

## Electoral Legislation Amendment Bill 2003

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Western Australia

LEGISLATIVE ASSEMBLY

## **Electoral Legislation Amendment Bill 2003**

**A Bill for**

**An Act to amend the —**

- *Electoral Act 1907*;
  - *Constitution Acts Amendment Act 1899*;
  - *Salaries and Allowances Act 1975*; and
  - *Electoral Amendment (Political Finance) Act 1992*,
- and for related purposes.**

The Parliament of Western Australia enacts as follows:

## **Part 1 — Preliminary**

**1. Short title**

This Act may be cited as the *Electoral Legislation Amendment Act 2003*.

5 **2. Commencement**

- (1) Subject to subsection (2), this Act comes into operation on the day on which it receives the Royal Assent.
- (2) Part 2 Division 3 comes into operation on a day fixed by proclamation.

## **Part 2 — *Electoral Act 1907* amended**

### **Division 1 — Preliminary**

#### **3. The Act amended**

The amendments in this Part are to the *Electoral Act 1907*\*.

5 [\* *Reprinted as at 15 December 2000.*  
*For subsequent amendments see Western Australian  
Legislation Information Tables for 2002, Table 1, p. 115.*]

### **Division 2 — Amendments about fixed election dates**

#### **4. Section 4 amended**

10 (1) Section 4(1) is amended in the definition of “general election”  
as follows:

(a) in paragraph (a) by deleting “64(1)” and inserting  
instead —

“ 64(2) or (3) ”;

15 (b) in paragraph (b) by deleting “64(2)” and inserting  
instead —

“ 64(4) ”.

(2) Section 4(1) is amended by inserting in the appropriate  
alphabetical positions the following definitions —

20 “  
“**election year**”, in relation to a periodic election,  
means the year in which the writ for the periodic  
election is issued;

“**periodic election**” means —

25 (a) a general election for the Assembly the writ  
for which is issued under section 64(3); or

(b) any general election for the Council;

”.

**5. Section 64 replaced**

Section 64 is repealed and the following section is inserted instead —

“

5 **64. Issue of writs for general election**

(1) In this section —

“**expiry year**” of an Assembly means the year in which that Assembly, if it is not previously dissolved, will expire by effluxion of time.

10 (2) If an Assembly is dissolved before 1 November last preceding its expiry year, the Governor shall cause a writ for elections in all the districts to be issued not later than 10 days after the dissolution.

15 (3) If an Assembly is not dissolved before 1 November last preceding its expiry year, the Governor shall cause a writ for elections in all the districts to be issued on the third Wednesday of January in the expiry year.

20 (4) In order to fill seats in the Council that are to be vacated by effluxion of time at the end of 21 March in a year, the Governor shall cause a writ for elections in all the regions to be issued on the third Wednesday of January last preceding that 21 March.

”.

**6. Section 70 amended**

25 (1) Section 70 is amended by inserting before “The” the subsection designation “(1)”.

(2) At the end of section 70 the following subsection is inserted —

“

30 (2) In the case of a periodic election the date fixed as the last day for the nomination of candidates shall be the second Friday following the date of the writ.

”.



**7. Section 71 amended**

After section 71(3) the following subsections are inserted —

“

- 5 (4) In the case of a periodic election the date fixed for the polling shall be the third Saturday of February in the election year.
- (5) If the third Saturday of February in an election year is an excluded day, the date fixed for the polling shall be the fourth Saturday of February in the election year.
- 10 (6) In subsection (5) —
- “**excluded day**” means a day appointed as polling day for an election of the Senate or a general election of the House of Representatives or as the voting day for a referendum as defined in section 3 of the
- 15 *Referendum (Machinery Provisions) Act 1984* of the Commonwealth.

”.

**8. Section 72 amended**

After section 72(1) the following subsection is inserted —

20

“

- (2) In the case of a periodic election the date fixed as the last day for the return of the writ shall not be later than 21 March after polling day.

”.

25 **9. Section 76 amended**

Section 76(3) is amended by deleting “the time prescribed by the *Constitution Acts Amendment Act 1899*.” and inserting instead —

“ 21 March after polling day. ”.

**10. Section 156E amended**

Section 156E(2) is repealed and the following subsections are inserted instead —

“

5 (2) A writ shall not be issued under subsection (1) on or after 1 November last preceding the expiry year and, in that case, the vacancy is taken for the purposes of section 64(4) and section 10 of the *Constitution Acts Amendment Act 1899* to occur by effluxion of time at  
10 the end of 21 March in the expiry year.

(3) In subsection (2) —

“**expiry year**” means the year in which the term of service of the member whose seat has been vacated would have expired.

15

”.

**Division 3 — Amendments about electoral funding**

**11. Heading to Part VI amended**

The heading to Part VI is amended by deleting “Disclosure” and inserting instead —

20

“ **Electoral funding and disclosure** ”.

**12. Part VI Division 2a inserted and transitional provision**

(1) After Part VI Division 2 the following Division is inserted —

“

**Division 2a — Electoral funding**

25

**175LA. Terms used in this Division**

(1) In this Division —

“**eligible vote**” means —

(a) a vote given at an election in which there are only 2 candidates; or

- (b) a first preference vote given at an election in which there are more than 2 candidates, but does not include any vote on a ballot paper that has been rejected;

5           “**party group**” means a group all the persons included in which have been endorsed by the same registered political party.

10           (2) For the purposes of this Division, a reference to a vote given includes a reference to a vote deemed under section 146F to have been given.

              (3) For the purposes of this Division, electoral expenditure incurred in relation to an election by or with the authority of —

- 15           (a) a candidate endorsed by a registered political party who is not included in a group; or
- (b) persons included in a party group,

shall be taken to have been incurred by or with the authority of the party.

**175LB. General entitlement to funds**

20           Subject to this Division, after an election the election funding reimbursement amount under section 175LC is payable for each eligible vote given for a candidate.

**175LC. Election funding reimbursement amount**

- 25           (1) The election funding reimbursement amount is —
  - (a) \$1.28106; or
  - (b) the amount worked out, to 5 decimal places, under subsection (2).

- (2) The election funding reimbursement amount is to be adjusted for each financial year on 1 July of that financial year using the formula —

$$\frac{A \times B}{C}$$

5 where —

“A” is the election funding reimbursement amount immediately before 1 July in a year;

“B” is the CPI number published for the March quarter in the year; and

10 “C” is the CPI number published for the March quarter in the previous year.

- (3) In subsection (2) —

15 “CPI” means the all groups consumer price index for Perth published by the Australian Statistician referred to in section 5 of the *Australian Bureau of Statistics Act 1975* of the Commonwealth.

(4) If, for a particular financial year, adjustment of the election funding reimbursement amount would reduce the amount, the amount is not to be adjusted for the year.

(5) If an amount would, if calculated to 6 decimal places, end with a number more than 4, the amount is taken to be the amount calculated to 5 decimal places and increased by 0.00001.

25 **175LD. Claims for payment**

(1) A payment under this Division cannot to be made unless a claim for the payment has been lodged with the Electoral Commissioner in an approved form before the expiration of the claims period referred to in subsection (6).

30

- (2) A claim for payment under this Division for the eligible votes given for a candidate endorsed by a registered political party may be lodged by, and only by —
- 5           (a) in the case of a candidate not included in a group, the agent of the registered political party;
- (b) in the case of a candidate included in a party group, the agent of the registered political party; or
- 10           (c) in the case of a candidate included in a group, other than a party group, the agent of the group.
- (3) If a registered political party endorsed candidates in 2 or more elections held on the same day, all claims for payment under this Division lodged by the agent of the party under subsection (2)(a) or (b) in relation to those elections must be lodged as one claim.
- 15
- (4) A claim for payment under this Division for the eligible votes given for a candidate not endorsed by a registered political party may be lodged by, and only by —
- 20           (a) in the case of a candidate not included in a group, the agent of the candidate; or
- (b) in the case of a candidate included in a group, the agent of the group.
- 25
- (5) A claim for a payment under this Division is to be accompanied by any information required by the Electoral Commissioner regarding —
- 30           (a) in the case of a claim lodged by the agent of a registered political party under subsection (2)(a) or (b), the electoral expenditure incurred by or with the authority of the party in relation to —
- (i) the election to which the claim relates;  
             or

- (ii) in the case of a claim lodged in accordance with subsection (3), the elections to which the claim relates;
- 5 (b) in the case of a claim lodged by the agent of a candidate under subsection (4)(a), the electoral expenditure incurred by or with the authority of the candidate in relation to the election to which the claim relates; or
- 10 (c) in the case of a claim lodged by the agent of a group under subsection (2)(c) or (4)(b), the electoral expenditure incurred by or with the authority of persons included in the group in relation to the election to which the claim relates.
- 15 (6) For the purposes of subsection (1) the claims period is —
- (a) the period of 20 weeks after polling day in the election or elections to which the claim relates; or
- 20 (b) such longer period as the Electoral Commissioner fixes before the end of the period specified in paragraph (a).
- (7) The Electoral Commissioner cannot fix a longer period for the purpose of subsection (6)(b) unless satisfied that
- 25 the circumstances of the case justify the fixing of a longer period.

**175LE. Electoral Commissioner to determine claims**

30 A claim for payment under this Division is to be decided by the Electoral Commissioner in accordance with this Division.

**175LF. Circumstances in which payment to be made**

- 5 (1) Subject to subsections (2) and (3), a payment can be made under this Division in respect of eligible votes given for a candidate in an election if, and only if, the number of those eligible votes is more than 4% of the total number of eligible votes given at the election.
- 10 (2) If a candidate in an election in a region is included in a group, a payment can be made under this Division in respect of eligible votes given for the candidate as long as the total number of eligible votes given for candidates in the election included in the group is more than 4% of the total number of eligible votes given at the election.
- 15 (3) In the case of a claim lodged by the agent of the registered political party in accordance with section 175LD(3), a payment can be made under this Division in respect of eligible votes given for a candidate endorsed by the party as long as the total number of eligible votes given, at the elections to which the claim relates, for candidates endorsed by the party is more than 4% of the total number of eligible votes given at those elections.
- 20 (4) Subsections (2) and (3) do not limit each other's operation.

25 **175LG. Amount of payment not to exceed electoral expenditure**

- (1) The amount of a payment under this Division made in respect of a claim under section 175LD is not to exceed —
- 30 (a) if the claim is lodged by the agent of a registered political party under section 175LD(2)(a) or (b), the electoral

expenditure incurred by or with the authority of the party in relation to —

- (i) the election to which the claim relates;  
or
- 5 (ii) in the case of a claim lodged in accordance with section 175LD(3), the elections to which the claim relates, less any input tax credit in respect of that expenditure;
- 10 (b) if the claim is lodged by the agent of a candidate under section 175LD(4)(a), the electoral expenditure incurred by or with the authority of the candidate in relation to the election to which the claim relates, less any input tax credit in respect of that expenditure;
- 15 or
- (c) if the claim is lodged by the agent of a group under section 175LD(2)(c) or (4)(b), the electoral expenditure incurred by or with the authority of persons included in the group in relation to the election to which the claim relates, less any input tax credit in respect of that expenditure.
- 20

(2) In subsection (1) —

25 **“input tax credit”** means an entitlement arising under section 11-20 or 15-15 of the *A New Tax System (Goods and Services Tax) Act 1999* of the Commonwealth.

**175LH. Making of payments**

- 30 (1) If the Electoral Commissioner is satisfied, in respect of a claim under section 175LD(2)(a) or (b), that an amount is payable under this Division for eligible votes given at an election or elections for a candidate or



candidates endorsed by a registered political party, the Electoral Commissioner shall make the payment to the agent of the party.

- 5
- (2) If the Electoral Commissioner is satisfied, in respect of a claim under section 175LD(4)(a), that an amount is payable under this Division for eligible votes given at an election for a candidate, the Electoral Commissioner shall make the payment to the agent of the candidate.
- 10
- (3) If the Electoral Commissioner is satisfied, in respect of a claim under section 175LD(2)(c) or (4)(b), that an amount is payable under this Division for eligible votes given at an election for persons included in a group, the Electoral Commissioner shall make the payment to the agent of the group.
- 15
- (4) If a payment is made under this Division and the recipient is not entitled to receive the whole or a part of the amount paid, whether because of a false statement in a claim or otherwise, the amount or the part of the amount may be recovered by the State as a debt due to
- 20
- the State by action, in a court of competent jurisdiction, against the person.

**175LI. Revocation of decision regarding payment**

- 25
- (1) If the Electoral Commissioner is satisfied that the amount of a payment decided under section 175LE exceeds, or is less than, the amount payable to the claimant, the Commissioner may revoke the decision and make a fresh decision.
- 30
- (2) If the amount payable under the fresh decision is less than the amount paid to a person under the revoked decision, the difference between the amounts fixed by the decisions may be recovered by the State as a debt due to the State by action, in a court of competent jurisdiction, against the person.

**175LJ. Death of candidate**

- 5
- (1) If a candidate for whom eligible votes were given at an election dies, a payment under this Division for the eligible votes given for the candidate may be made despite the candidate's death.
- (2) If the candidate —
- 10
- (a) was not endorsed in the election by a registered political party;
- (b) was not included in a group; and
- (c) had not appointed an agent,
- a claim for the payment may be lodged by, and the payment may be made to, the legal personal representative of the candidate.
- (3) If the candidate —
- 15
- (a) was included in a group other than a party group; and
- (b) was the agent of the group,
- another person included in the group may lodge a claim for a payment under this Division for the eligible votes given for persons included in the group, and the payment may be made to that other person.
- 20
- (4) This section has effect despite sections 175LD and 175LH.

**175LK. Appropriation of moneys**

25

Any payment made under this Division shall be charged to the Consolidated Fund which is to the extent necessary appropriated accordingly.

”.

- 30
- (2) Part VI Division 2a as inserted by subsection (1) does not apply to an election held before the day on which subsection (1) comes into operation.

**13. Section 175N amended**

Section 175N(2) is amended after paragraph (b) by deleting the full stop and inserting —

“

5

;

(c) any income that consists of a payment received under Division 2a.

”.

**14. Section 175U amended**

10 (1) Section 175U(3) is amended by deleting “and that return” and inserting instead —

“

or a claim that the agent may lodge under Division 2a and that return or claim

15

”.

(2) Section 175U(4) is amended by deleting “and that return” and inserting instead —

“

or a claim that the person may lodge under Division 2a and that return or claim

20

”.

(3) Section 175U(5) is amended by deleting “information that relates to the return” and inserting instead —

“

, or may lodge a claim under Division 2a, information that relates to the return or claim

25

”.

**15. Section 175V amended**

Section 175V(1) is amended by inserting after “section” —

30

“ 175LH(4), 175LI(2) or ”.

**16. Section 175W amended**

Section 175W(4) is amended by inserting after “return” —  
“ or claim ”.

**17. Section 175ZB amended**

5 Section 175ZB(1), (2), (2a), (4) and (9) are amended by  
inserting after “return” in each place where it occurs —  
“ or claim ”.

**18. Section 175ZC amended**

(1) Section 175ZC(1) is amended by inserting after “each” —  
10 “ claim under Division 2a and each ”.

(2) Section 175ZC(2) is amended as follows:

(a) by inserting after “copy of a” in both places where it  
occurs —

“ claim or a ”;

15 (b) by inserting after “which the” —  
“ claim or ”.

**19. Section 175ZD amended**

Section 175ZD(1) is amended by inserting after “section” —  
“ 175LH(4), 175LI(2) or ”.

20 **Division 4 — General amendments**

**20. Long title amended**

The long title is amended by inserting after “elections” —  
“ and for related purposes ”.

**21. Section 4 amended**

- (1) Section 4(1) is amended by inserting in the appropriate alphabetical position the following definition —

“

5

**“authorised witness”** has the meaning given by section 94;

”.

- (2) Section 4(1) is amended by deleting the definition relating to “print”, “printed” or “printing”.

10 **22. Section 5D amended**

After section 5D(3) the following subsections are inserted —

“

15

- (4) The Governor, on the recommendation of the Premier, may appoint an Acting Deputy Electoral Commissioner to act in the office of the Deputy Electoral Commissioner —

20

- (a) when the Deputy Electoral Commissioner is absent from duty for any reason or is absent from the State;
- (b) when the Deputy Electoral Commissioner is acting in the office of Electoral Commissioner under section 5H(2);
- (c) when the Deputy Electoral Commissioner has been suspended; or
- (d) when the office of Deputy Electoral Commissioner is vacant.

25

- (5) Before making a recommendation under subsection (4) the Premier shall consult with the Parliamentary leader of each party in the Parliament.

(6) While the Acting Deputy Electoral Commissioner is so acting —

5 (a) he may perform the functions of the Deputy Electoral Commissioner, and anything done by him in so performing those functions has the like effect as if it were done by the Deputy Electoral Commissioner;

10 (b) any act or thing that is required under a written law to be done to, by reference to or in relation to the Deputy Electoral Commissioner shall be regarded as effectually done if done to, by reference to or in relation to the Acting Deputy Electoral Commissioner.

”.

15 **23. Section 5F amended**

Section 5F(1)(ea) is deleted and the following paragraph is inserted instead —

“

20 (ea) may conduct other elections, referendums or polls —

(i) if authorised to do so under another written law; or

25 (ii) if they are provided for under another written law and the regulations authorise the Electoral Commissioner to conduct them;

”.

**24. Section 18 amended**

30 Section 18(c) is amended by deleting “one year” and inserting instead —

“ 5 years ”.

**25. Section 67 amended**

Section 67(5) is amended by deleting “32(a)” and inserting instead —

“ 32(1)(a) ”.

5 **26. Section 77 amended**

After section 77(5) the following subsection is inserted —

“

(6) If a person who is not an elector entitled to vote at an election of a member of the Assembly nominates himself for election to either House, the nomination is invalid.

”.

**27. Section 84 amended**

(1) Section 84(1)(a) is amended by deleting “one-twentieth” and inserting instead —

“ 4% ”.

(2) Section 84(1)(b) and (c) are amended by deleting “one-tenth” and inserting instead —

“ 4% ”.

20 **28. Section 85 amended**

Section 85(2) is amended by deleting “6 p.m.” and inserting instead —

“ 12 noon ”.

**29. Section 90 amended**

- (1) Section 90(1) is repealed and the following subsection is inserted instead —

“

- 5 (1) Any elector may make application for an early ballot paper at any time after the polling day for an election has been publicly announced by the Government.

”.

- 10 (2) Section 90(1a) is amended by deleting “at any time during the period referred to in subsection (1)”.

- (3) Section 90(3a)(a) is amended by deleting “who is entitled to apply for an early ballot paper”.

- (4) Section 90(3e)(a)(i) is deleted.

- 15 (5) Section 90(7)(b) is amended by deleting “entitled to an early ballot paper” and inserting instead —

“ an elector ”.

- (6) Section 90(8)(a) is amended by deleting “is entitled to an early ballot paper under subsection (1)(d)” and inserting instead —

“

- 20 will be unable to vote during the hours of polling on polling day because the elector is, or is caring for a person who is, seriously ill or infirm, or approaching maternity

”.

- 25 (7) Section 90(8)(b) is amended by deleting “if the elector is entitled to an early ballot paper issue him with one” and inserting instead —

“ issue the elector with an early ballot paper ”.



- (8) Section 90(12) is amended by deleting “entitled to an early ballot paper by virtue of subsection (1)(f)” and inserting instead —

“

5                   who is serving a sentence of imprisonment for an offence or is otherwise in lawful custody or detention

”.

**30. Section 92 amended**

10           Section 92(4c)(b) is amended by deleting “Tuesday” and inserting instead —

“ Thursday ”.

**31. Section 95 amended**

Section 95(8) is amended as follows:

15           (a) by deleting “elector is an” and inserting instead —  
“ elector is a patient or ”;

(b) by deleting “is an inmate in an institution or is a patient in a hospital”.

**32. Section 100 amended**

20           (1) Section 100(1)(c) is amended by deleting “institution or hospital, or both” and inserting instead —

“ hospital, prison or other institution ”.

(2) Section 100(1)(d) is amended as follows:

25           (a) by deleting “any institution or hospital, or both,” and inserting instead —

“ any hospital, prison or other institution ”;

(b) by deleting “or hospital, or both, for” and inserting instead —

“ for ”.

**33. Section 100A amended**

- (1) Section 100A(1), (1)(a), (2)(a) and (b) and (5) are amended by deleting “or hospital”.
- (2) Section 100A(1)(b) is amended by deleting “record his”.
- 5 (3) Section 100A(2) is amended by deleting “or hospital,”.

**34. Section 100B amended**

Section 100B(2a) is amended by inserting after “The” —  
“ Electoral Commissioner or the ”.

**35. Section 102 amended**

- 10 Section 102(5) is amended by deleting “or hospital”.

**36. Section 132 amended**

Section 132(2) is amended as follows:

- (a) by deleting “a special institution or hospital” and inserting instead —  
15 “ an institution ”;
- (b) by deleting “or (d)”.

**37. Section 192 amended**

- (1) Section 192(2) and (3) are amended by deleting “or hospital” in each place in which it occurs.
- 20 (2) Section 192(4) is repealed.
- (3) Section 192(5) is amended as follows:
- (a) by deleting “Subsection (4)” and inserting instead —  
“ This section ”;
- (b) by deleting “a prison” and inserting instead —  
25 “ an institution ”;
- (c) by deleting “the prison” and inserting instead —  
“ the institution ”.

**38. Section 188 amended**

- (1) Section 188(1) and (2) are deleted and the following are inserted instead —

“

- 5 (1) Penalty for bribery or undue influence —
- (a) if the offence relates to an early ballot paper or early vote: \$24 000 or imprisonment for 2 years; or
  - 10 (b) in any other case: \$12 000 or imprisonment for 12 months.
- (2) Penalty for any other illegal practice —
- (a) if the offence relates to an early ballot paper or early vote: \$12 000 or imprisonment for 12 months; or
  - 15 (b) in any other case: \$6 000.

”.

**39. Schedule 1 amended**

- (1) Schedule 1 clause 5 is repealed and the following clause is inserted instead —

20 “

5. Unless all the vacancies have been filled, the surplus votes (if any) of any candidate elected under clause 4, or elected subsequently under this clause, shall be transferred to the continuing candidates as follows —
- 25 (a) the number of surplus votes of the elected candidate shall be divided by the number of votes received by him and the resulting fraction shall be the surplus fraction;
  - 30 (b) in relation to any particular ballot papers for surplus votes of the elected candidate, the surplus fraction shall be multiplied by the transfer value at which those ballot papers were transferred to the elected candidate, or by one if they expressed first

preference votes for the elected candidate, and the product shall be the continued transfer value of those particular ballot papers;

- 5 (c) the total number of ballot papers for surplus votes of the elected candidate that each —
- (i) express the next available preference for a particular continuing candidate; and
- (ii) have a particular continued transfer value, shall be multiplied by that transfer value, the number so obtained (disregarding any fraction) shall be added to the number of votes of the continuing candidate and all those ballot papers shall be transferred to the continuing candidate,
- 10

and if on the completion of the transfer of the surplus votes of the elected candidate to a particular continuing candidate that candidate has received a number of votes equal to or greater than the quota, that candidate shall be elected.

15

”.

(2) Schedule 1 clause 7 is repealed.

20 (3) Schedule 1 clause 9 is amended by deleting “4(a) and (b)” and inserting instead —

“ (5) ”.

#### **40. Minor amendments**

The Act is amended as set out in the Table.

25 **Table**

<b>Provision amended</b>	<b>Amendment</b>
section 60(1)	deletion of “56(a)” and insertion instead of — “ 56 ”.
section 61	repeal of the section
section 62I(2)	insertion after “one member of” of — “ the ”.

<b>Provision amended</b>	<b>Amendment</b>
section 62N(1)(c)	insertion before “decision” of — “ a ”.
section 75(1)(b)	deletion of “nomination” and insertion instead of — “ declaration of nominations ”.
section 77(1)(b)	insertion after “as” of — “ , or from being, ”.
section 87(7)	deletion of “113A” and insertion instead of — “ 113B ”.
section 141(1)	deletion of “, (b)”.
section 156A	deletion of “(1)”.
section 186	deletion of “incapable of being chosen or of sitting as” and insertion instead of — “ disqualified from being elected as, or from being, ”.

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**Part 3 — *Constitution Acts Amendment Act 1899* amended**

**Division 1 — Preliminary**

**41. The Act amended**

5 The amendments in this Part are to the *Constitution Acts Amendment Act 1899*\*.

[\* Reprint 12 as at 3 Oct 2003.]

**Division 2 — Amendments about fixed election dates**

**42. Section 8 amended and transitional provisions**

10 (1) Section 8(2) and (3) are each amended by deleting “May” and inserting instead —

“ March ”.

(2) Section 8(4) is repealed and the following subsection is inserted instead —

15 “  
(4) Where an election held as part of a general election fails wholly or partially or is declared to be absolutely void, the seat of a member elected at an election held by reason of that failure or declaration shall become  
20 vacant at the expiration of the period of 4 years beginning on 22 March next following that general election.

”.

25 (3) Section 8(5) is amended by deleting “(4)(a)” and inserting instead —

“ (4) ”.

(4) Section 8(6) is repealed.

- (5) If a person who is a member of the Legislative Council on 21 March 2005 is no longer a member on 22 March 2005, the *Salaries and Allowances Act 1975* and parliamentary superannuation arrangements continue to apply in relation to that person in the same way as they would have if —
- 5
- (a) 21 May 2005 had continued to be the day at the end of which the person’s seat became vacant by effluxion of time; and
- (b) the person had continued during the subtracted period to hold any higher office that the person held on 21 March 2005.
- 10
- (6) In subsection (5) —
- “higher office”** means the office of —
- (a) President of the Legislative Council; or
- 15
- (b) Chairman or Deputy Chairman of Committees in the Legislative Council;
- “parliamentary superannuation arrangements”** means contribution, entitlement and other superannuation arrangements in respect of —
- 20
- (a) a person by or for whom contributions are being made as at 21 March 2005 to the scheme as defined in section 5 of the *Parliamentary Superannuation Act 1970*; or
- (b) a person for whom contributions are being made as at 21 March 2005 under section 29 of the *Parliamentary Superannuation Act 1970*;
- 25
- “subtracted period”** means the period —
- (a) beginning on 22 March 2005; and
- (b) ending on 21 May 2005 or, if the person dies before then, on death.
- 30

**43. Section 10 amended**

Section 10(3)(b) is amended by deleting “May” and inserting instead —

“ March ”.

5 **44. Section 21 amended**

(1) Section 21(1) is amended as follows:

(a) by inserting before “Provided” the subsection designation “(2)”;

10 (b) by deleting paragraphs (a) and (b) and “and” after paragraph (a) and inserting instead —

“

15 (a) whenever any Legislative Assembly would expire by effluxion of time on or after 1 September of any year but before the third Wednesday of January next following, that Legislative Assembly shall continue up to and including the day next preceding that third Wednesday of January and no longer; and

20 (b) whenever any Legislative Assembly would expire by effluxion of time on or after the third Wednesday of January of any year but before 1 September of that year, that Legislative Assembly shall cease and determine on the day next preceding that third Wednesday of  
25 January.

”.

(2) Section 21(2) is repealed.

**45. Section 36 amended**

30 Section 36(9) is amended by deleting “May” and inserting instead —

“ March ”.



**Division 3 — General amendments**

**46. Sections 7 and 20 amended and saving provision**

- (1) Sections 7 and 20 are each amended by inserting after “person who” —

5

“

is an Australian citizen as defined in section 4(1) of the *Electoral Act 1907* and

”.

- 10 (2) A person who is a member of the Legislative Assembly or the Legislative Council immediately before the commencement —

(a) does not become disqualified, on the commencement, for membership of the Legislative Assembly or the Legislative Council for the purposes of section 38(a) or 40(a) of the *Constitution Acts Amendment Act 1899*; and

15

(b) is not prevented from completing his or her current term as a member,

by reason only of not being an Australian citizen as defined in section 4(1) of the *Electoral Act 1907*.

- (3) In subsection (2) —

20

“**commencement**” means the commencement of this section.

**47. Section 32 amended and saving provision**

- (1) Section 32 is amended by inserting before “A person” the subsection designation “(1)”.

- 25 (2) Section 32(b) is deleted and the following paragraph is inserted instead —

“

(b) has been convicted of an offence for which the penalty specified by a law is or includes —

(i) imprisonment for life; or

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(ii) imprisonment for a period that may exceed 5 years.

”.

(3) At the end of section 32 the following subsection is inserted —

5

“

(2) In subsection (1)(b) —

“**offence**” means an offence against a law of this State, the Commonwealth, another State or a Territory.

”.

10

(4) A person who is a member of the Legislative Assembly or the Legislative Council immediately before the commencement —

15

(a) does not become disqualified, on the commencement, for membership of the Legislative Assembly or the Legislative Council for the purposes of section 38(b) or 40(b) of the *Constitution Acts Amendment Act 1899*; and

(b) is not prevented from completing his or her current term as a member,

by reason only of a conviction that occurred before the commencement.

20

(5) In subsection (4) —

“**commencement**” means the commencement of this section.

## **Part 4 — *Salaries and Allowances Act 1975* amended**

### **48. The Act amended**

The amendments in this Part are to the *Salaries and Allowances Act 1975*\*.

5           [\* *Reprinted as at 8 September 2000.*  
          *For subsequent amendments see Western Australian*  
          *Legislation Information Tables for 2002, Table 1, p. 348 and*  
          *Gazette 15 Aug 2003 p. 3685-92.*]

### **49. Section 6 amended**

10           Section 6(5b) is repealed and the following subsection is  
          inserted instead —

“

- 15           (5b) Notwithstanding any other provision of this Act or any  
          determination, a person elected as a member of the  
          Legislative Council at a general election shall not be  
          entitled to any remuneration as such a member in  
          respect of any period before 22 March next following  
          the general election unless that person —
- 20                 (a) was a member of the Legislative Council  
                    immediately before the general election; or
- (b) is declared elected under section 156D of the  
                    *Electoral Act 1907* to complete the unexpired  
                    portion of a term of office ending immediately  
                    before that 22 March.

”.

25

**Part 5 — *Electoral Amendment (Political Finance)*  
*Act 1992* amended**

**50. The Act amended**

5 The amendments in this Part are to the *Electoral Amendment  
(Political Finance) Act 1992*\*.

[\* *Act No. 75 of 1992.*]

**51. Sections 5 and 6 repealed**

Sections 5 and 6 are repealed.

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