

**CONSTITUTION AND ELECTORAL AMENDMENT BILL 2005**

*Second Reading*

Resumed from an earlier stage of the sitting.

**HON PETER FOSS (East Metropolitan)** [5.40 pm]: Mr President, I am glad I have your undivided attention, because somebody was distracting you when I was paying you a compliment about the very recent addition to the house of the honour board celebrating representative government. I was pointing out that representative government is as important as responsible government. In fact, I would go so far as to say that representative government is more important than responsible government, and I am pleased to see that we have honoured representative government with the honour board prior to even honouring responsible government. I was commending you, Mr President, on your actions in making this distinction and in drawing the attention of members in this chamber in Western Australia to the importance of representative government. The only flaw I saw was that inadvertently the board had been erected in such a manner that the portraits of Her Majesty the Queen and His Royal Highness the Duke of Edinburgh cannot, in their current size, be returned to the chamber. I understood there was some suggestion that we could have a stained glass window versions of them instead. That, of course, is a digression.

**The PRESIDENT:** Perhaps the member would like to leave a donation and a public subscription for this purpose.

**Hon PETER FOSS:** Indeed, Mr President. I digress, but I had drawn attention to the fact that I consider representative government even more important than responsible government. I felt that the reforms of which this legislation is part had failed to take proper cognisance of the importance of representative government even before that of responsible government. I had suggested a number of moves that were needed - not just this one, because this bill has not gone far enough; it purely adds one member. A number of other constitutional and electoral amendments need to be made to address the consequences of the legislation that has been passed. I was part of the way through that, and I will continue.

If we are to continue with this system, we need to address the problem in the means of counting proportional voting if indeed we are to keep proportional voting. One of the other constitutional changes that I suggested we might make, in addition to the one that is currently being contemplated, is to perhaps change from proportional representation back to a system of more direct representation, because we have these larger electorates that have to be serviced.

Another matter that needs to be addressed and is markedly missing from this legislation - it is a matter that has concerned me and I have spoken on it before in this house - is the atrocious way we deal with illiterate voters. All our priorities seem to be wrong. We all know that in Western Australia there is a significant number of illiterate voters. They are not confined to the Aboriginal population, but they have a much higher percentage than anyone else. I have been disgusted by the denial of democratic rights to these illiterate voters. There are two ways in which this happens: there are those, usually elderly people, who have no hesitation in admitting that they are illiterate and need assistance, and there are other people who feel ashamed that they are illiterate and do not seek assistance. The ones who feel ashamed spoil their vote. The ones who do not feel ashamed wander in and hand over a card. I do not think that is a proper method. The Electoral Act does not recognise the handing over of a card as being a request for assistance. The handing over of a card can be done only after a person has indicated he needs assistance, and then he can indicate the way he wishes to vote. The problem is that the person who comes in and presents a card has already been told by somebody outside what the card states. The whole process of a secret ballot has been totally undermined by a process that takes place before the person even gets into the place of balloting.

**Hon Paddy Embry:** And of course he might not have been told the truth.

**Hon PETER FOSS:** Who is to know? We go through all this process during an election to ensure a person's proper vote is recorded, and then we allow the system to be totally subverted by allowing a person to hand over a card which somebody else outside may have represented to them. However, it gets worse. If a person indicates that he is illiterate and requires assistance, he is accompanied while he is voting not only by the returning officer for that booth but also by the scrutineers. So much for a secret ballot! The process is a disgrace to democracy. We have gone to all this fuss about one vote, one value as being the necessary change we need to make in our electoral system to ensure democracy, yet we deprive a substantial number of our country electors in particular of a proper choice and a proper right to make that choice. However, processes can be easily adopted to rectify this, and I have spoken in this Parliament about them before. The world's largest democracy, India, regularly carries out democratic elections in which the majority of voters are illiterate. They have a proper secret ballot; it is possible to happen. They do it by symbols. Most people can indicate a choice against a symbol. They might

not be able to read a name, but they can recognise a cow or some other symbol. In India the symbols for the various parties are well known and they are publicised during the course of a campaign. People only have to put their mark against the symbol.

**Hon Ray Halligan** interjected.

**Hon PETER FOSS:** The big problem is that not everybody knows the candidate. Hon Ray Halligan has indicated an alternative, which is photographs. If it is a small area and the person is known, that is fine; for the upper house it would not be very satisfactory because most people do not recognise those on the ballot paper. The reality is that we are talking about a step forward in democracy, yet we have not secured the most basic and fundamental part of democracy, which is the right to a secret ballot. We might have to make another alteration, which is the capacity, if need be, to have optional preferential voting. We should have optional preferential voting. The commonwealth has had it for a long time and we should have it, because if illiterate voters are to vote in the secrecy of the balloting place -

**The PRESIDENT:** Order! I am sure the member will relate his comments to the bill, but it appears he is covering a range of electoral topics canvassing anything other than an increase of two seats. I am sure the member will relate that back to the issue of the two seats.

**Hon PETER FOSS:** Yes. The trouble with this bill is its total inadequacy, because of its failure to address vital parts of the democratic system. This bundle of measures has been put before us because this is a message that we need for democracy. This is the last bill in that series; this is the one that is supposed to put the icing on the cake and make it all happen, but this bill is sadly lacking. This bill fails to address the fundamentals of democracy. Those fundamentals are sadly missing in this package of reform. How can this reform package be put up as addressing the problems if we have not addressed the fundamental problems? What is the point of electing two more members if we do not have a system under which they can be properly elected? Why fiddle around with the things that interest the parties and the number-crunchers in the other place when we are not dealing with the things that really matter to electors? Why are we neglecting those people? It is because they do not count. Why is Labor not worried about those people? Why has a proper measure not been taken? It is because the government knows that it has the system sewn up. Members will be elected by illiterate people, who have been educated to take a card inside and to present it. The government is not interested in democracy, it is interested in the numbers. It is interested in keeping the Treasury bench and in being the responsible government, or in its case irresponsible, rather than in providing representative democracy. This legislation should be about representative democracy. As a measure for representative democracy, it is entirely inadequate, because it fails to address all those measures. Until we address those measures, we will be fiddling with just the peripheral matters. We are dealing with the things that matter only to Hon Jim McGinty as Attorney General and as the numbers man for the Labor Party. This package has nothing to do with democracy; it is to do with looking after the Labor Party.

If the government were really concerned about democracy, it would not have given priority to these bills; it would instead have given priority to measures that the government could have put through with the accord and applause of the entire Parliament. It could have addressed fundamental matters of democracy to ensure a truly representative Parliament so that members could represent their constituencies. It could have ensured that it was not just a matter of trying to get the numbers on election day but of making sure that people were elected for the full four years to represent their electorates. It could have made sure that we had a voting system that delivered democracy and provided a method of dealing with illiterate voters that gave them the right to cast their vote without having it inspected by the returning officer and the scrutineers for all the parties.

I asked Hon Robin Chapple about this matter. He was present when I was in Onslow for the by-election. I was absolutely horrified by the fact that 90 per cent of the voters at that booth had to seek the assistance of the electorate returning officer and to be accompanied by the scrutineers for the parties when placing their vote on the ballot paper. It was humiliating for those people.

**Hon Robin Chapple:** If I remember rightly, we had a half-hour conversation on that issue.

**Hon PETER FOSS:** Exactly. I hold the same view now that I held then; we are fiddling with the inconsequential matters and not dealing with the things that we know are fundamental to democracy. The Labor Party has been prepared to leave the system alone because it knows how to use it for its own purposes. Remote Aboriginal communities produce a 100 per cent vote and the votes are 100 per cent valid. We know why; it is because they are all lined up, a card is put in their hands and in they go. I am pleased to say that one good thing about Onslow is that the Liberal Party won that booth. We only won two booths in the by-election, and one was Onslow.

**Hon Derrick Tomlinson:** We must have had good scrutineers.

**Hon PETER FOSS:** We had very good scrutineers! It was reported in the papers that the scrutineers were a horde of lawyers. I do not know why it was called a horde; there is only one of me. We do not know what the situation would be if people could exercise their democratic rights.

I am in a quandary. I believe that we need more members of Parliament in the lower house. I have said time and again that the report of the committee stated that if the government really wanted to bring in one vote, one value, it should bite the bullet, pay the money and increase the number of members in the lower house. I certainly would support a system that increased the number of members in the lower house. The formula that the Greens applied could be taken to 2.5 per cent, so that there could be variations in the size of electorates but the electorates would be no bigger than a certain size. For instance, they would be no bigger than a certain size in the north west and no bigger than another size in the south west and so forth. That way, there would at least be some possibility of ensuring that both principles - the equality of votes and the real chance of representation - could be observed. My concern is that this bill does not go far enough. We probably need an extra 10 members in the lower house to start getting reasonably sized electorates in the country. An appropriate formula for vote weighting would be 2.5 per cent for electorates of any size; that is, they would not need an area of 100 000 square kilometres for the weighting to apply. That might even provide two laa laas in Fremantle.

**Hon John Fischer** interjected.

**Hon PETER FOSS:** There are an awful lot of la-las in Fremantle if Hon Jim McGinty can get elected. The reality is that the laa laas would vary across the state. On that basis we would probably get reasonably sized electorates throughout. If an electorate went over a certain size, the number of members of Parliament would increase. Once the formula was applied, that would be acceptable. People might eventually say that they do not want any more members of Parliament. They might say that there are too many of them. I suspect that they might quickly say that. We might then get to know what the people want. The fact is that people in Perth could not give a darn about it at the moment. Nothing affects them. If they get a few more members of Parliament around, they might curse the fact that there seem to be so many of them. Imagine what some shire citizenship ceremonies will be like. There will be so many people lined up to hand out roses and potted plants that it will be hard to get a go in edgeways!

**Hon Derrick Tomlinson:** Let's hope that they don't all speak!

**Hon PETER FOSS:** Yes. There would come a time when the public said that it did not want any more members in the city because there were enough. The people would eventually say what they regarded as being a reasonable proportion of members between the country and the city and what was a reasonable size for electorates. We already have country electorates that are too big to provide proper representation. Although I am pleased that some extra members will be provided in the lower house, it is nowhere near enough, and that provision is not accompanied by appropriate measures. What is so distressing is that the people who have a lot to do with this legislation, the Greens, have supported the old system. How many times has something been done for the best of motives but without thinking about how to handle the results? I will give an example. We can see how this works with artillery. An instruction may be given to turn 180 degrees and fire. If that instruction were given in the wrong order, there would be a very different result. That is what we all too often do in political terms; we get it in the wrong order - we fire and then turn 180 degrees. The Greens today gave notice of a motion to deal with some of the problems that they have caused. If we take that to its logical extension, it involves setting up call centres in India. Who needs a representative? We could just have a call centre in India. Why not? Half the time when we ring up for something we get a call centre in India, or sometimes they ring without being requested to do so.

**Hon Derrick Tomlinson** interjected.

**Hon PETER FOSS:** They say, "Hey Mr Foss, would you like to buy this?"

**Hon John Fischer** interjected.

**Hon PETER FOSS:** Yes. The call-centre solution is virtually what is being raised belatedly by the Greens. We are going ahead with this package of bills and the problems it creates will be fixed later. This legislation is inadequate because we have created a problem and we will then look at how to fix it. Should we not first have looked at what the problems would be? It is not as though the government did not have time to know what the problems would be. We dealt with a similar bill two years ago. Instead of the government putting a bit of money into coming up with something worthwhile, we spent a couple of million dollars in appealing to the High Court on a hopeless case, all because Hon Jim McGinty wanted to vindicate his Blackstone constitutional law prize, which he received at university, to prove that he knew something about constitutional law. All he did was to go along to the High Court and prove that he did not.

**Hon Paddy Embry:** How many city people came to give a representation?

**Hon PETER FOSS:** Nobody in the city was interested. Country people put up their money. This legislation is not doing it in the right order. This is an imperfect cobbling together of a partial solution after the event. The members who represent country regions must be horrified that the interests of their electors have been so sadly neglected. I am sure that anybody who represents the Mining and Pastoral Region will say that the area they represent is already impossibly large and that it would be so much easier if they could represent a smaller area, which they could deal with more adequately and which would allow them to be available to their electors. I hope that we take those measures in the future. I urge all continuing members of this house to consider alternatives to ensure that all the principles of democracy and the needs of electors for representation for a full four years are addressed. Okay, this has been decided on party lines.

*Sitting suspended from 6.00 to 7.30 pm*

**Hon PETER FOSS:** I was somewhat taken by surprise by the dinner adjournment because, as I am sure all members detected, I was on the peroration of my speech. I will pick it up as best I can from where I left off. The point I had made is that this package of legislation, and this particular piece of legislation, suffers from the problem that it has involved a single-minded fanaticism that has taken no account of the broad range of issues that has to be considered in the matter of democracy. Any time there is fanaticism or fundamentalism or an obsession with one particular principle to the exclusion of all others, there is unfairness. It is questionable whether this legislation has ended up fairer or more unfair, even to people in the city. However, it is certainly unfair to people in the country. I am alarmed that, once again, as is always the case with this government, we have pursued something that addresses some pie in the sky without trying to achieve true democracy in this state. We always seem to think that we can sweep it under the table and forget about all the problems we have and by doing that think we have solved them. We can then issue a press release stating that, hey presto, they have been solved. Notwithstanding that we have ended up with a worse situation under that principle, and certainly a worse situation under the other democratic principles, there certainly has been no attempt to deal with all the other matters that I mentioned in my speech.

This legislation is a failure. It fails to address any of the basic principles of democracy. The question is: do we vote in favour of or against this legislation? It is said that half a loaf is better than no bread. This is hardly half a loaf. In fact, it is barely half a slice. It is said that half a slice is better than no bread. Although I do not support this legislation, mainly because I think it takes people's attention away from the dreadful thing that has been done to democracy in this state, it is better than no bread at all. I will not oppose this half a loaf, even though I think it is a very measly handout by a government seeking to satisfy the concerns of the people in the country. This will be a great disservice to the people of Western Australia when it could have been an opportunity to address a multitude of problems in our electoral system. The government could have come up with a formula, as suggested by the committee when it reported some time ago, that allowed one vote, one value to be taken into account as one of the principles of democracy, along with the others, by increasing the number of members in the city without in any way impinging on the ability of country members to represent their constituents. That was chosen not to be done. We know exactly why it was chosen not to be done. We know why the elements that suit the Labor Party are in there. We know why the elements that suit the Greens are in there. This has been nothing but an opportunistic carve-up by those two parties, for which I venture to say they will get their comeuppance, hopefully for something like 20 years, as occurred when Hon Sir Joh Bjelke-Petersen became Premier of Queensland and the Nicklin government got its comeuppance. However, even though I have considerable reservations, I will not be opposing this bill.

**HON SUE ELLERY (South Metropolitan - Parliamentary Secretary)** [7.35 pm]: I thank members for their contributions. I understand that because this bill forms part of the package of legislative changes that we have made to the electoral arrangements in Western Australia, it is unpalatable to the majority of the people who have contributed to the debate. However, I appreciate that those members made their remarks in such a way as to ensure that we can move on in an efficient manner.

I took note of the remarks that members made about how the bill came before this house. The fact is that the bill came before this house as a result of an agreement between the Greens (WA), the government and Hon Alan Cadby. Criticism has been made of the fact that that agreement was reached. I do not necessarily accept the criticism that it is an agreement for the sake of an agreement. Some members referred in their contributions to the word "compromise" as though compromise is something in which members of Parliament should not engage. We might have had an entirely different outcome, of course, had others been present at the negotiating table.

I also note the remarks of Hon Bill Stretch. I have listened to Hon Bill Stretch's contributions in the house over the past four years. Hon Bill Stretch made a sage and wise contribution to the debate. He was able to sum up the points of difference between the parties and describe, with understated passion, perhaps, the differences between us. Hon Bill Stretch used the expression that this package of legislation was a train wreck. That is not a criticism that the government accepts in any way, shape or form. However, that leads to the question: if

members opposite make the decision that they are not willing to participate in the process, what part does that play in making the legislation a train wreck, if that is what the member thinks it is?

This matter is inevitably part science and part judgment. Science certainly forms part of the process, because to change a number from 57 to 59 is pretty scientific. However, in all the elements that make up the package there are also elements of judgment about whether we have the balance right.

**Hon Simon O'Brien:** You've got to get the balance right; is that what it is all about?

**Hon SUE ELLERY:** That is right. The question then is: do we have the balance right on where the lines are drawn and what is the fairest number of districts that we believe is appropriate to include in the legislation? Clearly the government's judgment is that it has made a fair decision about the number of districts. That is the difference between the government's judgment and the view expressed by the majority of members opposite in their contributions to the second reading debate on whether the government has judged it unfairly. In the final analysis those elements are a matter of judgment.

**Hon Murray Criddle** interjected.

**Hon SUE ELLERY:** That is Hon Murray Criddle's point of view.

I thank members for their contributions. This bill is part of a package of legislation and I commend the bill to the house.

Question put.

**The DEPUTY PRESIDENT (Hon Kate Doust):** This bill requires an absolute majority, so I will ring the bells for a division.

*Point of Order*

**Hon NORMAN MOORE:** Madam Deputy President, could you explain to me why you have ruled that this requires an absolute majority?

**The DEPUTY PRESIDENT:** I understand that when this bill went through the other place, it was decided that it required an absolute majority. I therefore decided to maintain continuity.

**Hon NORMAN MOORE:** This bill will amend the Constitution Acts Amendment Act, which does not require an absolute majority to be amended. It will also amend the Electoral Act, which also does not require an absolute majority to be amended.

**The DEPUTY PRESIDENT:** The recording of an absolute majority does not alter the outcome; it will simply put on the record that there was an absolute majority in support of the second reading.

**Hon NORMAN MOORE:** There was no call for a division by anybody in this chamber. There is, therefore, in my view, no need for a division. There is no point in recording that an absolute majority was obtained when it is not necessary and when there was no dissentient voice.

**The DEPUTY PRESIDENT:** There was a dissentient voice.

**Hon NORMAN MOORE:** I am sorry, there was no call by anybody for a division.

**The DEPUTY PRESIDENT:** No, but I put the question on the basis that I wanted to record that there had been an absolute majority. I understand that if there is a dissentient voice, it is necessary for the bells to be rung and for the house to divide. That is why I called for it.

**Hon NORMAN MOORE:** Will you, just for my edification, tell me why there is a requirement for an absolute majority? What legislation are we passing that requires an absolute majority for it to be passed?

**The DEPUTY PRESIDENT:** As I said earlier, when this bill was before the Assembly it decided it would deal with the matter as though it required an absolute majority - a constitutional majority - in case there were any difficulties with the legislation. To ensure that no questions arise from this I want to make sure that, for the record, this house passes the legislation with an absolute majority.

**Hon Peter Foss:** I cannot see that the requirement for government satisfaction binds this chamber. There is either a ground for an absolute majority or there is not.

**The DEPUTY PRESIDENT:** I will leave the chair until the ringing of the bells to consider this.

*Sitting suspended from 7.47 to 7.58 pm*

*Deputy President's Ruling*

**The DEPUTY PRESIDENT (Hon Kate Doust):** As Deputy President, it is my responsibility to ensure that bills that pass this house do so according to the law in regard to constitutional bills. I formed the view that this bill required an absolute majority and, accordingly, there being a dissenting voice, I called a division. I will now put the question again, because of the confusion that occurred.

*Debate Resumed*

Question put and passed with an absolute majority.

Bill read a second time.

*Committee*

The Deputy Chairman of Committees (Hon Kate Doust) in the Chair; Hon Sue Ellery (Parliamentary Secretary) in charge of the bill.

*Deputy Chairman's Ruling*

**The DEPUTY CHAIRMAN (Hon Kate Doust):** Before we deal with the clauses of this bill, I note that there are amendments listed on supplementary notice paper 37, issue 1. Before moving to deal with those amendments, I need to make a ruling on them. I advise the committee that I have considered the amendments proposed by Hon Murray Criddle and consider that they breach section 46 of the Constitution Acts Amendment Act 1899. I believe that the amendments are caught by section 46(3), which denies the Legislative Council the ability to amend a bill if the amendments would increase a burden or charge on the people; that is, if the amendment appropriates public moneys. The bill before the committee has a very narrow scope; that is, to increase the number of members of the Legislative Assembly from 57 to 59. There can be no question that, by proposing an additional member, the amendment, if passed, would increase the burden on the people under section 46(3). I rule that the amendment is out of order, because it contains an appropriation contrary to section 46(3) of the 1899 act.

*Dissent from Deputy Chairman's Ruling*

**Hon MURRAY CRIDDLE:** I move -

That the committee dissent from the Deputy Chairman's ruling.

Although the addition of a further member would, on the basis of remuneration as set out by the Salaries and Allowances Tribunal, increase the burden on the people, there is nothing to say that, when the changes take effect in four years, the Salaries and Allowances Tribunal would not take a totally different view. It would be inappropriate for this house to second-guess what any tribunal may determine about the range and quantum of salaries and allowances in the future. For instance, the tribunal may determine that it will commensurately reduce the salaries and allowances for all members of Parliament so that the net burden on the people is no greater than at present. That comes from your ruling, Madam Deputy Chairman, on 4 May 2005, affirmed by the President, on page 1230 of *Hansard*.

**The DEPUTY CHAIRMAN:** The member is required to provide that dissent in writing. I will leave the chair until the ringing of the bells.

*Sitting suspended from 8.04 to 8.07 pm*

[The President resumed the Chair.]

**The PRESIDENT:** I will leave the chair and consider the ruling of the Deputy Chairman of Committees and the written dissent.

*Sitting suspended from 8.09 to 8.24 pm*

*President's Ruling*

**The PRESIDENT:** I have considered the ruling of the Deputy Chairman of Committees and the written dissent of Hon Murray Criddle, and I uphold the ruling of the Deputy Chairman of Committees. I consider that the proposed amendment breaches section 46(3) of the Constitution Acts Amendment Act 1899. There is a difference between a regime that may or may not involve an increase in expenditure by virtue of electoral allowance, costs of office and ancillary services, and a fundamental amendment that imposes a clear burden by increasing the number of legislators. I would have ruled any amendment to the Electoral Amendment and Repeal Bill 2005, previously considered by this chamber, to have been out of order if it had, for example, proposed an increase in the number of members from 34 to 36 in this chamber. Although I have upheld a narrow interpretation of section 46(3) in a past ruling, such an interpretation cannot be extended to uphold an amendment of the type proposed by Hon Murray Criddle.

*Committee Resumed*

**Clause 1: Short title -**

**Hon NORMAN MOORE:** I was criticised the other day by Hon Chrissy Sharp on the basis that, by seeking to entrench parts of the new Electoral Act, I had somehow expressed some support for it. It is a pity that the member cannot understand that some members can actually make decisions based on principle. If Hon Chrissy Sharp had listened, she would have heard me say at the time that this chamber, with an absolute majority, can make the rules for electoral legislation, and they should not be able to be changed without an absolute majority, regardless of what I think about the policy or the system. I hate the system that the government is bringing in, but I believe it should be entrenched, because it is the electoral law of Western Australia. I want to make that absolutely clear. As a fundamental principle, I believe the electoral laws should be entrenched, and I sought to entrench them all. Hon Chrissy Sharp did not agree with that, because she is the sort of person who wants to change them down the track without an absolute majority. That is what she said. I was happy to entrench the whole lot as a matter of principle, not because I support any of it, but because I support the concept that electoral laws should be entrenched, and they must be entrenched by an absolute majority. If that occurs, the Parliament has made a proper decision, and that can be changed in the future only by an absolute majority. That is my position, and it will remain that way.

**Hon CHRISTINE SHARP:** All I can say in response to the Leader of the Opposition is that the next time he is seeking support for such an important matter of principle at one o'clock in the morning, he might like to inform members whom he is seeking to recruit for support of that amendment in good time.

**Hon Peter Foss:** It was on the supplementary notice paper.

**Hon CHRISTINE SHARP:** No. The amendment was altered, as the honourable member knows very well. It was changed at the very last moment. That is simply not the way in which serious parliamentary business is conducted, and the Leader of the Opposition knows that only too well.

**Hon NORMAN MOORE:** I refer Hon Chrissy Sharp to page 5 of "Amendments and Schedules: Supplementary Notice Paper No. 33: Issue No. 5: Tuesday, May 3 2005", where she will see my amendment, in writing, which states -

A Bill that expressly or impliedly amends or repeals Part IIA -

That is the whole part -

or any provision of Part IIA including this section (as inserted by section 4 of the *One Vote One Value Act 2005*)

That was my amendment on the supplementary notice paper for Hon Chrissy Sharp to read. It is not my job, as it is the Labor Party's job, to go to Hon Chrissy Sharp's office to seek her support for everything I want to do.

**Hon Christine Sharp:** Why did you come to our office then?

**Hon NORMAN MOORE:** I will when I feel the need to, but I do not have to. Hon Chrissy Sharp should understand that. When I put an amendment on the supplementary notice paper, it is there for Hon Chrissy Sharp to consider. It does not mean that I must ring her to say that I put one on the supplementary notice paper. That was my position then and it still is.

**Clause put and passed.**

**Clauses 2 and 3 put and passed.**

**Clause 4: *Electoral Act 1907* amended -**

**Hon NORMAN MOORE:** Is this clause the reason the government was of the view that the bill needed an absolute majority for its passage at the second reading? Is it because section 16C(1) of the Electoral Act will be entrenched when the Electoral Amendment and Repeal Bill becomes an act?

**Hon SUE ELLERY:** The member referred to section 16C(1). My advice is that section 16F(4)(b) is the reason we need to take an abundance of caution and to carry it by an absolute majority.

**Hon NORMAN MOORE:** It is not section 16C(1) that is entrenched; it is section 16F(4)(b). I have not had a chance to check this because I did not expect this matter to come on today. Section 16C(1) is in division 2 of the bill we passed the other week. If my memory serves me right, division 2 is entrenched. I need this to be clarified so I know the exact reason we have done what we have done.

**Hon SUE ELLERY:** Section 16C(1) is not entrenched.

**Hon NORMAN MOORE:** Is division 2 in its totality entrenched?

I have just received a copy of what will be the Electoral Amendment and Repeal Act. Section 16N refers to a bill that repeals or alters any of the provisions of the part other than division 2 in its totality. Section 16C(1) is in division 2. Section 16G(3) and (4) and section 16L are entrenched.

**Hon Sue Ellery:** As I said before, section 16C(1) is not entrenched.

**Hon NORMAN MOORE:** A bit of clarification would be helpful.

**Hon PETER FOSS:** I have a question because I am a bit puzzled by the answer of the parliamentary secretary. Is she suggesting that the entrenchment has taken place because of the Electoral Distribution Act; because of the Electoral Act as amended by the Electoral Amendment and Repeal Bill 2005; or because of some other provision, such as in the Constitution Act, given amendments to the Constitution by reason of the case between McGinty and Marquet, which is able to be extended to provisions such as these?

**Hon SUE ELLERY:** In response to the question asked by the Leader of the Opposition, division 2 is not entrenched. That is the division that includes proposed section 16C(1), and that was my original response to the member. Division 3 is entrenched and includes proposed section 16F.

In response to the question from Hon Peter Foss, it is entrenched because of the Electoral Amendment and Repeal Bill.

**Hon PETER FOSS:** Has the Electoral Amendment and Repeal Bill been assented to or come into effect yet? Is it an act or are we talking about the Electoral Amendment and Repeal Bill?

**Hon SUE ELLERY:** This is a bill. The Electoral Amendment and Repeal Bill has not been assented to. I draw the member's attention to clause 2 of the Constitution and Electoral Amendment Bill 2005, which clause we have just passed and which bill we are now debating. Clause 2(2) states -

If the *Electoral Amendment and Repeal Act 2005* has not received the Royal Assent before the day referred to in subsection (1), this Act comes into operation immediately after that Act comes into operation.

**Hon PETER FOSS:** Therefore, retrospectively will this provision have to comply with the requirements of that act, notwithstanding that all it is repealing is an act, which is itself not entrenched?

**Hon SUE ELLERY:** It is not retrospective, because the Electoral Amendment and Repeal Bill will come into effect first. This bill will come into effect subsequent to that.

**Hon PETER FOSS:** It seems to me that, at the very most, the government might be able to argue that if the Electoral Amendment and Repeal Bill came into effect before this bill was assented to, because the constraint imposed by the provision relating to entrenchment is one that operates on the presentation of a bill for assent. I would have thought that, at the time the bill was presented for assent, we would have to look at the law as it was to see whether it could be presented. If it could be presented for assent and the Governor could legally assent to it, that is the material time. If the Governor has already assented to it by the time the bill comes into effect, I cannot see that it is relevant. It is an interesting provision. When does the Constitution and Electoral Amendment Bill provide for it to come into operation? Maybe the Leader of the Opposition knows when it is meant to come into operation.

**Hon SUE ELLERY:** To which bill is Hon Peter Foss referring?

**Hon Peter Foss:** The bill passed the other day by absolute majority.

**Hon SUE ELLERY:** The bill comes into operation on the day on which it receives royal assent.

**Hon PETER FOSS:** My view is that perhaps this is a belt and braces approach of the type in which there are no trousers. I do not think it is necessary to do this, but I can see that the government might be feeling a bit cautious after its drubbing in the High Court. It is a pity that it was not a bit more cautious at an earlier stage, because we might all have been spared an awful lot of pain some years ago when I pointed out that the government's arguments were complete nonsense. In this particular case it has gone the other way. I suppose that that approach, and not the rather gung-ho cowboy attitude taken on the last occasion, should be commended.

**Clause put and passed.**

**Title put and passed.**

*Report*

Bill reported, without amendment, and the report adopted.

*Third Reading*



**HON SUE ELLERY (South Metropolitan - Parliamentary Secretary)** [8.50 pm]: I move -

That the bill be now read a third time.

**HON NORMAN MOORE (Mining and Pastoral - Leader of the Opposition)** [8.50 pm]: This is the final nail in the coffin of country representation. It is the last gasp in this very grubby deal between the Greens (WA) and the government. There is a slight irony, however, in the fact that this bill diminishes the pain to the country by one seat. Instead of losing seven seats, the country will lose only six. I suppose we should be thankful for small mercies, and that is why we will not oppose the legislation. However, this is a sad day for country Western Australia, as we have said on a number of occasions, and my only hope is that the government and the Greens will wear it significantly at the next election, just as the Greens have already worn a fair bit of pain at the last election.

Question put and passed with an absolute majority.

Bill read a third time and passed.