



HIGH COURT OF AUSTRALIA

Public Information Officer

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ATTORNEY-GENERAL FOR THE STATE OF WESTERN AUSTRALIA AND THE STATE OF WESTERN AUSTRALIA v LAURENCE BERNHARD MARQUET (CLERK OF THE PARLIAMENTS OF WESTERN AUSTRALIA) (two matters)

Two pieces of legislation aimed at changing Western Australia's electoral laws could not be presented to the WA Governor for assent as neither Bill was passed by an absolute majority of all Legislative Council members, the High Court of Australia held today, confirming a decision of the Supreme Court of WA.

On 19 and 20 December, 2001, the Electoral Distribution Repeal Bill and Electoral Amendment Bill were passed by a majority of Legislative Council members present, but not by an absolute majority. The Bills had already been passed by an absolute majority of the Legislative Assembly. The first Bill would have repealed the Electoral Distribution Act 1947 which currently provides for the drawing of electoral boundaries for both houses of the WA Parliament. Section 13 of the Act, a "manner and form" provision, stated the Act could not be amended unless a Bill had concurrence of an absolute majority of both houses. The second Bill would have inserted a new electoral boundaries' regime into the Electoral Act to reduce the disparity between voter numbers in various electorates and would have increased the number of Legislative Council members from 34 to 36.

On 21 December, Mr Marquet began proceedings in the WA Supreme Court seeking declarations about the lawfulness of presenting each Bill to the Governor for assent. Each Bill was the subject of separate proceedings. The proceedings were referred to a specially constituted five-member Full Court of the Supreme Court, which decided by a 4-1 majority that the Bills could not be lawfully presented. The WA Attorney-General and the State of WA then sought special leave to appeal to the High Court. The special leave application was referred by a Full Court of three Justices to an enlarged Bench and argued as on appeal. In the High Court, those who had argued in the Full Court that the Bills were not validly passed (including political parties and rural groups) appeared to present arguments against the validity of the Bills. The Attorneys-General for the Commonwealth, Queensland and New South Wales also appeared.

The High Court granted special leave to appeal in each matter, but by a 5-1 majority dismissed each appeal. It held that "amend" in section 13 of the Electoral Distribution Act included "repeal" and held that compliance with section 13 was mandatory. Because each Bill was a law in respect of the constitution of a state parliament, section 6 of the Australia Act 1986 required compliance with manner and form provisions. It also held that section 2(3) of WA's Acts Amendment Act 1978, stating that every Bill after its passage through both houses shall be presented to the Governor for assent, did not impliedly repeal section 13, as "passage" meant "due passage" or "passage in accordance with applicable requirements".

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*