ELECTORAL AMENDMENT BILL 2014

Consideration in Detail

Resumed from 24 June.

Clause 5: Section 16B amended —

Debate was adjourned on the following amendment moved by Mr W.J. Johnston —

Page 3, lines 15 and 16 — To delete —

, protections and immunities

Mr W.J. JOHNSTON: The comma is not needed in our proposed amendment. This clause is about whether the protections and immunities of a royal commissioner are granted to the Electoral Distribution Commissioners. For a long time, the commissioners have been granted the powers of royal commissioners but not the protections and immunities of royal commissioners.

I was happy to be briefed by the Electoral Distribution Commissioners before the legislation went to the upper house and I understand the arguments of the chairman of the electoral distribution commission, His Honour Justice Neville Owen, but the opposition does not agree fundamentally with what he has proposed. The opposition is happy for the powers to be there, but it does not see any reason to grant to the commissioners the same immunities of royal commissioners. Effectively, no change is needed to the current arrangements. The opposition is not asking for change; it is asking to retain the status quo. Later on, the chamber will get to the question of the Freedom of Information Act, and that is what this issue is principally about. A royal commission is exempt from the requirement to disclose information through freedom of information, and that is understandable, but as I explained yesterday in my contribution to the second reading debate, this is a different style of process; it is very much done in public and it is expected to be done in public. Almost all of the documents are submitted publically and then people are allowed to comment on them. The commission produces an interim report and a final report, all of which is done publically. It is neither similar to a royal commission nor is it a commission of inquiry in which people go away to find out the facts of what happened; it is about people's opinion, both the opinion of those people making submissions and the opinion of the Electoral Distribution Commissioners when they make their decision in the end.

The commissioners have an issue about the resources that they believe may be required for a FOI application if one were to take place. I understand that there has not been an FOI application, but the opposition would say that that is an issue of government resourcing and not an issue of the efficacy of the FOI laws. The opposition believes that the more information that is disclosed, the better. In fact, as I observed yesterday, if we wanted to overcome the resourcing issue, we would simply have everything tabled at the end—every single document of the Electoral Distribution Commissioners would be made public at the end of the process. That way we would never have to worry about FOI because everything would be public. If that is not done, the protections provided to the community through freedom of information should not be undermined and should be allowed to continue. If there is a resourcing issue, that is a matter for the executive government to resolve; it is not a matter for Parliament to resolve through this legislation.

Mr C.J. BARNETT: The Electoral Distribution Commissioners have the powers of a royal commission so they can function. The commission is not a royal commission under the Royal Commissions Act, but it has the powers of a royal commission, although it does not have the protection and immunities of a royal commission and royal commissioners. The recommendation that the commissioners have the protections and immunities of a royal commission did not come from the government; it was a recommendation of Justice Neville Owen. In other words, it came from the commissioners. Other states do this, including New South Wales and Tasmania. The Electoral Act requires that the chair of the commission be either a current or retired Supreme Court judge, so that very much narrows the field. Judges have protections and immunities, and therefore it was recommended that if either a current or, more likely, retired Supreme Court judge were to be selected to perform this role from a limited and selected pool of candidates, they should be afforded the same protections and immunities as a judge. The government accepts that and also accepts that it provides a continuing level of protection. This will protect the commissioners from any legal action that could arise. Because of the way that politics and elections are going in Australia, particularly with the recent rerun of the Western Australian Senate election, all sorts of challenges, accusations and the like are expected to take place. The government believes that this is a modest change but that it will give comfort to those who serve on this commission, whether they are a serving or retired Supreme Court judge, and provide the same protection and immunities as if they were a judge and presiding over a royal commission. The government accepts that and does not believe that it is a big change, but it is an important change to the personnel who might accept this role.

Ms M.M. QUIRK: I accept all of that, but the question I posed on this particular provision was: what has happened to date that has served as an impediment to the commissioners doing their job that now requires this change? I am yet to receive an answer.

Mr C.J. BARNETT: I do not know what particularly motivated it. I doubt whether it was one particular incident, but if the member for Girrawheen looks at the way there has been contestability with all things to do with redistributions, elections and the like, including the occurrence of all sorts of minor parties and special interests, she will see that our system of determining boundaries and adjudicating over elections is becoming potentially quite precarious and that the results are being challenged more often. I think it is proper to give the commission that immunity and protection and, indeed, to ensure that it is truly independent so that those who serve as commissioners feel they are able to act without any undue pressure or without relating to public issues as they do. Elections are simply becoming more contentious; therefore, I think we should pass this amendment to protect the integrity of the distribution of electoral boundaries and the elections themselves.

Dr A.D. BUTI: I understand what the Premier said about this change not coming from the government but from Justice Owen. However, the Premier also said that the pool of potential commissioners was becoming narrower and that only judges and former judges can be commissioners. I understand that, but judges have those immunities and protections because of their role of being a judge. They do not have it because they are judges; they have it because of the role they perform as judges. When they serve on this commission, they are not performing the role of judges, so I do not think that the Premier's argument stands.

I also understand the suggestion that elections are becoming more contentious, but if someone challenges a change to an electoral boundary, they are challenging the decision; it is not a personal action against the decision-maker, so the decision-maker—the commissioner—should not have personal protection for something that may be ultra vires of their duties. The other side of looking at it is that if they are given protection and immunities, maybe it will not serve as sufficient discipline for them to undertake their duties, because if they feel that they are protected from any possible legal action and they act ultra vires or negligently, one would wonder whether they could be disciplined. I understand what the Premier said about elections becoming more contentious, but the commission makes a decision, and one should, of course, be able to appeal the decision. It is not a personal suit against the commissioner. Commissioners are not in this role as judges; they are in this role as commissioners. This clause gives them protection that we do not need to afford them.

Mr C.J. Barnett: That is a comment. I accept that that is a point of view.

Mr W.J. JOHNSTON: If the Premier wants to put any comments on the record, the opposition would welcome them, particularly if he wants to answer the questions from the opposition's lawyers, because they raise important issues. I will conclude by referring to section 16B(1), which states —

> For the purposes of this Part there shall be 3 Electoral Distribution Commissioners of whom —
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> (a) one shall be a person with judicial experience, appointed by the Governor on the recommendation of the Premier, who shall be chairman; and
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> (b) one shall be the Electoral Commissioner; and
>
> (c) one shall be the Government Statistician.

That is a great format for the Electoral Distribution Commissioners. I think everyone supports that. One Electoral Distribution Commissioner is a judge who, despite what Liberal members of Parliament occasionally say, we all respect and who is experienced at making decisions based on the facts presented to them. The second Electoral Distribution Commissioner is the Electoral Commissioner who is an independent person with a special role in the community and the third Electoral Distribution Commissioner is a government statistician. Although the Australian Bureau of Statistics is part of the federal Treasury department, it is an independent agency that deals with the number of people and those issues. To me, those three people are appropriate. Giving those commissioners the powers of a royal commission is very important because we want them to take evidence, inform themselves and obtain the information they need. Generally speaking, they need to be unrestricted in their role of gaining that information.

I turn to the question of protection and immunities. I had not thought of the question of immunities; that was not the part holding my mind, but rather the protections. I was attentive to Justice Owen in his presentation to the opposition and I respect the position he has put to us, but, in the end, we have come to a different conclusion. I will talk about that in a moment when we get to the proposed amendment to section 16B(7)(b), but we do not believe it is necessary to change the longstanding existing arrangement in this respect. If the Premier wants to make closing remarks, I welcome that. That is the Labor Party's position.

Mr C.J. BARNETT: There is a difference of view here. I emphasise that this has come from the commissioners. I am very conscious that it is not necessarily easy to find people to perform these roles, particularly since they

are chosen from such a small select group of current or retired Supreme Court judges. However, it has merit. People contest not only the election but also election results. Perhaps they have always been contestable, but the propensity to contest results seems to have increased. People can contest boundaries and whether the commissioner is in error or faces some conflict or whatever else. We could make our whole electoral process incredibly cumbersome and subject to risk if we do not provide these protections. By giving these immunities and protections along the lines of a royal commission, the commissioners can get on with the job without fear or favour that they will be challenged for whatever reason. I am not suggesting that the major political parties will do that, but a lot of fringe elements out there will pursue all sorts of causes. It is not to deny them their democratic voice, but it is to allow the commission to set about doing its job to determine boundaries in a tight time frame without interference.

Amendment put and negatived.

Mr W.J. JOHNSTON: I move —

Page 3, lines 20 to 25 — To delete the lines.

This has been circulated and the government has a copy of the amendment. It is the same amendment that was moved in the Legislative Council. This is a continuation of the discussion that we just had. I accept that this is on the recommendation of the Electoral Distribution Commissioners and not specifically from the government, but one way or another it is presented here as part of this bill. We propose to remove these words —

> (b) the provisions of the *Royal Commissions Act 1968* have effect in relation to the Commissioners as if they were enacted in this Act and in terms made applicable to the Commissioners and the performance of the functions of the Commissioners under this Part.

Again, we are taking the conservative position and saying that the current act is sufficient and we do not need to provide these additional protections to the Electoral Distribution Commissioners. We appreciate the arguments made by the commissioners, but we do not agree with them on this occasion. We have had part of that debate already. Sometimes we pass this type of provision and then we end up with unintended consequences because it infers provisions into the act rather than have the provisions come into the act. Therefore, we do not believe it is the appropriate way to proceed.

I take on board the Premier's comments about the litigious nature of society. I make the point that the reason we had a Senate re-run in Western Australia was because the Electoral Commission got things wrong. It demonstrated why we need the potential involvement of the courts, because when things go wrong, we need an arbitrator to fix the problem. That is exactly what happened with the Senate re-run. Of course, it was hugely expensive and for the Labor Party side it was a deeply troubling result, but that is not an argument against allowing review by others. It is rather evidence of a strong and effective democracy.

The ACTING SPEAKER (Mr N.W. Morton): Sorry, member for Cannington. The advisers have permission to enter.

Mr C.J. BARNETT: It is my fault that the advisers were not here earlier. They were not aware of the change in timing, so I apologise to the house and to the advisers for that.

Mr W.J. JOHNSTON: I made the observation yesterday about going to the United States in 2002. We went to Florida, which had the hanging chad and problems with counting the votes in the 2000 presidential election. It was a great controversy, but the outcome was the outcome. This is not canvassing the capacities of the people who are doing the job because, quite frankly, on each occasion that I have dealt with the redistribution commissioners, I have been amazed by the quality of the work they performed. Rather, this is about making sure that we have an appropriately structured open and transparent process. We are of the strong view that the current provisions in the act are strong enough. Therefore, we do not support the insertion of this provision.

Mr C.J. BARNETT: As the member for Cannington said, this is, basically, the issue that we just debated. It is a consequential amendment, effectively, so the government does not support this.

Amendment put and negatived.

Mr W.J. JOHNSTON: I made sure that yesterday I could come back to the words before we moved off. In a moment I will move a subsequent amendment that is not related to these provisions. I want to clarify what we are doing. These provisions prevent any part of the commissioners' decision process being judiciable. That is what I understand. We will get to the freedom of information issue later.

Mr C.J. Barnett: Is this the member's amendment? I do not understand what the member is getting to here.

Mr W.J. JOHNSTON: I understand the Premier's comments a minute ago to be that we do not want the courts interfering with the process of the redistribution. People are more and more taking matters about the political process to the courts. Leaving aside the FOI bit, we are now effectively saying that the courts cannot review the

work of the distribution commissioners and whatever outcome they come up with; that is the end of the argument. There is still a process and a debate about the work. I am not saying that they will go behind closed doors to do their work; that will still be done in public. Everyone will still put in submissions and there will be commentary. The commissioners will still take evidence and do all the work that they need to do. However, at the end of that when the maps have been issued, the courts have no place to be involved in reviewing any technical aspect of the operation of the commissioners. I understand that is the government's intention. If my understanding is wrong, please feel free to correct me.

Mr C.J. BARNETT: My understanding of this amendment is that obviously two years is the mid-point in a four-year election cycle. To move from two years to 18 months —

Mr W.J. Johnston: No; that is my next amendment, Premier.

Mr C.J. BARNETT: Sorry; I thought that is what we were on now.

Mr W.J. Johnston: No. I am asking what the purpose of clause 5 is before I get to my proposed new clause. What does proposed section 16B(7) do? Is it right that it will cut out the courts?

Mr C.J. BARNETT: Just for clarification, I thought the member's amendment was to clause 5.

Mr W.J. Johnston: I haven't moved it yet.

The ACTING SPEAKER: We have dealt with the amendment. I think the member for Cannington is making further comment around clause 5.

Mr W.J. JOHNSTON: I had two amendments to clause 5, both of which have now been defeated, and in a moment I will move proposed new clause 5A. Yesterday I checked with the Speaker to make sure that, once my two amendments were defeated, and they now have been, I could come back and ask about the clause, and I was advised that I could. I am talking not about my amendment, but about clause 5, which proposes to delete section 16B(7) and insert this proposed new subsection. Am I correct in my understanding that the provision to be inserted will put it beyond doubt that the work of the commissioners cannot be reviewed by the courts—that it is not "justiciable", which I think is the proper word?

Mr C.J. BARNETT: My advice is that the final decisions of the commissioners are not subject to review. I think that is clear. This provision will prevent court action during the process of setting the boundaries.

Dr A.D. BUTI: So it is non-justiciable. Let us say that the Electoral Distribution Commissioner gets it completely wrong—what process would rectify that? Would it be a political process and would legislation have to be introduced to try to correct that? I know it would be rare, but there could be a rogue commissioner.

Mr C.J. BARNETT: If there were a bizarre distribution, I guess it would require us in this chamber to act. If we got a completely perverse result and someone lost the plot, I think we would have to legislate, yes.

Clause put and passed.

New clause 5A —

Mr W.J. JOHNSTON: I move —

Page 3, after line 25 — To insert —

5A. Section 16E amended

In section 16E(b) delete "2 years" and insert:

18 months

This new clause will change the way that the redistribution works. At the moment, the roll closes two years after the date of the election. Section 16E states —

The State shall be divided into districts and regions in accordance with this Part —

(a) as soon as practicable after 26 February 2007; and

(b) as soon as practicable after the day that is 2 years after polling day for any subsequent general election for the Assembly.

I will quickly let members know that when people fill in an enrolment card to get on the electoral roll, that information goes to the commonwealth Electoral Commission, which then processes the data and passes it on to the state commission, because Western Australia has a separate state electoral roll. That data is processed basically once a month. The close-of-roll process occurs two years after the election, and that determines the number of people in each electorate. That is the basis upon which the state is divided into 59 electorates. Later in this bill, the time lines for the commissioners' work will be extended. The Labor Party accepts the necessity to have that extension in the bill. We do not have a problem with that; we agree with the commissioners. However,

the effect of that will be to delay the final distribution of the completed new maps for the 59 seats and six regions in the state. We are saying that that is an adverse outcome for the political process and we would like those maps to be produced earlier, and the way to do that is not to argue against the commissioners' need for extra time, which we accept and support, but to ask them to start the process earlier. We are saying that it should start six months earlier, because we think that with the extra month, the decision would be made about 18 months instead of 15 months before the date of the next election, and we think that would be a better outcome. We think it would be better for all sides of politics. We do not think it is an issue that particularly advantages the Labor Party; we just think it is something that everybody on both sides of politics would support. That is the purpose of our amendment, and we strongly believe that it should be supported.

Mr C.J. BARNETT: The government does not agree with this amendment. The member has proposed that the process of drawing up new boundaries begin 18 months after an election. Under the current legislation, the process begins two years after an election. It is not simply a matter of six months; it is also how it will fall across a calendar year. If the whole process were brought forward by six months, it would mean that the data would be a further six months out of tune at the time of the following election, so we would be denying ourselves by six months more up-to-date statistical data, population data and whatever else will be worked on, and I think that would be a mistake. I think it is adequate to start the process mid-term in a four-year term. If this amendment were accepted, it would mean that the process would get underway around September, and I think that is too early. It would also throw out of whack, if you like, the whole cycle. It would mean an intense period of map production, advertising, determinations, submissions and so on would fall over the Christmas period. That would simply be impractical. It would mean the loss of six months of data and time, and that is important because the commission would not be set up, it would not have the staff and it would not be ready to go. If this amendment were applied to the current term, it would mean that the process would have to start now. I think that is wrong, but it would also throw out the whole sequence and there would be intense periods when no-one was engaged because they would be on Christmas holidays. I do not think it is a practical suggestion and I do not think it is necessary. I think two years is adequate. The main value is that the more recent the data that is used, the more accurate the final distribution is likely to be in the equality of voters in different electorates, and if the process were to be brought forward we would be denying ourselves six months of up-to-date data.

Mr W.J. JOHNSTON: I want to put a couple of other issues on the record after the Premier's comments. I appreciate the Premier's reply and I understand the view of the Electoral Distribution Commissioners from discussions directly with them. I will make a couple of points. Firstly, before we had fixed terms in Western Australia, only two elections since World War II were not held in February—that is, the December 1996 election and the September 2008 election. Otherwise, the elections were always held in February, and often at the beginning of February. Two years from the beginning of February is the beginning of February. The problem now is that the process begins two years from the middle of March, because the election is now held on the second Saturday in March, so an extra month is lost because the election is now slightly later in the year. We might think that a month is a month, but we are now adding another month because the commissioners need an extra month in the process. We do not doubt their need; we agree with them. The problem for us is that the process is being delayed not by one month, but by two months because the fixed-term election is held in March. Instead of a process that might end in September or October, the process will now end in October, or perhaps even November, so there will be creep at the other end.

We had a discussion about the possibilities, and the relevant date could be brought back to January. Of course, it is not as though they can start work on the day that the two years is up because, as I described earlier, they have to process the data. It actually starts a little late—as soon as is practicable after the two years, so two or three weeks or sometimes even a little extra is lost. We can see how this thing keeps stretching out. Our view is that we should take it six months earlier. It is true that that means we are dealing with enrolment figures that are only 18 months rather than two years after the election, but it is interesting that in the redistribution for the 2005 election, which was under the old redistribution rules, the electorate of Wanneroo had 42 000 electors in it by the time we got to election day, which was nearly double quota. That was under the old system, in which the commission used real data and projections, so I do not understand how that outcome came about. Even when using data that is two years after the election, we can still end up in this extraordinary position. I think the seat of Wanneroo had a special provision under the determinations of the Salaries and Allowances Tribunal to give the member additional money for their electoral allowance because it was so huge. Indeed, my colleague the member for Butler's seat is now the largest in the state; it is enormous. It is growing so fast. Even under the current rules, we end up with anomalies, so my suggestion is that we do not legislate for anomalies; rather, we try to legislate for the main game. Maybe our crude amendment is not perfect, but what we are saying is that we would love to have the process starting earlier. If it is not going to start 18 months earlier, we should at least get it underway closer to the time at which it used to get underway when we had a February election, or perhaps even in January, because we know there are all these things that the Premier has described about the problems of

going over Christmas. But the earlier we start, the earlier we finish, and that is to the advantage of democracy in this state.

Mr C.J. BARNETT: Obviously Wanneroo and now Butler are both fast-growth areas, but that was when distributions were less frequent, so there was five years of growth in the system; now, under this system, it will be only two years, so hopefully even rapid-growth areas like Butler will not get as far out of whack as Wanneroo did.

Mr W.J. Johnston: Wanneroo was actually between the redistribution and the election; that's all right.

New clause put and negatived.

Clause 6: Section 16F amended —

Dr A.D. BUTI: I fully understand the need to ensure that the commissioners have adequate time to do their work. One may feel that one needs more than 42 days or 90 days, but I am just a bit concerned about "as soon as practicable after". I take the Premier's point that they might need a greater period of time, but could we not at least have some time limit? I am concerned that "as soon as practicable" could drag on and on, and if they can justify that, what can we do? We want their tasks to be done as soon as possible, obviously, but we do not want to put them under such pressure that they do not do their job appropriately, and that is why the government is amending the time period. I am just wondering whether we are leaving it too open-ended by not actually having some sort of time limit there.

Mr C.J. BARNETT: While it says "as soon as practicable" and that allows for the two years, the more practical issue is that, even before then, staff will have to be recruited, office accommodation found, systems set up, websites and whatever else, so that would be done in the normal way. Hopefully, when the calendar hits that two-year point, they will be functionally underway. The current problem is that they have not started and the first thing is to find accommodation, staffing and the like.

Mr W.J. JOHNSTON: I just make the point that the commission is always ready to run from the moment the closure of the rolls is complete, which is the first thing that has to happen. We are mindful of the practical needs of the commissioners and I commented on that in my contribution to the second reading debate. They have to decamp to Albany to take soundings on somebody's submission, or whatever, and these are all perfectly reasonable things, but it makes it harder for politics if the maps are not ready because it delays people's opportunity to participate in the democratic process. Neither the Labor Party nor the Liberal Party can preselect a candidate until they know what the districts look like, and the later the districts come out, the harder it is for the community to evaluate the candidates. We are not opposing clause 6, but we draw attention to the practical impact of it.

Clause put and passed.

Clause 7: Section 16I amended —

Mr W.J. JOHNSTON: The opposition is opposing this clause. Again, we think that the current wording is suitable. It could even be argued that means of travel is included in the term "communication" and does not benefit us in determining boundaries. It is a longstanding arrangement; we have all had to go through many different boundary amendments under the current wording, and I think we should be satisfied with it. I understand that it is a recommendation by the electoral commissioners, but the opposition is not quite sure what the particular reasons are for wanting to add the word "communication".

Mr C.J. BARNETT: I guess criteria can be a bit nebulous. This is not something that the commissioners must take into account, but it is something they "may" take into account. I do not know if it is of any great moment, to be honest, but I think it is a fair consideration. Obviously we are talking about regional rural electorates, and I am not convinced whether it is more or less difficult to cover a rural electorate; I know that is part of the folklore. Are there any country members here? Yes, one up the back!

Mr P.B. Watson: Go for it!

Mr C.J. BARNETT: I remember that when the debate on one vote, one value was raging, the argument was that country electorates are remote and vast. The then Liberal leader, Matt Birney, was arguing that point very vehemently in the house, and somebody pointed out that his seat of Kalgoorlie was smaller than my seat of Cottesloe—significantly smaller, both geographically and in terms of population.

Mr P.B. Watson interjected.

Mr C.J. BARNETT: No, but there were rural seats that actually were not large and vast; they were smaller than some of the metropolitan seats. What seems to be self-evident—that country seats are large seats—is not always the case. I also remember—he is not here, so I can say this—a by-election being held when the former member for Merredin was elected. We all went out and campaigned in what was essentially a Liberal versus National

Party contest. I went out, travelling around the towns in that electorate, with former member Mike Board. I think we charged around about six or seven towns in a day. I remember Mike turning around to me and saying, "This is a bit easy, isn't it?" In a sense, it was. We went to one town, we met the three or four community leaders who knew everyone in the town, and whatever we wanted to say or they wanted to ask was covered very quickly. We would drive another half an hour to the next town, and by the end of the day we had pretty much covered every issue and every person in the electorate. I also remember the former member for Maylands speaking at that time about some of the complexities involved in a lot of the urban electorates, so I think it is a bit of a myth.

Dr A.D. Buti interjected.

Mr C.J. BARNETT: Yes, and some of the social issues and complexities in urban electorates. The electorate of Kimberley, on the other hand, is clearly a vast electorate that has a whole lot of complex social issues, but that is not true of all regional and rural electorates. However, having said that, the ability to communicate electronically with constituents makes it a lot easier than it was even a few years ago, especially in rural electorates.

Travelling around electorates, and from electorates to Parliament, is also not self-evident. It is probably very difficult for the Leader of the National Party, the member for Warren–Blackwood, because although it is not far from Perth, the way transport works makes travelling around the electorate very difficult. I look again at the member for Kimberley, who represents a vast electorate. If she needs to see someone in Broome, there are multiple flights a day between Perth and Broome. The member for Warren-Blackwood, whose electorate is far closer to Perth, does not have that option. It is very easy for us to make the mistake of generalising. I clearly recognise that getting around the Kimberley from other centres is difficult. Therefore, it is reasonable that the commissioners have the capacity to take communication and travel within the electorate and to Parliament or Perth into account. It is up to them to choose whether they take those factors into account and how much weighting they give them, but it is a valid issue, and one that is periodically debated in this house. I hope I have not promoted another debate on that. I hope that the members for Kimberley and Geraldton stay seated!

Mr W.J. JOHNSTON: I would like an idea about what we are changing. I will use the Kimberley as an example. As I understand it, someone can catch a flight from Kununurra to Perth with Air North or a Qantas affiliate, and from Broome to Perth. Is the argument that those two places should not be in the same electorate? Does the Premier see what I mean?

Mr C.J. Barnett: No. I am saying that one would assume that communication from Broome would be difficult. It may not be compared with somewhere relatively close like Denmark, where the Leader of the National Party lives.

Mr W.J. JOHNSTON: That is the point. At the moment the act uses the word "communication" and the government is seeking to add the words "means of travel". I seek clarification. We have moved an amendment; that was the decision of our caucus. I know the numbers in the house, so I know what will happen to the amendment, but it would be good for the government to let us know more about "means of travel". We do not want a remote electorate split up. Let us look at the Pilbara. People can fly from Perth to Newman and from Perth to Karratha, but they cannot fly from Newman to Karratha. Is that an argument for Newman and Karratha being in separate electorates? Does the Premier see the point I am making? We do not know how the Electoral Distribution Commissioners will interpret "means of travel", but clearly as a Parliament we do not want them to interpret it to mean that the Pilbara cities near the coast and the Pilbara inland do not belong together, because they are part of the Pilbara. We want the definition of "means of travel" locked down so that we can be comfortable with what is intended by "means of travel". The member for Forrestfield's electorate is on the other side of the airport; does that mean we should pull apart the seat of Forrestfield because some people go north to Midland and some people go south to Gosnells? That is what we are trying to get a handle on. We know what the current words mean, because we have been working with them for a period. The proposal is for new words. We are taking a conservative approach because we do not think the words need to be changed. If the government wants to change them, we would not mind knowing what it is the government is hoping to achieve so that we can get a picture of how it will be different. As the Premier said, it might not be different at all. If it is not going to be different, why is the change being made? Can the Premier provide us with examples of means of travel that would be different from the existing word "communication" because, in a broad sense, "communication" does not just mean a phone; it also means travel, cars et cetera.

Mr C.J. BARNETT: I do not know whether "communication" is defined in the act; I doubt that it is. Just on the last point: to most people today, communication does not necessarily mean face-to-face interaction; there is mail, online messages, websites or whatever else. That is fairly universal now, assuming that people have reception. To me, "means of travel" recognises—it is really only for regional areas—the ease with which someone can travel around an electorate and have that face-to-face contact. A transport system or a safe road network in particular areas that make it easy to travel across the electorate might be different from an electorate in which the travel lines are orientated in a radial sense to Perth or to a regional centre. That is valid. Is it a boundary that can

be travelled across at ease or is it one in which one has to go into a regional centre and then out of that regional centre to get to somewhere fairly close? I imagine that is the case in the Kimberley, because members cannot really just go to the next town easily; rather, they would have to go into a regional centre and come back out. That is a valid point in terms of the ability of someone to properly represent their constituency by having face-to-face contact. That is my understanding. I imagine the commissioners will interpret it similarly. Again, it would be in only regional areas and only if the commissioners choose to take it into account. Some people would certainly argue in their submission—I am sure the member for Cannington has prepared such submissions—that it is easier to travel across those boundaries and more difficult under those boundaries. That is a fair point.

Mr W.J. JOHNSTON: I do not want to labour the point, but we are concerned because in our view the community of interest is the most important factor; adding additional criteria should not be taken to undermine the importance of community of interest. It is harder to work out what the community interest is in the metropolitan area; it is much easier to work out in the country. We have a small concern—it is not major because we trust the commissioners—that "means of travel" can be used to break up "community of interest" because it becomes another leg to an argument, which we oppose.

Mr C.J. Barnett: I agree that community of interest is far more important, but I suspect that the means of travel would be the result of the community interest. It is either the result of the community interest or it would create the community of interest.

Mr W.J. JOHNSTON: Everyone is referring to this for country areas, but the provision applies equally to the city. Again, it is often harder to judge the community of interest in the city. It is easy for Armadale and it is probably easier for Cottesloe —

Mr C.J. Barnett: Yes; it is easy where there are natural boundaries.

Mr W.J. JOHNSTON: It is interesting, because I once put in a submission that called for the North Metropolitan Region to include Fremantle, because there is nothing in the act that states that the region cannot cross the river. It would obviously be a good way to shake things up!

Mr C.J. Barnett: You don't want people south of the river getting involved north of the river!

Mr W.J. JOHNSTON: Yes!

Community of interest should be the principal issue that the commissioners deal with. We will not divide on this clause, but we do oppose it. We will watch this issue, because we think it is quite important.

Clause 7 put and passed.

Clauses 8 and 9 put and passed.

Clause 10: Act amended:

Mr W.J. JOHNSTON: We oppose this clause. Part 3 of the Freedom of Information Act will be amended with clauses 10 and 11 of the bill so that the Electoral Redistribution Commissioners will be exempt from the Freedom of Information Act. To start, I make the point that we understand that this is not about exempting the Western Australian Electoral Commission from the Freedom of Information Act; we understand that this is only about the Electoral Distribution Commissioners. Notwithstanding that, we still oppose it. I outlined in the second reading debate some of the considerations about that. I made the point that if there is a resourcing issue for freedom of information, that, in our view, is an issue for executive government. Therefore, we do not accept resourcing as a reason to exempt the Electoral Distribution Commissioners from the obligations of the Freedom of Information Act.

Moving on to the next issue, which is the decision-making process of the Electoral Distribution Commissioners, although I do not necessarily agree with every single line drawn by the Electoral Distribution Commissioners, I think that, generally speaking, the process is pretty good. So I am not at all critical of the distribution commissioners, although sometimes I think their draft maps are a bit odd. I think that they recognise that too, which is probably why they put them out. A couple of years ago, the commissioners recommended the abolition of the seat of Joondalup. I think everybody, including the commissioners, realised that was an error and they put the seat of Joondalup back in. But those sorts of things happen; that is not what the issue is about. The issue is about transparency and ensuring that the work of the Electoral Distribution Commissioners is done publicly; that is important.

I recognise that all the submissions, all the commentary on the submissions and all the comments on the comments on the submissions end up being made public. I recognise that the draft maps and the argument that the commissioners have used to form the draft maps are made public, and that the final maps and the reasoning of the commissioners in coming to their final conclusion are made public. There are very few documents that are not made automatically public by the Electoral Distribution Commissioners. Documents that would not be

automatically made public would be what-if scenarios; for example, if the commission asked Landgate, "What if we did this? If we put that suburb into that electorate, what would the effect be?" Currently, those sorts of things are not automatically made public and Justice Owen explained his sensitivity about those things. What I am saying to the electoral distribution commission is that I understand the sensitivity, but do not worry; it is not actually something that it should be sensitive about. The more information that is made available to the public the better, not just in this process, but in all government processes. We very strongly are of the view that we should not exempt the Electoral Distribution Commissioners from the freedom of information process.

Mr C.J. BARNETT: Again, this is a point where we will differ. I just make the point that this proposal to exempt the Electoral Distribution Commissioners from the freedom of information process has come from the electoral distribution commission itself. I acknowledge the point made by the member for Cannington that much of the information—probably the vast majority of it—is made public in any case. My view is that part of the motivation would be that the process is in a tight time frame to get those boundaries drawn well in advance so that candidates can be endorsed, campaigns run and the election itself run properly. However, the freedom of information process is there to provide the public with access to information within government itself. It is not there to get into judicial or quasi-judicial bodies, and I would see this as being in that category. In that sense, the member acknowledged that the Electoral Commission as a government agency is subject to FOI, and he is right about that; but the distribution commission, in my view, should not be.

One of the most important aspects of the electoral distribution commission is its integrity and related to that very much is its independence. That is built into the legislation in a number of ways such as requiring that the chair be a current or former Supreme Court judge; the Premier of the day consult with the Leader of the Opposition about that appointment, which would just seem to be natural fairness; and the decisions are final and binding. We all know in politics that FOI, in most cases, is used very legitimately by the public, the media, members of Parliament and interest groups to elicit information; however, it can also be used as a weapon, and it is, by both sides of politics. I think if we opened up the distribution commission to FOI, we would very much compromise its progress in doing its job; it would potentially delay it, because FOI itself would require a due process. We could see perhaps members of Parliament, political parties or candidates seeing that the distribution was maybe not going their way, use FOI as a target on the commission to try to delay it, frustrate it or even upset its decision-making. Although I understand the sort of purist argument that FOI should be everywhere, I think, in this case, as with courts and the like, it should not apply. I think that any FOI should be through the Electoral Commission, which must be accountable in that sense, but not this distribution commission, because I think it would make it very much a target of political activity or the activity of a political party, aspirant candidates, protest groups or whatever else. Therefore, I think it is correct that it be exempt from freedom of information.

Ms M.M. QUIRK: I understand the Premier's argument, but I pose the question whether making a blanket exemption or exclusion of the Electoral Distribution Commissioners from FOI is perhaps using a sledgehammer to crack a nut. Would it not be better if there were FOI applications that were litigious, vexatious or likely to cause greater administrative burden on the commissioners and effectively delay them, that the commissioners could seek an exemption about that specific request, rather than completely exclude these deliberations from FOI altogether? It seems to me that it is quite a ham-fisted way of dealing with it. Also, I think it is a fundamental principle of government that, wherever possible, it be open and accountable. My view is that simply having a blanket exclusion is not what is required to meet what the Premier sees as a concern, which to me can be dealt with by clause 11, "Effective operation of agencies, matter impairing etc.", in schedule 1 of the Freedom of Information Act. My view is that the existing FOI act has an exemption that would achieve the purpose the Premier is trying to seek with total exclusion.

Mr C.J. BARNETT: I understand the point, and I accept that this is a blanket exemption from freedom of information, but that does not preclude the commission from responding to requests or inquiries from the media, which I imagine is not infrequent, or indeed if there is a public issue running about it, from receiving correspondence. The commission can still choose to respond as it sees fit and I think that flexibility is always there. In the process, it also generally puts information online and it may raise discussion papers, philosophical points of view or whatever else. I think all that is reasonable. In fact, I have no doubt that if we did not have an exemption from FOI, the commission itself would become a target when it is trying to independently undertake its role.

Clause put and passed.

Clause 11: Schedule 2 amended —

Mr W.J. JOHNSTON: I am not intending to have a long debate. We have made our position clear: we oppose clause 11. I do not intend to speak at any length, but simply say that I think the government could have overcome some of the problems raised by the Electoral Distribution Commissioners by, say, exempting the operation of the

act while the commissioners are doing their work. Once the final maps are published, the government could then allow the FOI provisions to apply. But we will oppose the clause and that is the end of the debate.

Mr C.J. BARNETT: I have just been advised that the Information Commissioner himself has agreed to this exemption and has indicated so in writing. I do not know whether the member for Cannington wants to see that correspondence, but we can probably provide that if he is interested.

Mr W.J. Johnston: Sure.

Mr C.J. BARNETT: It is a fair point of debate, but I am very strongly of the view that that exemption is appropriate.

Clause put and passed.

Tabling of Paper

Mr W.J. JOHNSTON: Is the Premier going to provide that letter to us?

Mr C.J. BARNETT: Yes. We can make a copy of it shortly and I will provide that letter from the Information Commissioner to the member.

Mr W.J. JOHNSTON: I thank the Premier.

Debate Resumed

Title put and passed.

Leave granted to proceed forthwith to third reading.

Third Reading

MR C.J. BARNETT (Cottesloe — Premier) [3.51 pm]: I move —

That the bill be now read a third time.

MR W.J. JOHNSTON (Cannington) [3.51 pm]: I am not going to spend a long time on the third reading debate. Again, the Premier gets to speak after me, so he can say anything he likes and I cannot reply, but I was amused by the Premier's discussion about the Merredin by-election in 2001 when Hendy Cowan retired and the Liberals and the Nationals competed in that seat.

Mr C.J. Barnett: They did. The night before was the night I did my star jump, if I remember.

Mr W.J. JOHNSTON: The night before, yes—absolutely.

Mr C.J. Barnett: I should have been thrown out of Parliament, but it was three o'clock in the morning.

Mr W.J. JOHNSTON: Yes. It was amusing too because the National Party kept ringing me and saying, "Are you going to run a candidate?" I said, "Oh, yes—okay." Hon Darren West was our candidate. He had run in the other seat. I forget which seat it was. I think he ran in Moore in the previous election, and he was our candidate because the National Party said that it wanted a candidate. Then the National Party distributed our how-to-vote cards. It was the first election in Merredin in which we had our how-to-vote cards distributed on election day at every polling booth in the electorate. It was very interesting. The Leader of the Opposition went up there and worked with Hon Darren West on that campaign on the election day. They have some great stories about some of the things that happened. Anyway, that is just as an aside. There was also the media release from Max Trenorden; I ended up using his media release in an advertisement in the lead-up to the 2005 election because it was so flattering of the Premier. If the Premier needs it, I can send him a copy. I still have a copy of the media release; do not worry.

Mr C.J. Barnett: I can't remember—for the by-election?

Mr W.J. JOHNSTON: Yes, in the lead-up to the by-election. I will drop the Premier a copy the next time Parliament is in session. Anyway, they were interesting times. It was the second election for me as secretary. The first one had been the Nedlands by-election.

Moving on, I think it is very good that we have a robust democracy that allows people to have proper representation. When we are amending important legislation that is fundamental to the democratic process, it is appropriate that we have a thorough debate. The Labor Party opposes many of the provisions outlined in this bill, and we have had a detailed discussion about those on the way through. I will outline a few of them and I will let the Premier know that the Labor Party will, as we did in the upper house, oppose the bill at the third reading, although we supported it at the second reading. The reason for that is that the second reading allows the debate to take place; supporting the third reading is if we approve of the legislation before the house. We have great respect for the Electoral Distribution Commissioners. We would be happy to grant the additional time that they are seeking through clause 6, but we do not believe that that should occur when the two-year arrangement takes

place. I make that clear. We are very, very comfortable giving the commissioners additional time to do their necessary work. That is entirely appropriate and we agree with that, but we are concerned that this is now a further delay to the completion of the commissioners' work, and we do not think that that is in the interests of the state. We have been consistent and clear on our position on this issue. We respectfully put our position. We appreciated the opportunity to speak on a number of occasions with Justice Owen and the staff that he has with him—that is, people like Justin Harbord who are very high quality employees of the Western Australian Electoral Commission. However, in the end, we cannot bring ourselves to support the legislation in its current form. Our principal issue is the question of the timing of the redistribution.

The Premier has raised important issues on the question of the commissioners doing their work over Christmas. Everybody knows that in Western Australia nothing happens before Australia Day in January. When I was secretary of the ALP, Stephen Smith used to always say to me, "Politics starts on Australia Day." There is no question that the period from Christmas to Australia Day is dead time, and it would be difficult for the commission to receive submissions and deal with them at that time of the year. I accept that completely, but that is not of itself justification for having the process delayed to too late in the proceedings. That is why we believe it is better to have the whole process wrapped up early enough so that we can have the candidates selected by the political parties prior to the Christmas 15 months before the election. We think that is the appropriate time line. Even under the current arrangements in the act, we effectively cannot get our political party candidates into the field before Christmas—even with the act without amendment—and it is going to be even worse if we proceed in the way the government is recommending through this bill. We understand that this is not a political bill. It is not as though the Liberal Party is seeking political advantage through these changes. We make no such assertion. We understand that these are recommendations from the Electoral Distribution Commissioners, and they are people we hold in high regard and deep respect. But, respectfully, we say that the outcome is not ideal. The outcome will not serve the interests of democracy in this state.

We then turn to the question of the immunities of the commissioners. A learned judge who had spent his life in the service of the community at the bar and then on the bench would like to continue to have the same protections afforded to a judge or to a royal commission. The problem is that it is not an analogous situation. This is an administrative body that is performing an administrative task, and because it is an administrative body performing an administrative task, administrative law should apply. Again, we are very strongly of the view that the protections and immunities of a royal commission should not be granted to the Electoral Distribution Commissioners, and we do not believe that exempting the distribution commissioners from the Freedom of Information Act is the appropriate choice. We do not agree with either of those decisions. On the other hand, we think that the provisions in clause 9, which will allow the commissioners to make their decisions in the form of maps rather than in the form of descriptors, is a good decision. I explained in a little detail the strange procedure we have of dealing with submissions; that is, all the major parties and many other people in the community who are making submissions create them in electronic format but then have to convert them to paper to submit to the commission, which then has to convert them back to electronic format, and vice versa three or four times. That is not sensible.

Debate adjourned, pursuant to standing orders.