two-member provinces. It had a different structure if we go back to 1890 when the Legislative Assembly and Council were created. I cannot answer the member's question. The member said at any time in history. We had the 2005 reform, which is what we have now, and obviously that was 16 years ago. That system took effect in 2008, and we have had a number of elections since. In terms of what the member is talking about, it would not have happened under the current system.

Hon NEIL THOMSON: The parliamentary secretary is right. In fact, with the redistribution at the last election, the regional boundary was moved to include Kalbarri in the seat of North West Central, but it still meant that the people of Kalbarri were electing a member for the Mining and Pastoral Region as opposed to the Agricultural Region. There was some flexibility for the Electoral Commission to make that amendment, because there was a slight change, but it was constrained insofar as the boundary of the seat of North West Central followed the identical regional boundary. I come back to my point that very clearly there are still some constraints in the Electoral Act, as the parliamentary secretary rightly pointed out, relating to different criteria such as transport links and other points. I stick to my contention and predict, and am prepared to say in *Hansard*, that we will be standing in a place at the next election in which the lower house seats will be very different. It is important that the people of Western Australia know that. They will have very different combinations. The seat of Kimberley, for example, with its 11 609 electors, could quite readily, as I said during the clause 1 debate, have 15 000 electors. It still might not have the 30 000 electors in Belmont, but it could quite easily or readily include the fringes of Port Hedland, or maybe other parts of the Pilbara, and there could be some quite significant differences. This is a very important thing. I come back to this point, to follow on from the point that Hon Tjorn Sibma made. I think there is a pathway out of this. If this bill was honest about dealing with the upper house only, the Electoral Act would retain the need for districts. We could still have a definition of regions; it just would not apply to the upper house. That is something that might have been contemplated if this bill was as honest as its intention is said to be. If the intention is just to change the configuration of this place, we could still have the Mining and Pastoral Region, the Agricultural Region and the metropolitan regions, and the metropolitan region scheme boundary, in order to manage those lower house seats. That is something that I think should occur.

Hon TJORN SIBMA: I now move the amendment that I foreshadowed earlier —

Page 10, after line 27 — To insert —

(2) At the end of section 16I insert:

(2) In making the division of the State into districts the Commissioners shall ensure districts are located entirely within or wholly outside the metropolitan area of Perth.

(3) In subsection (2) —

metropolitan area of Perth means the part of the State that comprises —

(a) the region that was, as at the relevant day, described in the Third Schedule to the *Metropolitan Region Town Planning Scheme Act 1959*; and

(b) Rottnest Island.

This proposed amendment is a necessary safety valve to preserve the integrity of regional electorates as they exist in the lower house, because they will be affected axiomatically as an unintended consequence or a series of consequences that will arise from the government's decision to abolish regional representation in the upper house and to implement a whole-of-state electorate.

Hon MATTHEW SWINBOURN: I indicate, as I have done previously, that we will not be supporting the member's amendment. I have canvassed some of the reasons for that. I do not think that will be any great surprise. We maintain our view that it is no longer necessary to retain the regions' delineation. I might add that Hon Neil Thomson raised the thought in my head that the only regional boundary that cannot be moved by the Electoral Distribution Commissioners in a redistribution under the current system is the metropolitan region scheme, and the boundaries of the other regions are moved to accommodate those changes. For example, Esperance was previously in the Mining and Pastoral Region and is now in the Agricultural Region, if I understand correctly.

Hon Dr Steve Thomas: And Jerramungup.

Hon MATTHEW SWINBOURN: Yes. The Electoral Distribution Commissioners already move those communities in and out. We do not support constraining the Electoral Distribution Commissioners in that way, which is what this amendment would achieve.

Hon MARTIN ALDRIDGE: I rise to support the amendment moved by Hon Tjorn Sibma. It is a sensible amendment. It will not impact on the policy of the bill in any way. The parliamentary secretary described this amendment as a necessary consequence. Of course it is not. It is not a necessary consequence of implementing the policy of the bill. In fact, this amendment has been well crafted and understood by the government in preparing this bill. That is notwithstanding that, once again, the government has sought to gloss over the fact, including in the references to clause 20 in the explanatory memorandum, that this bill will have a practical and real impact on the distribution of seats in the Legislative Assembly. I think this is one of the several reasons that this bill is being put through in such a rush. Of course the government wants to make sure that this is done and dusted, not only to make sure that people will have a very distant memory of this at the next election, but also to make sure that when the distribution commissioners are formed within the next 18 months or so, they will be bound by these new provisions, which will mean that there will no longer be a delineation between regional and metropolitan Western Australia in the Legislative Assembly.

It is also interesting to note that we are dealing with this bill on Thursday of our fourth-last sitting week when we still have not passed the state budget. Last night, an urgent COVID-19 emergency powers bill was introduced into this chamber, but this electoral reform bill remains the highest priority of the Labor government in our fourth-last sitting week of the year.

Members contemplating their position on this amendment should do so knowing that this will not affect the impact of the 2005 Labor reforms, which I think has now resulted in seven regional seats being lost to the metropolitan area in the Legislative Assembly. That process will continue; this will not disrupt the process of redistribution. In time, a further regional seat may be lost to the metropolitan area in the Legislative Assembly. What the government is intentionally, I think, trying to achieve through resisting the amendment moved by Hon Tjorn Sibma is to blur the lines, particularly in the other place, between regional districts and metropolitan districts. That will be to the disadvantage of those constituencies and it would be only to the political advantage of the government to do so.

We have heard that the Premier has drafted a letter to the Salaries and Allowances Tribunal. Who knows what that says? It might be that he wants to remove all upper house members' regional offices and shift them all into a tower in West Perth. It might say that he thinks we should have fewer staff than Assembly members, as occurs in New South Wales. This is one of those things that will make it more difficult for entities such as the Department of the Premier and Cabinet and the Salaries and Allowances Tribunal in that it will no longer be easily identifiable which members

represent metropolitan constituencies and which represent regional or more remote constituencies. For all those reasons, the government should not be afraid and members should not accept that this is a necessary consequence of the bill, because it is nothing of the sort. This amendment has my full support.

Hon NEIL THOMSON: I also rise to support what is a very modest amendment. The parliamentary secretary was right when he picked up on my point about Kalbarri and some of the changes that we have seen in the delineation between the Mining and Pastoral Region and the Agricultural Region. They are not defined by the metropolitan region scheme. They are quite reasonable and modest changes, but the effect has still been to constrain the Electoral Distribution Commissioners from giving effect to what is a much stronger representation per voter than that in the lower house—a principle which I hope is still supported by the Labor Party. I do not know whether it is really supported because we have not seen a level of openness about the impact on the Assembly. As far as I know, I do not think members such as Ali Kent or Divina D'Anna have spoken at length on this matter. I assume they are not really aware of the potential —

Hon Alannah MacTiernan: They are incredibly popular local members.

Hon NEIL THOMSON: That is fine. This is not about popularity.

Hon Alannah MacTiernan interjected.

The DEPUTY CHAIR: Hon Neil Thomson has the floor.

Hon NEIL THOMSON: Chair, I am quite happy to take the interjection. This is not about popularity; this is actually about representation. This is about people in regional Western Australia having the option, every four years, to decide who represents them. But what we will see is a dilution of regional representation in the lower house. This debate has not been properly had. I support the amendment because I think it is modest, and I implore members opposite to support it. The proposed amendment does not try to completely undo anything. We accept that there is a level of inevitability about this bill. This bill is being rammed through with great haste by the government. The MRS boundary is independently established through the Western Australian Planning Commission. It is a very different process. It is not for tinkering and it makes a distinction between regional people and metropolitan people, who I think we all accept have very different needs. Some somewhat trite comments have been made about whether a small town in the Agricultural Region is really —

Hon Martin Aldridge: They do not like them.

Hon NEIL THOMSON: There have been some quite trite comments about some of the towns outside the metro region in saying that they are not really regional. The line is drawn by an independent body called the WA Planning Commission through a very robust process, ably chaired by David Caddy, and all the infrastructure that is around that. This is something that I think should be considered.

Hon Dan Caddy: A hardworking chair.

Hon NEIL THOMSON: I take the endorsement of Hon Dan Caddy on this matter because I think it is very important—hardworking and independent of any of the political machinations of this place or the other place. The amendment before us is a very good amendment. It would leave some scope for ongoing regional representation in Western Australia, through the lower house at least, notwithstanding this atrocious bill that is going through this place at this point. I endorse the amendment.

Division

Amendment put and a division taken, the Deputy Chair (Hon Jackie Jarvis) casting her vote with the noes, with the following result —

Ayes (10)

Hon Martin Aldridge	Hon Steve Martin	Hon Dr Steve Thomas	Hon Colin de Grussa *(Teller)*
Hon Peter Collier	Hon Sophia Moermond	Hon Neil Thomson	
Hon James Hayward	Hon Tjorn Sibma	Hon Wilson Tucker	

Noes (21)

Hon Dan Caddy	Hon Lorna Harper	Hon Stephen Pratt	Hon Dr Brian Walker
Hon Sandra Carr	Hon Jackie Jarvis	Hon Martin Pritchard	Hon Darren West
Hon Stephen Dawson	Hon Alannah MacTiernan	Hon Samantha Rowe	Hon Pierre Yang *(Teller)*
Hon Kate Doust	Hon Kyle McGinn	Hon Rosie Sahanna	
Hon Sue Ellery	Hon Shelley Payne	Hon Matthew Swinbourn	
Hon Peter Foster	Hon Dr Brad Pettitt	Hon Dr Sally Talbot	

Pairs

Hon Donna Faragher	Hon Klara Andric
Hon Nick Goiran	Hon Ayor Makur Chuot

Amendment thus negatived.

Clause put and passed.

Clause 21: Section 16K replaced —

Hon MARTIN ALDRIDGE: I want to ask the parliamentary secretary what we are doing here to section 16K. The explanatory memorandum explains that this clause "simplifies and modernises the text". Can I ask the parliamentary secretary: Will there be any material change in the application of section 16K through the amendment by clause 21?

Hon MATTHEW SWINBOURN: Member, my advice is that there will be no material change.

Clause put and passed.

Clause 22 put and passed.

Clause 23: Section 16M amended —

Hon NICK GOIRAN: The parliamentary secretary identified in consideration of clause 1 that clause 23 was one of seven clauses the genesis of which did not arise from the recommendations purportedly made by the Ministerial Expert Committee on Electoral Reform, in the report that it says that it issued on 28 June. That being so, what is the genesis for clause 23?

Hon MATTHEW SWINBOURN: As the member probably already knows, section 16M is already an entrenching provision in relation to those matters. Obviously, we are introducing the concept of electoral equality. We think that these are of the same kind and character as things that have been entrenched in the past and deserve a higher bar for further alteration as happened in the past. It deserves—I am trying to use the right word; it is not "protection" because that is not what it does—a higher standard so that it can be passed by both chambers with an absolute majority.

Hon NICK GOIRAN: Parliamentary secretary, who advocated for this to be done?

Hon MATTHEW SWINBOURN: It was a decision of cabinet. As the member quite rightly noted, it did not come out of the Ministerial Expert Committee on Electoral Reform. I do not think the members turned their minds to entrenching provisions at all in relation to these matters. To just add to what I said before, it is to lend certainty and stability to the law.

Hon NICK GOIRAN: I understand it was a decision of cabinet, as was the entire bill, but what was the basis upon which it arrived there? It is possible that something just arose out of cabinet deliberations, and, of course, the parliamentary secretary would not be in a position to discuss that. Although that is possible, it would be unusual I think, albeit not impossible. Normally entrenching provisions would be advocated by a person, so the genesis of other clauses would include the ministerial expert committee's so-called recommendations, or perhaps the genesis of the matter was something that the Electoral Commissioner suggested or some other key stakeholder recommended should occur. Did such a person, an individual, an agency, a body or a stakeholder specifically advocate to government to say that this matter is of such importance that it requires this form of entrenchment?

Hon MATTHEW SWINBOURN: It is out of cabinet—who advocated for it in cabinet. But it would be fair to say—the member can pick this up from the *Hansard* from the other place—that the minister himself is an advocate for the entrenching of these provisions.

Hon NICK GOIRAN: That is interesting, parliamentary secretary. The parliamentary secretary will recall that earlier in the debate that there was quite a bit of discussion about the importance, according to the minister—I think the parliamentary secretary quoted some of his remarks in *Hansard* from the other place about the desirability of independence—of originally establishing the ministerial expert committee. To the best of my recollection, the parliamentary secretary quoted or paraphrased some of the material from the Minister for Electoral Affairs in the other place and his rationale for establishing the committee. He was concerned that he would be criticised, and, in the absence of doing so, that it might be partisan—he may not have used the word "partisan". But it was very

important that this bill, this process and this so-called reform should be supported by an independent process. Plainly, that has not happened here with regard to these entrenchment provisions because the only identifiable advocate is the minister himself. Therefore, I think it is fair to describe this as one of the provisions in the bill that is not "independent", to use the phrase in the context that the Minister for Electoral Affairs was using it in the other place. That being so, was there some specific consultation that was undertaken with regard to this particular clause and the said necessity to entrench?

Hon MATTHEW SWINBOURN: In terms of the technicalities of it, not the policy decision, my understanding is that it was in consultation with the PCO and the Solicitor-General.

Hon NICK GOIRAN: This is a particularly interesting provision. As the parliamentary secretary will know and as I understand it, what is sought to be introduced in these entrenching provisions for the first time are provisions from an entirely different act. I understand that the entrenchment provisions at the moment relate only to particular parts and sections of the Electoral Act 1907, and we will examine that in a moment. For the first time, it seems to introduce the entrenchment of provisions from a completely separate act, and in this instance, it is the Constitution Acts Amendment Act 1899. Why has that been done?

Hon MATTHEW SWINBOURN: I am advised that it is a consequence of moving sections 16C and 16D into the Constitution Acts Amendment Act. It is consequential at 16M in terms of the reference.

Hon NICK GOIRAN: Clause 23 is amending section 16M. That is not in dispute, but why is the insertion of an entrenchment provision with regard to sections 5(2) and 18(2) of the Constitution Acts Amendment Act 1899 then said to be a consequence of amending section 16M? That does not follow.

Hon MATTHEW SWINBOURN: I am not sure that I was clear. It is a consequence of amending sections 16C and 16D of the Electoral Act.

Hon NICK GOIRAN: In clause 15, which we have passed, we inserted proposed sections 16C and 16D. Is the parliamentary secretary saying that as a consequence of clause 15 being passed, it was then necessary to introduce sections 5(2) and 18(2) of the Constitution Acts Amendment Act into clause 23? Again, I do not think that follows.

Hon MATTHEW SWINBOURN: I am trying to get to the bottom of this; I think I might be the problem more than anything else.

Hon Nick Goiran: I have to say that it is not clear on its face.

Hon MATTHEW SWINBOURN: I do not know whether the member has the blue bill for the Constitution Acts Amendment Act. I take the member to what will be new section 5 of that. The entrenchment provision is in relation only to those members who are to be returned and who will sit for the whole of state. What is not entrenched is 5(1). If we turn to new section 18, it is only 18(2) which is the entrenchment provision there whereby those members are to be returned and will sit for electoral districts. It is not the numbers that are entrenched, although I think with the Legislative Council it is not so much the entrenching position, but the referendum position in terms of reducing the number, which I am sure is dealt with in another part of the act. Does that provide the member with additional clarity, or am I again arguing at different purposes?

Hon NICK GOIRAN: It is helpful to look at the blue bill. If we take, for example, the first of the sections that will now be entrenched—that is, what will be section 5(2) of the Constitution Acts Amendment Act 1899. Very interestingly, the words used there, which are said to be entrenched and cannot be amended by a future Parliament unless there is an absolute majority in both houses is the term, "Those members are to be returned and sit for the whole state." If we compare that to what sits there at the moment, it is the replacement of the phrase "who shall be returned and sit for electoral regions." The only difference I can readily see is that instead of these members—those being us—sitting for electoral regions, we will be sitting for the whole of the state.

Hon Matthew Swinbourn: I am told that is correct.

Hon NICK GOIRAN: What is then not clear is why it is necessary to entrench that provision by way of an amendment to a completely different act—the Electoral Act of 1907. I do not think it is necessary to go down this path at all, but that is the difference between me and the government. The point is that if we are going to entrench something regarding the Constitution Acts Amendment Act 1899, that is the place to house the entrenchment, not in a completely separate act. Who in their right mind will read the Constitution Acts Amendment Act and say—this will be well after our careers are finished—I might amend this, but unfortunately they will be completely snookered unless they think to look at every other piece of statute in Western Australia, particularly those in the alphabet starting with E in the Electoral Act because hidden in the Electoral Act is the provision that says that we cannot amend 5(2) of the Constitution Acts Amendment Act. I cannot understand for the life of me why we are doing that. This is really a drafting matter more than anything else. As I understand it, it will not change the outcome. We will still be able to entrench but the proper place to entrench a provision is in the act we are seeking not to change.

Hon MATTHEW SWINBOURN: I think the member has explained his position in trying to understand the reason and the path chosen. The best I can say to him is that the decision for how it was drafted—obviously it was a final government decision—was fundamentally guided by Parliamentary Counsel's Office and the Solicitor-General. The point about his saying it should be in the Electoral Act, the Electoral Act is affected, I suppose is a good word, with constant references to the Constitution Act and the Constitution Acts Amendment Act. If anyone is proposing to do what the member was talking about—perhaps someone as competent and forensic as the member in analysis, will make sure they look at it—for a bit of gratuitous complement on my part and from the table, but they will have to do it at a very basic level. Not having been through the process myself, I imagine he would go back to the PCO and ask if they could help with this drafting and they would at least point to what is obviously the product of their own work in the first place.

I am not sure whether that is satisfactory for the member. I think it will have the effect we want it to have on entrenching, but as far as where it sits in which act and those sorts of things, it is here now and I think that is where it will stay.

Hon NICK GOIRAN: I thank the parliamentary secretary for the explanation.

Hon Matthew Swinbourn: I am not trying to be flippant.

Hon NICK GOIRAN: I do not take it that way at all. Let us see how things progress this afternoon. Perhaps there is an opportunity to go back to Parliamentary Counsel's Office—I think the parliamentary secretary said the Solicitor-General had been involved—to raise this point. I think we are only making life more difficult at this point for future Parliaments. I am not even arguing against the entrenchment position. That is a separate debate that I am sure we will take up shortly. This is merely a drafting issue. It is still entirely unclear to me why we would take this path. It could just be oversight. Maybe it is one of those things that, upon reflection, PCO and others might say is fair enough and the better place to put it would be in the Constitution Acts Amendment Act 1899. All we are simply saying there is that the government can amend those sections, exactly as we are doing here. In a sense, we are uplifting. I am arguing to uplift the key provisions of section 16M of the Electoral Act 1907 and place them in the Constitution Acts Amendment Act as they pertain to proposed sections 5(2) and 18(2). Anyway, I am satisfied that I have made the point and I am satisfied that the parliamentary secretary understands the point I am making.

Hon Matthew Swinbourn: I hazard a guess that it might be a subject of discussion.

Hon NICK GOIRAN: I am happy that it may well be taken up and we will see whether anything transpires as a result of that. I think we would be doing our heirs in the Legislative Council and, indeed, in the other place a great favour if we looked at attending to this. That is just a matter of drafting.

Of course, the issue still remains of why it is necessary to even look to entrench this provision. I turn the parliamentary secretary's attention to proposed section 18(2) of the Constitution Acts Amendment Act 1899. Again, I think the best place to look at this is in the blue bill. There the parliamentary secretary will see that the provision that will be entrenched once this bill passes is the phrase "Those members are to be returned and sit for electoral districts." As I can see, that is essentially identical to what is in section 18 of the Constitution Acts Amendment Acts 1899 at the moment. All that appears to happen at section 18 of that act, which we amended at clause 8, is to separate one provision into two. At the moment the provision reads —

> The Legislative Assembly shall consist of 59 elected members who shall be returned and sit for electoral districts.

It will now say —

> (1) The Legislative Assembly is to consist of 59 elected members.
>
> (2) Those members are to be returned and sit for electoral districts.

There is really nothing in it between section 18 as it is currently and as it will be courtesy of the passage of clause 8. One has to wonder why it was even necessary to do it in the first place, but, again, we are past that; we are beyond that point. Correct me if I am wrong, parliamentary secretary, but what is now proposed section 18(2) was not previously entrenched but will be by virtue of this clause. Again, why is it thought to be necessary?

Hon MATTHEW SWINBOURN: It is basically for consistency. We are entrenching the whole-of-state electorate of the Legislative Council, so we are entrenching the districts for the Legislative Assembly.

Hon NICK GOIRAN: There is quite a big difference, though, because if we think about the Legislative Council provision, proposed section 5(2) entrenches this principle that a member of this place has to sit for the whole state; in other words, they cannot sit for part of the state. At the moment, I sit for that part of the state that is described as the South Metropolitan Region. That will no longer be possible. If a future Parliament wanted to revert to something like that or a regional scheme, the point being made by the government is that it thinks it is of such importance that it would require an absolute majority, hence the entrenchment provision. That is certainly an understandable argument, but whether people agree with it is another point. When it comes to the Legislative Assembly, which is covered in

proposed section 18(2), what are we concerned about that would require this level of entrenchment? The phrase is "Those members are to be returned and sit for electoral districts." What else would they be sitting for other than electoral districts? I am not aware of any proposal by either major party or, indeed, any minor party to suggest otherwise. The government has not indicated any desire for reform with regard to that issue and the opposition has not either. It seems entirely over the top, can I say. Keep in mind that entrenchment provisions are not normal. They are not necessarily infrequent, but they are certainly not the norm. I would say they are the exception. Indeed, I note that the last time the WA Labor Party embarked upon reforms of this nature—I think I touched on this in the second reading debate—it ended up in a series of attempted reforms that were ultimately ruled invalid by the High Court in 2003. That bill had a fair amount of controversy associated with the entrenchment provisions, so much so that when the Standing Committee on Legislation examined this issue, it devoted a whole chapter of its report to entrenchment provisions—their manner and form, the distinction between single and double entrenchment and the like. That is all to say that it is not that common, so I think we could almost say that it is used in exceptional circumstances.

The whole point of the double entrenchment is to say that this matter is of such importance that we, the forty-first Parliament, want to constrain in some way what future Parliaments can do. It is not an absolute restriction, but we are constraining what it can do in the future, because we are saying, unlike pretty much all other laws in Western Australia that can be passed by way of a simple majority, that these ones are so important that they require an absolute majority. We have seen cases in which this has been implemented. Indeed, some of the work we are doing here is exactly an example of that. But there needs to be a cogent, comprehensive, persuasive argument provided for that, and, as I say, we might have a difference of opinion with the government about the appropriateness of a whole-of-state electorate versus regions for the Legislative Council, but I can certainly understand why a government, feeling as strongly as it does about this issue—someone described it as a 100-year dream or something like that—would want to entrench that. Okay, but, really, why proposed section 18(2) of the Constitution Acts Amendment Act 1899? What we are really saying here is that the phrase "Those members are to be returned and sit for electoral districts"—we are talking about our cousins from the other place—is of such extraordinary importance that it requires not just a single entrenchment, but a double entrenchment. As best as I can understand, it appears that the explanation is that the government is trying to be consistent between sections 5 and 18 of the Constitution Acts Amendment Act 1899. I wonder whether there is a more persuasive explanation for it.

Hon MATTHEW SWINBOURN: I do not think I can take it any further than what I have previously said about the consistency between the two houses. I know that it was not a significant issue or a major controversy in the other place. Perhaps they think they should be entrenched as well under their arrangements. However, this is about the consistency, certainty and stability that it will provide. I would not like to elevate it any more than that.

Hon NICK GOIRAN: To round out this topic, because there are a few more to get through on this provision, we have identified so far that there could be a better place to house that element of the entrenchment provision that deals with the Constitution Acts Amendment Act 1889. That point is understood and may well be considered by the government; we will see if anything arises from that.

Separate, but related to that, I would argue, is the lack of the necessity to entrench proposed section 18(2), albeit I can well understand why a government might want to entrench proposed section 5(2). I do not anticipate that there will be any change to that. The government's position is that it would like the two provisions to be consistent. I do not think that is an adequate or persuasive argument to justify using such an extraordinary measure. Nevertheless, that is the position, and so we will move on.

However, what does need to be clarified at this point, given its significance, is whether we are doing anything else at this point. Apart from bringing in those two proposed sections that we have just been discussing on the Constitution Acts Amendment Act 1889, are we doing anything else by agreeing to this clause? Will we in any way bind a future Parliament to other acts, including the Electoral Act 1907?

Hon MATTHEW SWINBOURN: Bear with me, member. Any bill that repeals or amends part IIA of the Electoral Act, other than sections 16G(3) or (4), must be passed by an absolute majority of the whole number of the members of the Council and Assembly. That means that the appointment of Electoral Distribution Commissioners cannot be changed without an absolute majority. That is provided for at section 16B of the Electoral Act and is not a change to the act. The state cannot be changed from a single electorate to a whole-of-state electorate without an absolute majority. That provision is found under proposed section 16C and is one of the new changes in the bill. Under section 16D of the Electoral Act, the state must be divided into districts. Each district is to return one member to sit in the Assembly, unless amended by an absolute majority of both houses. This is another new change within the bill. The relevant date for the division of the state into districts remains as outlined in section 16E of the Electoral Act, unless amended by an absolute majority in both houses. That is not a change to the existing act. The functions of the Electoral Distribution Commissioners, as outlined in section 16F of the Electoral Act cannot be altered unless the amending bill is passed by an absolute majority in both houses. Again, that is not a change to the act.

Hon NICK GOIRAN: To translate that, at the moment, section 16M of the Electoral Act 1907 appears to be limited in its double entrenchment to what is described as "any of the provisions of this Part". When it refers to "this Part", I understand that that is a reference to part IIA of the Electoral Act 1907 titled "Representation in Parliament". If we can just deal with that first, parliamentary secretary—I am happy for the parliamentary secretary to respond by way of interjection if it is of any use—there is no change in that respect. That is to say, when section 16M refers to the provisions in this part, it is, at the moment, a reference to part IIA and will remain a reference to part IIA.

Hon Matthew Swinbourn: Yes.

Hon NICK GOIRAN: I thank the parliamentary secretary. Section 16M of the Electoral Act 1907 also says "other than Division 2". That phrase is now missing from the bill, or is to no longer be used. To the extent that that is understandable, it is because division 2 will be wholly replaced. At the moment, there is a division 2, but that entire division 2, which consists of sections 16C and D of the Electoral Act, will be deleted and replaced with a new division 2 titled "Whole of State electorate and electoral districts". My point is that at the moment division 2 can be amended, as I understand it, without an absolute majority. However, in the future, an amendment to division 2 will require an absolute majority. Is that right?

Hon MATTHEW SWINBOURN: Yes, member.

Hon NICK GOIRAN: Division 2, which will be deleted, says that the state shall be divided into 59 electoral districts and that each district will return one member to serve in the Assembly. It also says that the state shall be divided into six electoral regions and that each region will return six members to serve in the Council. The parliamentary secretary indicated that at the moment that can be repealed or amended without the need for an absolute majority. In other words, what the government is trying to do, at least for the existing division 2, can be done without an absolute majority. However, in the future, it will require an absolute majority.

I just make this point to the parliamentary secretary: I find it interesting that the McGowan Labor government is quite happy to take advantage of the fact that previous Parliaments have decided not to constrain division 2, but this government has decided that it wants to constrain future Parliaments from repealing or amending division 2. I accept the practical reality that even if a previous Parliament had decided to constrain this Parliament and required an absolute majority, clearly, in the current circumstances, the government would be able to do so anyway. However, the point should not be lost that previous Parliaments decided that they would not require this extraordinary measure to be imposed upon us, the forty-first Parliament, but that we, the forty-first Parliament—at least those members who support the government—are insisting that future Parliaments from the forty-second Parliament onwards will be constrained by this. That is a rhetorical remark at this point. I do not expect a response. However, I make the observation that I am not sure whether future Parliaments will thank us for this imposition.

That being said, as I read it, the only portion of part IIA of the Electoral Act 1907 that will be capable of being repealed or amended in the future without the need for an absolute majority will be sections 16G(3) and (4).

Hon MATTHEW SWINBOURN: Yes, member.

Hon NICK GOIRAN: The future part IIA of the Electoral Act 1907, titled "Representation in Parliament", is no small part of the Electoral Act 1907. In fact, at least in the version of the blue bill that I have in front of me, it traverses what appears to be some 12 pages. Admittedly, that quantum of pages needs to be understood in the context that several sections are being completely deleted. That particular part will not, in its final form, be quite as lengthy as that, but the point is that a substantial number of provisions make up part IIA. I note that at the moment, if what is known as section 16L of the Electoral Act 1907 titled "Transitional provisions for amendments to laws etc. in 2005" were to be amended or repealed, it would require an absolute majority. However, no such section will be amended or repealed because it is being deleted. Here we are inserting proposed new replacement sections 16K and 16E that are said to be not quite untouchable, but will require an extraordinary level of support—quite apart from what we discussed earlier, and to which the parliamentary secretary agreed with regard to proposed sections 16C and 16D. For those members who want to know, in terms of new provisions, sections 16C, 16D, 16E and 16K will require an absolute majority.

Hon MATTHEW SWINBOURN: Proposed sections 16C and 16D are new provisions and proposed sections 16E and 16K will replace existing sections 16E and 16K, which were previously already entrenched, but the member highlighted them by saying that they are clearly new sections. However, existing sections 16E, 16F and 16K were actually entrenched provisions as well.

Hon MARTIN ALDRIDGE: I have a couple of questions on this provision. Proposed section 16M, as amended, will still retain the carve out for section 16G(3) or (4), which was mentioned earlier by Hon Nick Goiran. Section 16G titled "Districts, how State to be divided into" contains those subsections that relate to the large district allowance. Why is it the government's position that these two subsections out of quite an expansive part, should not be impacted by proposed section 16M?

Hon MATTHEW SWINBOURN: We are maintaining the existing status quo with respect to those things, member.

Hon MARTIN ALDRIDGE: That is a bit of a change. That does not explain why, out of all of part IIA, which is quite a diverse part—members should keep in mind that section 16M was the creation of a Labor government in 2005 with its first tranche of one vote, one value reform.

Hon Nick Goiran: That was after they messed up the first attempt.

Hon MARTIN ALDRIDGE: True. Labor created this provision in 2005 when it carved out section 16G(3) or (4), and it continues to maintain the status quo, as we just heard from the parliamentary secretary. There must be some explanation. As I said, it is a diverse part. It is the only part to refer to the large district allowance—section 16G(3) and (4)—not being protected by the government. It is interesting for this point: when we heard the Premier of this state repeat ad nauseam—as I am sure the Deputy Chair and all members heard in the lead up to the last election—that electoral reform was not to the agenda, he also said some other words. He said that enhanced regional representation will continue. Of course, at the time, that sounded all good and well—"It's not on the agenda; enhanced representation will continue." But what we have learnt since is that the qualification offered by the Premier about what is enhanced regional representation, is the retention of the large district allowance for the Legislative Assembly. This is despite the fact that section 16G(3) and (4) have not been offered, since 2005—when they were dreamt up by the Labor Party—nor now, the same protection offered to other parts of this bill, and now, in fact, another bill. I make that point and I hope that the parliamentary secretary will be able to come up with a better answer than simply maintaining the status quo.

The other question that I had about section 16M is its application to the Constitution Acts Amendment Act, which I will refer to as CAAA. We discussed this matter earlier when we were dealing with amendments to the CAAA, which, funnily enough, are found at sections 5 and 18 of the CAAA. The response from the parliamentary secretary at the time was that it was considered by the government, I assume on advice, that the CAAA was the preferable act to contain the information as far as it related to particularly the number of members elected to each of the houses of Parliament. The way that was effected was through the deletion of sections 16C and 16D, which is a matter that Hon Nick Goiran just took up. The Electoral Act states —

> **16C. Electoral districts, number of and MLAs for**
>
> (1) The State shall be divided into 59 electoral districts.
>
> (2) Each district will return one member to serve in the Assembly.
>
> …
>
> **16D. Electoral regions, number of and MLCs for**
>
> (1) The State shall be divided into 6 electoral regions.
>
> (2) Each region will return 6 members to serve in the Council.

We have deleted those sections—they are gone. We have transferred elements of those sections across to the CAAA, but in doing so, as far as I can tell, we have protected only part of the provisions. Are we reducing the effect of the entrenchment provision in this respect? As the parliamentary secretary said, proposed new sections 16C and 16D of the Electoral Act will talk about the division of districts, not about the number of members that each house will elect. That is now contained solely within the CAAA. When we transfer those provisions across to the CAAA, why is it that the government is just entrenching proposed sections 5(2) and 18(2) in the CAAA that will state "Those members are to be returned and sit for the whole of the State" and "Those members are to be returned and sit for electoral districts"? Am I reading this correctly? It is a little complex. I agree with Hon Nick Goiran that it would be far better if the government believes in entrenchment, to actually entrench those provisions within the acts, not in the Electoral Act.

Is it the case that we are now removing entrenchment from proposed new sections 5(1) and 18(1) of the CAAA, which state that the Legislative Council is to consist of 37 elected members and the Legislative Assembly is to consist of 59 elected members? Are we removing entrenchment from those aspects; and, if so, why?

Committee interrupted, pursuant to standing orders.

[Continued on page 5326.]