ELECTORAL AMENDMENT (MISCELLANEOUS) BILL 2008

Consideration in Detail

Clauses 1 to 5 put and passed.

Clause 6: Section 17B inserted —

Mr W.J. JOHNSTON: I refer to itinerant electors. There is a difference between the process for enrolment on the federal roll and the state roll. Will the witnessing requirements have an effect on the administration of the roll under this proposed section?

Mr C.C. PORTER: What witnessing requirements?

Mr W.J. JOHNSTON: I understand that currently a person on the state roll can witness the signature of a person who is eligible to be on the roll, whereas the commonwealth legislation provides a list of specific people who can be witnesses to a signature. When referring to the commonwealth roll, what impact will this proposed section have?

Mr C.C. PORTER: I am advised that it will have no effect. If an itinerant is accepted on the commonwealth roll and the rules the member stated will apply to the itinerant, the itinerant is automatically accepted on the state roll.

Mr W.J. JOHNSTON: If a person completes an application and the witness arrangements are valid under the state act but are not valid under the commonwealth act, does that mean that person is not included on the state roll by virtue of the fact that the witnessing arrangements for application on the commonwealth roll are not valid?

Mr C.C. PORTER: I am informed that that is not inconceivable. However, the mechanics are that we would rely on the commonwealth to mechanically ensure that the itinerant goes on the roll. As long as it was done in respect of the commonwealth procedure, the person would find himself on the state roll.

Mr J.N. HYDE: Further to that, does that mean that the Western Australian Electoral Commission will not be instructed to devote resources to getting itinerants on the roll?

Mr C.C. PORTER: My understanding of the WAEC is that it encourages all people to be on the roll. It would not be the case that specific resources would be devoted to this category of person, but rather they would be considered as one of the many categories of people that it is desirable go on the roll. I might be able to give a numerical breakdown of this category vis-a-vis other categories now, but they would be treated as people for whom it would be desirable to be on the roll. That treatment would come out of existing resources. No additional resources attach to this amendment to the act.

Mr J.N. HYDE: Surely there would be resourcing issues regarding staff training and other procedures to ensure, whether it be for the referendum and by-election this weekend or future by-elections and elections, that staff are able to deal with the issue of somebody turning up with no fixed address.

Mr C.C. PORTER: I will get the numbers for the member. My instructions are that there will be training, but it will be met out of existing resources. The training will not be overly detailed. It is not terribly much more than providing an explanation on how the form would work and how the commission would deal with people who are required to fill out the form. It would come out of existing resources that are separate resources set aside for training with respect to the forms that will be filled in.

Mr W.J. JOHNSTON: Is it possible for the Attorney General to provide an indication of the number of itinerant electors on the commonwealth roll who by this provision can be enrolled on the state roll? Is that able to be done by electorate, region or on any other basis?

Mr C.C. PORTER: My information is that across the 15 Western Australian commonwealth divisions that are maintained on the commonwealth roll there are about 422 registered itinerants. I have a breakdown of the number of registered itinerants in each division—Brand, 34; Canning, 40; Cowan, 11; Curtin, 11, Durack, 55; Forrest, 36; Fremantle, 19; Hasluck, 45; Moore, 14; O'Connor, 62; Pearce, 34; Perth, 17; Stirling, 19; Swan, 18; and Tangney, 7, which totals 422.

Mr A.J. WADDELL: If an itinerant is successfully enrolled on the commonwealth roll, this bill provides for that person to be enrolled in the state with which the person has the closest connection. If a person is already enrolled in a federal subdivision, how would the appropriate state be determined?

Mr C.C. PORTER: In determining which of the federal divisions people have a connection with pursuant to the legislation, they will give across certain information. That information is with respect to certain salient criteria

on an ascending basis. That same information will be used to determine which of the state divisions they have the greatest connection. My advice is that the nature of that information should make it, in all but the most extraordinary circumstances, very clear which of the state divisions they have the greatest connection. Those salient criteria provide that people must select the highest category that applies to them and enrol for the electoral area, firstly, in which they were last eligible to be enrolled—generally, this would be the place where they last lived for at least one month; secondly, in which one of their next of kin is currently enrolled if they have not previously been eligible to enrol; thirdly, in which state they were born if neither of the above applies; or, fourthly, the division with which they had the closest connection if they were not born in Australia. My advice is that if in giving over that information the appropriate commonwealth division is determined, then it should be the case that enough information is able to determine which is the appropriate state division.

Mr A.J. WADDELL: In respect of the people who are currently enrolled under the commonwealth roll, will there be a passing of that information to the state so that the people currently enrolled within the appropriate state division can be registered, or will they be forced to enrol elsewhere?

Mr C.C. PORTER: The answer to that is most certainly.

Clause put and passed.

Clause 7: Section 18 amended —

Mr P. PAPALIA: I am interested in whether the Attorney General has an estimate of the numbers pertaining to the two criteria, both the state, as it is proposed in this legislation, and the federal legislation, as they relate to sentences of one year or three years? Is there an apparent difference?

Mr C.C. PORTER: To clarify the question, is the member for Warnbro asking that if it is the case that the vote would be denied to people who had been sentenced to a term of three years versus one year, what the effective prisoner population in Western Australia would be for each of those two?

Mr P. PAPALIA: What will be the positive increase in numbers on the roll by allowing prisoners who have been sentenced to one year to vote and, by comparison, what would it be at the federal level?

Mr C.C. PORTER: I am not being facetious when I say that there would be a difference obviously. I think I can get that information; I have part of it here. I am informed by the Electoral Commissioner that 682 prisoners are serving sentences of less than one year. It may be the case that in my capacity as Minister for Corrective Services I could find out how many would be serving less than three years. That would change on an almost daily basis. I can find out.

Mr P. Papalia: No, don't worry about it. I am fine. Unless someone else wants that information, I am satisfied with the first view.

Mr W.J. JOHNSTON: Can the Attorney General give an indication of the sorts of crimes committed by the people in prison who are now to be granted the vote by the legislation before us today? Can the Attorney provide examples of crimes committed by these people who are going to be included on the electoral roll and allowed to participate in elections? What sorts of things have they done that have led them to be jailed prior to this point?

Mr C.C. PORTER: The Electoral Commissioner has said that he will not be able to provide that information. The relevant amendment, proposed section 18(1)(c), states —

> is serving or is yet to serve a sentence of detention (imposed under the *Young Offenders Act 1994*), or imprisonment, of one year or longer;

Is the member asking who would be disenfranchised or who would be included?

Mr W.J. Johnston: Disenfranchised.

Mr C.C. PORTER: Someone who is sentenced to detention or imprisonment of less than one year. This may affect 682 people. They fall into that category of serving less than a year. It would be difficult, other than going through each of those 682 people, to classify who they are. It is obviously the case in sentencing that what is a serious offence as marked by the maximum penalty, which appears in the Criminal Code or the other relevant piece of legislation, might be marked as a very serious offence by reference to that maximum; nevertheless, given the circumstances, someone's sentence may be shortened to a short period of imprisonment pursuant to that offence. As a statistical fact, we could safely say that some offences would be very unlikely to appear in that category. Obviously, very serious offences of homicide would be unlikely in the general course to receive sentences of less than a year, and, indeed, until last year's amendments that changed the minimum non-parole period, it was previously impossible.

The way to look at it is not to ask what types of offences but, given that it could be a large range of offences, to ask would the offenders be at the serious, moderate or minimum scale for offending of that type. We could safely say that within a one-year period, they are going to be at the minimum level of seriousness for an offence of any given type with reference to the maximum. I can say that when we push out to sentences of two years, eight months or two years, 10 months or two years, 11 months, we can get some very serious offenders. I am not necessarily talking about the categories of offences but simply the type of offence within any given category. We could safely presume that sentences that are from six months up to 12 months—there cannot be sentences less than six months—will represent minor examples of offending of a given type.

Mr W.J. JOHNSTON: In that regard, would any person who has committed crimes of violence, sexual offences, drug offences and offences against children, including cyber predators, potentially be granted a vote through this amendment that the Attorney General is proposing to the house?

Mr C.C. PORTER: I cannot answer that with specificity without going through those 682 offenders. Whatever offender we are dealing with and whatever offence he or she has committed, the difference between a 10-month sentence and a two-year, 10-month sentence is significant in terms of the nature of the offending and the criminal history, I would judge, of the offender, but any number of categories of prisoners could still vote. We are now told by the High Court that they have a constitutional right to do so.

Mr W.J. JOHNSTON: When the Attorney General says that that they have a "constitutional right", when was that declaration made by the High Court?

Mr C.C. PORTER: The decision in Roach was handed down on 30 August 2007.

Mr W.J. JOHNSTON: That was before 15 May 2008 when the Attorney General made his comments on this topic. Is it the government's intention through the forum of ministers of electoral affairs—I do not know the proper title of the forum of the ministers of each of the states and the commonwealth—to lobby for use of the commonwealth roll, which currently allows those people the Attorney General referred to in his 15 May 2008 press release to vote in commonwealth elections? Is it Hon Norman Moore's intention to lobby the commonwealth on behalf of the state to harmonise the commonwealth law to 12 months rather than three years? We have a situation today in Western Australia in which the Western Australians whom the Attorney General says should not be voting are voting in commonwealth elections. The government is part of that forum in which these issues of harmonisation are dealt with. Is it the intention of the government to lobby for harmonisation of the roll to reduce that three years to 12 months? What is the position of the government on those people whom the Attorney General singled out in his press release of 15 May 2008?

Mr C.C. PORTER: This requires some explanation. To the extent that the member's question is whether a state Liberal and National government would prefer that the commonwealth adopt a one-year rule such as that which we are proposing, the answer is yes. The basis for that desire is that we take the view that the exclusion of people who have been sentenced to a term of imprisonment of one year or less is a better cut-off line in excluding the vote than the three-year rule. As I pointed out in my press release, which the member has referred to on numerous occasions, the three-year rule allows people guilty of quite serious offending to vote. That will be the case in commonwealth elections but, if this legislation is passed, not in state elections.

Do we intend to lobby the commonwealth so that it will harmonise down to the one-year rule rather than have us harmonise up to the three-year rule? This depends on what value we place on harmony and harmonisation. It is interesting and instructive to think about recent experiences with the Standing Committee of Attorneys-General. Any number of issues fall under the banner of harmonisation. I will give a very brief example relating to the witnessing of statutory declarations. Certain people in this state are qualified to witness a statutory declaration. The list varies from state to state. The commonwealth recently said that it wished to have this harmonised. It took the view that all states should adopt the Northern Territory model, which is that anyone over the age of 18 should be able to witness a statutory declaration. My personal view, and one that I would advocate from this government, is that that considerably decreases the solemnity of statutory declarations. There is no value in the statutory declaration argument with harmonisation of itself. Sometimes when we harmonise, this state Parliament loses the ability to make a decision on an important issue.

I return to the member's question as to whether we would lobby the commonwealth government to have its rule drop from three years to one year to be consistent with ours and harmonise with ours. We would prefer that that be the case. Would we expend significant resources in lobbying to ensure that that is the case? I think the answer to that would be no. The commonwealth will do what it wants to do. There was confusion in speeches in the second reading debate as to the issue of harmonisation and what sits behind it. Historically in Western Australia, the exclusion rule was one year. Then in 2006 the former Prime Minister, John Howard, changed the commonwealth's exclusion rule. Traditionally in the commonwealth, it had been three years. So up until 2006

and John Howard's amendments, there had always been disharmony and inconsistency. The rule in Western Australia was one year; the rule in the commonwealth was three years. John Howard changed that in 2006 to make it zero, to exclude all prisoners from voting.

It was interesting to listen to all the speeches in the second reading debate, some of them impassioned. Some of them I agree with. Indeed, the High Court has now ruled it unconstitutional that the rule be zero and that all prisoners be taken out of the franchise. However, if it were the case that everyone in this house who gave a speech in the second reading debate felt so passionately that that was a derogation of human rights or was unconstitutional or was otherwise unfair, why is it that this Parliament raced so quickly in 2007 to amend what had been the longstanding one-year rule in this jurisdiction to harmonise with the John Howard zero rule, which was later ruled unconstitutional? Going back through the debate, it can be seen that that harmonisation of our rule from one year to zero to match Howard's drop from three years to zero occurred with barely a whimper at the second reading stage, or at any other stage of the parliamentary debate, from anyone in this house. Therefore, it is all very well and good to say now that it is a derogation of human rights to have a zero rule, that it is unconstitutional and that it is unfair, but for the quite illusory and siren-song-based temptation of "harmonisation", this Parliament and all the members on the other side of this house were quite willing to have that occur and have all prisoners disenfranchised simply because John Howard wanted that to be the case. I would have thought that it would be a very unusual thing for people from the other side of politics to race in so swiftly behind the former Prime Minister —

Mr J.N. Hyde: But you're the government now.

Mr C.C. PORTER: I understand that, and this is the next point, is it not? We say that harmony is not a value in and of itself. It may be that this Parliament takes a different view from that of the commonwealth Parliament of what is appropriate with respect to the franchise.

Mr W.J. JOHNSTON: I am quite interested in listening to the Attorney, and I am very happy for him to continue on this point.

Mr C.C. PORTER: There might be reasons why we would harmonise. The member for Mindarie pointed out that there may be costs associated with maintaining separate rolls. That may be a question that the member for Mindarie will pursue further. My understanding—I will stand corrected by Mr Gately—is that we have always maintained two rolls in this jurisdiction. There is some cost, no doubt, that would attach to that. I am not certain whether it is quantifiable. However, if, for instance, we took the view that to disenfranchise all prisoners was an egregious breach of human rights, why were those opposite so quick to race into doing that in 2007 simply because the commonwealth had done it? They must place enormous value on harmonisation and consistency. Frankly, as a federalist, I do not place innumerable and unquantifiable values on harmonisation for its own sake. Here in 2009, it may be the case that this Parliament takes a view that is different from that of the commonwealth Parliament on what is the appropriate cut-off rate. Would we let the commonwealth's view be persuasive and disintegrate our view merely because there was some ethereal benefit in harmonisation? I think the answer to that question is no, we would not do that. That is why we have said on this particular issue that the correct cut-off is one year.

I refer to the Roach decision. I think there was one very pithy representation of it, and it was from His Honour Justice Gleeson, at paragraph 19, on page 9, which states —

> It is consistent with our constitutional concept of choice by the people for Parliament to treat those who have been imprisoned for serious criminal offences as having suffered a temporary suspension of their connection with the community, reflected at the physical level in incarceration, and reflected also in temporary deprivation of the right to participate by voting in the political life of the community. It is also for Parliament, consistently with the rationale for exclusion, to decide the basis upon which to identify incarcerated offenders whose serious criminal wrongdoing warrants temporary suspension of a right of citizenship. I have no doubt that the disenfranchisement of prisoners serving three-year sentences was valid, and I do not suggest that disenfranchisement of prisoners serving sentences of some specified lesser term would necessarily be invalid.

He was in the majority with both of those expressions. With respect to three years, it was certainly valid. He said that one year was probably valid, although it is yet to be tested. However, the point is that this Parliament will make the decision that one year is the effective and appropriate cut-off to temporarily suspend someone's citizenship-based right to vote.

After the Roach decision, the commonwealth defaulted to what had been its traditional position of three years, but that is not to say that it might not also change its position. As I understand it, there has been no firm indication either that it is going to stay with what was the three-year default position or that it may move on from

that. Therefore, even if we did consider that harmonisation was some incredibly important goal to achieve, and it was worth sacrificing our own parliamentary sovereignty and decision making in this important area, we might be jumping the gun, because we might well harmonise to a position that the commonwealth may be intending to move from in the not too distant future.

Mr W.J. JOHNSTON: Indeed, that is why I asked whether the government was using the forums that are established for these discussions. I understand that these are matters that used to be dealt with by the Attorneys General, but there is now a specific council for ministers with responsibility for electoral affairs. I understand that in most states that is still the Attorney General, although in this state it is not, given that Hon Norman Moore is the relevant minister. That was actually the issue that I was raising with the Attorney. He has chosen 12 months and not three years, and he has told us that there are good reasons why he wants to take that position. Indeed, he could have taken a position that it was the commonwealth act that was challenged, not the state act, and it would be up to a prisoner to take action in the court to invalidate the provision that was passed by the former government at zero, and he has chosen to raise it from zero to one year because he believes it is an appropriate response to the Roach decision. I suppose that leads on to the question: what advice does the Attorney General have that the Roach decision will mean that 12 months is in fact the appropriate point at which to draw the line, if I can put it that way; and is there any advice that this is potentially going to be subject to further challenge by a prisoner here in Western Australia? Relying on Roach, the prisoner may say that the state is wrong and that 12 months is inadequate, in which case the court will determine whatever it determines. However, I am wondering what advice the Attorney General had before he recommended to Parliament the 12 months and whether that is the appropriate level.

Mr C.C. PORTER: The member made a point in a question that he asked. The question that he asked, if I understand it correctly, is this: when the Roach decision was handed down, why did we not just hold the line, maintain the provision at zero and wait for a state prisoner to challenge the state of Western Australia's Electoral Act? The answer to that is that the Constitution applies to state acts. Of course, that was game over for the zero-year rule for all legislation in Australia. Therefore, that point is misconceived.

The member's second question was about what advice we had received on the constitutional sustainability of an exclusion based on one year. Our advice—I think I am paraphrasing what the former Attorney General said when the same question was asked about this time last year—is that, very similar to what His Honour said in the passage I quoted, there is very little doubt that three years is constitutionally sustainable. Our advice is that one year is also constitutionally sustainable. However, obviously, the lower we dip from three years to zero years, the greater the chance, however remote, of a successful challenge to the exclusion. But I can say unequivocally that our advice is that one year is constitutionally sustainable as an exclusion.

Mr W.J. JOHNSTON: Can I clarify something that the Attorney said? As I understand it, he remarked that when the Roach decision came down, an exclusion to zero was constitutionally invalid. However, the 2008 state election took place with an arrangement under which the enrolment was zero. Therefore, is the Attorney General saying that there are prisoners who could take action because they were excluded from the vote in that election and that our electoral enrolment arrangements at the time of the 2008 election were invalid and, therefore, the prisoner exclusion did not exist at all? Alternatively, if the Attorney General is saying that the decision in Roach invalidated the zero provision that had been inserted by the Parliament at the time of the 2008 election, what existed for prisoners as at the time of that election? If the zero provision is invalid, is the Attorney General saying that prisoners serving in excess of three years are entitled to be enrolled? Are they entitled to exercise their franchise? Can they vote on Saturday? As I understand it, they are able to maintain their enrolment although they do not have the franchise. If they are on the roll for Saturday, can they vote on Saturday, if the Attorney General is saying that that zero figure was invalidated by Roach?

Mr C.C. PORTER: The member is fishing. If he is looking to have the election over again, I think it is over! I take the point. I am not an expert in the Court of Disputed Returns or the law as it relates to electoral affairs, but it is fair to say—I will have my adviser tug at my coat if it is incorrect—that at the 2008 state general election a number of prisoners were unconstitutionally disenfranchised. Each of those prisoners would have been attached to an electoral district. It would have been open for any of those unconstitutionally disenfranchised prisoners to appeal or make application to the Court of Disputed Returns to have the election result in any district overturned on the basis that they were unconstitutionally disenfranchised. I am not aware that any prisoner did that, but it would have been their right to do so. Again, I am not an expert, but the Court of Disputed Returns will look at irregularities, from unconstitutional irregularities right down to administrative irregularities, and make a determination similar to the proviso in criminal law as to whether or not the irregularity was so fundamental that the result for that district should be overturned. Maybe with the member's ex-state director hat on he has cottoned on to a good way to try to overturn that. He could rustle up some prisoners to see if he can make an application. I think it would be unlikely, if a small number of prisoners spread across a variety of districts made

application, that the result would be overturned based on their unconstitutional disenfranchisement and that they would be successful. Notwithstanding, the great tragedy to this was that this Parliament raced hurriedly and silently to follow the federal Parliament, led by John Winston Howard, to do something that was unconstitutional. Not a whimper was raised in this Parliament by either side of the house; notwithstanding some significant protestation now. I have had a look at the second reading debate, member for Mindarie, and it is a fair summary to say that the issue of potential unconstitutionality, or even egregious unfairness, was not raised. Am I incorrect in saying that?

Mr J.R. Quigley: You are right.

Mr C.C. PORTER: Both sides of the house raced in headlong and that is why, with respect to the member for Perth and others, it is all a little pious and sanctimonious to be heroes of the house now when it is all done and we constitutionally disenfranchised a range of prisoners. We have our civil liberties and human rights hats on now, but we did it all under the banner of harmonisation. It was not a great day for the Parliament, I would have thought.

Mr W.J. JOHNSTON: I am wondering then about this Saturday's referendum. As the Attorney General says, I am not actually trying to put my old hat back on and challenge the result of the 2008 election because the history of challenges to democratic elections is that if one does manage to overturn a decision in the courts, one always loses in a by-election anyway. That is not anything that I would recommend. I am asking about a specific issue; that is, if the zero arrangement that is currently in the law is invalid, what is the correct roll for this Saturday's referendum? Are there prisoners who can validly exercise their vote this Saturday because the zero provision is invalid and the Parliament has not passed any new provision? In that case, to what extent is that franchise extended to the prisoner population? Is it only for people who are serving less than 12 months because that was the provision that was in the act prior to the amendment that we are expunging; or is the Attorney General saying that every prisoner who is a citizen and who is on the roll—because not every prisoner is going to be on the roll—is eligible to vote on Saturday? I am not too much minded about the past because the past is that, but, rather, this Saturday, what is the effect? Is Mr Gately hurriedly looking to set up a polling booth at Casuarina Prison? What are we going to do this Saturday, because that is not the past; that is the future? I am stretching here to allow the Attorney General to get better advice, if he wishes; but, if he is ready, what is the arrangement?

Mr C.C. PORTER: The situation is unsatisfactory, but it is unsatisfactory because of legislation passed in this Parliament in 2007 that turned out to be unconstitutional. The situation is that people will be determined as to their eligibility—that is, their right to vote—based on the present provisions of the Western Australian Electoral Act 1907, even though we know that those provisions, if they were challenged on a case-by-case basis, would certainly be ruled unconstitutional.

As things presently stand, a prisoner who is serving six months and one day will be denied the right to vote in the daylight saving referendum based on the provisions of this act. If that prisoner chose to contest that exclusion, he would almost certainly be successful. Would that success overturn the result, whatever it may be, of the referendum? I would say that it is almost inconceivable that that would be the case. About this time last year I read the Roach decision fully and quietly. If we look at that decision, we see that Ms Roach was a Victorian woman who was serving a term of imprisonment in excess of, or close to, four years. She was excluded from voting pursuant to the Howard amendments in a Victorian state election. In any event, she was successful in the High Court but the result of the election, from which she was unconstitutionally excluded, stood—and still stands. My answer is that because of the past, which the member is not too keen to dwell on, the present situation is completely unsatisfactory.

Mr W.J. JOHNSTON: What I am trying to get at is: if that existing provision in the act today is invalid, what does the Attorney General say is the entitlement of prisoners to vote on Saturday?

Mr C.C. PORTER: The legal position is that, on our best guess, it almost certainly would be invalidated, if tested; but it stands until tested. It is conceptually an unconstitutional provision in a state act, but it would have to be tested on an individual basis.

Mr W.J. JOHNSTON: That actually returns to the point I was trying to make before, which is that whilst it may well be invalid and the courts may well strike the provision down, the fact is that today the act stands and is being acted on by the WA Electoral Commission, because that is the instruction the Parliament has given to the commission. When the Attorney General said that it was an invalid provision, what he meant was that it was a potentially invalid provision. I am not trying to put words in his mouth, but I am trying to interpret what he is saying—it is not that it is an invalid provision but that it is a potentially invalid provision. If a prisoner were to challenge it, it would be invalidated. What I was getting at in my question a few minutes ago was that the Parliament, following Roach, does not have to do anything if that was what the government chose. Whilst there is potential for a challenge, as the Attorney General says, the circumstances are unlikely to arise and may never

arise. The government chooses to bring this in because this is the provision that it believes to be appropriate given that people in prison have a constitutional right to vote at some time; where we draw the line is the question that we talked about previously.

Mr C.C. PORTER: I think that is a subtly but clearly distinct point from that which the member originally made. It was previously suggested—I wanted to clarify it—that what we could do as an option was "hold the line". I think they were the words used. The provisions as they stand in the WA Electoral Act are not possibly ultra vires the Constitution; they are certainly ultra vires the Constitution, but they have to be tested or pushed to that point of certainty by an individual case.

In reference to the original question about why we would not hold the line, the answer is that we would almost certainly expect a challenge at some point in time, either soon or in the distant future, and we would almost certainly expect—there is no doubt about this; it is quite clear—that that would render the provision invalid. It is not the first time that a provision in a state act has been rendered invalid subject to testing by a constitutional ruling. When faced with that situation, we need to move as swiftly as possible to amend the state act so that it is in line with constitutional requirements.

Mr A.J. WADDELL: I appreciate that we appear to be largely returning to the pre-2007 situation, so I expect a series of regulations dealt with this issue. However, I am interested to know in which electorate the prisoners will be enrolled. Will it be within the facility in which they are currently housed or will it be at their previous known address? How does that interact with the provisions for people with no fixed address that have been introduced?

Mr C.C. PORTER: In effect, the prisoners' position on the roll is a position that is referable to their address prior to them entering prison. For instance, Casuarina Prison would not potentially house a number of electors all in the electoral district in which Casuarina is located; the people who would be able to vote once this bill is passed will vote in the state electoral districts to which they were connected by virtue of their address prior to entering incarceration. I think it is the case, if I might say so, that often it was pre-poll voting that prisoners engaged in traditionally; although they voted in person occasionally, it was pre-poll voting generally.

Clause put and passed.

Clauses 8 and 9 put and passed.

Clause 10: Section 59 amended —

Mr W.J. JOHNSTON: I seek to clarify how this will affect the Western Australian Electoral Commission. As I understand the way the arrangements work, the Australian Electoral Commission does the data processing and passes the electoral roll to the state commission. This clause would then allow a second wash, if we like, to pick up prisoners in the information that is provided to the federal commission, under whatever procedures it has, and there would be a separate procedure for the state commission to determine whether people on the roll are eligible, based on the information provided by the federal commission to the state commission.

Mr C.C. PORTER: The state roll, which physically contains a list of names, will be annotated pursuant to information that the chief executive officer of the Western Australian Electoral Commission will receive from the chief executive officer of the Department of Corrective Services, which in turn will come from his database of who is in prison. Therefore, it is an annotation on the state roll.

Mr W.J. JOHNSTON: Therefore, no information comes directed; there is no indication on the roll information when it comes from the federal commission. The Australian Electoral Officer for Western Australia does not pass information to the Western Australian Electoral Commissioner, who already has the information that has been provided by corrective services to the AEC.

Mr C.C. PORTER: The federal Electoral Commissioner does not know, and I do not know whether he is interested in, who is in Western Australian state prisons, and there is no means by which he would know that. Therefore, the only information that he can have about who was on the roll and who was in a state prison will come from the state of Western Australia from the Department of Corrective Services.

Mr W.J. JOHNSTON: Surely there must be information provided by state corrections to the Australian Electoral Commission for it to exclude people who have been in a state prison for more than three years?

Mr C.C. PORTER: Yes, but that is not information that flows from the federal Electoral Commissioner; that is information that flows the other way.

Mr W.J. JOHNSTON: Is there an estimate of how many people? I know the commission jealously watches the quality of the roll, and I understand it does very good work, but one of the concerns written in its annual report is about when there is a large variation between the two rolls. Is there a belief that there will be a variation because

the information has been provided twice, if we like? Because people will be excluded by a process by the federal commission and then by a separate process by the state commission, those two separate data-matching processes may lead to error.

Mr C.C. PORTER: This is administrative and I cannot give the member information about what has happened in the past with the different cut-off points for the state and federal rolls. However, I would imagine that it is incumbent upon the federal commissioner to keep his roll up to date and to seek information from us that he thinks is necessary—that is, to seek from us information about the prisoners in the Western Australian prison system who are serving sentences of imprisonment up to that three-year rule. Therefore, I cannot comment on how he may go about doing that or the accuracy of the federal roll; it is a matter for the commissioner to devise the questions that he would utilise to seek information from the state of Western Australia.

Mr W.J. JOHNSTON: I suppose that what I am getting at is: how does the state commission know that errors are not made in the data matching by the federal commission that exclude or include people who should not be excluded or included?

Mr C.C. PORTER: There is no guarantee that that might not conceivably, in some small instances, be the case. However, the state Electoral Commission's responsibility is the state roll. I understand that is quite a large responsibility as it sits, without expecting this jurisdiction to conduct appropriately convened federal elections.

Mr W.J. JOHNSTON: Indeed, Attorney General, that was the point I was trying to get to, which was a matter raised by the member for Perth. I am not necessarily like other Labor members; I think a separate state roll is a positive matter. That is something Hon John Cowdell, the former President of the upper house, was also very keen to provide, but it goes to the question of the amount of resources provided to the state commission—this is the matter that the member for Perth raised. If we are going to have a separate state roll but all the data actually comes to us not from the information provided directly by people enrolling, but through the federal commission, I suggest there needs to be resourcing available to the state commission to ensure that what the Attorney General says does not happen actually does; namely, to ensure that the information maintained by the state commission based on the information it has from the federal commission is accurate and complete.

Mr C.C. PORTER: The Electoral Commission is satisfied with the present arrangements and it works very closely with the federal commissioner to ensure the integrity of the roll. Historically, we have had very good rolls. I think I understand the point the member is making, but it is outside the purview of the terms of this legislation. Unless there are some specific examples of poorly maintained rolls at the state level that relate to any of the provisions in this legislation, I do not know whether it is highly relevant.

Mr W.J. JOHNSTON: What I was suggesting on that very point is that if the chief executive officer of the Department of Corrective Services provided the information to the Australian Electoral Officer for Western Australia instead of to the Western Australian Electoral Commissioner, the roll could then be created once and the data provided by the AEC to the WAEC. Therefore, rather than having data matching done subsequent to the first set of data matching, there would only ever be one set of data matching.

Mr C.C. PORTER: In the scenario of the chief executive officer of the relevant prison providing the same piece of information X to persons A and B versus the CEO of the relevant prison providing information X to person B, who then hands it on to person A, people might take a different view about which is the more efficient system. We are satisfied that the system that is envisaged will be the efficient system.

Clause put and passed.

Clauses 11 to 13 put and passed.

Clause 14: Section 175C amended —

Mr W.J. JOHNSTON: I am sorry, I do not have a copy —

Mr R.F. Johnson: You are having to think of a question now.

Mr W.J. JOHNSTON: No; I am not.

Mr R.F. Johnson: This is your legislation, my friend, and all you are doing today is wasting a lot of time. You know that, and I know that there is other important business for this Parliament to deal with.

Mr W.J. JOHNSTON: I thank very much the Leader of the House. It is always very pleasant to have his interjections; they are always very pointed and relevant.

Mr R.F. Johnson: As are your questions. This is your legislation, my friend; all we have done is amend it slightly.

Mr M. McGowan: Are we not allowed to ask questions anymore?

Mr R.F. Johnson: You are when they are relevant, but he is making statements most of the time. You know that, and I know that.

The ACTING SPEAKER (**Mrs L.M. Harvey**): Order! The member for Cannington has the floor.

Mr W.J. JOHNSTON: Thank you very much, Madam Acting Speaker. Under proposed section 715C(2)(a), if the candidate has been endorsed by a political party, the agent of the political party is the agent of the candidate in relation to the election, and in proposed paragraph (b), if paragraph (a) does not apply, the candidate is the agent in relation to the election. Is there still a provision that will allow an unendorsed candidate to appoint an agent not being himself or herself?

Mr C.C. PORTER: Yes.

Clause put and passed.

Clause 15 put and passed.

Title put and passed.

Leave granted to proceed forthwith to third reading.

Third Reading

MR C.C. PORTER (Bateman — Attorney General) [1.12 pm]: I move —

That the bill be now read a third time.

MR W.J. JOHNSTON (Cannington) [1.12 pm]: I would particularly like to start by thanking the Leader of the House for allowing the Parliament to do its job! It is always pleasing to me to see the Leader of the House in this place making a great contribution. We all heard his contribution last week when he requested that a bill be voted on at four o'clock and forgot to mention that to ministers and other members of the government, and they all missed the vote. The vote was consequently lost and the leader had to detain the Parliament for some hours. I always welcome the Leader of the House's contributions, because, given the small number of days the Parliament will sit this year, it is great to be here and hear his inane interjections when he does not make any contribution to the public policy debate in this state. This is important legislation. What the Leader of the House says is true. This legislation was originally drafted by former Attorney General Hon Jim McGinty, a person who was attacked and vilified by the minister who is handling the bill today and who was, at the time, the opposition spokesman on electoral affairs. I was very happy to point out to the house that the former Attorney General was doing the right and proper thing in introducing this bill. It was then used by the Liberal opposition in a base and crass political attack. It personalised the issue into one about Jim McGinty, not the least in the press release of 15 May 2008 by the then opposition spokesperson, which said that the bill would provide the ability for serious offenders to vote for the Labor Party in the state election. That shows the level of contribution and level of thought that is completely absent on the other side of the chamber.

These electoral matters are very serious issues and the debate should take place without intimidation by the Leader of the House towards people participating in the parliamentary debating process. I was very interested that the Leader of the House was prepared to take about 60 seconds, as shown on the clock, of time that was allocated to me under the standing orders to ask my questions of the minister sitting at the table to berate me for having the hide to follow my responsibilities to this house in participating in the debate. I am always very happy to note that very few government backbenchers are prepared to put on the line their position on these important issues.

I was very pleased with the member for Jandakot's contribution. I listened to it last night and read it again this morning. I suggest that the Leader of the House go away and read that member's contribution to the debate.

Point of Order

Mr R.F. JOHNSON: The new member for Cannington probably does not realise that third reading speeches should be contained to what went on in consideration in detail, and not what went on at the second reading stage. They are not to be used simply to make personal attacks on other members. I ask that the member for Cannington use the third reading stage appropriately; it will make a great change.

Mr M. McGOWAN: I think this is an appropriate time to deal with the issue of government members continually trying to truncate debate.

Mr R.F. Johnson: What is your point of order?

Mr M. McGOWAN: It was in response to what I assume was a point of order. The Leader of the House did not actually say that it was. Government members are continually attempting to truncate debate. Debate in this place should be free flowing and members should be able to range widely when dealing with an issue. Just because we do not read out every single clause of a particular provision in the speech does not mean that our comments are not relevant to the issue. I recall when the Leader of the House was in this position—he is smiling now—and used to range freely and speak often with little relevance to anything in this place. Members are not conducting themselves in that way, but I think this consistent referral by members of the government to relevance needs to be put in context. Members should understand that they are able to have free-ranging debate and it does not have to be letter perfect on every provision of every bill. Government members must understand that if the government continues to adopt its approach to relevance, we will adopt the same strategy when government members are on their feet and, what is more, they will find that there are far more speakers during debates on legislation than there are at the moment.

The ACTING SPEAKER (Mrs L.M. Harvey): With reference to the point of order, there are plenty of precedents in this place that dictate that a third reading speech needs to be relevant to the consideration in detail stage of the debate, and that no new material should be brought into a third reading speech. It is not wide-ranging debate, such as we would have for a second reading contribution, so I ask the member for Cannington to come to the point and address the bill before the house.

Debate Resumed

Mr W.J. JOHNSTON: I referred to the minister's media release of 15 May 2008 during consideration in detail, and it was relevant to consideration in detail. When we discussed some of the issues that were raised, one of the Attorney General's replies continued for 10 minutes. People should remember that the Attorney General spoke for his entire five minutes in answer to one of my questions; I then stood and said that I was still interested in hearing from the Attorney General, or words to that effect, and I sat down. The Attorney General then spoke for another five minutes on the same topic. These were issues that were quite clearly being canvassed during consideration in detail. I know that the member for Jandakot was not here during consideration in detail, but the point I was trying to make to the Leader of the House in reply to his interjection—I was not trying to take the Parliament in a new direction; I was dealing with his interjection—was that —

Mr R.F. Johnson: You've got to tell the truth in this place.

Mr W.J. JOHNSTON: The Leader of the House needs to tell the truth about last Wednesday, and the fact that he got it wrong.

Mr R.F. Johnson: You need to tell the truth in this place, my friend, and be relevant to the bill that we're discussing.

Mr W.J. JOHNSTON: I am as relevant to the bill as the Leader of the House's interjection was. It is very impressive for the Leader of the House to interject on me for about 30 seconds and then complain that I am not being relevant. What issue was the Leader of the House raising with me? If the Leader of the House wants me to complete my conversation with the people of Western Australia through *Hansard*, I suggest that he remain silent and actually listen to me rather than talk. I am sure that he enjoys the sound of his own voice, but very few other people in this place do.

Mr R.F. Johnson: Let me assure you, my friend, that you have the most boring voice in this Parliament.

The ACTING SPEAKER: Although I accept the member for Cannington's assertion that there was some reference during the second reading debate to other issues, this is the third reading debate, and I draw his attention back to the Electoral Amendment (Miscellaneous) Bill 2008.

Mr W.J. JOHNSTON: I am looking forward to the Leader of the House joining the Acting Speaker in maintaining that interest in the Electoral Amendment (Miscellaneous) Bill 2008.

As I was explaining, during consideration in detail I asked the Attorney General, in very great detail, about the sorts of people who would be given the vote through the amendment brought to the house by the government for us to vote on today. I am sure that the Acting Speaker will remember—if she was present at the time; perhaps the Speaker was in the chair—that the Attorney General will, through this bill, extend the vote to a range of people who may well have been involved in serious criminal matters. In May 2008, the current Attorney General said that extending the vote to such people would be an opportunity for them to vote for the Labor Party. The point I tried to make during consideration in detail—I asked the Attorney General about 10 or 15 questions—was that such things can be dressed up in any way one wishes, but that responsible people acknowledge that people have rights. The government is choosing to draw the line at 12 months; that is the point at which it has chosen to draw the line. The Attorney General has other alternatives. He explained to the house that the current arrangement is

that the provision is invalid and that after Saturday's referendum, it may well be that prisoners who are denied the vote by the operation of the existing act could challenge their ineligibility to cast their ballot. That may or may not change the outcome of the referendum; we do not know yet, because the referendum has not yet taken place. However, as the Attorney General explained during consideration in detail, it is clear that there are potentially many prisoners who are eligible to cast a vote but who will be denied that right by the operation of the current act. I sought an understanding from the Attorney General about how many people he thought would be eligible, and how far the eligibility would extend. Would it be only people serving prison terms of up to 12 months, in accordance with the provisions of the current act, or would those people also be ineligible? If the current provision is invalid, would there be any limit to the number of prisoners who are eligible to exercise their franchise on Saturday? I was unable to get a clear position from him. That is fair enough, because it may be that he is unable to provide the information. Some prisoners are entitled to remain on the electoral roll even though they are excluded from the franchise, and I asked the Attorney General whether such people ought to be provided with a vote if, as the Attorney General asserted, the provision is invalid. These are all important issues that I raised with the Attorney General. I am not very interested in the opinions of the Leader of the House and his bullying tactics.

During consideration in detail, I also raised the matter of the wording of clause 14. It is quite important for candidates to have the option to maintain the right to appoint another person as a candidate agent. It appears, from a plain reading of the amendment, that that is not provided for. I was very pleased that the Attorney General was able to assure me that that important right of non-endorsed candidates will remain in place, because we clearly do not want to give to party-endorsed candidates additional privileges that are denied to Independent candidates. Independents are entitled to the same levels of rights and protections as are party candidates; that is a very key feature of the democratic process in Western Australia, and we need to protect it. I am glad that the Attorney General was able to give me that assurance.

I will not unreasonably or unnecessarily delay the house, because that would not be appropriate. However, I think some very valid points needed to be made about this legislation. It is sad that when the Labor Party was in government, the then Liberal opposition was not prepared to provide the same level of genuine critique of legislation but, rather, used debate as an opportunity to make outlandish allegations against the former member for Fremantle. With those few words, I commend the bill.

MR J.R. QUIGLEY (Mindarie) [1.28 pm]: There were a couple of comments made by the Attorney General during consideration in detail that I would like to address. During my contribution to the second reading debate, I referred to the fact that there was a three-year delimitation period in the commonwealth legislation, whereas the period in Western Australia was one year. We have gone through the history as to why that happened: the commonwealth government reduced the delimitation period to zero, but the High Court in the Roach decision ruled that that was invalid and the period reverted by default to three years. The Attorney General said, "Look, all this pious breast-beating by those on the opposition benches is a bit rich; it's a bit rich for them to decry the provision for a one-year delimitation, given that as recently as March 2008 the chamber voted for zero." The fact of the matter is that he, the Attorney General; I, the backbencher; and we, collectively, were wrong. There are three branches of government relevant to this bill, all with their role to play: the executive, the legislature and the courts. The bill passed through this place without a whimper because we collectively were wrong. We have been corrected by the High Court of Australia, which said that the legislation we voted for in this place—almost unanimously or without dissent—was wrong in law, as well intentioned as that vote might have been.

One of the most important freedoms we have in a democracy, on which the High Court has ruled and reflected, is to cast a vote for those who aspire to govern us. I believe that regime should be as transparent and as easy as possible to follow. There have been sad examples in the United States—I am proud that there has been none here—as great a democracy nonetheless as that country is, of a slump into some pretty unseemly role cleansing to try to benefit this party or that party. That was not the intention of either party in this country—the Howard Liberal government or the Carpenter Labor government—in bringing about the amendment to this legislation. I am proud of the way we have dealt with electoral legislation in Australia and I believe that the voting regime should be kept as simple as possible.

It is all very well for us in this wood-panelled chamber to argue the nuances of the legislation and its history; however, I am sure that the great wash of students and voters in the community trying to understand the system will never understand why it is okay for prisoner Brown to vote for the Prime Minister of Australia but is debarred from voting for the Premier of Western Australia. I suspect that one of the considerations given to the three-year limit in the commonwealth legislation was that it reflected a term of the commonwealth Parliament and that a person casting a vote in prison and limited by three years would be released to his or her freedom during the currency of the government that he or she voted for whilst incarcerated. Similarly, if the term in WA were three years—clearly this government will not do that—prisoners would vote for a government to which

they would be subject soon after their release. In this bill, one year pushes the limit right down to the bare minimum that the government believes the High Court will tolerate. It would not be pious to say that one voted the other way. I, the Attorney General and all members of this chamber were wrong and we must start afresh.

When considering the legislation, we should not consider the minimum possible term that will get past the High Court, but a term that is fair. The Attorney General argued at the consideration in detail stage that a one-year term would result in more minor offenders participating in the democratic process, but that argument does not hold upon examination. Many offenders who commit offences for the first time are given suspended sentences that they might not otherwise be given if it were their second or third offence. It does not really hold to say that holding the term at one year will filter out of the democratic system those people who are serious offenders, given that there are people in the community who are on extended probationary periods, community service orders or at liberty on parole for serious offences.

For all those reasons, therefore, I would have far preferred to see Western Australia reflect the commonwealth position so that we do not make a nonsense of the system by creating the situation in which a person can vote for the Prime Minister but not for the Premier. To my way of thinking, as simple as it is, that is a nonsense. Why is a person who can decide who should lead this country less capable of deciding who should be the Premier of Western Australia? It does not make sense. It is not good enough for members to use words such as “harmony”. Out there in the community we are telling people who are trying to follow our electoral system that they can vote for the Prime Minister if they are in jail for two and a half years but they cannot vote for the Premier of Western Australia if they are in jail for 15 months. People ask why. Our democratic system would garner much more credibility and credence if it were simple and logical to follow. Having made those comments, I nonetheless commend the bill to the house.

Question put and passed.

Bill read a third time and passed.