

**ELECTORAL AMENDMENT BILL (NO. 2) 2008**

*Introduction and First Reading*

Bill introduced, on motion by **Mr J.A. McGinty (Minister for Electoral Affairs)**, and read a first time.  
Explanatory memorandum presented by the minister.

*Second Reading*

**MR J.A. MCGINTY (Fremantle — Minister for Electoral Affairs)** [12.40 pm]: I move —

That the bill be now read a second time.

The Electoral Amendment Bill (No. 2) 2008 seeks to amend the Electoral Act 1907 and the Electoral (Political Finance) Regulations 1996. I will now outline the major features of the bill.

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

In March 2007 the Western Australian Electoral Act 1907 was amended to replicate the commonwealth's legislation prior to the *Roach* decision. Section 18(1)(c), which disqualified all sentenced prisoners from voting in Western Australian state elections, was inserted into the Electoral Act 1907. Prior to March 2007, persons serving sentences of less than one year could vote in a state election. The State Solicitor's Office is of the view that if section 18(1)(c) of the Electoral Act 1907 were challenged in the courts, such a challenge would be likely to succeed. Therefore, to comply with the High Court ruling and to be consistent with commonwealth electoral legislation, it is proposed to amend the Electoral Act 1907 so that prisoners serving sentences of less than three years will be allowed to vote in state elections. I stress that prisoners will remain eligible to enrol and remain enrolled while serving their sentences.

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

**Section 96 of the Commonwealth Electoral Act 1918** provides for itinerant electors to be enrolled. These electors can nominate to be enrolled in an electorate even though they do not live there. The electorate in which they are determined to reside is in the following descending order: the electorate in which the elector was last enrolled; or, if not previously enrolled, the electorate in which the elector's next of kin is enrolled; or, if there are no next of kin, the electorate in which the elector was born; or, if the elector was not born in Australia, the electorate with which the elector has the closest connection. Therefore, it is proposed to amend the Electoral Act 1907 to replicate the commonwealth provisions so that Western Australian citizens who have no fixed address can vote in a state election. The Electoral Commission will use commonwealth electoral administrative procedures in providing this service to Western Australian electors who have no fixed address.

**Lowering the political donation disclosure threshold:** It is proposed to amend section 175 of the Electoral Act 1907 so that the specified amount is lowered from the current \$1 800 to \$1 000. The specified amount is the term used to describe the political donation disclosure threshold. This is consistent with the commonwealth's stated intention to reduce its threshold from \$10 000 to \$1 000. Political finance disclosure provisions were first introduced in Western Australia in 1996. Under the disclosure provisions, all political parties, associated entities, individual candidates, groups and other persons are required to provide the Electoral Commissioner with details of gifts and/or income received for electoral or political purposes. When the political finance disclosure provisions were first introduced, the threshold for disclosure was \$1 500, linked to consumer price index increases. Currently, the threshold for disclosure of political donations is \$1 800. Under section 175 of the Electoral Act 1907, the specified amount is determined within 30 days after each state general election. Given that the electoral cycle and associated disclosure reporting are drawing to a close, it is more appropriate for political party agents and auditors to change to the \$1 000 threshold after the next state general election.

Changing the specified amount to \$1 000 has implications for other parts of the Electoral Act 1907 that deal with annual reporting requirements for political parties and other entities. Political parties and their associated entities are required under the legislation to lodge an annual return with the Electoral Commissioner by 30 November each year, disclosing all gifts and income received for the previous financial year. The most practical approach to this annual reporting requirement is to start the new \$1 000 threshold amount on 1 July 2009. This will mean that party agents and auditors will not have to report on two threshold amounts; namely, the current \$1 800 amount and the proposed \$1 000 amount. The formula that indexes the specified amount to CPI is set out in regulation 3 of the Electoral (Political Finance) Regulations 1996. Regulation 3 will have to be amended to delete all references to \$1 500 and replace it with \$1 000.

Overseas electors and prisoners to be registered as general early voters: Currently, under section 17A of the Electoral Act 1907, overseas voters who are enrolled to vote can vote in Western Australian state elections for up to six years after leaving Australia. Overseas enrolled electors can also vote in commonwealth elections up to six years after leaving Australia. Under commonwealth legislation, overseas electors can apply to be general early voters. The term “general early voter” describes certain categories of registered electors who automatically receive a postal ballot once an election is called. Therefore, once a federal election is called, registered overseas voters are automatically sent postal ballots by the Australian Electoral Commission. However, section 93 of the Electoral Act 1907 does not list overseas electors as general early voters for state elections. This means that an overseas Western Australian elector cannot receive a postal ballot automatically from the Electoral Commission. Once a state election is called, the elector has to either apply personally for a postal vote or vote in person at a registered overseas early voting centre. This can prove difficult in many places around the world, given poor communications, distance and postal service schedules. Also, prisoners are currently not registered as general early voters. It is proposed to amend the Electoral Act 1907 so that prisoners can apply to be registered as general early voters. This proposed amendment will make the state’s electoral legislation consistent with commonwealth legislation and will make the process of voting significantly easier for those prisoners serving sentences of less than three years.

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

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

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

Debate adjourned, on motion by **Dr S.C. Thomas**.