

Hon Nick Griffiths; Hon George Cash; Hon Murray Criddle; Hon Peter Foss; Hon Derrick Tomlinson; Deputy  
Chairman; Hon Robin Chapple; Hon Simon O'Brien; Hon Dr Chrissy Sharp; Hon Bruce Donaldson

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## **ELECTORAL AMENDMENT BILL 2001**

### *Committee*

Resumed from 5 December. The Deputy Chairman of Committees (Hon Barry House) in the Chair; Hon N.D. Griffiths (Minister for Racing and Gaming) in charge of the Bill.

#### **Clause 4: Part IIA inserted -**

##### **Proposed section 16B: Electoral Distribution Commissioners -**

Progress was reported after the proposed section had been partly considered.

Hon N.D. GRIFFITHS: Last night consideration was being given to the words contained in proposed section 16B(5), which involves the Premier consulting with the parliamentary leader of each party in the Parliament. Hon George Cash asked of me what was meant by the words “each party in the Parliament”. I pointed out that I thought it was an interesting question. There is a definition of “registered political party” in the Electoral Act 1907, but that is not the same definition as a party in Parliament. These words are present in section 5B(3) of the Electoral Act 1907. Section 5B deals with the appointment of the electoral commissioner and the deputy electoral commissioner and states -

The Electoral Commissioner shall be appointed by the Governor on the recommendation of the Premier, and shall hold office in accordance with this Act.

Section 5B(3) states -

Before making a recommendation under subsection (2) the Premier shall consult with the Parliamentary leader of each party in the Parliament.

The interesting point is that there is no definition of “party in the Parliament”. In answering Hon George Cash’s question, the words should be taken literally; that is, they mean what they say. The term “party in the Parliament” is not the same as a registered political party. For example, in this House a party in the Parliament includes the Liberal Party, One Nation, the National Party, the Greens (WA), and the Labor Party. In the other place the parties are the Liberal Party, the Labor Party, the National Party, and the liberals for forests. The latter party is also a registered political party, but that is not the point. With respect to those members who categorise themselves as Independents, such as the members for Churchlands, Pilbara and South Perth, they would not be considered, either collectively or as individuals, as a “party in the Parliament”. One cannot give an absolute and precise definition of “party in the Parliament”. However, it is really a matter of commonsense. If, for example, the members for South Perth and Churchlands were to get together and consider themselves a party, I expect that the Premier of the day would believe they constituted a party with which he or she should consult. If the member for Pilbara, or another Independent, sought the support of the people under a banner and that banner was from a particular party - whether the party is registered or not - and that person designated himself or herself as the leader of the party, that would be a “party in the Parliament”.

Hon M.J. Criddle: What about the Greens (WA), which does not have a designated leader?

Hon N.D. GRIFFITHS: The wording in the Act states that the Premier has to consult with the parliamentary leader of each party in the Parliament. If a party in the Parliament does not have a leader, there is no requirement for consultation. Indeed, how can the Premier consult with somebody who does not exist? If the Greens (WA) does not have a leader, there is no designated person with whom the Premier can consult. Having said that, the appropriate process would be to consult with each group in the Parliament. When dealing with matters as important as this, consultation would, in the normal course of events, take place with each group in the Parliament whether or not it has a party designation. I am not sure whether that answers Hon George Cash’s question. I note again the precedent that I pointed to with regard to the electoral commissioner.

Hon GEORGE CASH: The minister has, in part, answered the question that I asked yesterday. However, his answer confuses the issue more than was the position last night. It is my understanding that a “party in the Parliament” is a party recognised under the Salaries and Allowances Act 1975. I understand the definition of a registered political party in the Electoral Act because it is defined. However, the response given by the minister was a personal opinion. I assume that it was couched in those terms because, in fact, we are not defining what a party is in this Bill. I see difficulty and danger in the vague and general way that a “party in the Parliament” has been described. I raised the issue last night because I had a question in mind, and I recognise that overnight the minister has given some thought to the matter. I do not criticise the minister for what he has said.

Hon N.D. Griffiths: I still have a question in my mind!

Hon GEORGE CASH: I do not think that this House is coming to grips with this problem. The minister has told us what he believes is the definition of “party in the Parliament”, but I am not sure that he has legally

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described the definition of a “party in the Parliament” The minister said that if the party is One Nation, the Liberal Party, the Labor Party or the Greens (WA), it will be consulted because it fits within his understanding of what each party in the Parliament means. However, he has decided that Independents will not be included. That in itself raises a number of issues about whether the designation of Independents is a designation to indicate that they are not a member of a registered party or whether it has some other designation. The point I am trying to make is that we must better clarify the definition of a “party in the Parliament.” I understand if it means a registered political party or if its definition is as defined within the Salaries and Allowances Act. However, I do not think we have put a finger on what is intended in the Act.

With respect to the word “consult”, last night I indicated to the House that there were many variations in the *Macquarie Dictionary*. The minister expressed his view about a Premier’s moral obligation to consult with the parliamentary leader of each party in the Parliament -

Hon N.D. Griffiths: It was not just a moral definition - I gave my view on what the words meant with regard to both a legal and moral obligation.

Hon GEORGE CASH: The minister couched his words in such a way that there was a moral obligation in fulfilling a particular role. However, if the minister states that he was referring to a Premier’s legal obligation, I accept what he said. The point is that we cannot be guaranteed that proper consultation, as outlined by the minister, will occur. I mentioned yesterday an experience that I had in the lower House 15-odd years ago when an alleged consultation occurred but in fact very little consultation occurred. That alleged consultation was apparently sufficient at the time to satisfy the law; I do not believe it satisfied the intent of the Parliament.

I want the minister to also give consideration to how we can guarantee proper consultation, apart from dealing with the question of “party”. We have an opportunity to take at least some steps in the right direction in respect of consultation; that is, to insert after the word “Parliament” in line 23 on page 3, the words “and shall obtain the written consent of the Leader of the Opposition”. I say that because those words would require certain action to take place and would require the Leader of the Opposition to provide a response.

Before I formally move that amendment, I invite the minister to again reflect on the word “consult”. How can he guarantee that what the minister has said will be observed? Secondly, I am still not satisfied that the Chamber fully understands the meaning of the words “Parliamentary leader of each party in the Parliament” in line 23. A number of options are available and I invite the Chamber to concentrate its mind on the meaning of those words. They could be easily fixed by way of a definition but I leave that to the minister for the time being.

Hon N.D. GRIFFITHS: I gave my view yesterday, as I was invited to, of “consult”. I reiterate that it was not a matter of stating what I considered to be a moral obligation but that it was a matter of legal obligation.

In answer to the question about “guarantee”, one can never guarantee human behaviour. The safeguard that exists if this legislation is passed is the obligation on an office holder that is set out in the legislation. If that office holder does not carry out the obligation, it would be justiciable. Therefore, that is a guarantee in part that proper behaviour will occur.

The proposition that written consent of the Leader of the Opposition at the time be obtained goes further than “consult”. That notion is more than an agreement. It gives another office holder a veto and that office holder ultimately is the Leader of the Opposition, not a member of the Government. That therefore goes too far and would be unacceptable to any party that formed government.

Hon N.F. Moore: It is not the Government’s decision.

Hon N.D. GRIFFITHS: Why did members opposite not insert that provision when they were in power if they believe it is important?

The word “party” has been in the Electoral Act 1907 for some time, in section 5B(3). I note also a number of existing definitions in part IIIA of the Act. I refer to section 62C, at page 54, in which “eligible party” means a political party. It then goes on to provide other criteria as follows -

“**member**”, in relation to a political party, includes a person who is a member of a related political party;

“**parliamentary party**” means a political party of which at least one member is a member of the Assembly or the Council;

...

“**registered political party**” means a political party that is registered in the register of political parties;

It also has a definition of a related political party.

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It would be interesting to define "party" for the purpose of the consultation process. It needs mature consideration. It does not lend itself to being dealt with on the floor of the Chamber but it does lend itself to an overall review of a number of matters dealing with the electoral laws to which this Chamber should have input in the course of this Parliament.

I note the questions raised by Hon George Cash. In 1993 a number of people went around calling themselves Independents - being Independent then was very fashionable. They managed to garner a lot of votes just because they put the word "Independent" after their names. They said they were Independents and not members of any party. They said they sought election to public office and to engage in the political process but that they were not politicians. The definition of "political party" is an interesting question that needs to be considered and resolved. I do not have a ready resolution to the matter and I do not believe that it lends itself to a ready resolution at this time. It is a point that should have been raised a long time ago but, having been raised now, must be addressed.

Hon Derrick Tomlinson interjected.

Hon N.D. GRIFFITHS: I pointed out to the Committee that the words are in the Act in another context. A few definitions in the Electoral Act 1907 need further consideration.

Hon M.J. CRIDDLE: This issue could be resolved by saying that a parliamentary party is a party that is recognised by the Salaries and Allowances Tribunal. In that way a party that gets more than five seats in the lower House would be readily recognised. Currently three parties are recognised.

Hon PETER FOSS: There are two problems with this clause. First, the terminology has been in the Electoral Distribution Act 1947 for some time.

Hon N.D. Griffiths: It is in the Electoral Act 1907.

Hon PETER FOSS: No, the particular clause we are amending by moving from one Act to another Act has been in the previous Act for some time. It is not new terminology. However, by moving it into a new Act it can be given a new context and therefore a new meaning. It will be given the meaning that the new Act gives it, unless the context otherwise requires, because it is defined as meaning such and such. There could, therefore, be a different meaning of those words in two different Acts. The problem with the words "parliamentary party" is that there is no definition to be found in clause 4 of the Bill; it is found in section 62C of the Electoral Act. Section 62C is preceded by the words "In this Part". Although it is very informative, it does not help. Now that the problem has been raised, we need a solution, because we have come up with many different possibilities so far. We could have a party that is represented in the Assembly, a party that has five seats in the Assembly, or a party that has one seat in either of the Houses.

Hon N.D. Griffiths: Or my commonsense solution.

Hon PETER FOSS: We all have our own commonsense. Hon Murray Criddle gave us his idea of commonsense, and we have heard other people's idea of commonsense. There are all sorts of ideas about commonsense.

Hon N.D. Griffiths: Were you listening when I referred to section 5B(3)? The words are already in the Act.

Hon PETER FOSS: That is right, but they are not defined.

Hon N.D. Griffiths: I know. The problem, insofar as there is a problem, has been with this Act for some time.

Hon PETER FOSS: I agree. I am not for one moment suggesting that it is a new problem; I am saying that the problem is there. We are now dealing with it. By putting it into the Act, the opportunity has arisen for us to come up with some sort of solution. I do not think anybody is denying that we need a solution. This is a very sensitive area. If the Government consults everybody except for someone who it thinks is not within its view of the commonsense solution, that may lead to some challenge to the exercise of the commission's jurisdiction. We do not have an excuse now. It might not have been a problem. When all these definitions went into the Act, there were probably three parties - the Labor Party, the Liberal Party and the National Party, or possibly the Country Party. It was not a big problem in those days; it was purely a matter of catering for the Leader of the Opposition, the Premier and, if a coalition was in opposition, the Leader of the National Party. What was acceptable in those days is now problematical, because we now have the Greens (WA) and the Australian Democrats. What about somebody like Reg Davies, who became an Independent and then started his own notional party? He was the only person in this situation in the Parliament; nonetheless he could not end up as a party with parliamentary representation. Is that contemplated in the Act? How do we deal with the Independents in the other House - Larry Graham, Liz Constable, Phil Pandal and the member of the liberals for forests? Do they comprise a party? Liz Constable and Phil Pandal work closely together. We have a plethora of parties now and a plethora of status. It is about time we said what we meant by it.

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Hon DERRICK TOMLINSON: I am rather intrigued by this discussion. I am particularly intrigued by two things that the minister has said: first, he said that this has been in the Act for some time; and, secondly, he asked why we did not do something about it when we were in government? Let us consider the proposition that this has been in the Act for some time. It has been in the Electoral Distribution Act 1947 for some time; however, if the Parliament so decides, and if the Supreme Court agrees that due process has been observed, the Electoral Distribution Act will be repealed. That is the Act in which those words have existed for some time. The Act that we are now discussing is the Electoral Act 1907. The words have not been in that Act and are not in that Act. They are new words for the purposes of the Electoral Act. They may have existed in another Act, they may exist in another Act, and they may have existed in another Act for some time. However, they do not exist in this Act in this context at all. In this context -

Hon N.D. Griffiths: Yes, they do - in section 5B.

Hon DERRICK TOMLINSON: Let us turn to section 5B.

Several members interjected.

The DEPUTY CHAIRMAN (Hon Barry House): Order! Members will not have cross-Chamber conversations, because some sections of the Chamber cannot hear the comments being made.

Hon DERRICK TOMLINSON: Which subsection of section 5B is it?

Hon N.D. Griffiths: If you will sit down, I will address your point.

Hon DERRICK TOMLINSON: However, let me finish the point. I am talking about these words being in this Act in this context. They have not been in this Act in this context and they are not in this Act in this context. They are in section 5B, but they are not in the proposed new part IIA, because the new part IIA, for the purposes of the Act, does not yet exist; it is being deliberated upon. I want the minister to respond to the point made by Hon Peter Foss about considering the meaning of those words as transported into this new context.

The second matter was why we did not address it when we were in government. The previous Government cannot be held responsible for initiatives and actions of this Government. The previous Government did not deal with the Electoral Distribution Act. If the previous Government did not deal with that Act, it cannot be, as the minister wants us to accept, criticised in any way for not dealing with these words. The new Government has decided to deal with these words. The new Government has decided to put these words in this amendment to the Act in this context; therefore it has the responsibility for defining it. If it cannot be defined, I suggest two things: withdraw the Bill and have it redrafted - I do not think that is very sensible - or adjourn the debate and redraft it. If the Government cannot do that, it should again refer it to the Standing Committee on Legislation.

Hon N.D. GRIFFITHS: When a number of members seek the call, and quite properly are granted the call, I do not think it appropriate that they later have a go at me for not jumping up after each member has spoken. I do not intend to jump up after each member speaks. I will deal with the issues that have been raised as best I can.

First, on the matter raised by Hon Murray Criddle, yes, that could be a solution. Secondly, on the matter raised by Hon Peter Foss, Hon George Cash and I have debated that matter previously and the debate on that point commenced yesterday evening. We are now aware of it. A proper solution must be found and an appropriate process entered into. The process has commenced. The matter will be brought to the attention of the Attorney General, who has ministerial responsibility for this area. I trust he will act on the matter in an appropriate way.

A number of matters in the Electoral Act 1907 require attention. I hope those matters will be given attention so that our electoral laws as set out in that Act are improved. With regard to the matter raised by Hon Derrick Tomlinson, I do not want, in this process of improving the Electoral Act 1907, to engage in a partisan political debate. Some aspects of this Bill go to the heart of the differences between the parties. This matter is not one of them. What we are concerned about here is proper process to improve the law in an appropriate way. As I said earlier, section 5B deals with the appointment, terms and conditions, etc, of the Electoral Commissioner and the Deputy Electoral Commissioner. The words that are the subject of this part of the debate - namely, "each party in the Parliament" - are contained in section 5B(3). The history of section 5B is described in the Act as follows: section 5B inserted by No. 40 of 1987; amended by No. 6 of 1993; No 49 of 1996; and No 42 of 1997. Therefore, section 5B has been under consideration over a number of Parliaments.

I am not interested in making this issue the subject of partisan political debate. This issue has been raised, and it needs to be dealt with maturely. I trust the Electoral Commissioner will raise this issue with the Attorney General, and I certainly will raise it with the Attorney General. A number of matters in this Act cause me a degree of concern, not least of which is a matter on the Supplementary Notice Paper in the name of Hon Peter Foss dealing with the method of counting. That also needs to be examined. I do not want to enter into a debate on that matter in dealing with this clause, but I do not think that what Hon Peter Foss is proposing in that

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amendment is the right way to go, and that matter needs careful and considered examination. There may be other ways of dealing with the issue that is raised, but I am far from convinced that Hon Peter Foss's method is the appropriate method. I mention that as being relevant to the point that a number of matters in the Electoral Act need to be tidied up, at the very least. However, that should be done in an appropriate and considered way. The mechanisms that Hon Derrick Tomlinson has suggested are not the appropriate way to go, nor is the foreshadowed amendment by Hon George Cash. I do not want us to find ourselves in a later Parliament or a later debate in the same situation in which we find ourselves now, in which legislation is passed without appropriate consideration having been given to it.

Hon ROBIN CHAPPLE: I also thank Hon George Cash for bringing this section to our attention. There are a number of parties and individuals in this Parliament, and all of those parties and individuals need to be adequately consulted at this time. Therefore, I move -

Page 3, line 22 - To add after the word "leader" the words "or representative".

Page 3, line 23 - To add after the word "party" the words "and Independent members".

The rationale for this amendment is that there seems to be a predilection in this place that members of a defined political party - Labor, Liberal or National - have a say, and members of One Nation and the Greens (WA), and the Independents, who play an important part in this House, do not have a say. I suggest that if we want to have an egalitarian situation within this Parliament, the Government should consult with those people who need to be consulted and not those people who deem that they are the only people who should be consulted.

Hon N.D. GRIFFITHS: What Hon Robin Chapple has suggested may be the appropriate way to go, and what Hon Murray Criddle has suggested may be the appropriate way to go. There may be a number of appropriate ways to go. However, the better method of processing this issue is to do what I said earlier; namely, enable the Government to give this matter further consideration, as in my view many of the matters in the Electoral Act 1907 need to be given further consideration, and in due course to come back to this Chamber with amending legislation, and we can then deal with this matter. What has been suggested by Hon Robin Chapple and Hon Murray Criddle sounds good, but there may be other ways of dealing with this matter.

Hon GEORGE CASH: To not address the issue now is to duck the issue. Members would recognise that there are many Acts of Parliament that members would argue need to be amended, sometimes because what is contained in them is vague and general, and sometimes because what is contained in them is out of date. There are many other reasons that Acts need to be amended. Members would recognise also that the only time that members of Parliament have an opportunity to submit amendments is when an Act is being discussed in the House and is being reviewed and amended. That is the very position that we are in now in respect of amendments to the Electoral Act 1907. The Electoral Amendment Bill 2001 is proposed by the Government to amend in a particular form the Electoral Act 1907. However, the Chamber has found that the proposed amendment can be substantially improved. A problem that has been recognised now should be dealt with now - not after the Bill has been sent to a committee, not in six months, or not in the far distant future, but now.

I return to the original situation in which we found ourselves. I asked the minister how he could guarantee that a Premier would consult in the manner that the Parliament would expect. The minister's reply - these are not his words but are my understanding of what he said - is that one can never guarantee human behaviour. I agree with that proposition. Because one cannot guarantee human behaviour, parameters or limitations are put in Acts so that human behaviour does not career out of control.

Hon Derrick Tomlinson: It is regulated.

Hon GEORGE CASH: It is regulated, as Hon Derrick Tomlinson suggests. That is the purpose of an amendment that I believe should be considered. I understand what Hon Robin Chapple is trying to do with the amendment he has proposed. I agree that a representative of each political party and Independent members should be consulted. However, I suggest that the words that need to be inserted are not just those that require consultation. The question the minister has raised is that consultation cannot be guaranteed because of human behaviour. What needs to be added after the word "Parliament" are the words "and shall obtain the written views of the parliamentary leader or representative of each party or Independent member in the Parliament". My amendment picks up the words used by Hon Robin Chapple in his amendment, but extends it to guarantee that something will occur. The amendment seeks to guarantee that it is not just a case of a Premier handing someone a yellow Post-it sticker upon which he has written the person he proposes to appoint, the recipient asking why he has been told, and the Premier then saying that he is required to consult under the law, before he walks away.

Hon Peter Foss: That was Les Smith's appointment.

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Hon GEORGE CASH: Was it? Right. I am suggesting to Hon Robin Chapple that the written views of each party should be obtained. In my view, that would guarantee some consultation or at least some exchange of information. I am not proposing that an exchange of information is enough, but at least we would then know that the Premier of the day had recognised his obligations under this legislation. I ask Hon Robin Chapple to withdraw his amendment, so that I can sign and submit my amendment. My amendment will tighten up the whole exercise. It includes the words used in the amendment proposed by Hon Robin Chapple.

Hon Peter Foss: It doesn't have a veto.

Hon GEORGE CASH: It is not a veto. I changed the words because the minister suggested that the word "consent" could cause a veto to come into operation. I am suggesting that after the word "Parliament", the words "and shall obtain the written views of the parliamentary leader or representative of each party or Independent member in the Parliament" should be inserted. If Hon Robin Chapple seeks the leave of the House to withdraw his amendment, I will propose my amendment. If leave is denied, I will have to work around the amendment put forward by Hon Robin Chapple by inserting additional words. This would be a cleaner way of doing it.

Hon N.D. GRIFFITHS: I went further than just dealing with human behaviour. My view was that the matter would be justiciable. Hon Peter Foss concurred with that in subsequent observations. He may not have heard what I said. It is certainly open to review. What is the guarantee that a leader of a party or an Independent member will bother to provide those written views? What sanction will be in place? How will those members be compelled? How long will they take? This sort of provision can frustrate the proper workings of our system. That is why the way to go is as I suggested. The point has been made and has been taken on board by Government. It needs to be, and will be, addressed by looking at the alternatives in a considered way, rather than by a member putting forward another idea and saying, "This is how we will go along with it". The proposed amendment would mean that the Premier must go to each and every one of those people and ask for their written views on an appointment. One of those people might be rather ponderous. It might take forever and a day for him to get around to it. It might never happen. That would mean that the appointment could not occur and the whole process would be frustrated. I regret to say that human behaviour can be quite perverse. I accept that the intent of this amendment is bona fide, but frankly the process I have suggested is the way to go. If anything, I would rather go along with the amendment put forward by Hon Robin Chapple, than the one proposed by Hon George Cash. One is workable, but the other lends itself to the opportunity to frustrate the process.

Hon PETER FOSS: I feel that I must comment on the remark made by the minister, which I found quite extraordinary. He said that we should not make this amendment; we should take time for mature consideration. Have members heard the expression of a person being able to swallow an elephant but strain at a gnat? The Opposition has said that the Government did not tell the public about this legislation. Unless one read the Labor Party platform, one did not know it was a Labor policy. The Opposition said that time should be allowed for mature consideration of the Bill to give the public a chance to know about it and to give the committee time to investigate one of the most significant changes ever made to electoral law. What answer was received? It was no. We were told that this was the legislative priority of the Government and there was no time to do that. We were told that it is a matter of urgency. We cannot take time to consider the most fundamental change in electoral law, but we must take time to consider a minor drafting matter. Do members get the feeling that this Government perhaps has its priorities a little screwed up? It wants time to consider a matter of drafting, but has no time to consider a matter of substance. Does that tell us something about this Government? It does not want to spend time on substance, but it likes to spend time on all the form. That sums up this Government pretty well; it has no substance, but all the form is wonderful.

Frankly, we can work out some very good words to deal with this matter. It needs to be dealt with and it can be dealt with. I would like to hear the minister's views on the difference between taking time to consider the Bill as a whole, which is fairly important to people, and taking time to consider a minor drafting matter, which is insignificant. Why can we spend time on one, but not on the other? I am sure that with a proper exchange of views, we will come up with excellent wording for this clause, which the minister will be thrilled to have in the legislation.

Hon N.D. GRIFFITHS: That is a fascinating observation from someone who was a minister for eight years. He knows very well that government does not proceed in that way, nor is it the way that parliamentary process should proceed. We are dealing with technical matters. The issue has been raised. Those words have been in the Electoral Act 1907 for some time. I pointed out to Hon Derrick Tomlinson that the section of the Act in which the words are placed have been considered by this Parliament on a number of occasions.

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Hon Derrick Tomlinson: It is section 5B.

Hon N.D. GRIFFITHS: That is right. The words that we are dealing with have been considered on a number of occasions.

Hon Derrick Tomlinson: No they have not.

Hon N.D. GRIFFITHS: Section 5B has been considered.

Hon Derrick Tomlinson: Section 5B has not been considered.

Hon N.D. GRIFFITHS: I am well aware that the imperative of the Opposition is to occupy the crease, which is fine. What I am concerned about is having good law. This issue is surely not one of partisanship. If it is, those opposite are taking matters to extreme. Hon Robin Chapple has come up with a proposal; Hon Murray Criddle's proposal has substance. There may be other ways of dealing with the matter. I have suggested this matter, together with other matters in the Electoral Act 1907 which I note are of great concern to the Liberal Party and One Nation, need to be examined in a proper way, but this is not the proper process. All of us who have been in this House for some years know that very well.

Hon M.J. CRIDDLE: We have reached a very interesting situation. I understand we will put some amendments to other issues in this Bill to go to the other House, and they will be further amended before the Bill returns to this Chamber. We are working on an issue with several members to which Hon George Cash has outlined an amendment and we now have an opportunity to clarify the position that this House may adopt. Obviously, when this legislation goes to the other place, the Government will have an opportunity to review that amendment with a number of other amendments. From the point of view of this House giving its opinion on what direction we should take, there is a case to give consideration to the amendment that is being considered by Hon George Cash and other members. I understand Hon Robin Chapple has moved an amendment at this stage, and we are working on it.

Part 3 of a Salaries and Allowances Tribunal determination that "the person who not being a minister of the Crown is the leader of a party in the Assembly of at least five members other than a party whose leader is the Premier or the Leader of the Opposition" is an indication that to be recognised, a party in the other House has to have five members. If there were a difficulty with the number of people, that would provide some opportunity for a review of the financial arrangements. I commented earlier about the parties that are already recognised. If parties indicated that in order to gain recognition that would have to be amended, that opportunity would exist, based on the comments I made earlier.

Hon GEORGE CASH: I had an opportunity to consult with the Greens (WA) and, rather than invite Hon Robin Chapple to seek leave to withdraw his amendment, it is appropriate that those amendments be voted upon. If they are agreed to by the Parliament, I would propose to add after "Parliament" the words "and shall seek the written views of the parliamentary leader or representative of each party or Independent member in the Parliament." I will provide a written copy of that amendment on the basis that Hon Robin Chapple's amendment is carried.

Without wishing to speak to my amendment at this stage, I indicate that the word "seek" has been inserted in place of the word "obtain", and the amendment does not refer to the need for consent. That may overcome the problems we have discussed on the question of consultation.

**Amendments put and passed.**

Hon GEORGE CASH: I now move -

Page 3, line 23 - To insert after "Parliament" the words -

and shall seek the written views of the parliamentary leader or representative of each party and  
Independent member in the Parliament

Hon N.D. GRIFFITHS: I have said what I think the appropriate process is for dealing with this issue. I stand by those words. Therefore, the Government will be voting against this proposition, although I can see merit in it.

**Amendment put and passed.**

Hon GEORGE CASH: Section 5B(3) of the Electoral Act 1907 reads as follows -

Before making a recommendation under subsection (2) the Premier shall consult with the Parliamentary leader of each party in the Parliament.

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The minister suggested that consequential amendments would no doubt be required if we were to amend the current Bill. Does the minister propose during this debate to move those consequential amendments? If he does not, obviously some other action may have to be taken.

Hon N.D. GRIFFITHS: I am not sure whether there is a meeting of minds between Hon George Cash and me. I am not sure what the member is getting at.

Hon George Cash: Whether or not you want the same words to now apply to the Electoral Commission.

Hon N.D. GRIFFITHS: The process I outlined for dealing with matters concerning the Electoral Act 1907 is appropriate. I note that the Committee has decided to deal with a particular provision in this Bill in another way. As I see it, section 5B is not within the scope of the Bill before us. I do not propose to proceed down that path in dealing with this Bill. The way I outlined the Government's intention to deal with the Electoral Act concerning a number of issues is appropriate. Surely members of the Liberal Party and One Nation - with all due respect to Hon Robin Chapple; I am looking at due process for the electoral system of Western Australia - would be very pleased that a member of the Government has placed on public record an interest in how accounting procedures take place.

Hon Derrick Tomlinson: Can you tell us what priority you will give this amendment?

Hon N.D. GRIFFITHS: I will raise this matter with the Attorney General, who is the minister responsible for the administration of the Act.

Hon Derrick Tomlinson: You can give us no assurance that it will be looked at; therefore, it is within the power of this Parliament to look at it.

Hon N.D. GRIFFITHS: The interjection is unbecoming of the honourable member. I will be raising the issue and I expect that it will be given appropriate priority.

Hon GEORGE CASH: The minister has raised a question on the scope of the Bill. Without wishing to debate that issue, clearly, if he believes it is outside the scope of the Bill, the Committee can be empowered to deal with that issue by absolute majority and the matter can be cleaned up at some stage during debate. It means we will need to go out of Committee and come back in. If the minister wants the matter that he raised earlier attended to, it can be dealt with, rather than delayed for a subsequent opportunity when we are dealing with the Electoral Act. It would save a private member having to introduce a Bill to effect that change. I offer that proposition to the minister for his consideration.

Hon N.D. GRIFFITHS: I am obliged for that offer. However, Hon George Cash, who has served in this House in many capacities including as a minister, will know one does not do these things on the run in that way.

Hon GEORGE CASH: How does proposed section 16B differ from the section in the Electoral Distribution Act 1947? We have talked in the past about substitution of clauses. Do words in the Electoral Amendment Bill differ from those words dealing with the same issue in the Electoral Distribution Act? If there are changes to the words - I believe the minister will find some in 16B(8) - I seek the reasons for those changes.

Hon N.D. GRIFFITHS: Proposed section 16B(8) reads -

The moneys reasonably required for the purposes of the Commissioners shall be charged, on the certificate of the Auditor General, to the Consolidated Fund, which this subsection appropriates to the necessary extent.

In the Electoral Distribution Act, the words are as follows -

The moneys reasonably required for the purposes of the Commissioners shall be charged, on the certificate of the Auditor General, to the Consolidated Fund which, to the necessary extent, is hereby appropriated accordingly.

On the one hand are the words "which this subsection appropriates to the necessary extent" and on the other hand are the words "which to the necessary extent is hereby appropriated accordingly". The meaning to my mind seems to be the same. The words "which to the necessary extent is hereby appropriated accordingly" come from a more verbose era.

Hon PETER FOSS: I note the point made by the minister. Of course, he will understand why this is important. As one of the rules of statutory interpretation, Parliament is presumed not to legislate without intent. If we repeat well-known words they are presumed by the court to have the same meaning as when they were first used. If we change well-known words, it is presumed that Parliament has some intent in changing them. It would be



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helpful if the minister at least indicated to the Committee that his intent is not to make any change by using these words that differ from the current law and that it is purely a drafting change.

Hon N.D. GRIFFITHS: I have expressed my view that the words mean the same and the intent is that they mean the same. The former words come from a more verbose era. The new wording is better drafting.

Hon Peter Foss: I am not sure it is actually; we should debate it.

Hon N.D. GRIFFITHS: Hon Peter Foss can debate it if he wants to; we have debated everything else, but I do not think it is an issue.

Hon GEORGE CASH: The minister does not believe the different wording in the Bill and the Electoral Distribution Act is an issue. I think it is a very important issue. It may be that the operational effect of the new words is little different from the old words. However, this is about their intent. That was the issue that I was pursuing.

**Proposed section, as amended, put and passed.**

**Proposed section 16C: Electoral districts and representation -**

Hon GEORGE CASH: Proposed section 16C appears to contain the same words as the Electoral Distribution Act 1947. I would be obliged if the minister could indicate whether there is any change at all to those words?

Hon N.D. GRIFFITHS: I am dealing with the Electoral Act 1907. If I were dealing with the Electoral Distribution Act 1947, I would be better briefed. I have perused the Electoral Distribution Act 1947. I cannot find the words of proposed section 16C in that Act. However, I do note that it contains words which state that the commissioners shall divide the metropolitan area into 34 districts and divide the area comprising the remainder of the State into 23 districts. No doubt Hon Alan Cadby will correct me if I am wrong, but 34 and 23 add up to 57.

Hon PETER FOSS: This is obviously a fairly important part of the amendments to the law that will be made by this Bill. As has been pointed out by the minister, this amends the current law, which is that the commissioners shall divide the metropolitan area into 34 districts and divide the area comprising the remainder of the State into 23 districts. That is a distinction between the metropolitan area and the rest of the State. That is pretty well the hub of these reforms. I am a bit surprised that it took the minister a little while to find out where the difference was, because this matter is fundamental to the central part of this reform. I would have thought that the minister should at least be aware of the law that is being change by the Bill.

Hon N.D. Griffiths: It is a different Act. The Committee has already passed clause 3 of the Bill. Read clause 3 of the Bill. You are talking about an entirely different thing.

Hon PETER FOSS: I am talking about the law. We will come back to the long title, because I believe it is a misnomer. This is a Bill for an Act to make provision for the amendment of the Electoral Distribution Act, because that is what it will do. This is a proposed law. If it is brought into being it will affect the current law. Is the minister saying that the two laws can stand side by side? Quite obviously they cannot. We have this little myth we are going through. It is rather like "don't mention the war"; we have "don't mention the Electoral Distribution Repeal Bill because that Bill will solve our little constitutional problems". The fact is that we are dealing with this Bill. As far as we are concerned here, there is no such thing as the Electoral Distribution Repeal Bill. We are dealing with the law that is contained in the Electoral Distribution Act 1947 and we are dealing with this Bill. If we pass this Bill it will amend that law. That is a fact. The minister, as part of his little trickiness, may try to say that is not what is happening by pretending that the Act does not exist, but the Electoral Distribution Act 1947 is the law, in case the minister is not aware of it. The Bill and the Act do not seem to be able to stand together as a whole. It may be that many parts are quite similar and it may be that some parts would not be repealed by this Bill, but there seem to be other parts that are so inconsistent that it would amount to an implied repeal of those provisions. An implied repeal of part of an Act is what is called amendment. Therefore, this Bill amends the law. The Act is the law now and the Bill is what the minister hopes to be the law. He may never get there, and if we have anything to do with it he will not, but the reality is that he cannot say that he does not know what we are talking about and that we are talking about something totally different, because we are not.

We are talking about the law of Western Australia and the making of laws for the peace, order and good government of Western Australia. To work out what the proposed law does one must look at what the law is now. The law is now that the commissioners shall divide the metropolitan area into 34 districts and divide the area comprising the remainder of the State into 23 districts. The Bill states that the State shall be divided into 57 electoral districts and that each district shall return one member to serve in the Assembly. It does not seem to

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make that same distinction. Therefore, it would appear to me that this proposed section amends the previous section, because it takes away the requirement that in dividing the State into 57 electoral districts, a difference is made between metropolitan and non-metropolitan electorates. That is my reading of the change in the law. If this Bill were passed, that would be the change. Is that not so? This might seem a simple and silly question, but the minister is a lawyer and I am sure he will understand the reason I am asking it. If we pass this proposed section, will it or will it not have the effect that the State will no longer be divided in the manner set out in section 6(1) of the Electoral Distribution Act? Further, is it the intent that that be the effect of this provision?

Hon SIMON O'BRIEN: This clause illustrates the arguments that have previously been raised by Hon Derrick Tomlinson, Hon Peter Foss, Hon George Cash and others about proceeding pell-mell and with undue haste to resolve matters raised in this Bill. It is reflective of the remarks we heard earlier today from Hon Peter Foss about the lack of time allocated to the Standing Committee on Legislation to complete the report that the committee should have been able to complete. My comments are reflective of remarks made by Hon Derrick Tomlinson not so very long ago; he said that one of the best avenues of recourse available to us when considering a clause that has now been amended and agreed to is to adjourn the debate so that the Legislation Committee can consider the Bill further. I think that is what he said. Here is an example. The question about proposed section 16C is, where do the 57 single member Assembly districts come from? Is this the same as the existing provisions in the Electoral Distribution Act 1947? Hon George Cash raised that question. The minister was able to advise that no, there is no identical wording for the 57 districts in the Electoral Distribution Act 1947. He did find a reference, however, to 34 metropolitan districts and 23 country districts, which of course add up to 57. The fact is that the contents of the Electoral Distribution Act 1947 are not reproduced in this so-called amendment to the Electoral Act 1907. The reference to the 57 districts is in the Constitution Acts Amendment Act 1899. This Bill has not taken into account the provisions of the Constitution Acts Amendment Act 1899. A number of provisions in that Act will add to the legislative confusion which the Government is in the process of constructing before it attempts to deconstruct that confusion by introducing the next electoral reform Bill that is on the Notice Paper. We are not currently dealing with that Bill, but I have to make reference to it -

Hon N.D. Griffiths: The member is referring to it in passing!

Hon SIMON O'BRIEN: Yes. The Electoral Distribution Repeal Bill 2001 attempts to deconstruct some of the confusion, but I am not sure that it will be successful. Section 19 of the Constitution Acts Amendment Act states -

The State shall be divided into -

- (a) 55 Electoral Districts until the dissolution of the Legislative Assembly or the expiry thereof by effluxion of time first occurring after 31 December 1982; and
- (b) 57 Electoral Districts thereafter, under the provisions of the *Electoral Distribution Act 1947*, each returning one member to serve in the Legislative Assembly.

It will be interesting to explore the effect that proposed section 16C will have when we add references from the Constitution Acts Amendment Act which, at face value, are consistent. It refers to the 57 members for the Legislative Assembly, so there is no problem there. However, the Constitution Acts Amendment Act clearly refers to those 57 electoral districts existing under the provisions of the Electoral Distribution Act 1947, not the Electoral Act 1907. This is a problem that will take some unweaving because it is all part of the Government's idea to be too clever by half in trying to get its electoral reform legislation through the back door.

I draw the attention of the Committee to section 6 of the Constitution Acts Amendment Act; that section also relates to the matters we are considering during this committee stage. Section 6 refers to the division of the State into six electoral regions under the Electoral Distribution Act 1947. It also refers to the number of members who are attached to each of those districts. This is all more of the spaghetti junction complication that the Government seems to be making a habit of creating, such as its inability to determine who will be the minister responsible for road safety. Rather than doing it in a simple way the Government introduced round-about and sneaky back door methods in an attempt to achieve its objectives. The same thing is happening with the electoral gerrymander laws that it is seeking to introduce into the statute books of Western Australia.

Hon M.J. CRIDDLE: I move -

Page 4, line 4 to line 7 - To delete proposed section 16C and substitute the following new section 16C -

**16C. Basis for division of the State into districts**

- (1) The Commissioners shall -

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- (a) divide the Metropolitan Area into 34 districts; and
  - (b) divide the area comprising the remainder of the State into 23 districts.
- (2) The Commissioners shall make the division of an area mentioned in subsection (1)(a) or (b) into districts in accordance with the principle that the number of enrolled electors comprised in any district in the area must not be more than 15% greater, or more than 15% less, than the quotient obtained by dividing the total number of enrolled electors in the area by the number of districts into which the area is to be divided.

This goes to the very heart of the argument that has been put forward in this Chamber and to the essence of the representation of country people. Anyone who has listened to the debate on this issue would recognise the reasons for moving this amendment. The fact that country people will lose eight seats to the city as a result of the arrangement that this Government intends to put in place is not something with which any representative of country people can live. I move this amendment and ask that it be given serious consideration, because it has been indicated to me that that is what people want. It is also something that the National Party would like to see happen.

*Point of Order*

Hon N.D. GRIFFITHS: The Committee has already passed proposed section 16A and in doing so has dealt with the technicality of equality. The proposed amendment seeks to contradict that. The proposed amendment goes to the heart of the Bill and is contrary to the policy of the Bill.

Hon PETER FOSS: I disagree with the minister's point of order. We have not dealt with average district enrolments.

Hon N.D. Griffiths: Have a look at section 16A.

Hon PETER FOSS: We have defined it, but nothing has been done with it; for all we know, all sorts of things could happen. It does not matter whether we have passed it; we have not used it, and no principle can be applied. At this stage the matter is what effect the amendment will have, and it is not inconsistent with that definition.

Hon GEORGE CASH: I agree entirely. The definitions could extend to numerous other things, but that does not mean to say they should not be definitions; it is the operational effect of the definition in due course that will affect the manner in which the matter is handled. To claim that because we have passed section 16A we are precluded from dealing with this proposed section is an absolute nonsense.

The DEPUTY CHAIRMAN (Hon Barry House): There is no point of order.

*Committee Resumed*

Hon GEORGE CASH: Before I speak on this issue I want the minister to respond to proposals put forward earlier by Hon Peter Foss, because I want to add to his comments.

Hon N.D. GRIFFITHS: I was about to respond to a number of points made by members. I reiterate what I said earlier today: it is interesting that members opposite complain from time to time about my not responding to their comments, but they do not give me time to respond because their colleagues constantly jump to their feet.

Hon Peter Foss posed a question to which the answer is, if the Bill becomes law with proposed section 16C, the State will be divided into 57 electoral districts and each district will return one member to serve in the Assembly. The answer to Hon Simon O'Brien's question about where the 57 divisions will come from is that they will come from within the State of Western Australia. The Committee passed judgment on that matter last night. Clause 3 of the Bill reads -

The amendments in this Act are to the *Electoral Act 1907*.\*

Hon CHRISTINE SHARP: The Greens (WA) do not support Hon Murray Criddle's amendment in any sense as it is clearly at odds with our position that there should be no vote weighting in the Legislative Assembly.

Hon GEORGE CASH: Proposed section 16C is, without question, the crux of the whole Bill. This section will banish forever the metro-country divide, as it is known today; that is, the current divide of the metropolitan area into 34 districts and the remainder of the State into 23 districts. Proposed section 16C proposes that the whole State be divided into 57 electoral districts. There is no need at this stage to go through the disadvantages that will be placed upon the country should this proposition be carried, because that has been done during the debates

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on both the second reading and clause 1. We do not need to waste the next three hours talking about the disadvantages that will be suffered by country people because of their disabilities compared with the people in the metropolitan area.

The point I want to raise is that the minister continually states that we are dealing with the Electoral Act 1907. The fact is that the law at present in Western Australia dividing the State into districts is the law contained in the Electoral Distribution Act 1947, in particular section 6. For the benefit of the Committee for a second time, because my colleague Hon Peter Foss has already ensured that it was read into *Hansard*, so that we all know just what we are talking about, I shall restate the situation. Section 6 of the Electoral Distribution Act 1947 states -

**6. Basis for division of the State into districts**

(1) The Commissioners shall -

- (a) divide the Metropolitan Area into 34 districts; and
- (b) divide the area comprising the remainder of the State into 23 districts.

Hon Murray Criddle raised the issue of subsection (2), which states -

The Commissioners shall make the division of an area mentioned in subsection (1)(a) or (b) into districts in accordance with the principle that the number of enrolled electors comprised in any district in the area must not be more than 15% greater, or more than 15% less, than the quotient obtained by dividing the total number of enrolled electors in the area by the number of districts into which the area is to be divided.

That is the current law. If proposed section 16C is carried and brought into law - that is, if it receives the Governor's assent - there will clearly be a conflict between two Acts: the Electoral Act 1907 as to how the electoral districts and representation will occur, and the Electoral Distribution Act 1947 at section 6. The law, as has been clearly stated by Hon Peter Foss, is that the latter amendment in the Bill will take effect. When there is an inconsistency, the later law will apply. I believe the Committee agrees generally with that proposition. However, the point is that once proposed section 16C comes into force, there will clearly be an amendment to the Electoral Distribution Act 1947. If that is to be the case - and I say it is the case - the question of whether an absolute majority is required for an amendment to the Electoral Distribution Act 1947 comes into play. I say to the minister that it may be convenient to continually refer to the Electoral Act 1907, but it is imperative that this Committee, when it is dealing with amendments to the Electoral Act 1907, also have regard to the existing law contained in other Acts of Parliament in Western Australia. Obviously, the most critical of those Acts is the Electoral Distribution Act 1947. It has been pointed out to me that in the Constitution Acts Amendment Act, reference is made to the 57 districts within Western Australia. I do not have that Act in front of me and we can deal with it in due course. However, I raise that issue because I do not want the minister to think that hiding behind a smokescreen and trying to suggest that it is only the 1907 Act being amended is in fact washing with the Committee. We can see through that smokescreen. The minister is not doing justice to his position by suggesting that there is no other effect should the proposed section 16C be carried.

Hon PETER FOSS: This situation really gets down to the crunch of the nonsense that has been talked by this Government. I feel sorry for Hon Nick Griffiths because, as a lawyer, he knows it is nonsense. I will take great delight in sending a copy of the *Hansard* with his statements to lawyers around town. It is a bit tough when one is a lawyer having to come out with the sort of nonsense that he was talking about.

Hon N.D. Griffiths: Are you purporting to take revenge for what I did to you on many occasions?

Hon PETER FOSS: I can tell Hon Nick Griffiths that I will be listening with great interest to how he explains to me why this Bill is not amending the Electoral Distribution Act.

I return to the history of how an amendment is normally made. To this day the English way of amending Acts is to pass another one. The English have a law and pass another law on the same topic; they then have an amended law. The cut and paste method of amendment is modern. I think the cut and paste method is a good method because it forces members to think about the wholeness of the legislation and to try to get consistency from one end of it to the other. One does not need to rely so much on the rules of interpretation to find out what is the law. The rules of interpretation have been invented principally to help us deal with the English method of making amendments to Acts. We just pass one and then pass another. If one needs to find some legislation in which that method is followed of just passing one Act and another one, we have it in this place - the Constitution Act 1899 and the Constitution Acts Amendment Act 1899. The Constitution Acts Amendment Act does not cut and paste and stick bits in here and there; it starts to legislate on exactly the same sets of topics. Members may recall the debates we have had in this Chamber - not necessarily sitting as this Chamber - on whether we should put the two Acts together and have one Constitution. The problem is that every time we tried to do that, we found that

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putting them in the one Act gave them a totally different meaning. One would not think it possible that shuffling the same words alongside each other in an Act would cause a lot of problems. No-one has been able to agree on what would be the one Act. The Commission on Government recommended it. However, it is too big a task, because we would be changing the law. It is almost impossible to put the two Acts together and get the same result. The earlier amendment had the same words as in the Electoral Distribution Act; and, in the same way, this would have a meaning in the new context in the Electoral Act.

The rules of interpretation are important. The mere fact that in modern times we have always used a cut-and-paste method does not mean that the rules of interpretation do not still apply; they do. Clause 3 of the Electoral Amendment Bill states -

The amendments in this Act are to the *Electoral Act 1907*.\*

That is an interesting point. If we gave it the meaning that the Government wants to give it, the logical extension would be that, to the extent that the Bill is inconsistent with the Electoral Distribution Act 1947, the Electoral Distribution Act 1947 shall prevail. Is that what the Government is saying? If the Bill does not amend that Act, it would need those words in it. If the Government does not want to amend the Electoral Distribution Act, it will have to recommit the Bill so that clause 3 may be amended to read that the amendments in this Act are to the Electoral Act 1907 and, to the extent that that Act is inconsistent with the Electoral Distribution Act 1947, the Electoral Distribution Act 1947 shall prevail. I would be delighted to recommit the Bill for that purpose. However, that is nonsense. The Government is trying to say that this Bill amends the Electoral Act 1907 - that is, it cuts and pastes into that Act, by way of a stick-on amendment - but, to the extent that it is inconsistent with the Electoral Distribution Act, this Act shall prevail.

As soon as the Government puts that proposition, it amends the Electoral Distribution Act 1947. I have said in simple terms what is absolutely obvious to blind Freddy. This is a proposed law. That is what Bills are about; they are a way of bringing something into law. The Parliament enacts legislation. When a law is brought into effect, it does not matter what name it has, what shelf it goes onto or what slot it is put into, it becomes the law of Western Australia. This law will change the law of Western Australia with regard to the distribution of seats between metropolitan and country electorates. If that is not what this Bill is about, the minister should tell us. If that is not the law that the Government wants to pass, the minister should tell us. If it is not the Government's intention to change the current law as contained in the Electoral Distribution Act 1947, and it wants that law to remain unsullied, untouched and in effect, it should tell us, because we have obviously missed the point that the Government has been trying to make. Maybe this is why it does not believe it needs to go to the people. To the extent that this Bill is inconsistent with the previous law, the Government does not intend it to apply. It is expressing only a wish, not a law. That is rubbish! What amazing trick does the Government think it is perpetrating on the people of Western Australia or on the Supreme Court of Western Australia? I know why it is not prepared to admit what it is. It is worried that by saying so, it might have some effect on the case we are going to have.

Hon George Cash: However, by not saying so, it does not alter things.

Hon PETER FOSS: No. The good thing about it is that it will be those in the Supreme Court who will enjoy reading this debate and seeing what an absolute legal idiocy the Bill is. We should ensure that the Supreme Court looks at it. It will not be taken in for one minute that the Government does not understand it. We should get a little understanding of what this Bill for a law does, so that we do not spend a lot of time on idiocy. This Bill for a law intends to change the electoral laws of Western Australia as currently contained in the Electoral Distribution Act 1947. Am I correct? If I am incorrect, I would love the minister to tell me. If I am incorrect, I will support a recommitment of this Bill so that we can insert into clause 3 the provision that to the extent that the Bill is inconsistent with the Electoral Distribution Act 1947, the latter shall prevail. If that is not what the Government intends, why does the minister not tell us? Then we can get on with the genuine argument instead of trying to maintain this stupidity, invented by the Minister for Electoral Affairs, which he thinks will somehow fool people into thinking the Government is doing something different. The reality is that it is not. I am amazed that a genuine lawyer like the minister opposite has gone along with it. He has practised law and he knows what it is like to appear before the court. He knows the arguments that he would be prepared to make with a straight face and the arguments that he would not for his reputation make in a pink fit because they are nonsensical. I am sure the minister will not be the counsel telling the Supreme Court what he has told the Chamber today. He would get laughed out of court. It would not be worth his professional reputation to do it. I am sure the Minister for Electoral Affairs will find a hired gun to do it, because he would not have the capacity. If the minister were asked to do it, I know that he could argue a case, but he would not argue this one, because he would lose.

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Hon N.D. GRIFFITHS: I point out to Hon Peter Foss that he asked me a particular question and I answered that question. I will reiterate the answer. I said that if this Bill becomes law with the passing of proposed section 16C, and then I read out the words in proposed section 16C.

Hon GEORGE CASH: If that is the case, does that impliedly cause the Electoral Distribution Act 1947 to be amended?

Hon N.D. GRIFFITHS: What may or may not happen to the Electoral Distribution Act 1947 is another consideration. If nothing else happens, that argument can properly be put forward. The point is that the words I have read out are accurate and remain accurate.

Hon PETER FOSS: Perhaps we can ask the minister a more specific question. Does the minister believe that this proposed section can stand and be consistent with the law as it is presently; that is, the law contained in section 6(1) of the Electoral Distribution Act, which requires the State to be divided into 34 districts for the metropolitan area and 23 for the remainder of the State?

Hon N.D. GRIFFITHS: The current law is set out in the Electoral Distribution Act 1947. This point is set out in section 6(1) of that Act. The position is as I have said. If this Bill becomes the law, with this clause in the form in which it is before us, that will be the law.

Hon PETER FOSS: Is there any particular reason the minister is not prepared to tell us whether this Bill, unlike every other Bill that has come before this Parliament, will change the law? Will this Bill change the law?

*Sitting suspended from 1.00 to 2.00 pm*

Hon PETER FOSS: As I understand the operations of this Chamber, when we are debating the law sometimes we introduce new laws and sometimes we amend existing laws. I assume that in this case there is an existing law, and that the Bill we are debating is the Electoral Amendment Bill; in fact, the minister is very keen to ensure that we do not consider anything other than that Bill. However, the minister also seems to want me to refer to the Electoral Distribution Repeal Bill, which of course I cannot do, because that Bill is not before the Chamber at this time. We are considering the effect of the amended law proposed in this Bill; and in considering that matter, we need to take into account the fact that if we agree to this Bill, it will become law. I have never known of a circumstance in which, in considering an existing law, we have not considered what will be the effect of the Bill on the existing law if the Bill were to be enacted. Why is this Bill different from all the other Bills that we have dealt with in this place? What magical circumstance has occurred that prevents the minister from telling us what will be the effect of this Bill on the existing law if it were to be enacted?

The behaviour of the Government on this Bill is strange. The reason for that strange behaviour is that this Bill has come this far only because the Government is very aware of the law as it stands; in particular, the fact that section 13 of the Electoral Distribution Act has a manner and form provision. The Government has tried to come up with a tricky way of getting around that provision. However, I am pleased that a number of members of this Chamber are alive to that trick: the Liberal Party is alive to it, One Nation is alive to it, and the Greens (WA) are alive to it. We all understand that it is a trick. The Government has done this trick by taking two provisions and separating them into two different Bills.

It is clear from the code words coming from the minister that at some stage another Bill will be passed by this Parliament to repeal the existing law. We do not know about that, because it is not in this Bill; and the minister has said that we can refer only to this Bill, and in fact the standing orders require us to refer only to this Bill, so we can make no assumptions about that Bill. However, who knows? What if this Bill is subject to manner and form? The reason I am asking these questions is obvious. The minister knows exactly why; he just does not want to say it. He almost gags on admitting that this Bill is inconsistent with and amends the Electoral Distribution Act. The minister will not say it, because if he does not say it, it will not happen. However, he looks a bit like Basil Fawlty. Do not mention the law! It is very hard sometimes not to mention the law.

Hon Kim Chance: Especially when you goosetstep!

Hon PETER FOSS: I am glad I am providing amusement -

Hon N.D. Griffiths: You are.

Hon PETER FOSS: The minister is too. I pose this question -

Hon N.D. Griffiths: You are good at posing.

Hon PETER FOSS: If this Bill is subject to the manner and form provisions of the Electoral Distribution Act and the Electoral Distribution Repeal Bill is not, what will be the situation if both of those Bills pass this Chamber and one of those Bills is struck down? In view of the fact that the minister is having a lot of trouble mentioning the war, perhaps I can provide most of the mention of the war and the minister can tell me whether

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this is a possibility. If the minister is right and the Electoral Distribution Repeal Bill is not subject to manner and form - that is his argument; I do not agree with him - then it will not be struck down. However, if the Electoral Amendment Bill is subject to manner and form - which I can tell the minister it is - and it is struck down, what shall we be left with? We will have no law whatsoever. The minister's clever little trick, if his argument is right, will mean that there is no electoral law, because we will have repealed the Electoral Distribution Act. It will mean also that we will have no replacement law, because the minister is the only one in this place who believes that this Bill will not amend that Act. No-one believes the minister; and I should not say the minister is the only one who believes, because I do not believe the minister believes it either. We will have this wonderful situation in which an Electoral Distribution Repeal Bill will come into effect on royal assent. Bang; that will be the end of the electoral laws. The Electoral Amendment Bill, which interestingly will come into operation on a date to be fixed by proclamation, may never come into effect at all because I am pretty sure it amends the Electoral Distribution Act. Therefore, for a period of time, we shall have no law. We cannot stop the Electoral Distribution Repeal Bill being assented to, because once it has been passed by this Parliament, it will go to the Governor for royal assent and will be assented to. Bang; it will go too. That is interesting.

If in the meantime a member were to die, under what law would that person's replacement be elected and how could we meet to enact another law to supplant the previous law? They are interesting questions. If the Government goes ahead with its wonderful little scheme, this State might end up with no electoral law, no way to elect members of Parliament, and a dead member. There would be no way to elect a replacement for the dead member and no way for Parliament to meet in order to deal with that problem. It would be terrible if something drastic happened, such as the ministerial jet going down with Hon Tom Stephens et al on board. I used Hon Tom Stephens as an example not because I have any concerns about him, but because he is the most frequent user of the ministerial jet. He is the one who is most likely to be a passenger. There could be other members on board as well. I am sure that other ministers get a look in every once in a while. We would then have a serious problem about how that would be dealt with. The minister can sit there and play cutesy about the real effect and can pretend that, by not admitting the reality, it does not exist. However, the more the minister has refused to face the facts, the worse the problem has become. That is one of the basic rules of dealing with any problem. A book in my legal library is called *There's No Such Thing as a Dragon*, because the more one denies that a thing exists, the bigger it becomes. If a person cannot see a problem, he cannot deal with it.

The last time a Government refused to acknowledge massive problems was during the Burke era. That Government denied it in the newspaper. What happened next? The Dowding and Lawrence Governments tried to fix the problem, but lost more money. Hon Peter Dowding lost more money for this State than Hon Brian Burke. Hon Brian Burke had the initial responsibility, because he set in train the events that led to that loss. The reason so much money was lost was because in trying to pretend that the problem did not exist, the Dowding and Lawrence Governments did one stupid thing after another. One cannot tackle a problem if one does not face it. What is becoming evident in this Chamber is that the Government has a problem. It can be put off for a while, until it goes to the Supreme Court. The worst result for the Government would be for it to half lose that case. If it lost it completely, we would be okay; we would have the status quo. However, if the Government won half and lost half, we would be in trouble. When the Government makes a mistake, everyone pays.

Why does the Government not try to do this honestly? Why must the Labor Party be so tricky? Why does it not introduce the law in the normal way? Why does it not try to persuade people, somewhere along the line, so that it can have an absolute majority who support this position? Why must the Government be dishonest the first time a problem comes up? Is that built into the party policy? Maybe it is in the Labor Party platform and I missed it! I had better read the platform again. Is it in the platform of the Labor Party that if it gets into trouble, it should come up with a dishonest solution, and if that becomes a problem, to come up with two more dishonest solutions? The reality is that the minister is not prepared to face facts. He is going along with the myth, lie and deceit invented by the Minister for Electoral Affairs. He persists in supporting that. I will ask the minister a question to give him the opportunity to salvage his professional reputation and perhaps to make a change in Labor Party policy to be honest. Is it not a fact that this proposed law will change the current law relating to electoral distribution? I know that it is not law yet, but we are not sitting here because it will not become law, but because the Government believes that it will be passed. Is the proposal in this legislation, if enacted, one that will change the law as it currently stands? Is that a difficult question?

Hon N.D. Griffiths: No, I have answered it several times already.

Hon PETER FOSS: The minister has not answered it.

Hon N.D. Griffiths: You just do not like the terms of my answer.

Hon PETER FOSS: No, the minister has not answered it.

Hon N.D. Griffiths: I have pointed out to you that if it becomes the law, it will.

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Hon PETER FOSS: No, the minister has tried to say that another law will be passed prior to that.

Hon N.D. Griffiths: If it becomes the law, it will.

Hon PETER FOSS: I thank the minister for his answer. If it becomes the law, it will.

Hon N.D. Griffiths: I said that at least twice before lunch.

Hon PETER FOSS: The minister did not.

Hon N.D. Griffiths: Why don't you read *Hansard* as well as purporting to read the Australian Labor Party platform? I think you have misread the Australian Labor Party platform.

Hon PETER FOSS: I must confess that the Australian Labor Party platform is not high on my list of reading material, even of that which I read before going to sleep at night. I have a selection of suitable tomes that ensure almost immediate sleep. I have not yet added the Australian Labor Party platform to them. I am suggesting to the minister that there must be some agenda whereby he must be tricky, because that is certainly what he is being.

Hon N.D. Griffiths: That is an outrageous comment.

Hon PETER FOSS: I am glad we now have it on record that the minister admits that if this becomes law, it will amend the current law. I would be grateful if during the remainder of this debate the minister could refer us to the law as it now stands and to the provision in which we will find the current law, and to tell us how this law will differ from the current law. That is the usual process followed in this Chamber. I am asking the minister to follow that process and not to namby-pamby around and pretend that this legislation will not amend the law as it currently stands, because he is not fooling anybody. I do not think that it will fool the Supreme Court, which will not be the slightest bit interested in whether the minister said it or not. It will make up its own mind about what the Government is doing. The fact that the minister is trying to continue the pretence with people in this Chamber just indicates how bereft of honesty he is. He cannot admit that the Government tried to set up a system to avoid section 13 of the Electoral Distribution Act, which is being amended. The Government hoped to get away with that. If it does, it is being dishonest. The Greens (WA) should not support that dishonesty. The Greens should also not agree to anything that will leave us at risk of ending up with no law. If the Government has its way, through its tricky little method, there is every chance that we will end up with no law whatsoever and with no Parliament in which to fix it.

Hon GEORGE CASH: Hon Peter Foss raised some important issues to which I believe the minister should respond.

Hon N.D. Griffiths: I have. You do not like my response.

Hon GEORGE CASH: No. I do not think that I have heard the minister's response. I have heard him make some interjections, but from my position in the Chamber, I am not able to hear all the interjections. The minister knows that this is not the best place in the Chamber from which to speak and be heard or to hear what is going on. I ask the minister to reiterate his position so that I can be clear about what he is saying, because I have a question I would like to ask that is dependent upon his response.

Hon N.D. GRIFFITHS: I was asked before lunch about the current law and the effect of this Bill on it. I said that the law that currently applied to the matter under discussion was set out in section 6 of the Electoral Distribution Act 1947. I said that at least twice before lunch. I also said that if this Bill becomes law, and proposed section 16C is passed, the law would be in the terms prescribed in proposed section 16C. The State would be divided into 57 electoral districts and one member would be returned from each district to serve in the Assembly. I note and understand the point of view of the Opposition. It has been dealt with on a number of occasions. The Opposition has raised some interesting hypothetical scenarios and I trust that the Minister for Electoral Affairs will give those scenarios due consideration.

Hon PETER FOSS: We are obviously talking about the "a" word here. The "a" word is "amend". The one word that we will obviously not hear from the minister is "amend". I will summarise for members the effect of what the minister said in case they did not understand it, because the "a" word was not used. If this becomes law, the Act will be amended to reflect the contents of the Bill. I suggest to the minister that if it is correct that this Bill amends the Electoral Distribution Act and is subject to section 13, and if, as the minister argued, the repeal Bill is not subject to section 13, it would follow that the repeal Bill would not be void ab initio, but this one would be.

Hon N.D. GRIFFITHS: That is something the minister will have to consider in his deliberations. It is an interesting point and one with which I do not take issue. I know Hon Peter Foss is expressing his opinion. That may well be right. We will find out, or we may not find out, as the case may be.



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Hon PETER FOSS: Does the minister think that it is also a matter for this Chamber that we should not pass legislation that could leave the State without any electoral law at all? Is it purely a matter for the Minister for Electoral Affairs? I cannot quite see where his function comes into this. We are the ones passing this law. Is it not a function of this Parliament, and, in particular, of this Chamber of this Parliament which is dealing with this Bill now, to know the answer to that question? If we blithely go ahead saying, "Look, the Minister for Electoral Affairs will tell us at some time", and we pass one law which is valid and one law which is invalid, does the minister think the people of Western Australia will be happy with us? The fact is the Minister for Electoral Affairs can do nothing. He is one member of another House. The only way to get certainty is to have 18 members in this Chamber agree with the minister; at the moment he does not look like getting that certainty. Surely all responsible parliamentarians, whether or not they agree with the proposition, would agree with the principle that we should not run that risk. The minister agrees with me that that is a possibility, and I would go further and say that it is a strong probability.

We have reached this point because the people who came up with this scheme did not think it through very well. Therefore, the minister is asking us to go along with him and give him a majority - with only 17 votes, not 18 - thus opening up the possibility that the law that is created, if the minister is right about what the law is, will cause chaos. I do not think the minister is right about the repeal aspect. The relevant cases are quite clear on that. Repeal can be a form of amendment. However, if the minister is right and the repeal does not apply in one case, but definitely does in the other, and the Bill does not pass the second reading with an absolute majority, then one Bill will be valid and the other will be invalid. The minister says we should not worry about that; that is something for the Minister for Electoral Affairs to deal with, but I do not agree with that and I hope the Greens do not agree with it either.

Perhaps what the minister should do is think about this. We have been charging along and the President has said we should keep going without this problem being solved, because it will be solved in due course by the Supreme Court. We have been absolved of all responsibility in this matter. I do not see it that way. We do have a responsibility in this area, and the minister cannot satisfy us that what he seeks to do is not lead us along the road to chaos and a situation over which he will have no control. It is irresponsible of the minister to proceed further. He should report progress and go back to the Minister for Electoral Affairs, the man who is going to solve this for us, and advise him that we have a big problem. The minister should tell the Greens how he intends to solve the problem and deal with the scenario I have put before him. I include members of the Labor Party in what I am saying, because it would be a bit rough for government members to be asked to vote without this matter having been adequately canvassed, in the party room at least, because I do not think this issue has ever been put to government members. I would be interested to know whether this proposition has been discussed in Caucus. I cannot see light flashing in the eyes of those opposite indicating that this problem has been put to them. It is probably the first the Greens have heard of the possibility.

The minister has said I may very well be right. I know I am right about this Bill and, hopefully, the minister is wrong about the other one. If the minister is wrong about both of them we will be okay, but I think the minister is wrong on the repeal aspect, because if he is right, we are in trouble. We will face a problem if the minister is wrong, not if he is right. The minister owes it to his members, to the Greens and to us to report progress. He should take this matter back to his party room and come back and tell us what he would do if that scenario occurred. He should ask the Solicitor General to give him a nice, up-front, open opinion. The best opinion the minister will get, if he is lucky, is that the repeal Bill will also be caught. If the minister is lucky, he might get an on-the-one-hand and on-the-other-hand opinion, but I do not think he will. The minister will not get an opinion that says, "No worries, it will go through without any problems; that scenario will not occur." I am inviting the minister to look at this, because it is not a case of the minister having one view of the world and us having another view; there is a possibility that the minister is charging into a disaster, as he has been wont to do in the past. Once the minister has got into that disastrous situation he cannot back out. He should sort this out now for the good of Western Australia. In four years time - it will probably be less if the minister goes ahead - I do not particularly want to go to the people of Western Australia and say, "Look, here is another Labor Government and it has done it again." I would prefer to say that we, as a responsible Opposition, did our job, pulled this Government up and made it go and think about the matter. Certainly the minister might go back and get it right, but the odds are too high and it is too risky to go any further. The reason we have been so persistent on this issue is that we want to bring the minister to that realisation. It is safer and more sensible for the minister to do that, and it is also in the best interests of Western Australians.

Hon GEORGE CASH: If the minister responds now, could he speak a bit louder, because we are battling to hear.

Hon Paddy Embry: I can hear about one word in 10.

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The DEPUTY CHAIRMAN (Hon Adele Farina): Hon Paddy Embry will need to rise to his feet if he would like to ask a question of the minister.

Hon Derrick Tomlinson interjected.

Hon N.D. GRIFFITHS: Hon Derrick Tomlinson has a number of attributes that are worthy of comment. There are moments when I think all of us benefit from his capacity to speak at a volume at which members can hear him. In fact, I am told that, from time to time, he can be heard in the other place.

Hon Peter Foss has raised hypothetical point upon hypothetical point. He put to me propositions and invited me to say whether I could accede to the possibility; in fact, I think he put it stronger than that. I do not think it is appropriate for me to do other than say, given those “ifs”, that it is a possibility. It would be wrong of me to say otherwise; nonetheless, they are hypotheticals and rather big “ifs”.

The Government believes that the view of Hon Peter Foss is wrong. That has been set out clearly by the Attorney General on a number of occasions. Again, it is a matter on which we should agree to differ. The Opposition has an opinion, but the Government’s legal advice is to the contrary.

Hon PETER FOSS: The minister said that the Government believes that I am wrong. I am curious to know whether the Government has considered this point. I doubt that it has. It would be very interesting to know whether this Bill as it stands is an amendment to the earlier Act. There is no law that repeals the earlier Act. If that were the case and the minister were correct about the repeal not being caught by section 13 of the Electoral Distribution Act, section 13 would catch one Bill, but not the other. Did the minister consider that point prior to my raising it? Has it been considered by the Solicitor General? If he has not considered it, I do not know how the minister can say that I am wrong. If it has been considered by the Solicitor General, can the Government say categorically that his advice was that I am wrong or that he thinks I am wrong.

The minister said that I was proposing hypothetical situations. That is what we do every day. Most of the legislation we draft is prospective. We do not pass retrospective legislation. We spend our whole time dreaming up scenarios and catering for them. The Government is saying this is hypothetical. It is, but what if that hypothetical transpires? It is not that illusory a hypothetical; it could be a very real scenario, because we know this legislation will be tested immediately it is passed. The fact that the Clerk is worried about whether this legislation is valid is something of an indication that it is not necessarily hypothetical. The minister wants us to charge ahead with this now because it is hypothetical. We draft legislation to try to take into account every possibility; that is our business; it is nothing new; yet the Government is dismissing my suggestion on the basis that it is hypothetical. If it is hypothetical, should we not, as responsible legislators, cater for it?

If this point has been considered by the Government’s legal advisers, was their advice categorically that we need not concern ourselves with it because it will not happen? Or is it, as I suspect, that this point has never been considered and, if it has been considered, the Government has been advised that there is a good argument for it - on the one hand the Opposition could be right and on the other hand it could be wrong. I am very interested to know the answer to that question.

Hon N.D. GRIFFITHS: The advice was given to the Minister for Electoral Affairs, not to me. I was not present at any advice-giving session that I am aware of. In that sense, the wrong person is being asked. Granted I am the minister handling the Bill. However, as a former Attorney General, Hon Peter Foss will know that it is not customary for government to disclose its advice. The former Attorney General never disclosed advice given to government, although he always freely gave advice.

In the worst-case scenario, which is what we are dealing with, we are less than one year into a four-year Parliament and we have no means of fresh elections. The Parliament has time to enact electoral laws.

Hon Peter Foss: What if somebody died and created a vacancy?

Hon N.D. GRIFFITHS: That would make the enactment of electoral laws even more urgent. In the worst-case scenario, the appropriate course would be to enact very quickly that which exists. That would be the only proper course to embark on. I cannot answer the other questions.

Hon Peter Foss is aware of what is next on the Notice Paper. When we get to that, which I hope will be soon, and I am make my closing comments, I trust I will be able to address the points the member raised. I will certainly seek from the Minister for Electoral Affairs his answers to the matters that Hon Peter Foss raised. For the purposes for which we are dealing with these matters today, that will be the appropriate course of action. Hon Peter Foss may wish it were otherwise. No doubt, with his colleagues, he is about to engage in a degree of rhetoric to say otherwise. I think that what I am suggesting is appropriate. I have been candid about what I think is an appropriate course. Members opposite may not like it, but that is life.

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Hon PETER FOSS: We need something fairly categorical from the minister. I asked whether he had been advised on this point. He said that the Government's advice was that I was wrong. We need to know whether the minister has considered this point. I am fully conversant with whether he is obliged to share the advice with us. He is perfectly free not to tell us, albeit at his peril. Throughout this debate he has said that he has been advised that this is the proper path to take. When he wants to tell us to proceed he tells us what the advice is. However, when we ask whether it deals with a particular point he says he cannot tell us. He cannot have it both ways. If he chooses to tell us the Government's advice is that I am wrong, he must condescend to share the particulars. It is clear that he does not know whether the point I raised has been considered. He has not been a party to the considerations and apparently he has not seen the advice, which is a bit worrying. The Australian Labor Party does not have many experienced lawyers, and it believes it can afford to allow this legislation to be dealt with by an Attorney General who has not practised law. It is nice to have a law degree and be admitted but, as the minister and I know, the restricted practice year is not a time when people display vast quantities of their knowledge acquired in university. It takes a little practise before they work out what the world is all about. I would hope that somebody in the minister's party with his legal experience would have looked at this. We accept that he has not seen it, but he cannot tell the Chamber that his advice is that I am wrong, because he does not know whether this point has even been considered. I expect the Chamber to be given an answer when I ask, has this point been considered and is the advice categorically that it cannot happen? I do not want to know all the arguments. I do not want to hear what the cases are and all the other things about it. I want merely two reassurances: that it has been considered and that the advice is such that the minister can tell me categorically that I am wrong. That is all I want to know; I do not want to know the rest of the advice. The minister has told us that what he is doing is legitimate and will work. Okay, now he should condescend to provide a few particulars, so that this Chamber will be in a better position to make a decision on where we should go. I do not accept that we should charge on. The minister has come up with the hasty suggestion that we can all reassemble and pass another law. I think he will find there are a few more complications to it than that, especially if there is a vacancy in the meantime.

I suggest that by all means we continue now, but before we finish the committee stage I would like the minister to come back and say that he has read the opinion and he is able to tell me that this particular point was considered and that the advice is sufficiently strong that he can say categorically that I am wrong. I admit that no lawyer will ever say that there is no risk whatsoever, but is the advice so strong that the minister can tell us that we do not have to worry about it; that the possibility of what I have put forward is so remote that we do not even have to think about it? If the minister tells us that, it will be on his head. I would not believe it.

Hon N.D. Griffiths: With respect, I do not think it is appropriate for anyone to give a legal opinion and say categorically what is the situation. The member may purport to say that, but I am not like him. I am open to the possibility that I may be wrong about things.

Hon PETER FOSS: I am very happy for the minister to go away and find out. The day that we get legal advice that says there is no risk, we will be doing very well indeed. All I am asking from the minister is the assurance that the risk is seen by the Solicitor General to be so remote that we do not have to concern ourselves with it. There are two simple questions: was it considered and is the possibility of what I have put forward so remote that we do not have to worry about it? The minister can choose whether he tells us that or not. If he does not, fine; we will take whatever action is necessary at that stage.

I am happy to continue now, as long as the minister understands that at some stage before we finish the committee stage, I will be asking him to tell the Chamber whether the point I have put has been considered and how strong is the advice that there is very little to worry about. I have given the minister a real outlet. He can say that the possibility is so remote as to be inconsequential. If he can do that, fine; if he cannot do that, we will have to know; and if he refuses to do it, we will have to make our minds up on the basis of that. Those are his only choices.

Hon B.K. DONALDSON: I am not a lawyer and I do not even profess to be an after-5.00 pm expert, of whom there are many in the areas of law, electrical trades, plumbing trades and other trades. However, I keep looking at the letter to the President from the Clerk of this Chamber. In the third paragraph he states -

It is my opinion that the commencing words of section 13 - "*It shall not be lawful to present to the Governor for Her Majesty's assent . . .*" - requires me to give active consideration to whether or not the *Electoral Distribution Repeal Bill*, despite its stated repeal of the 1947 Act is, nonetheless, a bill that a court would -

I emphasise the word "would" -

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hold to be one that “amends” the 1947 Act and therefore subject to the provisions of section 13 at the second and third reading stages.

I know that we will never get two lawyers to agree with one another. Lawyers must be taught at law school that they must never agree with one another. However, the Clerk of this Parliament is concerned enough to state in a letter “that a court would hold” - not “could” but “would”. The word “would” defines the next three paragraphs. He states in the fifth paragraph -

... similar enactment stands outside any immunity that I may claim as the Clerk of the Legislative Council. . .

He is vitally concerned, as Clerk of the Legislative Council, about taking those Bills to the Governor. I keep reading this letter and I keep thinking to myself that Mr Marquet is well known as a very good and clever constitutional lawyer. I was quite amazed that he used the word “would” and not “could”. He writes in the sixth paragraph -

I therefore advise you and through you, the Legislative Council, that should the repeal bill pass the Council without an absolute majority at second and third readings, I will seek a declaratory judgment in the Supreme Court on 2 questions.

He goes on to state the questions.

Hon N.D. Griffiths: This was the safeguard for the hypothetical case.

Hon B.K. DONALDSON: That is most interesting, but let us come back to the word “would” and not “could” in the third paragraph. He did not say that a court could hold the Bill to be one that amends the 1947 Act; he stated that it would. He is entitled to his opinion. Hon Peter Foss, as a very experienced lawyer, is entitled to his opinion. The minister, who has vast experience in the area of law, is entitled to his opinion. Hon George Cash also holds a law degree. I do not know how many other lawyers there are in the Chamber. I think, Madam Deputy Chairman (Hon Adele Farina), that you hold a law degree. If I supported this Bill, I would feel an absolute idiot to find out that I was so dumb as to be part of the dumb Council that could not work out whether it needed an absolute majority. I agree with what Hon Peter Foss has said. For clarification, the minister needs to speak to the Attorney General and to seek advice - not his own advice because Mr McGinty is merely another lawyer. Is he a lawyer?

Hon N.D. Griffiths: Yes.

Hon Derrick Tomlinson: He has a law degree.

Hon B.K. DONALDSON: If he has, he is entitled to his opinion. We now have five different opinions.

Hon N.D. Griffiths: Do you know who gives the Government legal advice? It is lawyers.

Hon B.K. DONALDSON: I have not got that far yet. I have five lawyers on the list already. We can then move to the Solicitor General and keep going. Every one of them has a different opinion. Not one of them will ever agree with the others. Imagine the amount of remuneration lawyers would miss out on if they all agreed and could not argue for days in court on the finer technicalities of law. I draw the attention of the Chamber to that because as a member of this Council, like many other colleagues, I sat in this place and listened to points of law being raised. The Clerk of the Legislative Council is held in high regard. He used the words -

would hold to be one that “amends” . . .

Frankly, I would rather take the Clerk’s word and the word of Hon Peter Foss, who was Attorney General with the previous Government. I believe that the minister will do a disservice to the members of this Chamber if he does not seek further advice and bring that advice back into this Chamber. The debate on the committee stage of the Bill should be adjourned for the minister to seek further clarification and, if necessary, use the opportunity to bring a Supreme Court judge to the Bar of the House. I do not know whether that is an option. I have not discussed it with my colleagues in the Chamber or anybody else. However, the debate on the Bill is becoming ludicrous and I do not believe that the minister will be able to answer the questions and present the concise law to the Chamber.

Hon N.D. GRIFFITHS: I will deal firstly with the observations of Hon Bruce Donaldson. He made much of the words “that a court would hold to be one”. The paragraph in the letter reads -

It is my opinion that the commencing words of section 13 - “*It shall not be lawful to present to the Governor for Her Majesty’s assent . . .*” - requires me to give active consideration to whether or not . . .

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Hon Peter Foss put forward a hypothetical worst-case scenario; that is, the Bill may pass both Houses of Parliament, go before a court pursuant to the process proposed to be undertaken by the Clerk of the Parliaments and may be ruled to have fallen foul of the manner and form provisions. The other Bill, which we cannot talk about under standing orders -

Hon Derrick Tomlinson: That is another hypothetical.

Hon N.D. GRIFFITHS: It must be dealt with as a hypothetical scenario. The second part of the hypothetical put by Hon Peter Foss is that another order of the day, called the Electoral Distribution Repeal Bill 2001, will not be ruled out of order on the basis of the manner and form provisions. The difficulty then would be what would happen at the next general election or by-election. If the provision of the next order of the day in this hypothetical situation were dealt with as printed, there would be no difficulty until we reached the next general election, which is not due for some three years. The worst case scenario therefore is not a practical problem. The reason for that is contained in clause 5 of the next order of the day, to which I am referring in a hypothetical way, headed "Transitional provisions".

Hon M.J. Criddle interjected.

Hon N.D. GRIFFITHS: This is a hypothetical scenario, if we go down that path. Clause 5(2) of the next order of the day states -

The existing electoral distribution continues to apply in respect of -

It then details some matters. The worst-case scenario suggested by Hon Peter Foss is based on "ifs" and he is very firm in his opinion.

Hon Peter Foss: Which one are you referring to?

Hon N.D. GRIFFITHS: The next order of the day - in a hypothetical way - the Electoral Distribution Repeal Bill 2001, pages 2 to 3, clause 5(2).

Hon Peter Foss: You say that would link it?

Hon N.D. GRIFFITHS: Hon Peter Foss suggested that the Electoral Distribution Repeal Bill may stand up to a legal challenge but the Bill we are dealing with now will not. The provisions of that Bill dealing with that scenario look after the situation pending the next general election. That is how I read it and I hope I have read it correctly; however, again, I am not perfect. This is a four-year Parliament. The worst-case scenario is hypothetical and it is inconceivable that if it were to occur, the matter would not be remedied before the next general election.

Reference has been made to lots of lawyers. I am not standing in this place as a lawyer and I am not giving a legal opinion; it is not my job to give a legal opinion. I do not want to have a go at my colleagues who are lawyers but sometimes we lawyers get a bit carried away - I am not suggesting that is the case with anyone in this place - believing that we know something about laws and we do not apply a bit of commonsense to what we are talking about. I know that some of my colleagues who are not lawyers agree vigorously with that, irrespective of the party they belong to.

In the meantime, I am making inquiries to try to answer Hon Peter Foss's questions. I may not be in that position but I am making those inquiries. If I cannot answer his questions, so be it. A hypothetical worst-case scenario has been raised. However, the worst-case scenario is not the end of the world and it is inconceivable that it would cause a disaster.

Hon B.K. DONALDSON: The minister brushed off very lightly the opinion of the Clerk of the Parliaments.

Hon N.D. Griffiths: No, I have not, and I do not intend to.

Hon B.K. DONALDSON: The minister said that it was just another opinion; and that is what I was trying to say in the first place.

Hon N.D. Griffiths: Don't misinterpret me.

Hon B.K. DONALDSON: I want to clarify one matter. In the eight years that I have been in this place, the Clerk has generally indicated to the President, the Chairman of Committees, or whoever is in the Chair, when an absolute majority is needed. In those eight years I cannot recall any Bill that passed through this Chamber without the sanction, correctness and legality associated with the Clerk having assured the House that everything was above board and/or an absolute majority was needed; those assurances were always clearly stated. I put a high value on the opinion of the Clerk of this House. That is what he is here for, for goodness sake. His opinion to me has a lot of weight and the minister dismissed it.

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Hon N.D. Griffiths: No, I did not.

Hon B.K. DONALDSON: The minister was rather flippant with the answer he gave. I will read *Hansard* and I will be able to tell him exactly how he was. I realise the minister is not sitting here as a lawyer; he is sitting here as the minister in charge of this Bill. I note that lawyers, no matter who they are, usually are loath to help their fellow colleagues in a pro bono manner. At times I have asked some of my colleagues a question of law, and I am usually told to see my own lawyer as their opinions may not suit my case. I am getting more and more confused by the way in which the Committee of the Whole is operating. I believe even more firmly that this Bill will be thrown out by the Full Bench of the Supreme Court.

Hon N.D. GRIFFITHS: I am not sure what the member's question was. I note that he expressed his belief. For the record, I make it clear that I was not being flippant about the Clerk's advice to the President. I read out part of his advice. I was referring to the member's emphasis on "would" and I put that in context. I note the content of what the Clerk says.

Hon GEORGE CASH: It is extremely important for Hon Peter Foss to raise the issues he did about the legality of the proposals being put forward by the Government. For some time I thought that the minister did not intend to respond. However, the minister has now given the Chamber an indication that he will be seeking advice and hopes to be in a position to offer a response to those very serious issues.

Hon N.D. Griffiths: The issue was dealt with in my previous observations that the only worst-case scenario would be the next general election.

Hon GEORGE CASH: I am saying that I am pleased that only a few minutes ago the minister gave the Chamber the commitment that he would be seeking further advice on the matter and that he would be in a position to provide that advice to the Chamber in due course. My question relates to an earlier statement of the minister. He said words to the effect that if this Bill becomes the law, it will have the effect of amending the Electoral Distribution Act 1947.

Hon N.D. Griffiths: That is Hon Peter Foss's interpretation and your interpretation. I used precise words and I wrote them down. I said that if this Bill becomes the law, with the passing of proposed section 16C, the law will be what I then said. On the first occasion I read out proposed section 16C. On the second occasion, I used those words but I did not read out proposed section 16C in its entirety, although I referred to it. On the third or fourth occasion, I may have done the same. I choose my words carefully and properly. I did not use the word "amend". Hon Peter Foss continued to use it because that is part of your argument about manner and form. I understand your argument about manner and form - everybody does.

Hon GEORGE CASH: I am glad that the minister understands the argument about manner and form.

Hon N.D. Griffiths: I have never said otherwise, and I would hate for you to think that I would not.

Hon GEORGE CASH: The mere fact that the minister says that he understands it advances us several steps. It logically applies that the minister understands the various issues that Hon Peter Foss has raised. The question that I put to the minister is that he prefaced his earlier statement - that is, if this Bill becomes the law etc - with the word "if". What are the matters that are contingent on whether or not this Bill becomes the law?

Hon N.D. GRIFFITHS: Having heard the President give a statement on Wednesday, 28 November and having listened to him read out the letter from the Clerk dated 27 November, I note that the Clerk proposes to undertake a process. The fulfilment of that process is the contingency. I would have thought that was patent. No doubt this question has been asked so that the member can continue with another argument. That is my understanding of the process. If there is some other process that is not contained in the letter, I would be very pleased if someone could inform me of it.

Hon GEORGE CASH: Given that all the provisions of the Electoral Amendment Bill 2001 could have been incorporated into the Electoral Distribution Act 1947, why does the Government choose to have these issues incorporated in the Electoral Act 1907 and not the Electoral Distribution Act 1947?

Hon N.D. GRIFFITHS: My understanding is that the Government's legal advice is to the effect that by proceeding down this path, we will be able to have substantial electoral reform in this State.

Hon GEORGE CASH: I am interested in the minister's reply, because that confirms that the two Bills - the Electoral Amendment Bill 2001 and the Electoral Distribution Repeal Bill 2001 - are framed in such a way as to constitute a contrived scheme to overcome the difficulties presented by section 13 of the Electoral Distribution Act 1947, which requires an absolute majority, which the Government cannot achieve in this Chamber.

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Hon M.J. CRIDDLE: It is very appropriate that all these serious issues have been drawn out on such an important clause. As we have gone along, I have become more and more concerned about the issue of seeking legal advice before these Bills progress through the Chamber. I will be very interested to hear some of the answers the minister might give us later in proceedings. As a well-recognised legal adviser Hon Peter Foss has made some very interesting points on both Bills. I am concerned as a legislator that as we are progressing through the two Bills, some concern hangs over the issues that have been expressed. Section 13 of the Electoral Distribution Act hangs over this Bill like a pall. I assume that we will not see a resolution to that until both Bills have been passed and the Supreme Court has had an opportunity to deliberate on them.

As we move forward with proposed section 16C, and as we move towards a vote, this will probably be the most important section we will consider. If the amendment that I have put forward to delete proposed section 16C and substitute a new section is not passed, eight seats will be taken from the country and put into the city. That is the crux of the matter. That is the important issue we are facing. I urge members of the Chamber to give due consideration to those issues as we move forward and to bear in mind all the issues that have been put before the Chamber when the vote is taken.

Hon DERRICK TOMLINSON: We have all been observers of a debate that has principally involved the minister, Hon George Cash and Hon Peter Foss. Each has chosen his words carefully and deliberately. For most of us the debate has been a process of unravelling as we have observed and listened to the arguments from both sides. We have now reached the stage at which - if I have correctly followed the debate - an important legal point has been raised. In response to this the minister has answered that if the worst-case scenario described by Hon Peter Foss came to pass, the transitional provisions would apply. However, the minister has been unwilling to give an opinion - not because of his inability to do so, but because he is not the Attorney General and would rather not speak the words of the Attorney General. The minister has indicated that before we go to the final vote he hopes to provide us with the answers to the questions of law raised by Hon Peter Foss. The minister may or may not be able to provide us with those answers. In the meantime, we have to make decisions and vote on matters that may become law, in which case these matters may become law before our questions have been answered. We must have answers, or at least informed opinions, about these questions before we make a final decision. Previously, when the Legislative Council reached a stage in committee at which questions and matters were unanswered, the chairperson or the deputy chairperson left the Chair until the ringing of the bells. That enabled the person in charge of the Bill - in this case the Minister for Racing and Gaming - to take advice. No further action is taken by the Committee until such time that the advice has been taken. In effect, sitting is suspended while the advice is taken. Only after the advice has been taken does the Committee of the Whole make a decision. I put to you, Madame Deputy Chair, that the correct course of action is not to proceed with the vote while we wait for the minister to provide answers to the questions. The correct course of action is for you to leave the Chair until the ringing of the bells to enable the minister to seek advice.

Hon N.D. GRIFFITHS: I want to highlight the difficulty of the hypothetical situation that Hon Peter Foss raised and to point out what it means in practice. We are dealing with the Electoral Amendment Bill 2001. The proposition put to me was that the Electoral Amendment Bill 2001 and the Electoral Distribution Repeal Bill 2001 find themselves before the Supreme Court in the process that the Clerk has stated that he would undertake, and that the Supreme Court finds in these terms - this is the hypothetical situation: first, that the Bill we are dealing with falls foul of the manner and form provisions; and, secondly, that the Electoral Distribution Repeal Bill 2001 does not fall foul of the repeal provisions.

I was asked what would happen if a member were to die. In response to that I stated that if that worst-case scenario were to occur, the law with respect to members being elected would be set out in that other Bill to which the Supreme Court has given a tick, the Electoral Distribution Repeal Bill 2001, which has transitional provisions. The existing electoral distribution continues to apply in respect of various matters, and that Bill deals with those matters. Therefore, the only area of potential difficulty is with respect to the next general election. I have pointed out that this is a new Parliament and we have a four-year term. What is being suggested as a hypothetical disaster is just that - hypothetical. In the practical world that worst-case scenario would be addressed. If it were not addressed we would fail in our duty.

Hon Peter Foss asked whether the Government, the Attorney General or I had considered that worst-case scenario, and, if so, was advice given that it would not be a problem, or that it could happen? In response I said two things. First, I stated that I would raise these issues with the Attorney General. Before we dealt with the Electoral Distribution Repeal Bill I was in a position to say whatever I wanted. In the course of proceedings I went further than that and pointed out that I was seeking advice on the status of the situation and what I could say. That is the current position.

In terms of process, we have been dealing with these matters for a considerable time. There is a proper -

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Hon George Cash: If the minister wants to report progress on the Bill in a few minutes, we are happy for him to do that; however, we are stuck on this particular issue and are waiting on the advice that the minister believes he will be getting.

Hon N.D. GRIFFITHS: I have said what I will be doing. Whether I receive particular advice is a matter of conjecture. I have not said that I will be receiving particular advice. I have said that I will be seeking advice.

Hon George Cash interjected.

Hon N.D. GRIFFITHS: I am well aware of that. I am speaking for a reason. I am well aware of the people who are present in the Chamber in all of its manifestations.

Hon Derrick Tomlinson: You are just filibustering. You should move that the Chairman do leave the Chair until the ringing of the bells.

Hon N.D. GRIFFITHS: The member should bear with me for a moment and stop interrupting. Members opposite have said that they will use their best endeavours to have these matters resolved one way or another, and it is anticipated that will occur today. I hope the member will appreciate that I have dealt with this debate with a proper degree of goodwill. I know some comments have been made to the contrary, but I have sought to give members proper answers to what I consider to be their proper concerns. I propose, Madam Chair, to ask you to leave the Chair until the ringing of the bells, because I believe that is the appropriate course of action, and I will seek some advice; and, when we reconvene, I trust the agreement from the Opposition to use its best endeavours will continue and we can move and make our decisions on the clauses in this Bill and the proposed amendments. Madam Chair, I invite you to leave the Chair.

Hon GEORGE CASH: That is a matter for the Chamber.

Hon Nick Griffiths: Hon George Cash, as the former Chairman of Committees, is very knowledgeable about matters of procedure, but if he takes issue with what I am suggesting, that is fine.

Hon GEORGE CASH: I am not taking issue. I wish to indicate to the House that the Opposition will support the proposition that the Chairman do leave the Chair until the ringing of the bells to enable the minister to seek the advice that he referred to earlier. The minister in his most recent comments also suggested that some agreement was in place that the Opposition would use its best endeavours to progress this Bill. The Opposition is using its best endeavours to progress this Bill. However, we are being frustrated by the fact that the minister - understandably - believes he is in a position in which he cannot provide certain answers to questions because he wants to take advice on those matters. The reason Hon Derrick Tomlinson suggested that the Chair be vacated for a period was to expedite the Bill. It is as simple as that.

Hon N.D. Griffiths: We are in agreement.

Hon GEORGE CASH: Yes; the Opposition is prepared to agree to that course of action.

[Continued on page 6573.]

*Sitting suspended from 3.23 to 4.00 pm*