ELECTORAL AMENDMENT BILL (NO. 2) 2008

Second Reading

Resumed from 24 June.

HON NORMAN MOORE (Mining and Pastoral — Leader of the Opposition) [2.35 pm]: The Electoral Amendment Bill (No. 2) 2008 is not quite as simple as the Electoral Amendment Bill 2008. The Electoral Amendment Bill (No. 2) 2008 is designed by the Minister for Electoral Affairs to provide the Labor Party with a marginal improvement in its electoral prospects; namely, by making changes to who can and who cannot vote. The bill also seeks to destroy the Liberal Party's fundraising capacity and that of any other party that seeks funds from individuals who do not want their names disclosed. Fundamentally, that is what this bill is all about.

One can only speculate why the government is in such a great hurry to pass the Electoral Amendment Bill (No. 2) 2008 today, bearing in mind that this bill was read into this place only on Tuesday. I suspect that part of it is to titillate the public with speculation about an early election by saying that government wants to pass this bill before the house rises; by indicating that somehow or other it wants this legislation in place in case it decides to go to the polls early. I think that is all part of the Attorney General-Minister for Electoral Affairs' strategy. During this morning's debate on the Surrogacy Bill, I talked about Mr McGinty's strident criticism of this house for not dealing with his legislation in the way he wanted and how our so-called intransigence could, in fact, lead to an early election. It is all part of a government strategy to at least create the impression that an early election is possible. It is rather interesting that the next election is not due until about February next year and because we have heard so much about early elections in recent times, the view will now be held by many that if an election is held in December it will simply be a normal election and that an early election would be one held sometime between now and December. I can remember only one early election, which was held in the first week of December, as I recall. For obvious reasons, I did not regard that as a significantly early election, but it was early. If the government goes to the polls in December, I will say, "That's fair enough; that's been done before." If the election is held much earlier than that, it would be what we could call an early election. I think we are being conditioned to the view that if the election is held in February next year, that is a late election and that is a bit odd. However, I will put that issue to one side.

The Electoral Amendment Bill (No. 2) 2008 regrettably does not require an absolute majority, so we must see what the house does with it. This bill contains a number of amendments to the Electoral Act and I will go through them fairly briefly and indicate to the house the opposition's views on those changes. The first general area of change deals with prisoners' voting rights. Members may be aware that in Western Australia and at the commonwealth level at the present time, anybody who is in prison cannot vote. That situation was created by the commonwealth legislating a few years ago for that outcome and was followed by the state of Western Australia voting along the same lines last year. As a result of the federal government taking that course of action a High Court challenge, Roach v Electoral Commissioner 2007, was made. I just want to read out some advice that was provided to me about this court case me because it does not strictly accord with the government's assertion in the second reading speech. The government asserted that that High Court ruling means that prisoners must be allowed to vote if they have a sentence of less than three years. That is the government's assertion and the impression one gets from the second reading speech and the Minister for Electoral Affairs is that the High Court ruled, saying, "If you're in prison for less than three years, you can vote; if you're there for longer than that, you can't." The High Court ruling did not say that at all but rather said that a blanket prohibition on any prisoner voting was unconstitutional. However, that ruling did not indicate whether a one year, two year, four year or 50-year imprisonment duration was an appropriate cut-off point. I will now read the advice that I have —

> The plaintiff was an Aboriginal lady convicted of burglary and other crimes serving a sentence of a minimum four years. The Court dismissed the proposition that all prisoners had the right to vote but invalidated the blanket prohibition of voting by those serving all sentences.
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> Striking down this prohibition had the effect of reverting to the ban on prisoners voting when serving sentences of three years or more.

That is the previous commonwealth law —

- Chief Justice Gleeson pointed out that between 1902 and 1983, the Commonwealth Electoral Act disfranchised prisoners serving longer than a 12 month sentence.
- In 1983 the ALP took the limit to five years, that was lowered to three years in 2004 to be replaced by the blanket prohibition in 2006.

> A major objection to the blanket prohibition was Section 44 of the Constitution that disqualifies a member of the Senate or House of Representatives who have been convicted of an offence punishable by more than 1 years imprisonment.

- It was pointed out that sentences of less than this not only involved minor offences but can be handed out simply because in certain regions there is no suitable alternative penalty — which is clearly discriminatory.
- It represented a failure to attempt to identify crimes sufficiently serious to warrant disfranchisement.

Equally it was noted that at the 1897 Convention it had been suggested that the disqualification under Section 44 be three years, but one year was deliberately preferred.

- It was also noted that at the time of Federation, all States imposed various disqualifications on voting by prisoners.

Heydon J denied that the matter of a three year electoral cycle was relevant as Parliaments could run for less than that time. "It would be strange if the constitutional validity of a restriction on the franchise rose and fell with executive decisions about the duration of parliaments".

The judgements by six High Court judges do not support Mr McGinty's contention that the High Court could invalidate a prohibition of more than 12 months for a prisoner's eligibility to vote. No judge argued that 12 months was too low a cut-off point. The justices did not impose a three year cut-off; it was the default position once the 2006 provision was invalidated.

That is the advice provided to me about that High Court ruling. I stick by that advice. As members will later see, the opposition will move an amendment that will restrict the right to vote to those prisoners serving a sentence of less than one year's duration—as has been the situation in Western Australia for a very long time.

However, the question that must be asked is: why does the Labor Party want prisoners to have the vote?

Hon Barbara Scott: Because they will vote for it.

Hon NORMAN MOORE: That is the obvious answer.

My view is that it is appropriate for prisoners to not only lose their liberty but also have the penalty of not being able to vote, because they have behaved in a way that is contrary to the public interest. Prisoners have behaved in a way that is against the interests of the community by breaking a law. There ought to be some penalty for that. Whether they should be able to vote on who makes the laws ought to be taken into account. I accept that on this occasion the High Court has indicated that a blanket prohibition is not acceptable. The opposition will move to give prisoners who are serving a sentence of less than one year the ability to vote, as was the situation previously in Western Australia. That is appropriate, because the crimes committed by people who are in prison for less than one year are not of such a magnitude that they should lose their voting rights. However, given the way in which penalties are handed out these days, some pretty serious, nasty people are in jail for only two or three years. In my view, providing those people with the opportunity to vote would be contrary to the best interests of the community of Western Australia.

The government obviously believes that a majority of prisoners would vote Labor. That is the only thing I can think of that would convince the government to open voting to people who are serving a sentence of less than three years' imprisonment. I am surprised that it did not go for five years just to make sure it got them all. That is an issue on which I simply cannot make a definitive judgement. As I said, the opposition has taken the view that the assertion of the Minister for Electoral Affairs that the High Court said that it must be a sentence of less than three years is not what the High Court ruled at all. That is why we propose an amendment that reflects what we think is the intent of the High Court; that is, there should be no blanket prohibition on voting by prisoners, but the opening up of voting to prisoners who are serving sentences of less than one year would meet its requirements.

The bill was amended in the Assembly in one rather important area. I want to comment on that because it reflects the government's attitude to voting by prisoners. Members will be aware that if a person belongs to a certain category of voter—for example, the person lives on a pastoral station, is infirm or simply cannot get to a polling booth under any circumstances, and those circumstances will continue over time—he can register as a general early voter. The person's name will then go on a list known as the register of general early voters, and ballot papers will be sent to him automatically whenever an election is called. He will not have to do anything else. If someone is not eligible to be on the register, but his circumstances prior to an election mean that he cannot vote on election day or that he will face significant difficulties in getting to a polling booth, he can apply for an early vote prior to the election. The original bill presented in the Assembly provided that prisoners could go on the register of early voters. Interestingly, the explanatory memorandum and, indeed, the second reading speech in the other place, which I should probably not talk about, outlined that this was being done to make it easy for prisoners to vote. I would have thought that we should make it hard for prisoners to vote, or certainly not make it easy, because the intent of the Electoral Act is that voters are obliged to make an effort to get to a polling booth.

We have the right to vote in this democracy. People should do that. There should be some obligation on people to get off their tails and do that. Those who are eligible to be on the register of early voters should be only those people who cannot get to a polling booth for all sorts of logistical reasons. That is the intent of the legislation. To suggest that we should throw prisoners into the same category as, say, pastoralists who simply cannot get to a polling booth because they live 200 miles away is completely contrary to what I believe is the intent of the Electoral Act.

Government members in the Assembly have removed the proposal that prisoners can go on the register of early voters, and that was a good decision. I congratulate the Attorney General, who is also the Minister for Electoral Affairs, for recognising the validity of the argument that was put forward by the opposition in the other place. The bill still provides that if there is no polling booth available, prisoners can apply for an early vote. The opposition supports that, obviously. If there is a provision in the law that states that prisoners can vote, there must be an opportunity for them to do so. Clearly, if there is no polling booth that they can attend—they certainly cannot walk down to their local school to vote—there has to be a provision for them to vote.

I understand from the Electoral Commissioner that polling booths will be available at prisons. I do not know at which prisons, but obviously the main ones. I have some concerns about that. I can understand why it is going to happen, but I have some concerns for the welfare of Electoral Commission officers conducting those polling booths because some of the people who are going to vote are not very nice. Who knows the circumstances that Electoral Commission officers will be confronted with? It also makes it quite difficult for political parties or candidates to get their message across to prisoners when they cannot just knock on a door and say, "Can I come in and talk to you about my policies?" That just does not happen with prisoners, for obvious reasons.

We will support the provision in this bill that allows for prisoners to apply for an early vote because we acknowledge that some prisoners will be able to vote if the bill or the amendment is passed. We will be seeking to amend the period of incarceration from less than three years to less than one year.

The second main alteration to the legislation relates to voting for citizens of no fixed address. I have always had a concern about this because people of no fixed address often are people who do not take their responsibilities very seriously.

Hon Kim Chance: What about retirees? It is the grey nomads.

Hon NORMAN MOORE: Does the Leader of the House reckon I can say what I am going to say without him telling me what I should be saying?

Hon Kim Chance: I thought he was picking on the poor old retirees again.

Hon NORMAN MOORE: I know the Leader of the House is going to be in that category very soon! That is probably one of the reasons I might decide to say something about people like that!

The concern I have always had is that people of no fixed address seem to be those sorts of individuals who have little responsibility in their lives, made very little contribution, and generally could be regarded as vagrants. That has now changed considerably because there are, as the Leader of the House has said, a significant number of grey nomads. I am hoping that he will be one soon and he might take a few of his colleagues with him—particularly the Attorney General, who I would like to see join the ranks of the persons of no fixed address!

Hon Kim Chance: Where is his generosity of spirit?

Hon Ken Travers: Hon Norman Moore has got greyer hair than most of us!

Hon NORMAN MOORE: The longer I stay here, the quicker I would like to become a nomad!

Hon Ken Travers: No-one is stopping you!

Hon NORMAN MOORE: They are not, that is exactly right. Hon Ken Travers is encouraging me to leave sooner rather than later!

Hon Ken Travers: Promise?

Hon NORMAN MOORE: The situation in Australia these days, as it is explained to me, is that there are many people who retire, sell their house, buy a caravan, and head off around Australia and come back in one, two, five years or whatever. When they have seen the country or seen the world, they come back and buy a house and do what people who have retired do once they settle down again. It is appropriate that those people should be entitled to vote in Western Australia. They can vote at the commonwealth level and I think it is sensible that they can vote at the state level, so we will support this particular proposition.

Another area that has concerned me is that there are many itinerant voters in my electorate; persons of no fixed address. Over the years I have seen the way in which these people have been, from the Labor Party's point of view, seriously, consistently and effectively manipulated by Labor Party electorate workers. I do not propose to go into any more detail than that, other than to say that I hope nobody uses this new provision to enrol electors in

electorates that suit the political purposes of the Labor Party. People who move through the central desert can move through two or three electorates, and it might be to the advantage of a particular political party to ensure that some of these persons are registered as itinerant voters in a particular electorate, even though they are there for only a part of the time. I have been concerned about that for a long time, as I have been concerned about the way in which Aboriginal voters have been manipulated by some people. I have information from the Electoral Commission that to be an itinerant voter, a person must go through what is quite an elaborate process to determine which electorate he or she will be enrolled in. Fundamentally, what happens, as I understand it, is that the person who wants to enrol as an itinerant voter applies to go onto the commonwealth electoral roll to be notated as an itinerant voter in a particular electorate. If that application is accepted by the Australian Electoral Commission under the fairly stringent conditions that apply to becoming an itinerant voter, that person will become an itinerant voter on the Western Australian electoral roll.

To determine in which electorate these people will be regarded as residing, they have to go through a series of questions. They are in descending order as follows: firstly, they should be enrolled in the electorate for which they were last enrolled, which means that they cannot just move around if they have been enrolled before; secondly, if they were not previously enrolled, they must be enrolled in the electorate in which their next of kin is enrolled—therefore, if they were not enrolled, it must be an electorate in which their family was enrolled; thirdly, if there is no next of kin, they must be enrolled in the electorate in which they were born; fourthly, if that still does not apply because they were not born in Australia—I will have to check how it works in Western Australia if they were born in the eastern states—they must be enrolled in the electorate with which they have the closest connection. To demonstrate the electorate with which they have the closest connection requires them to explain, to the Electoral Commission's satisfaction, that there is a genuine connection between them and that electorate. I think those provisions are stringent enough to ensure that the sort of manipulation I anticipated a few years ago in this matter will not happen this time. I inform the government that the opposition will keep a very close watch on this to ensure that it is not abused by anybody for basic political advantage.

A new provision was inserted into the Electoral Amendment Bill (No. 2) 2008 in the Assembly. I do not quite know how the Assembly works, but it was not an amendment to the bill; it was an amendment to the act. I guess it is all to do with the scope of the bill and all that sort of stuff. However, a new clause was inserted that now provides that an elector's date of birth is part of the prescribed information for parliamentary parties, members of the Legislative Council and the Legislative Assembly, and that information will be included on the electoral roll. I think that is a good thing. As was explained in another place, the reason for doing this is so that letters can be written to people on the basis of their age. I suppose the advantage to both sides of politics is much the same, and it is useful for members to be able to concentrate their correspondence or their energies on an age demographic to which people belong when they are seeking to encourage those people to vote for them. The opposition will support that.

The main purpose of the bill—the lowering of the political donation disclosure threshold—is contained in the next part. Members will be aware that in Western Australia the Electoral Act 1907 provides that the source of any political donation of less than $1 500 does not have to be disclosed. There is an escalation provision in the regulations, and that figure is now $1 800. At the commonwealth level, the amount is $10 000. That has not changed. The federal government has announced its intention to change it, but I am not sure that the Senate will necessarily agree; it certainly has not agreed yet. This bill will lower the amount from $1 500 to $1 000, and we are told that this is for the sake of consistency with the commonwealth legislation. I say that to be consistent with the commonwealth we should make it $10 000. I am wondering whether to try that out on the house, because it might be a useful way to go! This provision is a response to the Rudd government's decision to lower the $10 000 threshold to $1 000, and it is designed to ensure that political parties such as the one to which I belong and other political parties that, unlike the Labor Party, do not have an organisational base that provides them with a regular source of revenue, will be at a disadvantage when raising money. Indeed, the same thing will apply not only to parties such as the Liberal Party and the National Party, but also to Independents who have to try to raise money and who do not have a base of fundamental revenue. This concerns me a great deal. We need to be careful, because we may be heading for a situation in this country in which there is one major political party extracting vast sums of money from the pockets of workers, and all the other parties are struggling to raise any money at all. There is a myth that the Liberal Party gets vast amounts of money from big business. That is a myth. Big business, if it contributes—generally it does not—provides similar contributions to both sides of politics, because that is the way major corporations respond to political circumstances. Fundamentally, reduction of the nondisclosure figure from $1 500 to $1 000 has, to put it in broad terms, the capacity to reduce the fundraising capability of the Liberal Party by about 30 per cent. People who want to make a contribution to the Liberal Party but do not want anyone to know—for reasons I will explain later—currently say, "Here's my cheque for $1 499"; or, with the escalation, $1 799. If this legislation is passed, they will say, "Here's my cheque for $999." We have suddenly lost $700. That is what Mr McGinty intends. He wants to change the electoral

system to ensure that the Labor Party stays in office forever, and he wants to change the political donation system to achieve a similar end.

Some people wish to donate to political parties without having their name disclosed for the reason that some governments can be extraordinarily vindictive if they find out that a company or individual has made a contribution to their political opponents; such a company may simply no longer get any business from those governments. Without putting too fine a point on it, I remember only too well the days of the Burke government when Terry Burke was the bagman. Terry used to go around with his bag, collecting money. There was some suggestion that he was taking a 30 per cent commission; I do not know whether that was true, but I understand it was. The fear in the business community was that if people did not put money into that bag, they would not get any government business. That is one side of the argument—that people must donate to the Labor Party to get any business. They were also told that if they got the other lot into power, they need not expect to get any government contracts. They were told that they could not fund the Liberal Party and expect to get government contracts when the Labor Party was in office. The Labor Party may well argue that it is the reverse when we are in government. I do not think it is, but members of the Labor Party may argue that. If they were right, it would make the point that this should not be allowed to happen. People should be allowed to make a contribution to a political party because they believe in the philosophies and the policies of that party. They should not be subjected to discrimination and victimisation as a result of a political preference.

We have made a decision to have public funding of political parties in Western Australia, which provides some funding for political parties and, in a sense, will provide a very basic level of funds for our party and, indeed, extra funds for the Labor Party. However, the sort of money that public funding will provide will go nowhere towards the total cost of running a campaign. A state campaign in Western Australia costs anywhere between $2 million and $5 million depending on how much there is to spend. I guess that campaigns cost as much as people want to spend. However, people really need a great deal more than the $1 million that the major parties will get from public funding to mount a campaign to give any prospect of being successful. This proposition, and a number of clauses relate to it, is designed to restrict the capacity of the Liberal Party, the National Party and the Independents to raise funds at the next election. We will therefore be opposing this proposition and seeking to retain the $1 500 threshold. I do not propose to move that it be $10 000, although that would be consistent with the consistency argument being put forward by the Minister for Electoral Affairs.

The next important part of the bill is to allow overseas electors to be registered as general early voters. At the moment overseas voters who are enrolled can vote in Western Australian state elections for up to six years after leaving Australia. The same applies to voters on the commonwealth roll, but under the commonwealth legislation if people are overseas, they can go on the register of early voters and automatically have a ballot paper sent to them at their overseas address. The provision in the bill seeks to extend that to voters on the Western Australian roll. We cannot think of any reason it should not happen for those voters, so that they will then not have to apply from overseas for an early vote or go to London where there might be a ballot box; they can be on the roll and have the ballot paper sent to them at their overseas address. We hope that those overseas persons will be taking enough interest in Western Australian politics to vote sensibly rather than simply not knowing what is going on and sending a vote in because they have to.

The next clause I want to deal with relates to section 183(6). It is one of those amendments that do not convince me we should go down this path, but I will support it. Section 183(6) relates to undue influence at polling booths in respect of voters' voting. Section 183 reads —

> Any person who —
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> . . .
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> (6) . . . being a candidate, personally solicits the vote of any elector on polling day;

I have always taken that to mean that I go nowhere near the voters; that I talk to the people who work in the polling booth and thank them and give them a drink and all that sort of stuff, and that I keep right away from voters. A suggestion has been put that candidates should be given the same rights as any other person on polling day and be allowed to hand out how-to-vote cards. There is some doubt about what soliciting for a vote means and whether handing out a how-to-vote card is soliciting for a vote or simply providing people with information. This was highlighted at the recent Murdoch by-election, when a suggestion was made that the Liberal candidate was handing out how-to-vote cards.

Hon Kate Doust interjected.

Hon NORMAN MOORE: Whatever it was, a complaint was made about that. I hope it was not someone from the Labor Party who made that complaint, because I could complain about a few things that the Labor Party does, but I will not, because we do not do that sort of thing. The Electoral Commission has recommended to the minister that this section of the act be deleted so that the same rules will apply to candidates at an election as apply to any other person. That will mean that candidates will not be allowed to go within six metres of the

polling booth door, but they will be allowed to hand out how-to-vote cards. We are prepared to accept that as a fair and reasonable proposal.

Clause 16 of the bill seeks to amend section 175C of the act to sort out some administrative issues that relate to candidates and who is their agent. As far as we are concerned, that clause of the bill is perfectly okay.

I want to mention one other matter that is of interest when considering this legislation. Part 3 of the bill seeks to amend the Electoral (Political Finance) Regulations 1996. Members will know that Parliaments pass bills, and those bills then become acts. If Parliament wants to change an act, it needs to bring in an amending bill. That is done as a proactive course of action. However, if any regulations that are made under the empowerment of an act are to be amended, they are normally gazetted and laid upon the table of the house, and within a certain period of time they can be disallowed. That is the way Parliaments generally operate. What we are doing in this bill is a very different way of dealing with regulations, and I am not sure that I like it much. I say that because I have a couple of questions about this matter that still have not been answered to my satisfaction. Will this mean that the regulations that are to be amended by this act will become primary legislation once this bill has been enacted? Will this mean also that if we want to amend those regulations in the future, we will need to introduce another bill? I am told that there is significant argument in legal and parliamentary drafting circles about this very issue. Some people argue that regulations should not be amended in this way. However, they say also that if the Parliament does approve this course of action, there should be a disclaimer in the bill to say that nothing in the bill will prevent these amended regulations from being disallowed in the future; that is, another bill will not need to be brought into the Parliament to amend these regulations. I draw members' attention to the fact that regulation 3(2) refers to a "specified amount" of $1 500. That regulation is proposed to be amended by this bill to change that amount to $1 000. It might be in the interests of the Labor Party for an amendment to that regulation to be made by way of a bill. I will outline a hypothetical scenario. We become the government after the next election. We do not have the numbers in the upper house. We want to change the amount of $1 000 back to $1 500. We look at this legislation and we are told that the only way we can change it is by way of a bill, so we introduce a bill and it gets thrown out in the upper house. However, if it can be done by way of regulation, the regulations can be simply gazetted and tabled. If they are disallowed in the Legislative Council, they are simply re-gazetted the next day. Is it the intention of the government to try to prevent that kind of scenario from occurring in the future? I want some guarantee and understanding in this debate that it is not the intention of the government that any amendments to those amended regulations require a further amending bill—that they can be amended the way regulations are normally amended.

They are the views of the opposition on this bill. We will vote for the second reading, because we have a number of amendments to propose. If those amendments are accepted, we will vote for the third reading. If we are not able to achieve our amendments in the committee stage, we will vote against the third reading.

HON GIZ WATSON (North Metropolitan) [3.16 pm]: I will make a few comments on the Electoral Amendment Bill (No. 2) 2008. I note that we are revisiting some debates that took place in this house in October 2006, when we debated the issue of voting rights for prisoners and itinerant people. Not surprisingly, the Greens (WA) have a view of prisoners' voting rights contrary to that expressed by the Leader of the Opposition. We are pleased to see that the government is making this amendment to recognise the decision of the High Court of Australia. The position I have taken on the principle of whether prisoners should vote, which I raised when we debated this issue in 2006, is derived from the Joint Standing Committee on Electoral Matters in the federal Parliament, which recommended in 1993 that all prisoners in Australia, except those convicted of treason, be granted the right to vote. Firstly, prisoners should not be punished twice; and, secondly, retaining the right to vote assists with the rehabilitation of offenders. It is also worth noting different approaches to the issue of the right of prisoners to vote in different countries. In October 2005, an article appeared in the *Guardian* in the United Kingdom, headed "UK prisoners should get vote, European court rules". It states —

> Laws setting out who can and cannot take part in elections are to be rewritten after the European court of human rights today ruled in favour of giving British prisoners the right to vote.
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> Ruling in the case of a former prisoner against the United Kingdom, the Strasbourg court said the disenfranchisement of 48,000 convicts in British jails violated the European convention on human rights.
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> It said that with the exception of the right to liberty, lawfully detained prisoners continued to enjoy all the rights guaranteed in the convention — including political rights and freedom from inhumane and degrading punishment.

There is a range of views in different jurisdictions about whether we should further punish prisoners by removing their right to vote. I also refer to an article in *The Australian Financial Review* dated 5 October 2007, relating to the High Court case. The article, written by Justice Michael Kirby of the High Court of Australia, reads —

> Australia is a country in a process of renewal. Many things long accepted are undergoing revision. However, one of the good features that we traditionally boast of has been our shared commitment to "a fair go" for all — to be a tolerant, inclusive, moderate society in which virtually everyone can find a place. Like all democracies, we have sometimes strayed from these noble ideals.
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> Last week in Canberra, the High Court published its reasons for orders to invalidate an act of the federal parliament. That act, passed in 2006, had taken away the right to vote from all prisoners serving a sentence of imprisonment. The court declared that this could not be done.
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> Figures produced to the court showed there were nearly 26,000 prisoners in Australia, of whom nearly 6000 were on remand. Of the other 20,000, the 2006 law excluded about 8000 citizens from voting. More than 20 per cent of them, like the applicant in the case before the High Court, Vickie Roach, were indigenous citizens.
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> Since colonial times, there had been exclusions from voting for persons convicted of treason or other "infamous crimes". For much of the history of the commonwealth a person had to be serving a sentence of more than one year's imprisonment to be so disqualified.
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> This was later changed to five years and in 2004 it was cut back to three. Then in 2006, total prohibition on sentenced prisoners was introduced — even if the sentence was for just a few days that happened to coincide with an election. Ms Roach, on her own behalf and for other prisoners, said that when sentenced to prison, she was there as punishment, not for further punishment. Similar total exclusions in Canada and Britain have been held to offend basic rights.

That concurs with the article from the *Guardian* that I just quoted. The article continues —

> However, in the US, 4 million citizens, no less, are banned from voting for life. In New Zealand only those serving three years or more in prison lose their right to vote.
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> The federal government argued that prisoners under sentence had temporarily forfeited their right to take part in federal elections. It said that it was up to parliament to decide such matters because of the "sovereignty" of parliament.
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> However, by the wisdom of the constitution, no parliament is completely "sovereign". It is only the people who are sovereign. The constitution spells out a democratic form of government. As Chief Justice [Murray] Gleeson observed, it would be incompatible with the text and character of the Australian constitution to revive today the early 19th century British exclusion of Roman Catholics from the vote. Equally, it would be invalid to restore the early 20th century Australian exclusions from the vote of women and indigenous people.
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> The Australian constitution expressly provides that a person may be elected to serve in parliament although sentenced to imprisonment of up to one year. If a member of parliament could serve despite such a sentence, it would be paradoxical to exclude altogether prisoners with their much less onerous obligations from being voters.
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> Four judges upheld the challenge to the total exclusion of prisoners. The court ordered, in effect, that prisoners serving sentences of less than three years must have the right to vote in the coming elections. Within the electoral cycle, such prisoners will ordinarily be back in the community.
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> Some, of course, will say that we should not worry about prisoners. Take away their civil rights. Throw away the key. We all know the usual suspects who are of this persuasion. However, it has not been the temperate tradition of Australia. Ours is a land made up, largely, of immigrants without sharp class distinctions. Many of our earliest settlers were convicts. They were people who served their time. Prisoners must be able to "live it down".
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> That is why the decision of the High Court is such an important one. It is part of the mosaic of law that defines the identity of the Australian community. Australia remains a land respectful of human dignity, including of its prisoners. Unlike the US, it would never tolerate excluding millions (or thousands) of citizens from the vote because of past convictions. It celebrates democracy and representative government as a core feature of what it is to be an Australian.

We fully endorse those sentiments. We enthusiastically support this aspect of the Electoral Amendment Bill (No. 2).

We also welcome the change to the rights of voting for itinerant people. We debated this matter when we previously debated a package of changes to the Electoral Act in this state. I am very pleased that this has been brought back before the Parliament. We will support it, again noting that a considerable portion of the

disenfranchised people—they are disenfranchised because they have no fixed address—are Indigenous and homeless people.

We support the next major amendment, which is to lower the threshold for which a political donation must be declared, because it is consistent with the Greens (WA)'s policy of openness and accountability for financial donations. By way of correspondence, the Greens sought an additional amendment to this aspect of the bill to not only support the reduction in the amount for which political donations must be declared, but also to require that in the time immediately prior to an election, donations must be made transparent to the public. The public would then know who the donors were prior to going to the ballot box. That proposal was not supported by either of the major parties. That is very unfortunate because donors often make a donation during the period immediately before an election but the declaration is not made public until after the election. An amendment to make that process more transparent is in the best interests of the democratic process. However, I repeat that neither of the major parties was interested in amending the bill to achieve that. Therefore, I will not use the time of the house to formally move an amendment to that effect.

The remaining three matters the bill deals with are the registration of overseas voters as general early voters, candidates being able to distribute how-to-vote cards and the matters to do with political party agents. They are uncontentious and sensible amendments. The only other comment I have about revisiting the package of amendments to the Electoral Act is that we are not debating fixed terms. It is an exhausting process to once again go through the endless speculations about early elections.

Hon Norman Moore: I am starting to have second thoughts about that.

Hon GIZ WATSON: Members are aware that it is very difficult for a smaller party to work out how to prepare for an election when it could happen at any time.

Hon Norman Moore: You reckon you have problems!

Hon GIZ WATSON: I am sure that the Liberal Party has problems too. It is very hard to work out how to plan for an election when it could be held in either September or February.

Hon Sue Ellery: Only one person in my party knows.

Hon GIZ WATSON: It might suit everyone except the Premier to have fixed terms. I believe that there is a strong mood in the community for fixed terms and that an amendment to that effect will eventually pass through Parliament. I believe the community strongly supports it. We support the bill.

HON SHELLEY ARCHER (Mining and Pastoral) [3.28 pm]: I have a number of issues about this legislation. The first relates to itinerants. Members are aware that there are a substantial number of itinerants in my electorate. During the wet season, quite a number of communities in the Northern Territory close and all the people move to Kununurra. Last week the proposition was put to me that an election could be held in Western Australia in February when the itinerants are in Kununurra during the wet season. If an election were called in the Northern Territory when they had gone home again after the wet season had finished, would they get to vote in both elections? My answer to that question when I was asked was that I thought that they would. Under this legislation, it is clear that if they moved to Kununurra, which they do every year during the wet season, there might be an issue about them being able to vote in two state elections.

That is an issue that raises some concern for those of us who live in the north west. I canvassed among quite a number of Indigenous organisations the prospect of prisoners having the right to vote, because in my electorate, of course, most people who are in prison are Indigenous. The view was expressed quite strongly that no-one who is in prison should be given the right to vote. I have a much softer view than that and said, "Quite a lot of you mob are in prison for not paying fines; surely those people shouldn't lose their right to vote." Even when I raised those issues with those people, they felt quite strongly that people in prison should lose their rights, and it is their fault that they are in prison; they should not blame anyone but themselves. I think I pretty much convinced them that perhaps those serving only a 12-month sentence should be eligible to vote, and that would not affect too many people in the north west. As was pointed out to me, I would benefit from both provisions in the legislation I have just raised because Indigenous people would be more likely to vote for me as an Independent.

If I were really paranoid, I would say that the amendment in the bill to lower the political donation threshold from $1 500 to $1 000 is targeted directly at the Independents who will be standing. An enormous number of people who make donations do not want their names revealed. Even when I was a member of the Labor Party, an enormous number of people who donated to the Labor Party, to a person or to a particular campaign did not want their names revealed. The Liberal Party has said that this amendment will certainly have an impact on the Liberal Party, as I am sure it will on the Nationals and the Greens (WA). It will certainly have an impact on anyone who stands as an Independent at the next election. I am very unlikely to support the government on that issue and will support any amendments that the Liberal Party moves.

I think the amendment to register overseas voters as early voters is a fabulous idea. A substantial number of my friends who live overseas come back to Australia. They like to keep in touch with political issues and to vote. I support a provision that gives them an opportunity to vote in elections and to be registered as early voters, because, again, that is relevant to my electorate. I think it is also a great idea to repeal the section in the act that applies to how-to-vote cards. Candidates will at last be able to work out what to do on election day. The how-to-vote card issue has been a very grey area for a long time and I certainly support the repeal of that section. The last part I support is the amendment to the section on political party agents.

HON SUE ELLERY (South Metropolitan — Minister for Child Protection) [3.32 pm] — in reply: I thank members for their contributions to the debate on the Electoral Amendment Bill (No. 2) 2008. A couple of issues were raised by Hon Norman Moore that are reflected in the amendments on the supplementary notice paper, so we will have a more detailed debate on them when in committee. However, I will touch on some of the key issues that members have reflected on.

The first issue that everyone expressed a view on was the issue of prisoner voting. A spectrum of views were canvassed, if we take on board the comments that Hon Shelley Archer indicated came from some of her constituents; namely, that prisoners should not be eligible to vote or that we should consider allowing prisoners to vote who are serving less than three years. It is the case that the government's adoption of the three-year sentence is arbitrary, in that it is not based on any philosophical view about the range of sentences. It has arisen as a consequence of the matters considered in the High Court ruling in the Roach case. In the Roach decision, the High Court found that the previous commonwealth electoral arrangement whereby prisoners serving sentences of three years or less were eligible to vote was valid. To do otherwise—that is, to reflect where we were before the commonwealth made its changes and before the High Court challenge was made—would create a degree of uncertainty. Depending on one's point of view, that might be a huge degree of uncertainty or a lesser degree of uncertainty. It is not clear that a period of imprisonment of less than three years would not be able to be challenged, and obviously we want to avoid that. There is also the argument about consistency between the two roles. The state and commonwealth roles are also relevant, and that is what we relied on the last time that changes were brought to Parliament.

Hon Norman Moore: The commonwealth has not changed its law either.

Hon SUE ELLERY: No; I am saying —

Hon Norman Moore: It is still zero in the commonwealth law.

Hon SUE ELLERY: However, it will change.

Hon Norman Moore: Yes, and pigs might fly.

Hon SUE ELLERY: The reason we brought these changes before Parliament last time was to avoid the state and commonwealth roles being out of kilter as a consequence of decisions of the commonwealth. We wanted to minimise the opportunity of that happening. We have chosen to change the provision to three years not because of some philosophical point of view; it takes into account the matters before the High Court and the decision it made. The court found that it was valid for prisoners serving a sentence of less than three years to be able to vote in elections. From the government's point of view, that provision is less likely to be challenged because the matter has already been considered by the High Court. However, we will be able to have a more detailed discussion about that issue during the committee stage.

Hon Norman Moore asked me two questions, one of which was about the place of birth in the hierarchy of the list of addresses that itinerant voters may be enrolled at. I do not have an answer to that question, but we will be able to discuss it during the committee stage. The other question the member asked was about regulations and whether those regulations will be able to be changed only by a future bill. I give the government commitment that that is not the case. It is also the case that this is not the first time we have done it in this fashion. For example, the State Superannuation Amendment Act 2007, the Nurses Amendment Act 2003, the Sentencing Legislation Amendment and Repeal Act 2003 and the Inspector of Custodial Services Act 2003 changed regulations. The reason it was considered a useful exercise for the purpose of Parliament was that, as the formula for amending the political donation disclosure threshold is set in regulations and is somewhat complex—issues about the transitional period will need to be considered when those changes are made—the view was taken that it would be useful to have that formula before the house at the same time as we deal with the legislation.

The other major matter about which comments were made was reducing the disclosure threshold in the bill from $1 500—but effectively $1 800—to $1 000. Five clauses in the bill operate together to lower that threshold. That goes to accountability and community expectations about information being made available. There is clearly a distinct difference of opinion on that issue. It is the case that the federal government has indicated its intention to move this way. Hon Norman Moore said that it will be interesting to see what the upshot of that legislation might

be in the newly formed Senate. It will indeed be interesting to see what happens in the Senate. However, given who will be sitting on the crossbenches, I am not sure that they would necessarily take a more conservative view on that matter.

Hon Norman Moore: Why didn't you wait until the commonwealth changed its laws if you want to be consistent with it?

Hon SUE ELLERY: I am not able to give the member the reason for that. I suspect it is probably the case that as legislation was being introduced to reverse the effects of the previous amendments to the legislation and given the Roach decision, it was considered a useful time to make these changes as well. I cannot answer that question specifically.

Hon Norman Moore: Presumably, if the commonwealth does not do it, you will come back and make it $10 000 anyway.

Hon SUE ELLERY: I am not able to answer that question, but the commonwealth's intention is quite clear.

There is debate on whether the threshold change should occur now. It is an election that triggers the calculation of the new specified amount. The combination of the five clauses I referred to will allow continued reporting under the present $1 800 threshold until the introduction of the $1 000 threshold that will occur within 30 days of the next state election for candidates and from 1 July for annual returns by political parties. It is about avoiding the situation in the transition when there would be different dates.

I will leave my comments there. We can have a more detailed discussion when we debate the clauses and amendments in committee. I thank members for their contribution and commend the bill to the house.

Question put and passed.

Bill read a second time.

Committee

The Chairman of Committees (Hon George Cash) in the chair; Hon Sue Ellery (Minister for Child Protection) in charge of the bill.

Clauses 1 to 3 put and passed.

Clause 4: Section 4 amended —

Hon NORMAN MOORE: Clause 4 amends section 4(4) of the Electoral Act. For members' information, section 4(4) of the Electoral Act reads—

> A reference in this Act to a full election in a region is a reference to an election in a region for the return of —
>
> (a) 7 members of the Council in the case of the North Metropolitan Region or the South West Region; or
>
> (b) 5 members in any other case.

The Western Australian Electoral Act is contradictory about this matter. A definition at the front of the act states that we have two regions of seven members and four regions of five members. The rest of the act refers to six regions of six members. We have been told that this was an oversight when the one vote, one value legislation was passed. If an election is called before this legislation is passed, I wonder whether the courts would rule that the redistribution of six regions of six members is invalid because the act is contradictory. I have been told by the Electoral Commissioner that this was an oversight and that the court would probably rule in favour of the intent of the Parliament that there be six regions of six members. I suspect that he is right. However, it would take a long time for a court to make a decision. In the event that this bill is not passed by the next election, I might take the matter to court to seek an injunction.

Hon SUE ELLERY: The honourable member is right. The act does not reflect the outcome of the debate on the legislation. It does appear as an oversight. The clause that we debating seeks to correct that oversight.

Clause put and passed.

Clauses 5 and 6 put and passed.

Clause 7: Section 18 amended —

Hon NORMAN MOORE: I move —

> Page 4, line 28 — To delete "3 years" and insert instead —
>
> 1 year

Clause 7 seeks to insert a three-year provision. The amendment that I have moved seeks to delete that three-year provision and insert a one-year provision, which is in line with the argument that I have put forward about prisoners. I have already made my case; I do not propose to argue it again. It is for the chamber to decide whether it will go down the path that I am promoting as opposed to the three years that the government is inserting. I have already indicated that the High Court did not rule that three years was a definite period that had to be included in state legislation. There is no suggestion of that at all. To argue otherwise in disingenuous. I commend the amendment in my name.

Hon SUE ELLERY: The government will oppose the amendment. I touched on this matter during my second reading response. The advice that the government has received is that because of the Roach case there could be constitutional validity doubts if we reverted to the one-year provision. I attempted to explain that the government's position on the period of time is not a philosophical one. The government wants to adopt the position that creates the least possible uncertainty. Hon Norman Moore is right in that the High Court did not make a determination on the question of three years versus any other period. Rather, it determined that the previous arrangements, whereby prisoners serving a sentence of three years or less were validly able to vote, are valid. For that reason, the government's view is that to reduce any uncertainty, to create certainty and to reduce any potential likelihood of a challenge, the safest course of action is to revert to the position that the High Court has found is valid. For those reasons, the government will not support the amendment.

Amendment (deletion of words) put and a division taken with the following result —

Ayes (14)

Hon Shelley Archer	Hon Brian Ellis	Hon Barry House	Hon Barbara Scott
Hon George Cash	Hon Donna Faragher	Hon Robyn McSweeney	Hon Bruce Donaldson *(Teller)*
Hon Peter Collier	Hon Nigel Hallett	Hon Norman Moore	
Hon Wendy Duncan	Hon Ray Halligan	Hon Simon O'Brien	

Noes (13)

Hon Kim Chance	Hon Graham Giffard	Hon Ljiljanna Ravlich	Hon Ed Dermer *(Teller)*
Hon Kate Doust	Hon Paul Llewellyn	Hon Sally Talbot	
Hon Sue Ellery	Hon Sheila Mills	Hon Ken Travers	
Hon Jon Ford	Hon Batong Pham	Hon Giz Watson	

Pairs

Hon Ken Baston	Hon Matt Benson-Lidholm
Hon Helen Morton	Hon Vincent Catania
Hon Anthony Fels	Hon Adele Farina

Amendment thus passed.

Amendment (insertion of words) put and passed.

Clause, as amended, put and passed.

Clauses 8 to 13 put and passed.

Clause 14: Section 175 amended —

Hon NORMAN MOORE: Clauses 14, 15 and 17 and part 3 of the Electoral Amendment Bill (No. 2) 2008 deal with the same issue; that is, the intention to reduce the disclosure threshold figure from $1 500 to $1 000. I have already argued the case for the opposition during the second reading debate and do not propose to now waste the time of the committee. I suggest that we take a vote on this matter to decide which way the committee will go. I move, on page 6, lines 24 to 27, to oppose the clause.

The CHAIRMAN: Voting against the clause will achieve the objective of the amendment.

Hon SUE ELLERY: I want to place the government's position on record. The government opposes this amendment. We believe that reducing the disclosure threshold from the current $1 500 to $1 000 will not only better enable transparency and openness in political disclosure in Western Australia—which is what the community wants—but also further reduce the scope for undisclosed donations and align the Western Australian legislation with the commonwealth's intended disclosure threshold. Therefore, for the reasons previously outlined, the government will oppose the intention to vote against the clause.

Clause put and a division taken with the following result —

Ayes (13)

Hon Kim Chance	Hon Graham Giffard	Hon Ljiljanna Ravlich	Hon Ed Dermer *(Teller)*
Hon Kate Doust	Hon Paul Llewellyn	Hon Sally Talbot	
Hon Sue Ellery	Hon Sheila Mills	Hon Ken Travers	
Hon Jon Ford	Hon Batong Pham	Hon Giz Watson	

Noes (14)

Hon Shelley Archer	Hon Brian Ellis	Hon Barry House	Hon Barbara Scott
Hon George Cash	Hon Donna Faragher	Hon Robyn McSweeney	Hon Bruce Donaldson *(Teller)*
Hon Peter Collier	Hon Nigel Hallett	Hon Norman Moore	
Hon Wendy Duncan	Hon Ray Halligan	Hon Simon O'Brien	

Pairs

Hon Matt Benson-Lidholm	Hon Anthony Fels
Hon Vincent Catania	Hon Ken Baston
Hon Adele Farina	Hon Helen Morton

Clause thus negatived.

Clause 15: Section 175A amended —

Hon NORMAN MOORE: The opposition is opposed to clause 15, which is also part of the proposal by the government to reduce the threshold from $1 500 to $1 000. In line with the previous vote, I trust the house will also reject this amendment.

Hon SUE ELLERY: I will indicate the government's position, but I do not intend to divide again. The public record is clear. This clause goes to the accountability and transparency of disclosures.

Clause put and negatived.

Clause 16 put and passed.

Clause 17: Section 175ZF amended —

Hon NORMAN MOORE: This is another amendment that relates to the matters we have already discussed. I suggest that the house vote against this clause as well.

Hon SUE ELLERY: I will again put the government's position. This amendment relates to transparency and accountability in the disclosure of election donations. The government supports the bill as it is.

Clause put and negatived.

Clause 18 put and passed.

Part 3: *Electoral (Political Finance) Regulations 1996* amended —

Hon NORMAN MOORE: The opposition proposes to oppose the whole of part 3. Assuming that we can do that in one hit, I suggest that the house oppose the whole part.

Hon SUE ELLERY: I again restate the government's position; that is, part 3 of the bill is an important part that would give effect to the government's desire to achieve greater transparency and accountability in political disclosures. The government believes that it is an important component of the bill.

Part put and a division taken with the following result —

Ayes (13)

Hon Kim Chance	Hon Graham Giffard	Hon Ljiljanna Ravlich	Hon Ed Dermer *(Teller)*
Hon Kate Doust	Hon Paul Llewellyn	Hon Sally Talbot	
Hon Sue Ellery	Hon Sheila Mills	Hon Ken Travers	
Hon Jon Ford	Hon Batong Pham	Hon Giz Watson	

Noes (14)

Hon Shelley Archer	Hon Brian Ellis	Hon Barry House	Hon Barbara Scott
Hon George Cash	Hon Donna Faragher	Hon Norman Moore	Hon Bruce Donaldson *(Teller)*
Hon Peter Collier	Hon Nigel Hallett	Hon Helen Morton	
Hon Wendy Duncan	Hon Ray Halligan	Hon Simon O'Brien	

Pairs

Hon Matt Benson-Lidholm	Hon Ken Baston
Hon Vincent Catania	Hon Robyn McSweeney
Hon Adele Farina	Hon Anthony Fels

Part thus negatived.

Title —

The CHAIRMAN: Given that part 3 has been deleted, there is a need to move that the title of the bill be amended by deleting the words "and the Electoral (Political Finance) Regulations 1996".

Hon SUE ELLERY: I move —

To delete the following from the long title —

and the *Electoral (Political Finance) Regulations 1996*

The CHAIRMAN: There is also a need to recommit the bill for the purpose of reconsideration of clause 2. Clause 2(b) is now redundant, as clauses 14, 15 and 17 and part 3 were deleted. Therefore, when we report, there will be a need to recommit the bill for the purpose of reconsideration of clause 2, the commencement clause, because clause 2(b) will now need to be deleted.

Amendment put and passed.

Title, as amended, put and passed.

Bill reported, with amendments, and an amendment to the title.

Recommittal

On motion by **Hon Sue Ellery (Minister for Child Protection)**, resolved —

That the bill be recommitted for the further consideration of clause 2.

Committee

The Chairman of Committees (Hon George Cash) in the chair; Hon Sue Ellery (Minister for Child Protection) in charge of the bill.

Clause 2: Commencement —

Hon SUE ELLERY: I move —

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

This reflects the decisions that have been made about other clauses of the bill.

Amendment put and passed.

Clause, as amended, put and passed.

Bill again reported, with a further amendment.

Consideration of the reports made an order of the day for a later stage of this day's sitting, on motion by **Hon Sue Ellery (Minister for Child Protection)**.

Standing Orders Suspension — Motion

On motion without notice by **Hon Kim Chance (Leader of the House)**, resolved —

That so much of standing orders be suspended so as to enable order of the day 650 to proceed to the third reading at this day's sitting.

Question put and passed with an absolute majority.

Report

Reports of committee adopted.

Third Reading

HON SUE ELLERY (South Metropolitan - Minister for Child Protection) [4.13 pm]: I move —

That the bill be now read a third time.

HON NORMAN MOORE (Mining and Pastoral — Leader of the Opposition) [4.14 pm]: The Electoral Amendment Bill (No. 2) 2008, having been passed in an amended form, will now be transmitted to the Assembly. I suggest that that is another reason why the Minister for Electoral Affairs might want to bring the

Legislative Assembly back to finish off the government's priority legislative program and to put in place the electoral amendments that he so earnestly sought. Maybe he can do that, and deal with this bill, along with the Surrogacy Bill 2007, next week.

Question put and passed.

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

Sitting suspended from 4.15 pm to 4.30 pm