ELECTORAL DISTRIBUTION REPEAL BILL 2001

Second Reading

Resumed from 18 September.

HON GEORGE CASH (North Metropolitan) [5.42 pm]: The long title of this Bill states that this is -

A Bill for

> An Act to repeal the *Electoral Distribution Act 1947*, to make consequential amendments to the *Constitution Acts Amendment Act 1899* and other Acts, and for related purposes.

The second reading speech, presented by the Minister for Racing and Gaming on 18 September, comprises six paragraphs. When compared to the second reading speech on the Electoral Amendment Bill - which contained considerably more comment - the Government, through the minister, appears to want to say very little about what this Bill seeks to achieve. The first five paragraphs refer to the history of the Western Australian electoral system. Although that is important, it is not necessarily hugely relevant to what we are addressing in this Bill. The sixth paragraph states -

> This Bill proposes to repeal the 1947 Electoral Distribution Act.

That is the main purpose of the Bill. It then states -

> It also proposes to remove -

[Quorum formed.]

Hon GEORGE CASH: The second reading speech states -

> It also proposes to remove from the 1899 Constitution Acts Amendment Act the provisions relating to the numbers of and representation of electoral regions and electoral districts.

Additional comment follows, which, although interesting, does not necessarily add to the substance of the two previous sentences.

The second reading speech provides very little information. One would be entitled to question why it does not go into greater detail about what is proposed. Why is it not like most other second reading speeches in this place in providing voluminous comment about why the Government proposes a particular course of action? I suggest that the Government did not want to go into great detail about what it was doing because it wanted the people to believe that no dramatic change would result from the passage of this Bill. It is not made clear that the Bill is very much companion legislation to the Electoral Amendment Bill, which in the main, substitutes the provisions of the Electoral Distribution Act 1947 and transfers them into the Electoral Act 1907.

I referred to its being "companion legislation". Whether that is the appropriate terminology remains to be seen.

[Quorum formed.]

Hon GEORGE CASH: In my view, the limited comment in the second reading speech is a ruse to encourage the people of Western Australia to believe that nothing significant or dramatic will result from the passage of this legislation. As I said, the Electoral Distribution Repeal Bill is very much companion legislation to the Electoral Amendment Bill. Whether it is appropriate to use the term "companion legislation" remains to be seen, because the Government is embarking on amendments to related legislation. As members know, every Bill in this House stands on its own. Although a Bill may relate to other legislation, it must be read as a single Bill, or Act in due course. If it amends or repeals other legislation, that other legislation must be read in concert with the Bill that is being debated - in this case the Electoral Distribution Repeal Bill.

This Bill was originally introduced into the House on 18 September by the Minister for Racing and Gaming. It was referred to the Standing Committee on Legislation on 27 September in the following terms -

> That the orders of the day for the second reading of the Electoral Amendment Bill 2001 and the Electoral Distribution Repeal Bill 2001 be discharged and the Bills be referred to the Legislation Committee for inquiry and that it report the Bills to the House not later than 26 November 2001, and if the House is not sitting on that day, the report is to be presented to the President, who is to authorise its release and publication on receipt.

The reference also included the following instruction to the Standing Committee on Legislation -

> That it be an instruction to the Legislation Committee considering the Electoral Amendment Bill 2001 that the Legislation Committee have power -

(a) to receive and consider any proposal or submission relating to the basis upon which persons are elected to the Legislative Council, the number of members constituting the Legislative Council, and any related matters;

(b) to report any findings or recommendations it desires to make arising from any proposal or submission described in (a).

The reason for that additional instruction was the arrangement that had previously been entered into between the Australian Labor Party and the Greens (WA), whereby the Greens had publicly indicated that their support for one vote, one value would be contingent upon the numbers in this House being increased by two members. Clearly, as the Bills in their original form did not contemplate any increase in the membership of this House, there was a need to instruct the Standing Committee on Legislation to enable it to inquire into matters pertaining to such an increase in numbers.

The terms of reference that the committee adopted were interesting. The reason that I bring them to the attention of the House at this stage is that, firstly, we are dealing with the Electoral Distribution Repeal Bill 2001, and the particular issue on which the committee was interested in obtaining the views of the community on this Bill related to term of reference No 3; that is, that the committee place advertisements in newspapers. According to the report, the committee adopted the following interpretation of the inquiry terms of reference in its advertisement calling for public submissions -

> *"The Committee has resolved to conduct its inquiry into the above Bills by examining the basis upon which members are elected to the Legislative Assembly and the Legislative Council, and, more particularly, the matters listed in paragraphs 1-4 below:*

At this stage I am interested in paragraph 3, which states -

> *The manner and form requirements, if any, for the repeal of the* Electoral Distribution Act 1947.

However, term of reference 4 states -

> *Any other matter relevant to the aforementioned Bills.*

Clearly, that was an enabling term of reference to give fairly wide scope to matters about which the committee wished to hear from the public.

As a result of the committee's advertisements in various newspapers, the committee received 101 oral submissions and a considerable number of written submissions on matters relating to both the Electoral Amendment Bill 2001 and the Electoral Distribution Repeal Bill 2001. We can go through the report in due course. However, in the main, it should be noted that chapter 8, which is headed "The Manner and Form Requirements for the Repeal of the *Electoral Distribution Act 1947*", is the most relevant chapter in respect of the issues surrounding the proposed repeal of the Electoral Distribution Act 1947. The reason I say that is that chapter 8 deals with the question of manner and form. On Wednesday, 19 September 2001, I raised in this House an issue that dealt with the manner and form requirements of the Electoral Distribution Repeal Bill 2001. The motion requested that the Attorney General obtain an opinion from the justices of the Supreme Court of Western Australia on the legality of the Electoral Distribution Repeal Bill 2001. The motion I moved was passed by the House - we can deal with that in due course - and was in the following terms -

> That the Leader of the House advise this House within 14 days or on the first sitting date thereafter if the House is not then sitting -
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> (a) whether the Attorney General will commence proceedings seeking a declaration of law by the Full Court of the Supreme Court on the following questions -
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> (i) Is it lawful for the Clerk of the Parliaments to present to the Governor for Her Majesty's assent a Bill to Repeal the Electoral Distribution Act 1947 unless the second and third readings of such Bill shall have been passed with the concurrence of an absolute majority of the whole number of Members for the time being of the Legislative Council and the Legislative Assembly respectively?
>
> (ii) Is it lawful for the Clerk of the Parliaments to present to the Governor for Her Majesty's assent a Bill which enacts an electoral distribution scheme which replaces or substitutes for the scheme in the Electoral Distribution Act 1947 following or in conjunction with repeal of the Electoral Distribution Act 1947 unless the second and third readings of such Bills shall have been passed with the concurrence of an absolute majority of the whole number of Members for the time being of the Legislative Council and the Legislative Assembly respectively?

(b) if the Attorney General will commence such proceedings, the date on which he will instigate the issuing of the originating summons and the arrangements he will make for the adequate and proper argument of the questions.

I moved that motion and it was passed by the Legislative Council. In due course, on 23 October 2001, the Attorney General published his reply to the motion, in which he stated that he was not prepared to ask the Supreme Court of Western Australia to make a decision about a hypothetical situation, such as the validity of a Bill yet to be passed by the Parliament. That is an interesting response, because, clearly, it suited the Attorney General to hide behind the fact that the Bill had not passed all stages in the Parliament before the question was asked. In due course in this second reading debate, I will indicate that the Clerk of the Parliaments has since advised the House that he intends to seek a declaratory judgment of the Supreme Court on certain questions that affect his presentation of the Bills for royal assent. However, when I moved this motion, we were not contemplating that we would wait until the Bills went through the Parliament; we were contemplating a situation that first occurred in the eastern States of Australia, when, during the passage of a Bill, the Parliament sought a declaration by the relevant court in the eastern States about whether what was being done was lawful. Therefore, there was an opportunity for the Attorney General to move forward at the time this motion was passed by the House. However, as I said, the Government, for reasons of its own, hid behind the fact that it called the issue a hypothetical situation at the time, and declined to go to the court to seek that judgment.

That is interesting in itself, but as much as the Attorney General can run, he cannot hide, because judgment day will come, whether or not he likes it. If it does not come while the Bill is still working its way through the Parliament, it will certainly come once it has reached its third reading, because we now know that the Clerk has indicated that he will seek the judgment of the court.

The whole question of manner and form arises because of, firstly, section 13 of the Electoral Distribution Act 1947.

Sitting suspended from 6.00 to 7.30 pm

Hon GEORGE CASH: As I was explaining before the dinner suspension, the subject of manner and form was raised by people who came before the Standing Committee on Legislation when it visited various parts of Western Australia to discuss the Electoral Amendment Bill and the Electoral Distribution Repeal Bill. The term "manner and form" means that the Parliament has the legislative capacity and power to create a fetter on its legislative capacity by requiring that the Parliament adopt a particular procedure when it is dealing with various pieces of legislation. The question of manner and form is not confined only to parliamentary procedure but relates also to the entire process of turning a proposed Bill into law. It relates to more than just section 13 of the Electoral Distribution Act 1947; it relates to the total procedure. That is why I said earlier that the Electoral Amendment Bill and the Electoral Distribution Repeal Bill are companion legislation - I do not want to call them complementary legislation - because the two go hand in hand. Section 13 of the Electoral Distribution Act provides that a Bill to amend that Act requires the concurrence of an absolute majority of the members of both the Legislative Assembly and Legislative Council to both the second and third readings of such Bill. Later I will make some observations about what occurs when that absolute majority cannot be achieved.

[Quorum formed.]

Hon GEORGE CASH: The term "manner and form" derives from section 5 of the Colonial Laws Validity Act 1865, which states in part that the Parliament has -

> full power to make laws respecting the constitution, powers, and procedure of such legislature; provided that such laws shall have been passed in such manner and form as may from time to time be required by any Act of Parliament, letters patent, Order in Council, or colonial law for the time being in force in the said colony.

The key words in that section are "to make laws respecting the constitution, powers, and procedure", and "in such manner and form as may from time to time be required". That 1865 Act applied in Australia for a considerable time. Members will be aware that during the 1980s, there was considerable discussion about the fact that the United Kingdom Parliament had the power to make laws having effect within Australia; and in 1986, after significant discussion between the United Kingdom Parliament and the Commonwealth Parliament, and with the agreement of the various State Parliaments, the Australia Act 1986 was passed. Section 1 of that Act expressly terminated the power of the Parliament of the United Kingdom to make laws having effect as part of Australian law, whether as a law of the Commonwealth, of a State or of a Territory. Section 6 of the Australia Act 1986 picked up most of the words of section 5 of the Colonial Laws Validity Act and states -

> Notwithstanding sections 2 and 3(2) above, a law made after the commencement of this Act by the Parliament of a State respecting the constitution, powers or procedure of the Parliament of the State shall be of no force or effect unless it is made in such manner and form as may from time to time be

> required by a law made by that Parliament, whether made before or after the commencement of this Act.

The key words of that section are "respecting the constitution, powers or procedure of the Parliament", and "unless it is made in such manner and form". Section 6 of the Australia Act 1986 carried forward the provisions of section 5 of the Colonial Laws Validity Act.

When we talk about manner and form, the question that needs to be considered is whether the Electoral Distribution Act 1947 is a law respecting the constitution, powers or procedure of the Parliament. When I talk about "the Parliament", I mean not only the Legislative Council but the Parliament as constituted. I argue that section 6 of the Electoral Distribution Act is a law affecting the constitution of the Parliament, because it clearly deals with the mode of appointing the Parliament. Section 6 states -

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

In my view, any law that purports to repeal section 6 of the Electoral Distribution Act is clearly a law affecting the constitution of the Parliament; and, if the repeal Bill is to be valid, it must be passed in accordance with the prescribed manner and form requirements.

I should also indicate that a number of cases both in Australia and overseas have considered the question of the constitution, powers and procedures of Parliaments. An analysis of many of those cases indicates that the provisions in the Electoral Distribution Act 1947 are effectively subject to manner and form provisions.

It is interesting to go back through the debates of this Parliament and look at the procedure that has been followed by the Western Australian Parliament for the repeal of previous electoral distribution legislation. The former Electoral Districts Act 1947 was raised on a number of occasions when members were dealing with the Electoral Amendment Bill 2001. On 4 December 1947, when the Legislative Assembly was considering the Electoral Districts Act 1947, a vote was taken on the third reading and the result was 27 in favour and 18 against. The Speaker of the Legislative Assembly at the time - *Hansard* page 2523 - stated, according to the Standing Committee on Legislation's report -

> I declare the third reading of the Bill carried by an absolute majority.

The Bill was then transmitted to the Legislative Council, and on 10 December 1947 the President of the Legislative Council made the following comments in respect of the third reading of the Electoral Districts Bill 1947 at *Hansard* page 2606, and as contained in the legislation committee's report -

> As this requires the concurrence of an absolute majority of members, it is necessary that the House should divide.

The vote on that Bill indicated that it achieved the requisite absolute majority. At the third reading of the Redistribution of Seats Bill 1911, it is recorded at page 2606 of *Hansard* of 3 April 1929, as replicated in the committee report, that the Speaker of the Legislative Assembly stated -

> An absolute majority is required for the passage of the third reading.

On the same day, 3 April 1929, when the Redistribution of Seats Bill was considered in the Legislative Council, according to the committee report, the then Deputy President stated at page 121 of *Hansard* -

> There being no dissentient voice, and there being an absolute majority of the House present and voting, I declare the Bill carried by the necessary constitutional majority.

The Redistribution of Seats Act 1911 - which repealed the Redistribution of Seats Act 1904 - was passed in the Legislative Assembly, with 26 members voting in favour and 16 against. The composition of the Legislative Assembly in those days was 50 members. Although the Speaker of the Legislative Assembly did not comment on whether there was an absolute majority, with 26 out of a possible 50 votes it obviously achieved the requisite absolute majority. There was some suggestion that because the Speaker of the Legislative Assembly did not make some pronouncement about there being an absolute majority, that may have created a situation in which an absolute majority was not required. The bottom line is that, irrespective of what the Speaker or the President

says at the time, the minutes of the Legislative Assembly or the Legislative Council record the votes on that occasion, and the relevant issue is the number of votes, not what the President or the Speaker might say.

When dealing with that same Bill in the Legislative Council on 24 January 1911, just prior to the third reading vote on the Redistribution of Seats Bill 1911, the then President stated at page 3222 of *Hansard*, as stated in the committee report -

> Before this Bill is read a third time I have to state that in accordance with Section 6 of the Redistribution of Seats Act, 1904, the third reading of this Bill must be carried with the concurrence of an absolute majority of the whole number of the members for the time being of the Legislative Council. I declare that the vote just taken is in accordance with the statutory requirement.

Apart from indicating a particular pattern that is followed when Bills requiring an absolute majority are put, three members of the Standing Committee on Legislation, being Hons Peter Foss, George Cash and Paddy Embry, noted that the President of the Legislative Council is bound by a previous practice of the Legislative Council. Although I do not propose to go into that at this stage, it is clear that precedent has been set in this House and that precedent is required to be followed until the Council itself decides otherwise.

The President has in fact made some comments on his position in respect of the second reading of the Electoral Amendment Bill 2001. I will leave those comments for the time being, although it is my view that the moment the Electoral Amendment Bill 2001 did not achieve the absolute majority required, it in fact hit the wall, or it died. I was thinking earlier today that it is a like a spacecraft that is sent into space. The Electoral Amendment Bill 2001 and the Electoral Distribution Repeal Bill 2001 can be compared to a shining spacecraft that has been launched by the Labor Government. The Government has failed to recognise that upon re-entry to the earth's atmosphere, the Electoral Amendment Bill 2001, to date, has burnt up; it does not exist any more because it did not achieve the absolute majority required.

Hon John Fischer: Have you identified Dr Spock?

Hon GEORGE CASH: I have not identified anyone at this stage. I am making the point that, in my view, when the Electoral Amendment Bill 2001 did not achieve an absolute majority, it died.

Hon Frank Hough: You should have said, "Beam me up, Scotty."

Hon GEORGE CASH: I do not follow that sort of program, but I recognise what the member is saying. I recognise that it is something to do with one of the space programs. If the member likes, we could go into that.

Hon Robin Chapple: I am a great devotee of *Star Wars.*

Hon GEORGE CASH: Hon Robin Chapple would understand the analogy that the Electoral Amendment Bill burnt up when it did not achieve its absolute majority at its second reading in the Legislative Council.

Hon Frank Hough: It is still wandering around space.

Hon GEORGE CASH: It does not exist any more; it might be floating around the stratosphere or wherever these things float, but that is about all it is good for.

Hon G.T. Giffard interjected.

Hon GEORGE CASH: I have all night and unlimited time. I will be pleased if Hon Graham Giffard gives me some assistance on the way, if I miss anything. I encourage him to listen carefully. He has already picked up one mistake when I said "school" instead of something else.

Hon G.T. Giffard: You said "Council" instead of "court".

Hon GEORGE CASH: He was good enough to correct me, and I hope he will keep listening. The more advice that he can give me the more opportunity I have to discuss this issue.

Another issue that was considered by the committee was the interpretation of the words "amend" and "repeal". There had been some discussion in the committee about whether a Bill to repeal an Act can in some circumstances be held to be a Bill that amends an Act.

Hon Robin Chapple: Surely a repeal is a repeal.

Hon GEORGE CASH: In simple terms that might be thought to be the case. However, it would appear that there is good evidence to show that a repeal Bill can in fact amend another Act. Whereas an amendment cannot necessarily repeal an Act, a repeal can be held to amend an Act.

Hon Robin Chapple: If an Act does not exist because it has been repealed, how can it be amended?

Hon GEORGE CASH: That is the simplistic way of looking at something and saying that it does not exist. The clause notes to the Electoral Distribution Repeal Bill 2001 state that clause 3 repeals in its entirety the Electoral Distribution Act 1947. They then refer to clause 5 stating -

> under this clause's traditional arrangements the re-distribution which took place in 1994(?) will continue to apply until a re-distribution is made under future legislation. The effect is that current Legislative Council and Legislative Assembly members continue to represent the same regions and districts and any by-elections that may be needed will be held in respect of those same regions and districts.

The argument that Hon Robin Chapple advanced a moment ago was that if legislation is repealed, it does not exist any more. The Electoral Distribution Repeal Bill 2001 purports in clause 3 to repeal in its entirety the Electoral Distribution Act 1947, but then goes on to state that notwithstanding that, clause 5 shall contain some transitional arrangements.

Hon Robin Chapple: Is that not a convenient legal provision to enable some certainty under the law, but the Act still remains repealed?

Hon GEORGE CASH: The member may be right that it gives certainty under the law, but the question is, which law?

Hon Robin Chapple: This is why we are sending it off.

Hon GEORGE CASH: Exactly, because what the member has said sounds reasonable, but we cannot repeal an Act and then in the next sentence say that, notwithstanding that repeal, we will still keep some transitional provisions if we need them. Those transitional provisions in clause 5 relate to by-elections that might occur between now and the next general election. It is an interesting question. I do not suggest that I have the answer. However, I do say that we can repeal an Act and, by that very repeal, impliedly amend another Act. There is no question about that. That is one of the questions that needs to be teased out when this issue is discussed in due course in the court.

Hon Robin Chapple: I hear what you are saying. My view is that a repeal is a repeal.

Hon GEORGE CASH: I am prepared to agree. One would assume that a repeal means a repeal, which means that there is nothing left of the previous Act. However, it is clear from some of the cases, that a repeal can be an amendment. That is one of the issues that needs to be taken up in due course.

When discussing the words "repeal" and "amend", the committee report referred to Butterworth's Australian Legal Dictionary 1997 edition, page 52, which defines "amend" when relating to an amending Act, and quoted it in the following terms -

> An Act of Parliament that amends an earlier Act. An amending Act may operate by substituting, inserting, omitting, or repealing words or provisions in the original Act. A later inconsistent Act repeals, if not expressly then by implication, an earlier Act. An amending Act that breaches binding constitutional requirements is not enforceable.

It defined the word "amendment" as follows -

> Amendment 1: A change or alteration to a document; for example, amending a statement of claim.

We are not so interested in that definition but more interested in the second definition of amendment in Butterworth's Australian Legal Dictionary, which the committee referred to as follows -

> 2: A change to an existing statute made by an amending Act. In order to give effect to an amendment it is not necessary for the word 'amend' to be used in the amending Act. If the court is satisfied that the later Act is to bring about an alteration in the operation of an earlier Act, the later Act will be treated as an amending Act.

It then quotes the case of the R v Wheeldon 1978, page 619, 18 Australian Law Reports, at pages 622 and 623. It continues -

> In statutory interpretation when one Act is amended by a later Act, the two Acts are to be regarded as one connected and combined statement of the will of parliament.

It refers to the case of Sweeney v Fitzhardinge 1906, page 716, 4 Commonwealth Law Reports, at page 735. The word "repeal" was also considered. The committee report refers to the Butterworth's Australian Legal Dictionary definition of "repeal" in the following terms -

> Repeal: The deletion, omission, or reduction in scope of a statutory provision by another statute. A later statute provides that for the addition of words to a section is an amendment rather than a repeal.

It refers to the case of Beaumont v Yeomens 1934. Then the phrase "implied repeal" was considered. The committee report refers to the Butterworth's Australian Legal Dictionary definition of "implied repeal" in the following terms -

> The rule that where a later Act is inconsistent with an earlier Act, the later Act has repealed the early Act by implication

It refers to Goodwin v Phillips 1908. It continues -

> In statutory interpretation, the courts will only construe an implied repeal if there are very strong grounds to support the implication for there is a general presumption that the legislature intended respective statutory provisions to operate together.

It then refers to the case of Saraswati v R 1991.

I should have raised this matter earlier: the Liberal Party of Australia (WA Division) made a submission to the committee when it was considering previous decisions in both the Legislative Assembly and the Legislative Council - that is, decisions requiring an absolute majority of members at the second and third reading stages. The Liberal Party submission noted that on two occasions in 1954 and 1959, successive Australian Labor Party and coalition Governments were prevented from amending the Electoral Distribution Act by a lack of an absolute majority in the Legislative Assembly. The same constitutional principle in 1936 prevented the Wilcox ALP Government from passing a highly partisan redistribution Bill through the Legislative Assembly. That comes from page 5 of the Liberal Party of Australia (WA Division) submission dated 29 October 2001.

I am trying to indicate to the House that the Government is attempting to bypass the provisions of the Electoral Distribution Act 1947 by introducing two separate Bills - the Electoral Amendment Bill 2001 and the Electoral Distribution Repeal Bill 2001 - to avoid the manner and form provisions contained in the Electoral Distribution Act. There is no question that the various amendments contained in the Electoral Amendment Bill that are not present in the Electoral Distribution Act could have been incorporated in the Electoral Distribution Act by an amendment. However, had that course of action been taken, it would have required compliance with the manner and form provisions. In essence, the Electoral Distribution Act is being amended by substituting its provisions and transferring those provisions to the Electoral Act 1907.

I referred to the previous practice of the Legislative Council and the manner and form provisions by which I believe the Parliament is bound. I indicated that there appears to be an inconsistency in the Electoral Distribution Repeal Bill, wherein clause 3 appears to repeal the entire Electoral Distribution Act, yet clause 5 provides that transitional arrangements will remain. That is an interesting proposition.

I now refer to two letters that are significant in respect of the arguments that have been generated on the question of compliance with the manner and form provisions. The first is a submission dated 17 October 2001 from Professor G.J. Craven, the foundation Dean and Professor of Law at the University of Notre Dame Australia, which was sent to the Standing Committee on Legislation when it advertised for comments. The letter is in four distinct parts. Part 3 deals with the manner and form provisions and the repeal of the Electoral Distribution Act. I am aware that members do not want me to speak for the rest of the evening. If it suits the House, I am happy to have part 3 incorporated in *Hansard*, and I seek leave for that course of action.

[The following material was incorporated by leave of the House.]

> **3) Manner and form and the repeal of the *Electoral Distribution Act 1947***
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> This is a difficult and troubling issue. It should be observed at once that the circuitous and indirect route by which the legislation before the Parliament goes about a process of what is, essentially, the fairly straightforward task of replacing the electoral machinery presently contained in the *Electoral Distribution Act 1947*, cannot fail to excite an apprehension that some attempt is being made to evade an inconvenient constitutional impediment. However, whether such a constitutional impediment actually applies in these circumstances is not a simple question.
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> There is no doubt that section 13 of the *Electoral Distribution Act* seeks to protect the provisions of that Act against amendment in the absence of the achievement of an absolute majority in both Houses of the Parliament. Consequently, were the current proposals to be contained in amendments to that Act there would be no doubt that, on the assumption that section 13 itself was an effective requirement of "manner and form", those amendments would require passage by the requisite majorities. However, the present proposals do not take the form of an amendment to the *Electoral Distribution Act*, but rather the repeal of that Act together with the making of associated amendments to the *Electoral Act 1907*, the two steps together forming what might reasonably be regarded as an integrated legislative scheme.

Given, therefore, that no actual amendment to the *Electoral Distribution Act* is involved, the argument is that section 13 simple does not apply. A further complication is whether, under the relevant law concerning manner and form provisions and in particular section 6 of the *Australia Act*, section 13 of the *Electoral Distribution Act* could in any event be regarded as a valid provision as to manner and form.

Perhaps the simplest way to approach these issues is to pose and answer three questions in relation to the present legislative proposals, and their interaction with section 13 of the *Electoral Distribution Act* and the law pertaining to constitutional manner and form provisions. They are:

(i) As a matter of statutory construction, is the repeal of the *Electoral Distribution Act* an amendment of that Act within the meaning of section 13?

(ii) As a matter of statutory construction, does the repeal of the *Electoral Distribution Act*, when taken together with the amendments to the Electoral Act, amount to an amendment to the *Electoral Distribution Act* within the meaning of section 13?

(iii) In either case, is section 13 of the *Electoral Distribution Act* an effective manner and form provision?

Unless an affirmative answer is given to one of the first two questions, and to the third question, it follows that there is no impediment to the passage of the proposed legislation by simple legislative majorities.

(i) ***As a matter of statutory construction, is the repeal of the Electoral Distribution Act an amendment of that Act within the meaning of section 13*****?**

The answer to this question depends upon whether one adopts a technical or a functional approach to the word "amend" where used in section 13. Under the former approach, the distinction between an "amendment" to an Act on the one hand, and the "repeal" of an Act - which is what is involved in the present circumstances - is quite clear. An amending Act is one which alters the content of the principal Act while leaving that Act on foot, while a repealing Act is one which eliminates the principal Act from the statute book. Various consequences follow at common law depending upon how an Act fits within this categorisation. On this approach, it is perfectly clear that the only direct legislative action being taken in respect of the *Electoral Distribution Act* is its repeal, and that this consequently does not fall within the terms of section 13.

A functional analysis produces a much more equivocal conclusion. The evident intent behind section 13 as an entrenchment provision is to protect the electoral dispositions of the *Electoral Distribution Act* against disturbance without the attainment of a special legislative majority. Clearly, those dispositions will be just as greatly disturbed - indeed, far more greatly disturbed - by their wholesale elimination as by their specific alteration in one or more respects. Consequently, it would be highly curious were section 13 to be regarded as protecting the *Electoral Distribution Act* against the making of minor amendments without the achievement of an absolute majority, but not as requiring the achievement of such a majority in the case of the legislative annihilation of the Act. On this basis, it plausibly might be argued that, having regard to its particular purpose and context, that the term "amends" where used in the *Electoral Distribution Act* has a specialised meaning, and comprehends any legislative action inconsistent with the contents of that Act. On this basis, legislation repealing the Act would fall within the general category of legislation that amends that Act, and would be subject to the special majority requirements of section 13.

It is an open question as to which of these views is preferable. It certainly is true that it would have been open to the original drafter of section 13 to include a specific reference to repeal of the *Electoral Distribution Act* had this been the desired effect. On the other hand, it is an at least equally plausible interpretation that the notion of repeal was imagined as being comprehended within the concept of amendment. Perhaps the most that can be said is that it is profoundly unclear whether the repeal of the *Electoral Distribution Act* proposed within the present legislative package would or would not fall within the terms of section 13.

(ii) ***as a matter of statutory construction, does the repeal of the Electoral Distribution Act, when taken together with the amendments of the Electoral Act, amount to an amendment to the Electoral Distribution Act*** **within the meaning of section 14?**

As a matter of strict law, the fact that the repeal of the *Electoral Distribution Act* evidently is linked to the amendments to the *Electoral Act* so as to provide for an alternative regime of electoral distribution does not change the character of that repeal. In other words, the question of whether a repeal of the *Electoral Distribution Act* does or does not fall within the description of an "amendment" to that Act within the meaning of section 13 is not affected by the reality that this repeal will be accompanied by some other associated legislative measure. Rather, whether the repeal comes within the terms of section 13 will be determined in accordance with the discussion above, as to whether a "technical" or "functional" interpretation is to be applied to the term "amends" where used in that section.

Of course, what is starkly underlined by the conjunction of the repeal of the *Electoral Distribution Act* and the amendment of the *Electoral Act* in what is evidently part of a co-ordinated legislative scheme is the fact that unless an "amendment" of the former Act is to be regarded as including its repeal and subsequent replacement by equivalent provisions, then the protection which the drafters of section 13 apparently thought had been provided to the dispositions of the *Electoral Distribution Act* is utterly worthless. This is a consideration which might be thought to militate in favour of the functional interpretation of the term "amends" in that section.

(iii) In either case, is section 13 of the Electoral Distribution Act an effective manner and form provision?

In any event, whether the repeal of the *Electoral Distribution Act* falls within the ambit of its own section 13 is irrelevant unless section 13 may be regarded as a valid provision restricting the legislative procedures of the Parliament of Western Australia. This is a difficult question, not only in its own right, but generally as regards the wider issue of whether and in what circumstances the Australian State Parliaments may restrict their own legislative capacities.

The simplest means by which section 13 might be validated would be as a provision of "manner and form" respecting the "constitution, powers or procedure" of the Parliament of a State within the meaning of section 6 of the *Australia Act 1985*. That a mere absolute majority requirement falls within the description of a provision of manner and form for the passage of legislation there can be no doubt. The more difficult question is whether section 13 is a law concerning the constitution, powers or procedures of the Parliament.

It is quite clear since the decision of the High Court in *South East Drainage Board v. The Savings Bank of South Australia* that a manner and form provision will not be valid as relating to the powers of a State Parliament merely because it does itself purport in some way to restrict those powers. Consequently, the answer to this question must depend primarily upon the extent to which those matters purportedly protected by section 13 - that is, the contents of the *Electoral Distribution Act* - themselves answer the description of matters pertaining to the powers, procedure and constitution of the Western Australian Parliament.

Obviously, the matters contained in the *Electoral Distribution Act* are not "constitutional" in the sense that they are not contained in either the *Constitution Act 1889* or the *Constitution Acts Amendment Act 1899*. However, it equally is clear that these matters are not entirely extraneous to the State constitutional system, as was the case with the purported manner and form provisions dismissed by the courts in such cases as *South East Drainage Board* and *Westlakes v. South Australia*. Indeed, the contents of the *Electoral Distribution Act* would not be markedly out of place in a State Constitution or associated legislation, and are most definitely closely connected with the functioning of the Parliament of Western Australia. This said, the comments of Wilson J. in *Western Australia v. Willsmore* endorsing the earlier decision of the High Court in *Clydesdale v Hughes* indicate that some matters quite closely related to the constitutional dispositions of a State Parliament - there, a change to the qualifications of electors - nevertheless did not fall within the category of laws respecting the constitution, powers and procedures of the legislature.

On balance, it seems that at least some of the matters contained in the *Electoral Distribution Act* and thereby subjected to the purported protection of section 14 do indeed answer the description of matters pertaining to the powers, procedure and constitution of the Western Australian Parliament. I reach this view on the basis that provisions such as sections 2A, 3, 6 and 9, in erecting a complex system of electoral regions and districts based upon distinctions drawn between metropolitan and non-metropolitan areas, and upon social-geographical distinctions drawn between regions themselves, make a fundamental contribution for better or

> worse to the basis character of the Western Australian parliament as a legislative entity. Indeed, it is for this reason that their variation is a subject of such considerable political and community attention. Consequently, I am inclined to the view that section 13 of the *Electoral Distribution Act* is a valid provision of manner and form within the meaning of section 6 of the *Australia Act,* and that it accordingly requires the attainment of an absolute majority in both Houses of the Parliament for any measure that might come within its ambit.
>
> Given this conclusion, it is not necessary to pursue the issue of whether section 13 might some other (and possibly wider basis) such as section 106 of the Commonwealth *Constitution* or the reasoning of the Privy Council in *Brivery Commissioner v. Ranasinghe.*
>
> By way of summary, my general conclusion concerning the repeal of the *Electoral Distribution Act* and the operation of manner and form provisions is therefore as follows. I believe that it is difficult to say with confidence whether the repeal of this Act would or would not be valid in the absence of compliance with absolute majority requirements of its own section 13. This turns on the meaning to be ascribed to the word "amends" where used in that section. A narrow view would hold that the repeal of the Act would not fall within such a description, while the adoption of more functional view would tend to the opposite conclusion. In either case, section 13 appears to be a valid manner and form provision, so that if the repeal of the *Electoral Distribution Act* does indeed fall within its ambit, compliance with the absolute majority requirements of that provision would be mandatory.

Hon GEORGE CASH: I thank the House for that and I will endeavour to conclude my remarks as soon as possible. I refer to another letter dated Wednesday, 28 November 2001, which was sent to the President of the Legislative Council from the Clerk of the Parliaments. Mr Deputy President, you will recall that from the day the President made a statement in respect of the Electoral Amendment Bill and the Electoral Distribution Repeal Bill. I do not intend to discuss the issues raised by the President - that is, as to when he would make a decision about whether the Electoral Amendment Bill required an absolute majority of both Houses on the second and third readings - but I will refer to the letter written by the Clerk of the Parliaments to the President. I will do that because the question of manner and form has gained a fair bit of credence in the community since it was raised. I moved a motion in September asking the Attorney General to take action to determine through the Supreme Court whether absolute majorities at second and third readings were required on these Bills. I said earlier in my comments that the Attorney General declined to progress that request on the basis that, he argued, it was a hypothetical question. The Clerk of the Parliaments obviously has given some consideration to the words of section 13 of the Electoral Distribution Act, because the opening words of that section state that "it shall not be lawful to present to the Governor for Her Majesty's assent" - and it goes on to describe what is not lawful. Clearly, the Clerk of the Parliaments must have satisfied himself before he presents for Her Majesty's assent either the Electoral Amendment Bill or the Electoral Distribution Repeal Bill that he is able to state that those Bills were passed in accordance with the laws of this Parliament and the provisions of any other Act that may impact on these Bills. The fact that the Clerk has now indicated that he intends to seek a declaration of the court is an important step forward. It will certainly alleviate the need for the House to argue the question of manner and form. In fact, it is not a question that the House should argue. It is a question that should be raised, and it is proper that the court decide a point of law. Again, to save the time of the House, I seek leave to have the letter from the Clerk of the Parliaments to the President incorporated into *Hansard*.

[The following material was incorporated by leave of the House.]

> Dear Mr President
>
> ***Electoral Distribution Repeal Bill 2001***
>
> ***Electoral Amendment Bill 2001***
>
> As you are aware, there has been considerable debate concerning the applicability of section 13 of the *Electoral Distribution Act 1947* to the bill that provides for the repeal of the 1947 Act in its entirety. On different grounds, the question of the application of section 6 of the *Australia Act(s) 1986 (UK) (Cth)* has been raised.
>
> Section 13 of the *Electoral Distribution Act 1947* enacts that it is not lawful to present a bill that amends any provision of that Act to the Governor for the Royal Assent. In this State, the duty to present bills to the Governor resides in the Clerk of the Parliaments. The person appointed to that office is the Clerk of the Legislative Council.
>
> It is my opinion that the commencing words of section 13 - "*It shall not be lawful to present to the Governor for Her Majesty's assent . . .* " - requires me to give active consideration to whether or not the *Electoral Distribution Repeal Bill*, despite its stated repeal of the 1947 Act, is, nonetheless, a bill that a

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

I should also consider whether other enactments, either in concert with, or independently of, section 13 but having an identical effect, apply to either or both bills.

Were the lawfulness of presenting a bill an issue in litigation, the court is entitled to know if I considered that question at all and, if I did, with what degree of diligence. My personal liability under section 13 or similar enactment stands outside any immunity that I may claim as the Clerk of the Legislative Council either under the general law of privilege or section 51 of the *Constitution Acts Amendment Act 1899*. The Clerk of the Parliaments is not an officer of either House.

I therefore advise you and through you, the Legislative Council, that should the repeal bill pass the Council without an absolute majority at second and third readings, I will seek a declaratory judgment in the Supreme Court on 2 questions. The first will seek an interpretation of section 13 and its application (if any) to either or both bills. The second will ask the Court to decide whether, apart from, or in concert with, section 13, any other law imposes conditions which must be complied with in passing either or both bills. The degree of compliance on which the Court will be asked to pronounce is where any failure avoids the enactment. The actual form of the questions will not be settled until counsel's advice is obtained and after the Houses have agreed to the same version of each bill. It is only then that there will be 2 bills that I am able to "present" to the Governor. The presentation of either or both bills will depend entirely on the findings of the Court.

I am sending Mr Speaker a copy of this letter at the time you publish it to the House.

Hon GEORGE CASH: I thank the House. Only one issue remains for me to discuss. When the Clerk seeks a declaration of law from the court on the matters he raised in his letter, it is absolutely crucial that the court hear both sides of the question. In that regard the Deputy Leader of the Liberal Party, the member for Mitchell, Mr Dan Sullivan MLA, wrote last week to the Premier, Dr Gallop, in the following terms -

Dear Premier

Re: Electoral Amendment Bill 2001 and Electoral Distribution Repeal Bill 2001

I refer to the above legislation currently before the Legislative Council.

Following recommendation 5 of the report of the Standing Committee on Legislation of the Legislative Council, the Clerk of the Parliament wrote to the President of the Legislative Council indicating that he would be seeking a declaratory judgement from the Supreme Court of Western Australia as to whether it is lawful for him to present either or both of these Bills for Royal Assent once passed.

The Clerk's action arose from doubts as to the legal validity of this legislation because an absolute majority was not likely to be achieved and, in fact, was not achieved on the second reading of the Amendment Bill. The President thereupon ruled that he would await the decision of the Court and not make any decision on the law himself.

The Clerk has indicated that he will abide by the decision of the Court and I understand also that the Attorney General has indicated that he will intervene on behalf of the Crown to argue the validity of the passage of the two Bills.

Obviously this is a matter of considerable public importance and, as such, it is imperative that the contrary view be argued. As a matter of public interest and probably as a matter of law I believe that the Court will require that the alternative view be represented before them.

In such a case, I am advised, it can be expected that the Court would order all costs to be borne by the Crown, and it is appropriate that that be done.

This is a complex matter of law and, by necessity, will require extensive preparatory work prior to any Supreme Court hearing.

In view of the extremely serious nature of the legal issue involved, it is imperative that the State Government should make provision for both cases to be presented to the Court in a competent and well-researched manner.

Also, if the matter is to be progressed swiftly, as I have no doubt that you and all parties are keen to see happen, the question of legal representation must be resolved soon.

> I would appreciate the opportunity to meet with you, the Attorney General and your representative in the Legislative Council to discuss how the legal case against the Government's position will be coordinated and funded.
>
> It seems most appropriate that funding for the contrary view be provided by the State Government. Also, the case against the Government's position should be coordinated by the Opposition who, in turn, would coordinate the wide range of interests opposed to the legislation, such as the National Party, the WA Farmers' Federation and the Pastoralists' and Graziers' Association.
>
> In view of the importance of this matter, the significant public interest considerations, and the likely time constraints, it would be greatly appreciated if we could meet this week, while Parliament is sitting.
>
> Once the meeting date and time are finalised, my office will ensure that representatives from the National Party and other relevant organisations are invited, as well. Your office is welcome to contact my Research Adviser Tirzah Bell . . . or me to make the necessary arrangements.
>
> Kind regards
>
> Dan Sullivan MLA
>
> Member for Mitchell

That is an important letter that needs to be considered by the Government, because as I have stated on a number of occasions, the questions involving manner and form considerations are now matters of high public policy. They need to be resolved by the court. It is not the position of this Parliament to argue questions of law. We can argue questions of practice and procedure, but in the end, the court must make a declaratory judgment on what the law is on these matters. I look forward in due course to the court making such a decision.

Although the Liberal Party has always maintained, and will continue to maintain, its absolute opposition to both the Electoral Amendment Bill 2001 and the Electoral Distribution Repeal Bill 2001, we stand ready to respect the decision of the courts in this important matter of public policy. We say that the matter needs to go to the courts as a matter of urgency. One would hope that the courts will treat the matter as one of urgency and deal with it as expeditiously as possible. The Opposition opposes these Bills for not only the reasons that I have advanced but also the many reasons that will be advanced by my colleagues during debate on this Bill.

HON PETER FOSS (East Metropolitan) [8.13 pm]: I regret that the Deputy President (Hon Simon O'Brien) is occupying the Chair at the moment rather than the President because I had hoped to address some remarks concerning both the President and the Clerk of this House. I feel that both the President and the Clerk have been put in an unfortunate position by the method by which the Government has sought to proceed with this legislation. We had a lengthy debate on another Bill in this House during which the Government was unable to mention a particular word; and that was the word "amend". Amend is a word that is anathema to the Government for the reasons that were pointed out so ably by Hon George Cash. If the provisions of this Bill amend the Electoral Distribution Act, it will be caught by section 13 of that Act and will require an absolute majority to pass the second and third reading in this House. Quite separately and unconnectedly another Bill - extraordinarily enough on the same topic - is before the House at the same time. This other Bill, the Electoral Amendment Bill deals with the same topic interestingly enough that is dealt with by the Electoral Distribution Act. It is an extraordinary coincidence that these two pieces of legislation are passing through the House at the same time. One would imagine sometimes that it would be more convenient to follow the processes of past years when dealing with legislation of this nature; that is, when the Government puts to Parliament a Bill to indicate the new process for electoral distribution it goes through the two sets of laws to see where the current law goes and where the future law will go, it provides for an orderly transition from the current law to the new law and once that transition has occurred it provides for that old law to be repealed. That is a neat, sensible, easy way of dealing with legislation: the Government makes the amendment, it has the transition and then it repeals the unnecessary legislation. That has been done many times before. However, the Government will not do that. It will have two totally separate, unconnected pieces of legislation; two pieces of legislation that do not even refer to each other and are not in any way dependent on each other. It is almost as if some blind has been drawn down that prevents us from seeing what the left hand of the Government is doing to the right. These Bills are totally separate propositions.

Mr Deputy President (Hon Simon O'Brien) and I know that is complete and utter rubbish. The Government has worked out that it does not have an absolute majority in this House, and will not secure it; so it has decided upon a scheme that has been devised by the Attorney General. It is a good thing that the Attorney General has never practised law, because I am sure he would spend most of his time doing shonky tax schemes. This is about as moral as a shonky tax scheme. It has the same mental ideas behind it as a shonky tax scheme, and we know what happens to lawyers who devise shonky tax schemes. This is shonky. I am amazed that those eminent people, who keep telling us how honourable they are and how high principled they are - the Greens (WA) - have

allowed themselves to go along with it. It seems that their only concern is whether they get away with it. They do not want to lose if it goes to the court and the court finally says it is invalid. They want to be seen to say that they are not certain whether it is valid or invalid, so they are warning the Government. However, it seems that they are not too worried about the morality of this. I have always understood the Greens to laud themselves as being a highly moral group.

Hon Robyn McSweeney interjected.

Hon PETER FOSS: They have a moral tone; they are not necessarily moral by other people's standards. The Greens have this belief that whereas everybody else does things for base political motives, they do them for a higher motive. I would love to hear during the course of the second reading debate, whether it gives them the slightest twinge that this has all the morality of a shonky tax scheme. This is a device to get around the clear wording of section 13 of the Electoral Distribution Act. As it happens, I do not think they will. In due course, they will be found to be totally wanting. The Greens will be shown to be just as shonky as the Labor Party. If the Greens vote for this, they will be shonky.

The worrying thing is that during the course of this divisive process you, Mr Deputy President (Hon Simon O'Brien), and other members who occupy the Chair have been repeatedly asked to decide difficult questions of law that no honest Government has previously asked a Presiding Officer to decide. Where does that put the President? Where can the President go? His party has devised a shonky scheme, ensured its passage through the lower House and introduced it in this place. He has been required to rule repeatedly on its legitimacy. No party should put a President nominated by it in that position. What can he do? He is damned if he does and he is damned if he does not. If he were to rule in favour of the Government, the opposition parties would challenge the ruling on the basis that they believe the President should not have so ruled. He should reject this device as a shonky scheme. If he were to rule in favour of the Opposition, we know what the Labor Party would do. We have seen what it does to its members who do not toe the party line.

The Government has put the President in an invidious position. Anyone who had any respect for the position of the President would not have introduced such divisive and shonky legislation. Governments can introduce divisive legislation that leaves no room for doubt about its legal basis. There is clearly considerable doubt about the legality of this legislation; there is no doubt that it is shonky. It might pass the letter of the law test, but it will never pass the morality test. This legislation has all the morality of a shonky tax scheme. As a result, the President is repeatedly being asked to rule on it. That is not the way we should proceed.

The President is not the only person being put in an invidious position; the Clerk is being subjected to the same pressure. Thankfully, he has responded to that pressure. He has been put under unreasonable pressure to deal with the shonky things that have been done. Appropriately, he has indicated that he will go to the Supreme Court for a ruling. It is improper for him to be required to make a ruling on the shonky things that the Government has done.

I wish the President were in the Chair. If he were, I would extend to him my sympathy for the embarrassing position in which he finds himself and the difficult decisions and rulings he has been required to make as a result of this Government's callous disregard for the independent, valued and respected position that he holds in this Chamber. Had it any respect for that position, it would not have put him and his office under that pressure. He has my sympathy.

Hon Kim Chance: What was your score in the High Court on the native title legislation that you rammed through this Parliament? You were defeated seven to nil.

Hon PETER FOSS: What does that have to do with it?

Hon Kim Chance: You are talking about legislation that will not stand up in law. You have the nerve to say that -

Hon PETER FOSS: Not only will the Government's legislation not stand up in law, it will also not stand up in morality. The Government's biggest problem is that it is introducing what it says is an act of principle -

Hon Kim Chance: You are lecturing us after your legislation was defeated seven to nil!

Hon PETER FOSS: I am glad the Leader of the House is interjecting.

Hon Kim Chance: You are a massive hypocrite. Your legislation went down seven to nil and you have the nerve to lecture us.

Hon PETER FOSS: Yes.

Hon Kim Chance: I can't believe that.

Hon PETER FOSS: Yes, I am, because the leader is so thick that he cannot get the point.

Hon Kim Chance: I understand seven to nil.

Hon PETER FOSS: The Minister for Racing and Gaming is sitting there wishing the leader would shut up. Throughout the debate on this legislation the minister has very cleverly kept his lips buttoned. He has refused to say anything to indicate that these two pieces of legislation are even slightly connected. Unfortunately, the leader has opened his mouth and given it away immediately.

Hon Kim Chance: How do you feel about your legislation going down seven to nil?

Hon PETER FOSS: I have no problems with that.

Hon Kim Chance: Where was the morality in that? It was a disgrace.

Hon PETER FOSS: The legislation went down as a result of the passage of retrospective commonwealth legislation. If the leader likes retrospective commonwealth legislation -

Hon Kim Chance: Nonsense.

Hon PETER FOSS: The leader should read the commonwealth Native Title Act. The Commonwealth Government passed an Act that retrospectively was inconsistent with ours under section 109. It is hard to predict inconsistent retrospective legislation. The leader should try that one. Even if that had not been the case, I would not mind. It was good legislation. The proof was that all the good aspects of it were pinched by the Commonwealth Government.

Hon N.F. Moore: It was one of the few serious attempts to deal with native title.

Hon PETER FOSS: We digress because unfortunately the Leader of the House has no idea why this is immoral. It is immoral because it is a shonky deal. Why not amalgamate the two Bills so that we can see what the Government is doing? The leader knows that it is a legal device. The Minister for Racing and Gaming has been carefully not saying it, but the leader is not helping him. After all the minister's good work in keeping his mouth shut, the leader is opening his wide and admitting it.

Hon Kim Chance: The result was seven to nil.

Hon PETER FOSS: Yes, we lost seven to nil.

Hon Kim Chance: According to you, stealing land is not immoral.

Hon PETER FOSS: The leader should read the legislation. I will not be diverted, because I want to talk about this legislation, even though I am proud of our legislation. One of these days the state native title legislation will supplant the commonwealth legislation, because it is better.

Hon Kim Chance: It was beautifully written, I will give the former Attorney General that.

Hon PETER FOSS: I thank the leader for that comment. I will ask for an extension of time because his interruptions have eaten into the time available to me. He should not try to make me speak any longer than necessary. I have lost 15 minutes of my allotted time because of his interruptions.

I will deal with this Bill because it is interesting. What does it do? It repeals the Electoral Distribution Act. The second reading speech states -

> As indicated by this legislation, the boundaries of the electoral provinces and districts in both the colony and State of Western Australia were set by Parliament in 1889, 1899, 1904 and 1911. In 1923, for the first time, provision was made for electoral commissioners. Those commissioners, when directed to do so by a proclamation, had a role in setting electoral boundaries. This new arrangement was provided for in the Electoral Districts Act 1923. However, the electoral commissioners' role was only recommendatory. The actual redistribution continued to require an Act of the State Parliament. Such legislation was enacted in 1929 with the Redistribution of Seats Act, and an amendment to that Act was also passed in 1929.
>
> As members may be aware, the next major development was the Electoral Districts Act 1947. Subsequently, in 1987, this Act was renamed the Electoral Distribution Act. The 1947 statute removed the need for an Act of Parliament to give effect to electoral redistributions. Electoral commissioners' recommendations took effect if promulgated by an order in council.

We have a progression in law from an undesirable situation in which boundaries were set by Parliament, to a situation in which boundaries were set by commissioners but had to be adopted by Parliament, to the final situation in 1947, in which electoral commissioners both set and promulgated the boundaries. What does this Bill do? It goes back to 1923. It takes us back in history, to a time when we no longer have a law for the

distribution of seats. It gets rid of the electoral commissioners and the setting of boundaries. Boundaries are left to be set the only way they can be set; that is, by Parliament. That is what it says. It repeals that Act. If members want to know what this Bill does, that is what it does. This wonderful, progressive Government has brought in a Bill for an Act to take us back to 1923, to the time when electoral boundaries could not be set by using electoral commissioners, because there were no electoral commissioners, and back before 1947, when the electoral commissioners' recommendations had to be adopted by Parliament.

This progressive Government has taken us back to 1923. However, it says, "Aha, we're not doing that really, because there is this - we can't mention it - other Bill. Sorry, there isn't another Bill, but there are in fact two separate Bills that have nothing to do with one another. We're not doing that at all." However, that is what this Bill does. This Bill is bulldust unless one looks at the other one; it is total rubbish. Why would the Government introduce a Bill for an Act to take us back to pre-1923, when we did not even have electoral commissioners? Why would it want to do that? There is only one reason it would do that. It is because it is not doing that; it is faking it. It is trying to pass one piece of legislation and pretending that there are two pieces of legislation. "Don't mention the war. Don't mention the Electoral Amendment Bill. That can't be mentioned. If the two are put together, we're amending the Electoral Distribution Act, and that requires an absolute majority, and we haven't got one. No, we're not doing that. We're going back to pre-1923." Is the minister really saying that? Does he really want us to go back to that situation? Would he like to read some of the debates in 1923 about why we should have electoral commissioners? Do I need to convince the minister? Why is it that the Government is so keen to go back to pre-1923? Why? Is that what this Bill is about? Yes, it is - except that it is not. The Government is in a form of schizophrenic denial. The two Bills do not exist, but they do - no, they do not; yes, they do. The Government does not know where it is.

The reality of the matter is that the Government is conjuring up a legal fiction. It is bringing into this Parliament a Bill that it intends to take all the way through to take us back to 1923, and it would have us believe that it is not part of the same scheme, the same idea or the same deal - I use the "d" word that the Greens (WA) do not like - to change the laws the Government's way. It does not exist. The amazing thing is that if the Government did truly repeal the 1947 Act, it would go. However, I am indebted to the minister for kindly pointing out to me during the debate on the Electoral Amendment Bill that the Government is not repealing the Act. The Government has gone to this enormous amount of trouble to repeal the Act, with temporary amnesia about the fact that another Bill is coming through to amend it. However, there is a problem. If the Act is repealed totally, there will be no electoral law. There will be not only no commissioners and no fixing of boundaries, but no boundaries. Despite clause 3, which says that the Electoral Distribution Act 1947 is repealed, there is clause 5, which says that it is not repealed. Clause 5, transitional provisions, states -

> (1) In this section -
>
> **"elections in districts", "elections in regions"** and **"general election"** have the same meanings as they have, respectively, in the *Electoral Act 1907;*
>
> **"existing electoral distribution"** means the division of the State into electoral districts and electoral regions for the election of members of the Legislative Assembly and the Legislative Council that was in effect immediately before the commencement of this Act.

Do we have electoral divisions? Yes, we have the electoral divisions that were in effect immediately before the commencement of this Act. The Government can stand on its head and stick socks in its ears for all it likes, pretend that it has this incredible schizophrenia that there are two totally separate pieces of legislation going through this Parliament that have nothing to do with one another, and that it has genuinely, properly, utterly, completely repealed the Electoral Distribution Act 1947, but it has not, because in clause 5(1) it has kept it. It goes on. Subclause (2) states -

> The existing electoral distribution continues to apply in respect of -
>
> (a) elections in districts held before the first general election for the Legislative Assembly held after the commencement of this Act;

Therefore, if we have a by-election in the meantime, where does the Government go? It finds those little pieces of paper. How will we know what they are? How will we know that this is the piece of paper, as opposed to that piece of paper, that tells us what the distribution is? That is simple: we look at the piece of paper that was signed by the commissioners. How else will we know what it is? How do we prove what the distributions are? We prove, and have judicial notice taken of, the distribution that was carried out by the commissioners at the last distribution. If one challenges it in a court of law, how does one prove that that was the correct boundary? One deposits the promulgation made by the commissioners. Will it be accepted by the court? Yes, of course it will be, because clause 5(1) and (2) continue it. It might as well all be put in the one Bill. Here the Government is

carefully trying to pretend that there is no war, or that it cannot be mentioned, and it does not mention it in its own clause 5. I know why. It is because it does not dare have no divisions in the meantime. It would be unthinkable to have no divisions. What if somebody died? What divisions would it have? It would have the divisions under the previous law that have been continued by clause 5(2). That is what we have. The clause continues -

> (b) elections in regions held before the first general election for the Legislative Council held after the commencement of this Act;

The same distribution applies. Paragraph (c) states -

> (c) the representation of electoral districts and electoral regions by members of the Legislative Assembly and the Legislative Council elected -
>
> (i) before the commencement of this Act;
>
> (ii) at elections referred to in paragraphs (a) and (b); or
>
> (iii) under sections 156C and 156D before the first general election for the Legislative Council held after the commencement of this Act.

It is interesting that paragraphs (a) and (b) refer only to elections held before the first general election. That is interesting, because I asked a question about what happens if this Bill is valid and the other one is not, and I was told not to worry; the system is worked out for us. It is in clause 5. It is, until a general election. It is not once there is a general election. Clause 5 does not apply to a general election. Therefore, this process must be completed prior to the next general election. That is interesting, because we know that both Bills will not be presented prior to the matter being decided by the court - or at least we hope they will not be; I have some confidence that they will not.

If this Bill were presented and the other were to await the decision of the court, and if it were to take more than three years - which is possible if the matter were to end up in the High Court - we could end up with a situation in which the matter still had not been resolved prior to the general election. That would create the potential that we had a law that had been passed by the House, had been given royal assent and had come into effect, and we would be okay until the general election; however, by the time of the general election, we would be in trouble. What if there was no new law? What if the period to decide this matter were so long that even if the new law were valid, the commissioners had not carried out the distribution in time? It might take two years to carry out the distribution. What would we do then? We would then be in a nice little pickle, and it would all be because the Government is too smart for its own good. It is not often that we have had Governments in this State that have been too smart for their own good. The last three such Governments I remember were the Burke, Dowding and Lawrence Labor Governments. They spent their whole time doing clever, tricky, smart-arse things the likes of which we have never come across previously. Governments should not get involved in things that are tricky. Governments should err on the side of caution.

The problem we have is that so intent is this Government on getting this legislation through that it is prepared to throw aside the position of the President by continually submitting the President to the most impossible decisions - something it would not have done if it had any respect for the position of President. This Government has also put immense pressure on the Clerk of the Parliaments. The Clerk did not deserve to get that pressure. What can the Clerk do? Where does he stand on this matter? The Government has put the Clerk in an absolutely impossible position, to which he has responded very wisely by saying he will go to the court. However, we should not get to the stage in which that is the only way out for the Clerk of the Parliaments. It just is not on. The Government will not lose anything by it, or at least it will try to make sure it does not lose anything by it. The Government is getting everyone in this Chamber involved in this ludicrous charade in which we are not allowed to even acknowledge that a process is taking place that is intended to take us from the situation under the Electoral Distribution Act to the situation under the Electoral Act, as amended. We are asked to suspend our disbelief to consider those two pieces of legislation as totally separate and unconnected activities that just happen to be taking place at the same time, almost independent of the will of the Government that is promoting both these Bills and is forcing them through this Parliament. What sort of rubbish is that? The reality is that there is one scheme or proposition. Let us have no doubt that the whole reason for this charade is that this Government is trying to get around section 13 of the Electoral Distribution Act. We would not have these two Bills, and we would not be causing this nonsensical risk to the safety of the legal system of Western Australia, were it not for this section that this Government is trying to get around. Section 13 states -

> It shall not be lawful to present to the Governor for Her Majesty's consent any Bill to amend this Act, unless the second and third readings of such Bill shall have been passed with the concurrence of an

> absolute majority of the whole number of the members for the time being of the Legislative Council and the Legislative Assembly respectively.

Hon George Cash has lucidly explained the history of those manner and form provisions and the fact that they have been preserved in the past by imperial provisions. The Australia Act 1986 also preserves the manner and form provisions.

We know why this is being done. Hon Nick Griffiths is probably the only member of Cabinet and also of the government side of this House who understands what this is about and does not see it as being just some sort of "thing" that we need to get around. He is probably the only person who understands the implications of what the Government is trying to do. However, unfortunately he is also the person who has to run this legislation through this Chamber. It is ironic that the one person who understands what the Government is doing has to stand in this House and try to pretend that it makes sense. I commend Hon Nick Griffiths, because he has made a lot more sense than anyone else who has talked about this legislation - and the reason is that he has said nothing.

The Government has come up with absolute nonsense as to why it is doing this. Hon Nick Griffiths has very carefully tried not to say anything. He has tried not to mention the Electoral Distribution Act at the same time as we are talking about the Electoral Amendment Act. However, he lapsed for a moment when he spoke about clause 5 of the Electoral Amendment Bill. There we have it! He realised the nonsense of the legislation. He realised that somewhere in the legislation there had to be some savings provision so that we did not end up with total mania, and he very kindly told us about it. What he told us indicates plainly that what this Government is doing is nothing more than failing to get around the manner and form provisions of the Electoral Distribution Act, because section 5 continues the Electoral Distribution Act at least until the next general election. When the Electoral Amendment Bill comes into effect, it will further amend the Electoral Distribution Act, because it will repeal the last bit of it and will substitute these provisions.

As Hon George Cash has pointed out, many legal arguments can be put, and I do not intend to go through all those arguments, because there will be a place to argue them, and it will not be a matter of the nonsense of trying to pretend to the court that these are two separate Bills. Any counsel who tried to say it was not a device and the two Bills were totally unrelated and unconnected would get short shrift. The court would look at the two Bills and see what the effect would be. The courts are used to looking at schemes and their constitutional backgrounds. However, for the time being let us do what Hon Nick Griffiths has asked us to do and take this legislation on the face of it. I will read to the House why this legislation should not be repealed. This is good legislation, because it provides for boundary commissioners and for the decisions of those boundary commissioners to be final. This House should not agree to repeal good legislation such as this and substitute the anarchy of a system that will require another piece of legislation before the next general election if we are not to lose all the electoral boundaries.

This is the legislation before the House. Of course, under the standing orders, we are obliged to speak on the legislation before the House. The legislation before the House removes electoral boundary commissioners and the legal effect of their decisions and substitutes anarchy. I probably will not have enough time to go through all the provisions that were raised in this House in 1923, 1929 and 1947, but I will start and perhaps some other member will be happy to continue. We should not follow the example of the minister in pretending that this Bill stands on its own, that it is an independent piece of legislation, that it merely removes commissioners and boundaries and repeals that nasty old Electoral Distribution Act and does not in the slightest way indicate that there should be a change to the scheme.

On 23 August 1923 at *Hansard* page 444 is the following -

> The PREMIER (Hon. Sir James Mitchell - Northam) . . . in moving the second reading said: It should not be necessary to say much in introducing this Bill. Members have the measure before them and there are maps exhibited in the Chamber showing the old and new boundaries. Last session we passed the Electoral Districts Bill after having fully discussed it, and commissioners were appointed in accordance with that measure. Their duty was to divide the State into districts, according to the principles laid down. The report of the commission forms the main part of the Bill; as a matter of fact it is the Bill. It provides for an amendment of the boundaries and states just how the boundaries are to be fixed. This cannot be a party measure.
>
> Mr. Heron: Not a party measure! See how members are laughing!
>
> The PREMIER: It is a measure to give effect to a direction laid down by Parliament last year. It is not a Government proposal. The Government have had no hand at all in fixing the boundaries.
>
> Mr. McCallum: You made the Electoral Districts Bill a party measure.
>
> The PREMIER: That was a different thing.

Mr. McCallum: Was it?

The PREMIER: Very different. It is necessary to have a redistribution from time to time on account of the population of some centres increasing and the population of other centres decreasing.

There is no provision in this Bill to allow any change due to change of population. It is frozen. It would be frozen for all time if it went past the next general election; but it is frozen. Despite all this Government's suggestions about one vote, one value, it is prepared to have the boundaries frozen until the next general election. To continue -

Particularly is it necessary under our system of representation to meet the changes that occur. When the other Bill was introduced it was a party measure, but the House discussed it fully and members admitted that the time for a redistribution was overdue. No-one more than I regretted that the Bill had to be introduced. A redistribution is always resented and it always leads to trouble and difficulty.

That is probably why the Government is trying to get rid of it; that is why it is abolishing redistribution. To continue -

Although we got through our work last year pleasantly enough, we had some very long sittings. As a result of that measure, new boundaries have been suggested.

Mr. Pickering: Not on the lines of our direction.

The PREMIER: The hon. member will have an opportunity to show in what way the commission have departed from the direction set out in the Electoral Districts Act.

Mr. Marshall: It will not be hard to show that as regards the Murchison district.

The PREMIER: The member for Murchison will also have an opportunity.

Mr. Marshall: And I shall take full advantage of it.

The PREMIER: I hope that members, in dealing with this Bill, will remember their duty to the State. We may not like the boundaries; they may not suit us personally, but that is not the question before us. All we have to consider is whether it will be fair to the State to have the boundaries as set out in this Bill.

The fascinating thing about it is that we can see that the old method of dealing with these things, whereby the electoral distribution was not set by boundary commissioners but by the Parliament, led to a considerable amount of fuss. It led to the sort of argument that we have had about the Electoral Amendment Bill. That is what the Government is wishing on us; removing the electoral commissioners and their ability to set the boundaries will take us back to that position. The Parliament will have to enact other legislation for us to have electoral boundaries again. Is that what the Government wants? Is that the purpose of the Government's legislation? I would love to hear from the minister when he responds whether that is the intent. Is it the intent of this Government to get rid of electoral commissioners and the automatic setting of electoral boundaries at regular intervals and without the interference of Parliament? Is that what this Government intends, because that is what this legislation does? Maybe the Government has another intention not disclosed to us in this legislation. Maybe it intends that this legislation should be replaced by some other legislation - something like the Electoral Amendment Bill, perhaps. Could it be that the Government does not intend to do what is in this legislation but something else? Could it be that more legislation is following this legislation? Could we find later that the two pieces of legislation were being progressed side by side with the intent that what we had would be replaced or amended by a new scheme, but it did not look like an amendment - it looked like a repeal and a totally new idea which happened to have some ideas similar to the old ideas? Could that be what is here? Have we discerned a deeper meaning in this legislation before the House? Could it be that in this last few minutes I have actually divined what it is that the Government is trying to do? Could it be that it is seeking to amend the Electoral Distribution Act but not make it clear to the courts that that is what it is doing? I may have just recently, in the course of this speech, come across the secret meaning of this legislation. This legislation is not intended to throw away the principles of 1923, 1929 and 1947. This legislation is obviously intended as a mere ruse to get around section 13. I could be wrong. The minister remains mute. It could be that the Government does intend what it says in this legislation, and I must argue against that intent. I must suggest to this House that we resist that idea; that we should go back to the concept of keeping electoral commissioners, notwithstanding that this legislation abolishes them. I urge the Government to understand the need to retain electoral commissioners. This legislation should be defeated because it is wrong in principle. The introduction of electoral commissioners was a very necessary progression that we made in 1923. I happen to think that the step the Parliament took in 1923 was an excellent one, and I urge this Government to stay with the idea. Members should not go along with this terrible idea of getting rid of electoral commissioners. Furthermore, I go beyond that: do not just have

electoral commissioners; have electoral commissioners who actually decide the boundaries. Step forward to 1947: even if I can get the Government to the idea that we had in 1923 -

[Leave denied for the member's time to be extended.]

Hon Peter Foss: Shame! Shame!

The DEPUTY PRESIDENT (Hon Simon O'Brien): Order!

HON RAY HALLIGAN (North Metropolitan) [9.00 pm]: We have before us a very important piece of legislation, as has been eloquently explained by Hon George Cash and Hon Peter Foss. There is some doubt as to the validity of certain aspects of the legislation. According to the second reading speech, the Bill proposes to repeal the 1947 Electoral Distribution Act. It also proposes to remove from the 1899 Constitution Acts Amendment Act the provisions relating to the numbers and representation of electoral regions and electoral districts. There has been a continual evolution of the electoral arrangements of this Parliament. The second reading speech said that these arrangements are gradually being taken out of the Western Australian Constitution and the Constitutions Act Amendment Act and placed in a single piece of legislation dealing with all aspects of the electoral process. It also said that this Bill facilitates that continuing evolution of Western Australia's electoral arrangements.

I find it most interesting that the second reading speech talks about evolution rather than revolution. I also take note of the fact that this current Labor Government has been very vocal - certainly the Premier has been very vocal - about the fact that it accepted the majority of recommendations of the Commission on Government. I believe COG said that although the constitution Act should not deal with minor electoral detail, it should provide the broad framework of our electoral system, which should be acknowledged and safeguarded in the Constitution. In addition, COG said that it should be amended only by referendum. From the minister's second reading speech, it is obvious that the Government is now turning its back on those COG recommendations. The Government is taking a completely different path and suggesting that it can repeal some Bills, and bypass what anybody else would consider the right way of doing things. Hon Peter Foss compared this to the story of the emperor's new clothes. If a person says something often enough, he may convince people that he is right.

In this instance I have no doubt that the Government has told the Greens (WA) not to worry, that everything is okay, and that it knows what it is talking about. I hope that the Greens are able to present an argument of their own for why they believe, and have proved, that the Government is right on this issue. It makes one wonder which is the dog and which is the tail. I do not think there is any doubt in the minds of people, certainly those on this side of the House, that an arrangement has been reached. Who has been involved in pushing that arrangement forward? It has been said that the ALP has had to give ground to placate the Greens, yet on 1 August I understand Hon Christine Sharp said something about being pressured by the State Government. The question is who do we believe and who do the people of Western Australia believe about what should be done, is being done and why. Certainly the ALP has said on numerous occasions that part of its platform is one vote, one value. Previous speakers have shown that there is some fallacy in that argument. The ALP may currently feel strongly about it and have sometimes in the past felt very strongly about it, but some of its previous leaders certainly have not felt strongly about one vote, one value.

Although Hon Peter Foss has referred back to 1923, I will try to stay with the current day. The current Labor Government said in the lead-up to the election of 1996 that it would do a number of things for the State, one of which was most definitely the introduction of electoral reform. In one of its media statements dated Monday, 18 November 1996 it mentions one vote, one value twice in one sentence, so it obviously felt strongly on that point. The media release stated that the ALP wanted to promote the opportunity for small parties and Independents to be elected to the Legislative Council, which has always been controlled by conservatives - it certainly has not in the past few years - by reducing the number of regions from six to two and establishing proportional representation for those regions. That is yet again another change of heart. I have no argument with that. My only concern is when people stand and say that it has always been that way, or that they have only had one principle and they do not want to be advised of all the sub-principles involved. They stand on the so-called moral high ground and suggest that they have always thought in that manner, they have always been right and that there is only one argument. I suggest on this occasion that has not been the case.

COG recommendation 262 reads -

> the Bill to amend the *Constitution Act 1899* shall not be presented for assent unless approved by a majority of the electors in a referendum.

Although the Government was quite prepared to say to the people that it agreed with the majority of the recommendations of COG, I am not sure that it spelt out completely those things with which it did not agree. The ALP probably found it politically expedient to talk about the things it did agree with and then, by sleight of

hand or through the back door, present its current proposition to the Parliament. I believe the ALP has also said something to the effect that the difference between the responses of the two major parties to the recommendations of COG is highlighted by those matters that the former Government rejected outright or on which it failed to give an adequate pledge of action, but which the ALP is committed to implement. There is nothing wrong with being selective, but people need to be honest and open to be accountable. Members of the Labor Party should spell out in no uncertain terms those things they did agree with and, probably more importantly, those things they did not agree with.

With regard to being open and accountable, I will move quickly to the situation in Kalgoorlie at the last election when the ALP sitting member Megan Anwyl distributed a flyer. The Government did not mention that it would abolish eight country seats, only that it would not abolish 16. If that is not a sleight of hand, I do not know what is. The flyer went on to say -

> Under Labor country seats will have 17,000 electors and city seats 23,000.

How does that compare currently with what the Government is proposing? Have the figures been changed? Are things a little different? The Government probably should have put more resources into winning Kalgoorlie, because Megan Anwyl goes on to say -

> Only Megan Anwyl has positive solutions to stop crime

In the 10 months of this Government I am not so sure that it has stopped crime all that well. Obviously Megan Anwyl had the solutions and I hope the Government has had the benefit of her expertise in the party room. The Opposition might ask at a later stage just what the Government has learnt from her that will stop crime, because it is not using that knowledge now.

The Labor Government also stated that its principle of one vote, one value had long been central to its philosophy. It said that Labor re-stated - not just once but obviously a number of times - its commitment to implement this principle in both Houses of Parliament; that is, not only in the Legislative Assembly but also in the Legislative Council.

The Government appears to have changed its mind in a number of areas. I wonder whether the changes were thought of in the party room or whether some members who make up a party called Greens (WA) suggested something to the Government that changed its mind. I have advocated that a referendum be held on this major issue for the people of Western Australia. I shall talk about that a little more in a moment.

Hon Peter Foss mentioned boundaries, which, of course, are all important in any electorate. He said that Parliament had in the past decided the boundaries of electorates and that, subsequently, commissioners decided those boundaries. Boundaries are all important; they are not just lines on a map. I shall relate a short story to the House about lines that I saw on a map in Papua New Guinea on which administrators drew lines to create provinces, knowing absolutely nothing about the people with whom they were dealing or about the topography of the area. They obviously thought they were doing the right thing by splitting up the country into easily arranged and easily managed areas. Unfortunately, they found, because there were few roads in the highlands of Papua New Guinea, that some of the lines went straight through the centres of villages. Therefore, people in the middle of a village, depending on which house they lived in, could be called one people or another. The central line down the Owen Stanley Range divided New Guinea from Papua. The bureaucrats, as I said, probably with good intentions, decided whether people were Papuan or New Guinean - and they became two completely different peoples.

Boundaries, therefore, are very important. We have heard something about the boundaries that are likely to be drawn should this legislation pass through the Parliament. The upper House will have six members each in six electorates and the boundaries in the Legislative Assembly will be redefined. It has been explained to me that some boundaries are likely to stretch from the coast right across the State to the South Australian border. Will there be a community of interest in that electorate with people on the desert and people on the coast? There would be very little difference between that situation and the situation in Papua New Guinea. The Government wants these people to come together whether or not they like it. It will mean that whoever represents a particular district will need to have knowledge of all the communities of interest. The representatives will have an enormous burden placed on them by that decision, let alone by the greater distances that they will need to travel.

I talked last week about one thing that the Government cannot provide to the representatives of this Parliament. Although the Government is prepared to provide additional phones, computers and possibly additional staff and offices, it cannot possibly provide additional time; that is one thing that is just not available to the Government. However, those elected representatives will be expected to service to the best of their ability the people they represent. They will have great difficulty in representing those people. I suggest that ultimately their electors will become frustrated, which should not happen.

The point I make is that we have an opportunity to bring those people into the argument and to cause them to be part of the solution rather than part of the problem. An enormous number of questions will be asked by electors and possibly by the elected members who will have to go out to their electorates and try to provide a face and a voice to the services they provide. In view of what is contemplated by this Bill, I believe a lot of services will be denied to electors, which, again, is unfortunate.

I believe the Government knows only too well whether the proposals in this Bill are likely to be accepted by the people of Western Australia. I believe it has no wish to go to the people by way of referendum because it is aware of the result. That is unfortunate. I have been down this path before when I have talked about the role of members in this Parliament. The members in this Parliament are here to represent the people of Western Australia. If we turn our backs on them and do things our way in spite of them, not because of them, we will not only abrogate our responsibilities but also do the wrong thing.

[Quorum formed.]

Hon RAY HALLIGAN: As elected members, we should not abrogate our responsibility and impose our will on the people of Western Australia. On something as important as this, we should ask the people what they want. The Government, unfortunately, has no wish to go down that path for a variety of reasons. I understand that Hon Jim McGinty made certain statements on electoral and parliamentary change and referenda. He said that the idea that the Australian people will support any proposition that has any merit is horribly mistaken, because of the complexity of the issues and the understanding that Australian people have of many of the broader issues involving our processes. It appears that Mr McGinty believes that the people must not be allowed to pass judgment on constitutional matters, because they do not know what is good for them. I believe Mr McGinty also mentioned two referenda that were defeated in 1988, and tried to use those as examples of the foolishness of voters. These were the questions of rights and freedoms and the constitutional recognition of local government. In both these referenda the federal Government was exposed as centralist in its objectives. It is said that voters rightly objected to the Commonwealth purporting to confer on them the right to freedom of religion when they already had it. The proposal would have enabled sectarian bigots to mount High Court challenges against government support of church schools and hospitals. That was rejected by 72 per cent of WA voters and 69 per cent of voters nationally.

As to the second referendum, local government is not recognised in the Constitution for the very good reason that it is a devolution of state authority and its regulation is the responsibility of the States. Constitutional recognition of local government would have enabled the Commonwealth to attack a major area of state responsibility and advance the centralist agenda of replacing federalist democracy by public regional governments. This proposal had already been rejected in 1974 by 53 per cent of Australians, which included 59 per cent of Western Australians. In 1988 the respective no votes were 66 per cent and 70 per cent. An overwhelming number of people voted against the centralist designs of Canberra.

In this instance, although Mr McGinty mentioned two of those referenda, he did not mention a third that was voted down in 1988 by 62 per cent of Australians and 68 per cent of Western Australians. This was the fair elections question that would have imposed equal electoral enrolments on State Parliaments. Voters refused to have this reform thrust upon the sovereign Parliaments of the States, nor did they see it as a necessary icon of democracy. Mr McGinty obviously fears that Western Australians will reject electoral reform, as they did in 1988. That is a most unfortunate path to follow, because the people have every right to have their say. To some extent they have had a say, but not by referendum. In *The West Australian* of 9 July this year 33 per cent of respondents supported one vote, one value, 57 per cent supported the current electoral system and seven per cent were undecided. Forty-two per cent of Perth voters and 17 per cent of country voters supported one vote, one value; 51 per cent of Perth voters and 76 per cent of country voters supported the current system. Forty-two per cent of Labor voters supported one vote, one value while 51 per cent of Labor voters supported the current system. Seventy per cent of Liberal voters backed the current system and 57 per cent of the voters did not support constitutional change. I do not know the number of voters involved in that, but it gives some indication of the support for the current system.

I have some concerns about the way the Government is approaching this legislation, more so because it was one of the Commission on Government recommendations. To date, the Government is quite comfortable, in fact it is patting itself on the back, about all its election commitments and when they will go through this House. I am not sure whether the Government has made a list of those things it had previously agreed should be done and is letting people know when it will bring that legislation before this Parliament.

I mentioned before that Dr Gallop agreed with a COG recommendation that changes to the Constitution should go to the people in a referendum.

Hon Robin Chapple: What recommendation was that?

Hon RAY HALLIGAN: I will find it for the member in a moment.

By failing to include one vote, one value provisions in the Constitution, Dr Gallop is avoiding his commitment to a referendum. Again, there are principles and sub-principles, and people who change their principles, which members on this side of the House have been accused of. I would like some openness, accountability and honesty on the part of the Government about how it has reached its current stance and what it has forgone and changed to reach that stance. Under COG recommendation 263, Dr Gallop agreed to hold a people's convention within 12 months of winning office to develop a new Constitution. Is that still on the agenda? The Government has only two months to go. Also, I understand Dr Gallop would give the responsibility of looking after that item to the Deputy Premier, Hon Eric Ripper. I do not know whether he currently has that responsibility and, if he does, what he has done with it. COG recommendation 256 referred to the Constitution Act. Dr Gallop agreed to enshrine the composition of the upper House in the Constitution Act. Again, we find that the Constitution has been bypassed and it is going into an electoral Act.

Commission on Government recommendation 255 also refers to one vote, one value being in the Constitution Act. There has been a concerted effort to bypass not only the Commission on Government recommendations but also the people of Western Australia. The Government has insisted on its way of doing things. It could not do that unless it had the support of the Greens. We have some idea of the Government's motive, but we are not sure what has caused the Greens to go down this path.

Hon B.K. Donaldson: It is a trade off.

Hon RAY HALLIGAN: It appears that the Greens have come to an arrangement. I know they do not like the word "deal", but an arrangement is just as good.

The North Metropolitan Region has 14 Legislative Assembly seats and seven Legislative Council seats, giving a total of 21. If this legislation is passed, there will be a total of 23 seats; that is, 17 Legislative Assembly seats and six Legislative Council seats. That region covers 1 005 square kilometres - which is a very small portion of the State - but it will have more representation if this legislation is passed. I have no doubt that the Government will say that it is the springboard for those who have to travel to the South Australian border. It might also be suggested that it is easier to catch planes in Perth than it is in Kalgoorlie.

I find it very difficult to convince myself and others to whom I speak that there should be greater representation in the metropolitan area as distinct from the country areas. To date, the Government has not presented a good argument about why it is right and everyone else is wrong. When I say "everyone else", I mean the greater majority of people who comprise this State, not the 17 members who sit on the government side of this Chamber. We are being told, and the Greens have been convinced, that the emperor is wearing new clothes. Members on this side of the Chamber have not been convinced.

This is important legislation and it should not be dismissed lightly. It should have been sent to the people. If the Greens wanted that to happen now, it could. They could vote against the second reading of this Bill and it could go to the people. At some stage I would like the Greens to explain a little more fully why they do not want that to happen. If they did, when people asked me to explain what the Greens had in mind I could tell them rather than provide the names and telephone numbers of the Greens members.

Hon Peter Foss and Hon George Cash have adequately explained the reason that members on this side of the Chamber oppose this Bill. I am sure that subsequent speakers will adequately explain yet again their reasons that this legislation should not progress.

HON M.J. CRIDDLE (Agricultural) [9.35 pm]: The National Party opposes the Bill. I will explain it more fully so that members understand exactly what the Government is doing. As I have said many times, this legislation will have a major impact on country people and will rob them of much of their representation. The Bill repeals the Electoral Distribution Act and amends various Acts, including the Constitution Act Amendment Act 1899 and the Electoral Act 1907. This Bill sets out the rules for dividing the State into 57 lower House seats and 34 upper House seats and matters to be considered when dividing the State into districts and regions, including that very important issue of community of interest. It has been pointed out previously that the community of interest is difficult to address in large districts.

The legislation also deals with means of communication and distances from the capital. People living in the metropolitan area do not appear to understand that methods of communication commonly used in the city are not readily available in the country, and they are not available at all in remote areas. It must be understood that reducing representation will make it very difficult for people in those areas to communicate.

Existing boundaries of regions and districts and physical features are also issues. Existing local government boundaries and demographic trends are important. The amendment passed providing that redistributions should occur two years after a general election will, to some extent, overcome that problem.

The legislation also deals with the appointment and functions of the electoral distribution commissioners. Amendments have been foreshadowed requiring an absolute majority of the Legislative Assembly and the Legislative Council. These provisions, along with the provisions of Constitution Acts Amendment Act, are now contained in the Electoral Amendment Bill or will no longer have effect on any legislation.

Reference has been made to section 13 of the Electoral Distribution Act. That section has been quoted previously, but I will repeat it -

> It shall not be lawful to present to the Governor for Her Majesty's assent any Bill to amend this Act, unless the second and third readings of such Bill shall have been passed with the concurrence of an absolute majority of the whole number of the members for the time being of the Legislative Council and the Legislative Assembly respectively.

Clause 3 of the Bill repeals the Electoral Distribution Act. Neither the minister's second reading speech nor the explanatory memorandum make any mention of the effect of the repeal of the Bill insofar as it avoids the requirement for an absolute majority in both Houses. That issue will be determined by the Supreme Court. The Government is enacting the most extreme form of amendment without requiring that absolute majority. The intent of section 13 is clear, and it was made very clear in 1947. I have tried unsuccessfully to find the report of that debate. However, avoiding section 13 does not honour the commitment made by the Parliament and the intent of that legislation when it was enacted. This Bill is certainly an attempt to get around that legislation.

The functions and powers of the electoral commissioners and the establishment of districts and rules governing the division of the State have been amended and are now in the Electoral Amendment Bill. In effect, the Government has amended the bulk of those provisions that relate to electoral distribution to suit its agenda, and has done so without requiring an absolute majority. In my view, that is a moral issue. We are told this Bill requires less than an absolute majority to repeal an Act of Parliament that contains provisions requiring an absolute majority before it is amended. The dubious legality of this move is amplified by the fact that the changes affect the voting rights of the people of Western Australia. It is therefore not surprising that the minister has made scant mention of the repeal of section 13. The way the Government is going about this repeal is a means to get around that part of the 1947 legislation.

To go a little deeper into the repeal Bill, it provides that the Act will come into operation as soon as it is assented to by the Governor. The President has made it clear that there will be representations to the Supreme Court about the validity of the Bills. The Bills may well be presented to the Governor if they meet the requirements of the Supreme Court.

The Bill also repeals the 1947 Act in its entirety, as I mentioned before. That Act provides for the appointment of electoral distribution commissioners, who shall be the Chief Justice of Western Australia, the Electoral Commissioner and the Government Statistician. The commissioners' functions are to divide the State into districts and regions in accordance with the Act. The Bill presently states that such a division is to be made after every second general election, or when required by proclamation. However, that section in the Electoral Amendment Bill has been amended. The commissioners' redistribution takes effect when it is published by the commissioners in the *Government Gazette*. The repeal of the Electoral Distribution Act 1947 will facilitate the process of consolidating this State's electoral legislation.

Clause 4 amends the Constitution Acts Amendment Act so that the provisions relating to the numbers and representation of electoral regions and electoral districts will be integrated with other electoral provisions. Indeed, under the transitional arrangements in clause 5, the redistribution that took place in the middle of the 1990s will continue to apply until a redistribution is made under future legislation. The effect is that current Legislative Council and Legislative Assembly members will continue to represent the same regions and districts, and any by-elections that may be needed will be held for those regions and districts. That is one of the issues which Hon Peter Foss raised and which certainly causes me a deal of concern.

Clause 6 makes consequential amendments to the Electoral Act 1907 to remove the references in that Act to the Electoral Distribution Act 1947. Section 24(3) of the Electoral Act states -

> Without limiting subsection (1), the rolls shall be printed and issued as soon as practicable after a notice dividing the State into districts and regions has been published under section 3(2)(f) of the *Electoral Distribution Act 1947*.

Further, section 51(2) of the Electoral Act states -

> The Electoral Commissioner may take such action and give such directions as he considers necessary in order for the rolls to be adjusted to give effect to a division of the State into districts and regions under the *Electoral Distribution Act 1947*.

The meaning of clauses 7 and 8 of the Bill is not clear. Therefore, I will run through what they mean. Clause 7 makes consequential amendments to section 11(1) of the Juries Act 1957, which states -

> If an Assembly district part or the whole of which forms or is comprised in a jury district is altered or abolished pursuant to the *Electoral Distribution Act 1947*, or any other law for the time being in operation; the jury district, as constituted immediately prior to the alteration or abolition of the Assembly district, shall nevertheless remain as so constituted until varied by proclamation under this Act, and any Jurors' Book in force immediately prior to the alteration or abolition of the Assembly district shall continue to be the Jurors' Book for the jury district until a new Jurors' Book is prepared under this Act.

Clause 8 makes consequential amendments to the Salaries and Allowances Act 1975. Section 6(6) states -

> Notwithstanding any other provision of this Act, where any provision of a determination dealing with the payment of electorate allowances or other allowances to members of Parliament which vary according to the electoral district or electoral region of a member becomes inapplicable, or, in the opinion of the Chairman, inequitable as a consequence of action taken under the *Electoral Distribution Act 1947*, the Chairman may without further authority than this subsection alter the determination in that regard to such extent as he thinks necessary for that purpose, and any variation of the determination shall be published in the *Government Gazette*.

That gives members an idea of what the Electoral Distribution Repeal Bill will do. Of course, the Electoral Amendment Bill has been dealt with by this House amidst a deal of controversy over a number of days.

The real issue is section 13 of the Electoral Distribution Act, which will be bypassed by the current Government by repealing the Electoral Distribution Act. People in rural and regional Western Australia will find that very difficult to swallow, and they will make their opinions known to the Government at future elections. They will make the point that taking away their representation is viewed very seriously and will have an impact on the way in which they vote. Although this Bill has been introduced by the Government, it must be pointed out that the assistance of the Greens (WA) will be remembered by the voters in regional and rural Western Australia.

I once again put on record my complete opposition to the two electoral Bills, particularly the Bill we are debating at present. I believe we have canvassed all the issues as thoroughly as we possibly can. The Government has not recognised that the committee's report clearly pointed out that there was no indication by the people in the country or in the city of a requirement for this Bill to go through the Parliament, or that there was any need for haste. I realise that the Government has indicated clearly that it is its wont, and was an issue at the last election. I did not see it as a big issue at the last election, and one that should be rushed through. In all my travels, nobody in country and regional Western Australia made a point to me that he or she wanted this legislation to go ahead. It is sad to see this Bill go through and representation removed from those areas that certainly need coverage. I am concerned about the way these Bills have been brought to the House.

HON ROBIN CHAPPLE (Mining and Pastoral) [9.48 pm]: I rise tonight to use a word I used last time; that is, consistency. There has been some discussion about the Greens' views of the Electoral Distribution Repeal Bill. The Greens have made their views clear from the outset, and on 19 September 2001 we even supported Hon George Cash's motion in which he sought to determine whether the Attorney General would commence proceedings seeking a declaration of law by the Full Court of the Supreme Court on a number of questions, the first of which was -

> (i) Is it lawful for the Clerk of the Parliaments to present to the Governor for Her Majesty's assent a Bill to Repeal the Electoral Distribution Act 1947 unless the second and third readings of such Bill shall have been passed with the concurrence of an absolute majority of the whole number of Members for the time being of the Legislative Council and the Legislative Assembly respectively?

We supported that position, on the basis that although we believe entirely that a repeal is a repeal is a repeal, questions were being raised by the other side of the House and we thought there was some value in seeking clarification. With that in mind, that position was espoused by our member on the committee and was a recommendation of the committee, and the Clerk has now taken action to seek that clarification before the court prior to assent being given to this legislation.

With regard to consistency, on Monday I attended a meeting in Tom Price of the Pilbara Regional Council, along with Hon Jon Fischer and Mr Larry Graham, the member for Pilbara in the other place. That was an interesting debate, because we were discussing royalty provisions and the like. When it came time for the member for Pilbara to make his deliberations on royalty returns, he proceeded to detract from those words and say that Hon Jon Fischer, Hon Robin Chapple, Hon Tom Stephens, Hon John Ford and Hon Norman Moore had no

relationship with the Mining and Pastoral Region because none of us lives there. I thank Hon Jon Fischer for interjecting and pointing out that Perth is central to the electoral region of all those members. Mr Graham then professed the view that the reason for his notion that we have an independent State or Territory in the north west of Western Australia is that he believes one vote, one value electoral reform is not in his or his electorate's interests.

I return to the word "consistency". When we talk about consistency, we should remember that on 19 September 1995, the member for Pilbara was appointed by Hon Jim McGinty to head the Australian Labor Party's response to the electoral reform proposals by the Commission on Government, about which a report was forthcoming by the then Liberal Government. In announcing that appointment, Mr McGinty said -

> Labor has already endorsed 111 of the 114 recommendations in COG's first report. To date, the Government is yet to embrace any of the proposals.
>
> I will not sit back and allow these long-awaited reforms aimed at making Western Australia's system of government more accountable and democratic to wither on the vine . . . .
>
> Caucus today appointed Pilbara MLA Larry Graham to coordinate the Opposition's approach to COG's reforms.

We are fully aware that the Government brought down a report. That report was eloquently talked about by Hon Ray Halligan, and I will deal with that matter shortly. The minority report that was brought down had four signatories: you, Mr President; Hon Mark Nevill; Hon Larry Graham; and Geoff Gallop MLA. That report said with regard to the Legislative Council -

> To be constituted a House of Review both the role of the Legislative Council and the basis of its representative character require some alterations. We acknowledge that proportional representation now provides one element in the electoral system for the Legislative Council. We consider however, that the effect on it of the present regional division of the State strongly inhibits the possibility of significant minority interest obtaining representation in the House, representation which we believe should be promoted on democratic grounds . . . the justification for the Council having an electoral system which precludes the representation of minority interests having significant support is difficult to sustain.

That is certainly at odds with what that member from the other place is saying these days - but that is "consistency". The minority report states also -

> We believe that the Parliament cannot lightly ignore the recommendations contained in the Commission on Government Report. They are a reflection of what amounts to two major Commissions of Inquiry into our political system. In only the most exceptional circumstances and on the basis of the most compelling argument should parliament set aside any of the recommendations.

It is clear that the minority report supported in its entirety the provisions of COG. The report states also -

> The Minority considers the rejection of recommendations 42 and 43 and 52 and 53 to be particularly serious in their consequences.

I am reading only certain sections of the minority report; if members would like me to table the report, I am more than willing to do so. The report states also -

> While the Minority would have preferred a deviation of no more than 10% from the common quota which has now become the standard throughout Australia, they were willing to accept the Commission's recommendation of up to 15%. On no account however can a variance of 20% per cent as proposed by the Committee be accepted. This would allow Assembly seats to vary in size from . . .

The report states also -

> Recommendation 52 and 53 proposed that a fair electoral system be introduced for the Legislative Council without vote weighting or malapportionment and involving regional proportional representation with 5 seven member regions.

That comment is interesting, because it will crop up again shortly. The report states also -

> The Committee's system could see the creation of six 5 member constituencies and one 4 member constituency. The quota in each region would be 17% to 20%, excluding all minor parties except the National Party. This would completely negate the whole thrust of the Commission's proposals for the reform of the upper house.

The report states also -

> The Minority welcomes the Committee's recommendations to retain compulsory voting (Rec 47), to retain 4 year terms for members of the Legislative Council (Rec 57), and to constitute the Legislative Council as a genuine house of review (Rec 51).

The report was signed by Larry Graham, Mark Nevill, Geoff Gallop and John Cowdell, the President. One might be able to say that, at that time, Mr Graham was by some facet of the Labor Party machine coerced into taking that position. I do not think that is the case, because prior to the appointment of that committee on 19 September 1995 by the then Leader of the Opposition, Hon Jim McGinty, and the presentation of the minority report in October 1996, Mr Graham also made a verbal submission to the Commission on Government. For those members who now consider Mr Graham to be an ally, I will read his words to Jack Gregor during a regional seminar in Port Hedland on 15 June 1995. I will table the paper so it can be seen that all is as stated. It states -

> **GRAHAM, MR:** I have met with officers of your commission working on this and they have asked me for my submission as a member with a remote area electorate. They asked me a series of questions and said to me, what would be the effect to me as a local member of parliament if my electorate was extended out on the sort of indicative boundaries you have put in there for one vote one value?
>
> **THE CHAIRPERSON:** Yes.
>
> **GRAHAM, MR:** Let me just explain to people. I have one of the busiest electorate offices in Western Australia, not because - well, it might be, but I mean, not particularly because of anything I do. It is simply that the load of work through my electoral office is a consequence of government departments not having a presence in towns, government departments not being prepared to represent another government department, governments not having public liaison people, people with whom the public can deal, government departments not being, in inverted commas "user friendly" to people in towns, as they are in the city. So my office then becomes the place - and other politicians, too, I have to say; I'm not claiming the credit. My office becomes the place where people go to break into the system of the government bureaucracy. That would be a large amount of my work.
>
> To me, as a member of parliament, it is really academic. Currently my electorate is the size of Victoria. It's really academic to me whether it goes out to become the size of New South Wales, as it does in the current boundaries that are drawn up. I lose places like Tom Price and Paraburdoo, which are relatively close to this area, and I pick up Halls Creek -

Debate adjourned, pursuant to standing orders.