

ELECTORAL AMENDMENT BILL 2008

Receipt and First Reading

Bill received from the Assembly; and, on motion by **Hon Sue Ellery (Minister for Child Protection)**, read a first time.

Second Reading

HON SUE ELLERY (South Metropolitan — Minister for Child Protection) [7.50 pm]: I move —

That the bill be now read a second time.

This bill amends the Electoral Act 1907 to remove the requirement for the Chief Justice of the Supreme Court of Western Australia to be the chairman of the Electoral Distribution Commissioners. The function of the Electoral Distribution Commissioners is to divide the state into districts and regions in accordance with the requirements of the Electoral Act. Section 16B of the Electoral Act 1907 currently provides for the Chief Justice to be ex officio chairman of the Electoral Distribution Commissioners. The Chief Justice has raised concerns regarding his role in the electoral distribution process. He has referred to academic writings that express the view that the conferral of such a role upon judicial officers is inconsistent with the independence and neutrality of the judiciary, perhaps even to the point at which a question might arise as to constitutional invalidity. The Chief Justice has also noted that given the importance of the electoral process, it would be preferable if the Chief Justice were in a position to sit in any litigation relating to that process, without being precluded from doing so by any perceived conflict of interest. Furthermore, the Chief Justice has pointed out that questions were raised in the Marquet case by some members of the High Court about the propriety of the Chief Justice participating in litigation relating to electoral distribution when he was himself part of the process.

In no other Australian jurisdiction is the Chief Justice required to be a member of the equivalent of our Electoral Distribution Commission, let alone be its chairman. In every other jurisdiction, apart from South Australia, there is no requirement that a serving judge be a member of the equivalent of the Electoral Distribution Commission. Rather, the relevant legislation in most other state and territory jurisdictions provides for a serving judge or a retired judge to be either a member of or to chair the equivalent of the Electoral Distribution Commission. Although it is accepted that the Chief Justice should not be required to serve on and chair the Electoral Distribution Commission, there are obvious advantages in terms of public confidence in the electoral distribution process in having a judge or retired judge fulfilling that role.

In order to address the concerns raised by the Chief Justice and in line with the practice adopted in other states and territories, this bill amends the Electoral Act to provide for the chairman of the Electoral Distribution Commissioners to be a judge or a retired judge of the Supreme Court of Western Australia.

Prior to making an appointment of a judge to the position of chairman of the Electoral Distribution Commissioners, the Premier is required to consult with the Chief Justice of Western Australia. The tenure of appointment for the position of chairman of Electoral Distribution Commissioners is for a term not exceeding five years, with the opportunity for reappointment on one occasion. It is envisaged that a retired Supreme Court judge may be appointed to fill the position. However, if no retired judge is available or willing to take the appointment, it will be possible to appoint a current member of the Supreme Court of Western Australia to fulfil the role.

The proposed amendments are acceptable to the Chief Justice.

I commend this bill to the house.

Debate adjourned, pursuant to standing orders.