

CONSTITUTION AMENDMENT BILL 2002

Introduction and First Reading

HON NICK GRIFFITHS (East Metropolitan - Minister for Racing and Gaming on behalf of the Leader of the House) [2.43 pm]: I move -

That the Bill be now read a first time.

Question put and a division taken with the following result -

Ayes (13)

Hon Robin Chapple	Hon Jon Ford	Hon Louise Pratt	Hon Ed Dermer (<i>Teller</i>)
Hon Kate Doust	Hon Graham Giffard	Hon Ljiljana Ravlich	
Hon Sue Ellery	Hon Nick Griffiths	Hon Jim Scott	
Hon Adele Farina	Hon Dee Margetts	Hon Ken Travers	

Noes (12)

Hon George Cash	Hon John Fischer	Hon Robyn McSweeney	Hon Barbara Scott
Hon Murray Criddle	Hon Frank Hough	Hon Norman Moore	Hon Derrick Tomlinson
Hon Paddy Embry	Hon Barry House	Hon Simon O'Brien	Hon Bruce Donaldson (<i>Teller</i>)

Pairs

Hon Giz Watson	Hon Bill Stretch
Hon Kim Chance	Hon Peter Foss
Hon Tom Stephens	Hon Alan Cadby
Hon Christine Sharp	Hon Ray Halligan

Question thus passed.

Several members interjected.

The DEPUTY PRESIDENT (Hon George Cash): Order, members! The Bill will not be read a first time until the House comes to order.

Bill read a first time.

Second Reading

HON NICK GRIFFITHS (East Metropolitan - Minister for Racing and Gaming on behalf of the Leader of the House) [2.47 pm]: I move -

That the Bill be now read a second time.

This Bill will end what was recognised by the Commission on Government in August 1995 as an anomaly. Specifically commenting on the situation in this Chamber, the Commission referred to -

removing the anomaly of a house with an even numbered membership having a Presiding Officer, the President, who has a casting but not a deliberative vote.

Indeed, the commission went further and suggested that the President's casting vote reduces, rather than enhances, the proportionality of this Chamber. The commission suggested rectifying this anomaly by increasing the number of members of this Chamber to 35, to be elected from five regions which would each return seven members. It did not expressly deal with the issue of the President's vote. However, it is clear that the same result can be achieved by either mechanism, and the proposal in this Bill does so without requiring an additional member. Therefore, this Bill seeks to amend section 14 of the Constitution Acts Amendment Act 1899 to give the President of this House a deliberative vote on all questions that come before this House, and remove the President's casting vote. Currently, the President has a casting vote when votes in the Council are equal. However, the President does not have a deliberative vote. This position is set out in section 14, which provides that -

The presence of at least one-third of the members of the Legislative Council, exclusive of the President, shall be necessary to constitute a quorum for the despatch of business; and all questions which shall arise in the Legislative Council shall be decided by a majority of votes of the members present, other than the President, and when the votes are equal the President shall have the casting vote:

An amendment, as proposed by this Bill, is required not only because the current position is an anomaly. There are reasons of fairness to Western Australian citizens and democratic principle as well as constitutional law that support and justify the proposed amendment.

Hon Norman Moore interjected.

Hon NICK GRIFFITHS: First, depriving the President of a deliberative vote has meant that electors in the President's electoral region do not have full, proper and fair representation in this Chamber. The Bill will rectify this position. It will end the ongoing and current disfranchisement of those electors which of itself detracts from this Chamber's and, therefore, the Western Australian Parliament's democratic foundations and legitimacy. The amendment will ensure that both in theory and in practice, this Chamber will, as required by section 5 of the Constitution Acts Amendment Act 1899, consist of 34 elected members and not merely 33 members. It will allow, but importantly, not compel the President to have a deliberative vote on all Bills and issues that come before this Chamber. That will then give electors in the President's electoral region the full right, via the President's deliberative vote, to participate in the making of laws that govern them. In addition to those universal principles of fairness, democracy and representation, there is now, since the Western Australian Supreme Court's decision in the Marquet case, a substantial constitutional reason for allowing the President to have a deliberative vote. This reason involves consideration of what it means for this Chamber and the other place to pass a Bill.

Hon Norman Moore interjected.

Hon NICK GRIFFITHS: I will not deviate from the second reading speech. However, I understand, Mr Deputy President, that there is a convention in this House that people do not interject during second reading speeches.

Several members interjected.

The DEPUTY PRESIDENT (Hon George Cash): Order, members! I was unavoidably taking some notes on another issue so I do not know who started what. However, I know who will finish it and it will be me. The Minister for Racing and Gaming has the call to deliver the second reading speech and it should be delivered without unnecessary interjection. One of the reasons that second reading speeches are delivered in this place without unnecessary interjections is so that Hansard can record them accurately. The very least members might do is to pay some respect to Hansard.

Hon NICK GRIFFITHS: Prior to the Marquet case, the traditionally accepted position had been that to pass a Bill required a simple majority; that is, a Bill passed through either this Chamber or the other place when it obtained a simple majority of affirmative votes. Of course, some provisions, such as those in section 73(1) or 73(2) of the Western Australia's Constitution Act 1889 or section 13 of the Electoral Distribution Act 1947, referred to an absolute majority. In those situations the view was that a Bill was passed upon attaining a simple majority. However, because the Bill did not meet the absolute majority criteria, it was not presented for assent.

At least three of the judges in the Marquet case have now put forward a different view of what is required to pass a Bill. On this view, a Bill to which an absolute majority requirement applies is not passed unless an absolute majority of all of the members of this Chamber vote in favour of the Bill; that is, for a Bill to pass it must pass in a legally effective and binding manner. For example, a Bill that was within the scope of section 13 of the Electoral Distribution Act 1947 but did not secure the support of an absolute majority of both this Chamber and the other place, would not have completed its passage through this Chamber or the other place within the meaning of section 2(3) of the Constitution Act 1889, which refers to the passage of a Bill through this Chamber or the other place.

The emergence of this view gives rise to a number of significant uncertainties and potential anomalies in relation to the State's constitutional arrangements. If, on the basis of the Supreme Court's reading of the Constitution, the passing of a Bill is a matter that has as its basis the entire membership of this Chamber, then is it not essential that all members should be able to cast a deliberative vote? On this view of the meaning of passing, it would be an extraordinary anomaly if one of the members of this Chamber were barred from participating in the passing of a Bill except where the votes were equal.

On the basis of the Marquet case view, a different issue arises. Has section 13 of the Electoral Distribution Act 1947 already repealed or partially repealed that portion of section 14 of the Constitution Acts Amendment Act 1899 that concerns the President's vote? Section 13, on the basis of the Marquet case, provides for the manner in which a Bill amending the 1947 Act must pass this Chamber. In doing so, section 13 overrides the portion of section 14 that requires that Bills pass on the vote of a simple majority of members present in this Chamber other than the President. As section 13 does not contain the qualification that the absolute majority must be an absolute majority of all members of this Chamber other than the President, it may well be that the President already has a deliberative vote at least on Bills to which section 13 applies and possibly on all Bills. That is, section 13 being a later and more specific enactment that prevails over section 14, which is a prior enactment,

may have impliedly repealed it so far as it purports to prevent the President from having a deliberative vote. It is obviously quite unacceptable to allow such fundamental constitutional issues relating to the way in which this Chamber transacts its business to remain unresolved.

The Bill will remove any anomalies or uncertainties and provide a sound and fair basis for the proceedings of the Chamber. In addition, the Bill, in giving the President of this Chamber a deliberative but not a casting vote, follows a well-established precedent in Australia. As honourable members may be aware, section 23 of the Constitution, which came into operation on 1 January 1901, expressly gives the President of the Senate a deliberative vote in all cases and provides that when the votes are equal, the question shall pass in the negative. This Bill is drafted in identical words to the provision in section 23 relating to the President of the Senate. The reason that the Senate President, unlike the Speaker of the House of Representatives, has a deliberative vote, is to ensure that the State from which the President is a senator is not deprived of the benefit of its representation in the Senate.

Point of Order

Hon BARRY HOUSE: When the minister was reading the second reading speech, I think he deliberately missed out the word “almost” in a previous paragraph. I saw him take a pen to the second reading speech from which he is quoting. I seek some clarification on that because it may be important at some stage as to whether the word “almost” is supposed to be in the second reading speech.

Deputy President’s Ruling

The DEPUTY PRESIDENT: What the minister actually says in his second reading speech to the House, as recorded by Hansard, is to be taken as the second reading speech. The second reading speech notes are distributed to members as a courtesy to enable members to follow, in general terms, what is being said. Usually, the notes are word for word of what is being said. However, the bottom line is that what the minister says during his second reading speech is what is to be taken to be the second reading speech as it will be recorded in Hansard in due course. That is one of the reasons second reading speeches are generally not interrupted. It is important to get down the exact words that are spoken and not just rely on the typewritten notes that are provided for guidance.

Debate Resumed

Hon NICK GRIFFITHS: Similarly, this Bill will implement the same democratic principle of ensuring that electors who vote for the President are not deprived of the benefit of obtaining the President’s representation of their interests, wishes and hopes in this Chamber. Again, analogous to the Senate, members in this Chamber are elected by regions returning specified numbers of members. Likewise, the Senate comprises a specified number of members from each State.

Members may also be aware of the position under the South Australian Constitution. In South Australia, when a casting vote has not been exercised, the President of the Legislative Council may indicate concurrence or non-concurrence in the passing of the second or third reading of a Bill. Therefore, the South Australian President has the opportunity to indicate concurrence or non-concurrence with the passing of a Bill for the purposes of legislative provisions in South Australia, which are similar to Western Australian provisions such as section 73 of the Constitution Act 1889 and section 13 of the Electoral Distribution Act 1947. Consequently, if a Bill passes by a majority in the South Australian Legislative Council, the President is able to indicate concurrence with its passing so that an absolute majority of the members of the Legislative Council concur in the passing of that Bill. The President would indicate that a majority had voted for the Bill and would then indicate that, with the President’s concurrence, an absolute majority of Legislative Council members had concurred with the Bill that had been passed by a majority.

In this context, it is important to note that the terminology in section 73(1) and (2) of the Constitution Act 1889 and section 13 of the Electoral Distribution Act 1947 is that a Bill “shall have been passed with the concurrence of an absolute majority of the whole number of the members for the time being of the Legislative Council”.

This Bill will not only rectify an anomaly in our legislative process but also enhance the democratic credentials of this Chamber. More importantly, it will provide those Western Australians who are in a President’s electorate with their democratic right to full representation. I have much pleasure in commending this Bill to the House.

Debate adjourned, pursuant to standing orders.