

**ELECTORAL AMENDMENT (MISCELLANEOUS) BILL 2008**

*First Reading*

Bill read a first time, on motion by **Dr K.D. Hames (Deputy Premier)**.

Explanatory memorandum presented by the Deputy Premier.

*Second Reading*

**DR K.D. HAMES (Dawesville — Deputy Premier)** [4.24 pm]: I move —

That the bill be now read a second time.

The Electoral Amendment (Miscellaneous) Bill 2008 seeks to amend the Electoral Act 1907. I will now outline the main features of the bill.

Prisoners' voting rights: On 30 August 2007, the High Court ruled in *Roach v Australian Electoral Commissioner* and the Commonwealth that provisions of section 93(8AA) of the Commonwealth Electoral Act 1918 were invalid. This section disqualified all sentenced prisoners from voting in commonwealth elections. However, the High Court found that the former provisions of the Commonwealth Electoral Act 1918 that allowed prisoners serving a sentence of less than three years to vote were valid. The commonwealth government has not yet amended its legislation. Given the High Court ruling, the former provisions continued in force, and prisoners serving a sentence of less than three years were allowed to vote in the November 2007 federal election.

In March 2007, the Western Australian Electoral Act 1907 was amended to replicate the commonwealth's legislation prior to the *Roach* decision. Section 18(1)(c) was inserted into the Electoral Act 1907, which disqualified all sentenced prisoners from voting in Western Australian state elections. Importantly, prior to March 2007, persons serving a sentence of less than one year could vote in a state election.

The government has received and accepted legal advice that a blanket ban on all sentenced prisoners being prevented from voting in state elections is unconstitutional. Therefore, to comply with the High Court ruling, it is proposed to amend the Electoral Act 1907 so that prisoners serving a sentence of less than one year will be allowed to vote in state elections. I stress that prisoners will remain eligible to enrol and remain enrolled while serving their sentence.

Voting for citizens with no fixed address: Currently, people who have no fixed address cannot vote in a Western Australian state election. Section 17(1)(c) of the Electoral Act 1907 requires a person to have lived at an address for one month before being eligible to claim enrolment for state elections. Public concern has been raised with the Western Australian Electoral Commission by citizens who, having sold their family home and no longer having a fixed address, and having decided to travel around Australia, find that they are excluded from voting in Western Australian state elections. These concerns are compounded when they discover that people with no fixed address can vote in a commonwealth election and that people who have been living overseas for up to six years can now vote in both commonwealth and Western Australian state elections.

Section 96 of the Commonwealth Electoral Act 1918 provides for itinerant electors to be enrolled. These electors can nominate to be enrolled in an electorate even though they do not live there. The electorate in which they are determined to reside is in the following descending order: the electorate for which the elector was last enrolled; or, if not previously enrolled, the electorate for which the elector's next of kin is enrolled; or, if there is no next of kin, the electorate in which the elector was born; or, if the elector was not born in Australia, the electorate with which the elector has the closest connection.

Therefore, it is proposed to amend the Electoral Act 1907 to replicate the commonwealth provisions so that Western Australian citizens who have no fixed address can vote in a state election. The Western Australian Electoral Commission will use commonwealth electoral administrative procedures in providing this service to Western Australian electors who have no fixed address.

Inclusion of date of birth on the electoral roll: It is proposed to amend section 25A(1a) of the Electoral Act 1907 to include an elector's date of birth as part of the prescribed information that parliamentary parties and members of the Legislative Council and Legislative Assembly receive when they are sent the electoral roll. This amendment will make the state electoral legislation consistent with the commonwealth legislation.

Overseas electors to be registered as general early voters: Currently, under section 17A of the Electoral Act 1907, overseas voters who are enrolled to vote can vote in Western Australian state elections for up to six years after leaving Australia. Overseas enrolled electors can also vote in commonwealth elections up to six years after leaving Australia. Under commonwealth legislation, overseas electors can apply to be general early voters. The term "general early voter" describes certain categories of registered electors who automatically receive a postal

ballot once an election is called. Therefore, once a federal election is called, registered overseas voters are automatically sent a postal ballot by the Australian Electoral Commission. However, section 93 of the Electoral Act 1907 does not list overseas electors as general early voters for state elections. This means that an overseas Western Australian elector cannot receive a postal ballot automatically from the Western Australian Electoral Commission. Once a state election is called, the elector has to either apply personally for a postal vote or vote in person at a registered overseas early voting centre. This can prove difficult in many places around the world, given poor communications, distance and postal service schedules.

**Candidates distributing how-to-vote cards:** It is proposed to repeal section 183(6) of the Electoral Act 1907. This section currently states that if a candidate personally solicits the vote of an elector on polling day, the candidate is guilty of undue influence. This has proved to be a contentious section for candidates handing out how-to-vote cards on polling day. There is a legal view that if a candidate distributes a how-to-vote card on polling day, coupled with a request or appeal or other approach to an elector, it would be construed as personally soliciting the vote of an elector and is therefore a breach of section 183(6) of the Electoral Act 1907. Repealing section 183(6) of the Electoral Act 1907 would make commonwealth and state electoral legislation consistent on this issue. Under commonwealth legislation, candidates can distribute how-to-vote cards on polling day, provided they are six metres from the entrance to a polling place. Currently, section 192(1)(b) of the Electoral Act 1907, in its application, prevents candidates from distributing how-to-vote cards in a polling place or within six metres from the entrance to a polling place.

**Political party agents:** All political parties in Western Australia must appoint an agent for disclosure purposes. Party agents must register with the commission and assume responsibility for lodging disclosure returns on an ongoing basis. Currently, under political finance legislation, the appointed agent for a political party is not automatically deemed to be the default agent for endorsed candidates of the party. Under section 175C of the Electoral Act 1907, candidates must separately appoint an agent by 6.00 pm on the day before polling day at each election; otherwise they are deemed to be their own agent. The commission's experience on this issue is that many candidates for the major political parties are not aware that they need to nominate a party agent for this to take effect. This leads to confusion and time lost in following up on these matters, and to significant delays in compliance with disclosure requirements for all involved. Therefore, it is intended to amend section 175C so that the party agent is by default the agent for candidates from their party. If a candidate did not want the party agent to be his agent, he would complete the appropriate prescribed form to nominate a different agent or himself.

Lastly, there are some minor and consequential changes to the Electoral Act 1907. I commend the bill to the house.

Debate adjourned, on motion by **Mr D.A. Templeman**.