CONSTITUTION (ELECTORAL REDISTRIBUTION) (APPEALS) AMENDMENT BILL

Introduction and First Reading

Ms CHAPMAN (Bragg—Deputy Leader of the Opposition) (10:32): Obtained leave and introduced a bill for an act to amend the Constitution Act 1934. Read a first time.

Second Reading

Ms CHAPMAN (Bragg—Deputy Leader of the Opposition) (10:33): I move:

That this bill be now read a second time.

The Constitution Act of 1934 is one of the most important documents that we have in the state, and more will be said about that, I am sure, when members speak on the motion on the 160 years of responsible government of the state, which is on our agenda for consideration. However, from time to time even the constitution is identified as being deficient, sometimes in only a small way, and so it needs to be updated and to be contemporary.

On other occasions, the Supreme Court identifies for us any deficiency that might be exposed during litigation. Similarly, the High Court not only is the judicial watchdog for the federal parliament but also receives matters which are case stated and which, on appeal or review, might need to have an identification as to either the validity of a law or, indeed, how it may be improved if a deficiency is identified.

In this instance, the Chief Justice of the Supreme Court has brought to our attention a matter that in his view needs to be considered by this parliament. Accordingly, this bill is introduced. In particular, it will have the effect of amending section 86 to enable a registered political party, or any other person with an interest in an electoral redistribution, to be an appellant to a decision of the Electoral District Boundaries Commission. The wording is slightly different in the bill. As the mover of this bill, I am happy to identify that 'any other person' will be incorporated in the words 'any elector or registered political party to appeal'.

At present, section 86(2) of the Constitution Act provides that only an elector—that is, a person registered on the electoral roll—may appeal to the Full Court of the Supreme Court against any order of the commission. As members will know, the only ground is that that order 'has not been duly made in accordance with this act'.

Most recently, on 10 March 2007 the Full Court of the Supreme Court handed down a decision in Martin v Electoral Districts Boundaries Commission [2017] SASCFC 18. Five judges, including Chief Justice Kourakis and Justices Kelly, Blue, Bampton and Hinton, unanimously dismissed an appeal by the Secretary of the Australian Labor Party, SA division. The order of the EDBC dated 7 December 2016 therefore remains, and accordingly the boundaries for our 47 state seats in the House of Assembly will be as per published in the order at that time.

It was a momentous occasion for some of us, probably not those in the ALP, but I think it is fair to say that when you have a 5-0 decision of the Full Court it is a smashing in anyone's terms, but in legal terms it makes it very clear that the Full Court fully endorsed the decision of the Electoral District Boundaries Commission, which included Her Honour Judge Vanstone.

I place on record my appreciation of all those who undertook work in relation to the Electoral District Boundaries Commission. It is a difficult exercise; it is a lot of work. Mr Gully and others in the Electoral Commission SA have to undertake an extraordinary amount of work, together with the third party, to form the commission. It is a lot of work. A number of people and parties put submissions, and I thank them for taking the time, because this really is at the core of ensuring that we have a fair and democratic process in respect of our elections.

The commission allowed for a redistribution in the December determination, which involved six rural electorates having electoral numbers with an estimate of 7 per cent below the average in respect of the population of electors, seven semirural electorates with an estimate of 3 per cent below the average and 34 city electorates having elector numbers slightly above the average.

Importantly, the judgement of the Full Court confirmed that the government by majority objective, which is set out in section 83(1), is clearly an objective and not just a matter to be considered and that the question of the equality of electors provision in section 77 was a mandatory consideration but not an objective. At last, for the purposes the 2018 election, we have a redistribution that is likely to result in government of the political party that achieves more than 50 per cent of the statewide vote. I also place on the record my personal appreciation of our Senior Counsel, Mr Tom Duggan SC, and his further counsel, Mr Joshua Teague, for their advocacy during this important occasion.

During the course of the hearing and delivery of judgement, the Chief Justice pointed out that the current law requires the appellant to be an elector, hence we have Mr Reggie Martin as the applicant and Ms Sascha Meldrum for the Liberal Party as the second respondent in the course of the proceedings. They will be forever recognised in legal posterity but, in any event, clearly the EDBC was the first respondent and our Liberal Party director, Sascha Meldrum, was named as the second respondent.

His Honour pointed out that the current law produces the result that the elector is a member of a political party which made representations to the EDBC but who did not personally appear before it. His Honour further noted, at page 4:

> Parliament may wish to consider whether a registered political party, or any other person with an interest in an electoral redistribution, particularly if that party or person has made representations to the EDBC, should be entitled to bring an appeal against an order of the EDBC. It may also be prudent to allow the Court a power to preclude a political party from appearing on an appeal through a proxy if that party made representations before the EDBC. As a practical consideration, Parliament may also wish to contemplate prescribing a procedure for the giving of public notice that an appeal has been instituted and of the right of persons to be joined.

Unsurprisingly to me, the Attorney-General has not acted on this piece of advice from the Chief Justice. I do not imagine that anyone from the government side, on the ALP side, is going to be rushing to want to quote a judgement that completely annihilated their attempt at appeal; nevertheless, what is important is that the Chief Justice has identified a matter which we should consider. It should be resolved, and I would urge the government to review it and support this bill to ensure that we remedy what has been identified as a matter worthy of consideration by the Chief Justice of the Supreme Court. I ask that favourable consideration be given to the bill.

Debate adjourned on motion of Hon. T.R. Kenyon .