

Electoral Amendment Bill 2016

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Western Australia

LEGISLATIVE COUNCIL

(As amended in Committee)

Electoral Amendment Bill 2016

A Bill for

An Act to amend the *Electoral Act 1907*.

The Parliament of Western Australia enacts as follows:

s. 1

1 **1. Short title**

2 This is the *Electoral Amendment Act 2016*.

3 **2. Commencement**

4 This Act comes into operation as follows —

- 5 (a) sections 1 and 2 — on the day on which this Act
6 receives the Royal Assent;
- 7 (b) the rest of the Act — on a day fixed by proclamation,
8 and different days may be fixed for different provisions.

9 **3. Act amended**

10 This Act amends the *Electoral Act 1907*.

11 **4. Section 4 amended**

12 (1) In section 4(1) insert in alphabetical order:

13

14 ***Commission website*** means a website maintained by or
15 on behalf of the Electoral Commissioner;

16 ***official agent*** has the meaning given in section 4AA;

17 ***vote record*** has the meaning given in section 99E(1);

18

19 (2) In section 4(1) in the definition of ***approved form*** paragraph (b)
20 delete “an internet site maintained by the Electoral
21 Commissioner)” and insert:

22

23 the Commission website)

24

1 **5. Section 4AA inserted**

2 At the end of Part I insert:

3

4 **4AA. Official agents for the appointment of scrutineers**

- 5 (1) The following people are official agents for the
6 purpose of the appointment of scrutineers under
7 sections 99G, 114, 137, 146C and 156D(11) —
- 8 (a) in the case of a candidate not included in a
9 group who has been endorsed by a political
10 party — the secretary of the political party;
 - 11 (b) in the case of a candidate not included in a
12 group other than a candidate referred to in
13 paragraph (a) — a person nominated by the
14 candidate;
 - 15 (c) in the case of a candidate included in a group in
16 which all the candidates have been endorsed by
17 the same political party — the secretary of the
18 political party;
 - 19 (d) in the case of a candidate included in a group
20 other than a group referred to in
21 paragraph (c) — a person nominated by all of
22 the candidates;
 - 23 (e) in the case of a group in which all the
24 candidates have been endorsed by the same
25 political party — the secretary of the political
26 party;
 - 27 (f) in the case of a group other than a group
28 referred to in paragraph (e) — a person
29 nominated by all the candidates.
- 30 (2) A nomination for the purposes of subsection (1)(b), (d)
31 or (f) must be made by notice in an approved form
32 given to the Electoral Commissioner.

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- 1 (3) A nomination for the purposes of subsection (1)(b), (d)
2 or (f) may be withdrawn by a candidate by notice in an
3 approved form given to the Electoral Commissioner.
4

5 **6. Section 17 amended**

6 Delete section 17(1)(c) and insert:

- 7
8 (c) who has lived in the same district or sub-district
9 for at least one month immediately before the
10 enrolment,
11

12 **7. Section 31A replaced**

13 Delete section 31A and insert:

14
15 **31A. Arrangement with Commonwealth for sharing of**
16 **information for revision of rolls**

- 17 (1) The Governor may arrange with the Governor General
18 of the Commonwealth for the Australian Electoral
19 Officer to notify the Electoral Commissioner (whether
20 in lists or otherwise) of the name and description of —
21 (a) each person whose name is removed, in
22 accordance with the *Commonwealth Electoral*
23 *Act 1918*, from a Commonwealth roll for this
24 State on the ground that the person is no longer
25 living at the address in respect of which the
26 person was enrolled; and
27 (b) each person whose enrolment on a
28 Commonwealth roll for this State is updated or
29 transferred under the *Commonwealth Electoral*
30 *Act 1918* section 103A; and

- 1 (c) each person whose name is entered on a
2 Commonwealth roll for this State under the
3 *Commonwealth Electoral Act 1918*
4 section 103B.
- 5 (2) During any period when an arrangement is in operation
6 under subsection (1), section 31AB has effect despite
7 anything in this Act other than section 53.
- 8 (3) An arrangement for notification under
9 subsection (1)(b) or (c) may relate to additions to or
10 alterations of a Commonwealth roll whether made
11 before or after the commencement of the *Electoral*
12 *Amendment Act 2016* section 7.
- 13 **31AB. Revision of rolls in response to notification about**
14 **Commonwealth rolls**
- 15 (1) For the purposes of this section, the Electoral
16 Commissioner may form an opinion because of a
17 notification given to the Electoral Commissioner under
18 section 31A and not otherwise.
- 19 (2) If the Electoral Commissioner forms the opinion that a
20 person who is not enrolled for any district or
21 sub-district is entitled to be enrolled for a district or
22 sub-district, the Electoral Commissioner may enrol the
23 person for the district or sub-district.
- 24 (3) If the Electoral Commissioner forms the opinion that a
25 person is enrolled for a district or sub-district but that
26 person is living at an address in the district or
27 sub-district (the *new address*) that is different to the
28 address shown on the roll, the Electoral Commissioner
29 may change the address on the roll to the new address.
- 30 (4) If the Electoral Commissioner forms the opinion that a
31 person is incorrectly enrolled for a district or
32 sub-district (the *first district or sub-district*), but that
33 person is entitled to be enrolled for another district or

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- 1 sub-district (the *second district or sub-district*), the
2 Electoral Commissioner may —
- 3 (a) remove the person’s name from the roll for the
4 first district or sub-district; and
- 5 (b) enrol the person for the second district or
6 sub-district.
- 7 (5) If the Electoral Commissioner forms the opinion that a
8 person who is enrolled for a district or sub-district is
9 not entitled to be enrolled for that district or
10 sub-district, the Electoral Commissioner may remove
11 the person’s name from the roll for the district or
12 sub-district.
13

14 **8. Section 40 amended**

15 In section 40(4) delete “Division (4)” and insert:

16

17 Division 4

18

19 **9. Section 41 replaced**

20 Delete section 41 and insert:

21

22 **41. When new names may be added**

23 New names may be added to rolls —

- 24 (a) by enrolment officers pursuant to claims; or
25 (b) under section 31AB(2).
26

1 **10. Section 90 amended**

2 (1) Delete section 90(1) and insert:

3

4 (1) An elector may, at any time after the polling day has
5 been publicly announced by the Government, make an
6 application for an early ballot paper.
7

8 (2) In section 90(1a) delete “at any time during the period referred
9 to in subsection (1)”.

10 (3) In section 90(3a)(a) delete “elector who is entitled to apply for
11 an early ballot paper; and” and insert:

12

13 elector; and
14

15 (4) Delete section 90(3b) and insert:

16

17 (3B) If an elector who wishes to make a written application
18 for an early ballot paper is unable to sign the
19 application because the elector is sight impaired,
20 physically incapacitated or illiterate, then on satisfying
21 an authorised witness of that inability to sign, the
22 elector may make a distinguishing mark on the
23 application which must be witnessed by the authorised
24 witness.
25

26 (5) Delete section 90(3e)(a)(i).

27 (6) Delete section 90(7) and insert:

28

29 (7) If the issuing officer dealing with a written application
30 for an early ballot paper is not satisfied that the

s. 11

1 application is in order, the issuing officer must give the
2 applicant written notice.
3

4 (7) In section 90(7a) delete “applicant therefor, if the issuing officer
5 is satisfied that the applicant is entitled to an early ballot paper,
6 the” and insert:
7

8 applicant, the
9

10 (8) Delete section 90(8)(a) and (b).

11 **11. Section 91 inserted**

12 After section 90 insert:
13

14 **91. Visiting an eligible elector to take vote**

15 (1) In this section —
16 *eligible elector* means an elector who will be precluded
17 from attending to vote during the hours of polling at
18 any polling place open in the State because of the
19 elector’s serious illness or infirmity or approaching
20 maternity.

21 (2) A request may be made orally or in writing to an
22 issuing officer by or on behalf of an eligible elector
23 requesting that an issuing officer visit the eligible
24 elector for the purpose of taking the eligible elector’s
25 vote.

26 (3) If a request under subsection (2) is made at any time
27 within 7 days before 6 pm on the day immediately
28 preceding polling day, the issuing officer may visit the
29 eligible elector for the purpose of taking the eligible
30 elector’s vote.

- 1 (4) On visiting the eligible elector the issuing officer must
2 obtain from the eligible elector an oral application for
3 an early ballot paper under section 90(3e).
- 4 (5) When the issuing officer receives the oral application
5 the issuing officer must issue the eligible elector with
6 an early ballot paper under section 90(4b) and the vote
7 of the eligible elector must be taken in accordance with
8 sections 90 and 92(3).
- 9 (6) Except as provided in this section, an issuing officer
10 must not visit any elector for the purpose of taking the
11 elector's vote.
12

13 **12. Part IV Division 3 Subdivision 2 inserted**

14 After section 99B insert:
15

16 **Subdivision 2 — Technology assisted voting**

17 **99C. Terms used**

18 In this Subdivision —

19 ***approved procedures*** means the procedures approved
20 under section 99D;

21 ***eligible elector*** means an elector who cannot vote
22 without assistance because the elector has insufficient
23 literacy skills or is sight impaired or otherwise
24 incapacitated, but does not include an elector of a class
25 that is excluded from this definition under the
26 regulations;

27 ***technology assisted voting*** means a method of voting
28 where an eligible elector votes by means of an
29 electronic device, such as by a telephone or by a
30 computer linked to the internet.

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- 1 **99D. Electoral Commissioner may approve procedures**
2 **for technology assisted voting**
- 3 (1) The Electoral Commissioner may approve procedures
4 to facilitate voting by eligible electors at an election by
5 means of technology assisted voting.
- 6 (2) The approved procedures must provide for the
7 following —
- 8 (a) for the registration of an eligible elector before
9 the eligible elector votes by means of
10 technology assisted voting;
- 11 (b) for the making of a record of each eligible
12 elector who has voted by means of technology
13 assisted voting;
- 14 (c) for the authentication of the eligible elector’s
15 vote;
- 16 (d) for the secrecy of the eligible elector’s vote;
- 17 (e) the means of ensuring that any vote cast in
18 accordance with the approved procedures is
19 securely transmitted to the Electoral
20 Commissioner and securely stored by the
21 Electoral Commissioner;
- 22 (f) for the scrutiny and counting of votes cast in
23 accordance with the approved procedures.
- 24 (3) The validity of a vote cast in accordance with the
25 approved procedures cannot be disputed on the ground
26 that the elector could have voted without assistance.
- 27 **99E. Record of vote**
- 28 (1) The regulations may provide, in relation to each vote
29 cast by a person using technology assisted voting, for
30 the production of a record (a *vote record*) of the vote
31 the person has cast.

-
- 1 (2) The vote record must not contain any means of
2 identifying the person who cast the vote.
- 3 (3) A vote record must be in a form that enables the vote
4 cast by an eligible elector to be accurately determined.

5 **99F. Independent auditing of technology assisted voting**

- 6 (1) The Electoral Commissioner must engage an
7 independent person (the *independent auditor*) to
8 conduct audits of the information technology used
9 under the approved procedures.
- 10 (2) Without limiting the content of the audit, the
11 independent auditor must determine whether test votes
12 cast in accordance with the approved procedures were
13 accurately reflected in the corresponding test vote
14 record produced under those procedures.
- 15 (3) The independent auditor may make recommendations
16 to the Electoral Commissioner to reduce or eliminate
17 any risks that could affect the security, accuracy or
18 secrecy of voting in accordance with the approved
19 procedures.
- 20 (4) The results of any audit of the information technology
21 used under subsection (2) shall be published on the
22 website of the Western Australian Electoral
23 Commission as soon as practicable and no later than
24 30 days following the close of polling.

25 **99G. Scrutineers**

- 26 (1) A candidate or the candidate's agent may appoint
27 scrutineers to represent the candidate in observing —
- 28 (a) any production of the vote record; and
29 (b) any other element of the technology assisted
30 voting process that is approved by the Electoral
31 Commissioner for the purposes of this section.

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- 1 (2) At a single member election not more than one
2 scrutineer at a time is allowed to each candidate at the
3 place where the vote record is produced or an element
4 approved under subsection (1)(b) occurs.
- 5 (3) At an election in a region where the relevant number is
6 more than one —
- 7 (a) not more than one scrutineer at a time is
8 allowed to each group; and
- 9 (b) not more than one scrutineer at a time is
10 allowed to each candidate who is not included
11 in any group,
- 12 at the place where the vote record is produced or an
13 element approved under subsection (1)(b) occurs.
- 14 (4) The appointment must be —
- 15 (a) made by written notice given to the Electoral
16 Commissioner; and
- 17 (b) signed by the candidate or the candidate’s
18 official agent.
- 19 (5) Section 137 does not apply to the scrutiny of votes cast
20 under this Subdivision.

21 **99H. Counting of technology assisted votes**

22 A vote cast in an election by an eligible elector and
23 transmitted to the Electoral Commissioner in
24 accordance with the approved procedures is to be
25 counted as if it were a vote cast by a person voting by
26 early vote.

27 **99I. Secrecy relating to technology assisted voting**

- 28 (1) A person who becomes aware of how an eligible
29 elector, voting in accordance with the approved
30 procedures, voted must not disclose that information to

1 any other person except in accordance with the
2 approved procedures.

3 Penalty for this subsection: imprisonment for 2 years.

4 Summary conviction penalty: a fine of \$6 000.

5 (2) A person must not disclose to any other person any
6 source code or other computer software that relates to
7 technology assisted voting under the approved
8 procedures, except in accordance with the approved
9 procedures or in accordance with any arrangement
10 entered into by the person with the Electoral
11 Commissioner.

12 Penalty for this subsection: imprisonment for 5 years.

13 Summary conviction penalty: imprisonment for 2 years
14 and a fine of \$24 000.

15 **99J. False or misleading statements in relation to**
16 **technology assisted voting**

17 A person must not make a statement (whether orally, in
18 writing or by means of electronic communication) that
19 the person knows to be false or misleading in a
20 material particular for the purposes of or in connection
21 with —

22 (a) making an application for registration for
23 technology assisted voting; or

24 (b) casting a vote by means of technology assisted
25 voting.

26 Penalty: a fine of \$1 000.

27 **99K. Protection of computer hardware and software**

28 A person must not, without reasonable excuse, destroy
29 or interfere with any computer program, data file or
30 electronic device used, or intended to be used, by the

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1 Electoral Commissioner for or in connection with
2 technology assisted voting.
3 Penalty: imprisonment for 5 years.
4 Summary conviction penalty: imprisonment for 2 years
5 and a fine of \$24 000.

6 **99L. Approvals must be published on the internet**

7 An approval by the Electoral Commissioner for the
8 purposes of this Subdivision must be —
9 (a) in writing; and
10 (b) published on the Commission website.

11 **99M. Regulations relating to technology assisted voting**

- 12 (1) The regulations may make provision for or with respect
13 to voting by eligible electors by means of technology
14 assisted voting.
- 15 (2) Without limiting subsection (1), the regulations may
16 make provision for or with respect to the period during
17 which voting by eligible electors using technology
18 assisted voting is permitted (including a period before
19 polling day).
- 20 (3) The regulations may provide that technology assisted
21 voting is not to be used at a specified election.
- 22 (4) Neither this section nor any regulations made under
23 this section prevent approved procedures dealing with
24 matters referred to in this section.
- 25 (5) If a regulation made under this section is inconsistent
26 with an approved procedure, the regulation prevails to
27 the extent of the inconsistency.

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99N. How this Act applies in relation to technology assisted voting

- (1) If an elector casts a vote in accordance with the approved procedures —
 - (a) the requirements of this Act relating to the elector’s right to receive a ballot paper are to be taken to have been satisfied; and
 - (b) the requirements of this Act relating to the elector’s duties on receiving a ballot paper are to be taken to have been satisfied; and
 - (c) the requirements of this Act relating to the marking of the ballot paper are to be taken to have been satisfied.
- (2) The regulations may make provision for additional matters relating to how this Act applies in relation to votes cast using technology assisted voting.

99O. Electoral Commissioner may determine that technology assisted voting is not to be used

- (1) The Electoral Commissioner may determine that technology assisted voting is not to be used at a specified election.
- (2) A determination under this section must be in writing and published on the Commission website.

13. Section 100A amended

In section 100A(4) delete “candidates to represent them” and insert:

candidates or candidates’ official agents to represent the candidates

s. 14

1 **14. Section 110 amended**

2 In section 110 delete “pencil” and insert:

3

4 pen or pencil

5

6 **15. Section 114 amended**

7 (1) In section 114(1) delete “candidates to represent them” and
8 insert:

9

10 candidates or candidates’ official agents to represent the
11 candidates

12

13 (2) In section 114(2) delete “officer, signed by the candidate, or any
14 candidate included in the group in the case of an appointment
15 under subsection (1)(b)(i), giving” and insert:

16

17 officer giving

18

19 (3) After section 114(2) insert:

20

21 (2A) A notice under subsection (2) shall be signed by —

22 (a) the candidate or the candidate’s official agent;
23 or

24 (b) in the case of an appointment under
25 subsection (1)(b)(i) —

26 (i) any candidate included in the group; or

27 (ii) the group’s official agent.

28

1 **16. Section 119 amended**

2 Delete section 119(1)(a) and insert:

3

4 (a) Have you already cast a vote for this election
5 (or these elections, as the case requires)?

6

7 **17. Section 122 amended**

8 After section 122(3) insert:

9

10 (4) Every elector who has voted by means of technology
11 assisted voting in accordance with the approved
12 procedures under Subdivision 2 is to be taken to have
13 made a declaration under this section.

14

15 **18. Section 134 amended**

16 In section 134 delete “Division (4a) or (4b),” and insert:

17

18 section 99H, Division 4A or 4B,

19

20 **19. Section 137 amended**

21 (1) In section 137(1) delete “candidate may appoint scrutineers to
22 represent him” and insert:

23

24 candidate or the candidate’s official agent may appoint
25 scrutineers to represent the candidate

26

27 (2) In section 137(3) after “candidate” insert:

28

29 or the candidate’s official agent

30

1 **20. Section 144 amended**

2 (1) After section 144(1)(b)(i) insert:

3

4 (ia) ascertain and keep a record of the
5 number of votes given for each
6 candidate under Division 3
7 Subdivision 2; and

8

9 (2) After section 144(2)(b)(i) insert:

10

11 (ia) ascertain and keep a record of the
12 number of first preference votes given
13 for each candidate under Division 3
14 Subdivision 2; and

15

16 (3) In section 144(2):

17

18 (a) after paragraph (d)(i) insert:

19

20 (ia) shall ascertain and keep a record of the
21 number of first preference votes given
22 for each candidate under Division 3
23 Subdivision 2, adding the votes to those
24 previously counted by the returning
25 officer for each candidate; and

26

27 (b) in paragraph (d)(ii) delete “ballot paper counted to him”
28 and insert:

29

30 ballot paper or vote record counted to the defeated
31 candidate

- 1 (4) In section 144(2)(f) after “ballot papers” insert:
2
3 and vote records
4
- 5 (5) In section 144(2)(fa) after “ballot paper” (each occurrence)
6 insert:
7
8 or vote record
9
- 10 (6) In section 144(2b) and (3) after “ballot papers” insert:
11
12 and vote records
13
- 14 (7) Delete section 144(3a) and insert:
15
16 (3A) For the purposes of subsection (3), if at any stage of the
17 count, ballot papers or vote records have been set aside
18 under subsection (2)(fa), the whole number of ballot
19 papers and vote records, at that stage, are to be taken to
20 be reduced by the number of those ballot papers and
21 vote records set aside.
22

23 **21. Section 145 amended**

24 In section 145(1) delete “on the ballot papers”.

25 **22. Section 146 amended**

- 26 (1) In section 146(1) delete “ballot papers contained in any parcel.”
27 and insert:
28
29 votes.
30

s. 23

1 (2) In section 146(2) delete “ballot paper.” and insert:

2

3 ballot paper or vote record.

4

5 **23. Section 146C amended**

6 (1) In section 146C(1):

7 (a) in paragraphs (a) and (b) delete “each group” and insert:

8

9 each group, or the group’s official agent,

10

11 (b) in paragraphs (c) and (d) delete “any group” and insert:

12

13 any group, or the candidate’s official agent,

14

15 (2) In section 146C(2)(a) and (b) delete “each candidate” and insert:

16

17 each candidate, or the candidate’s official agent,

18

19 **24. Section 149B inserted**

20 At the beginning of Part IV Division (6) insert:

21

22 **149B. Term used: document**

23 In this Division —

24 ***document*** includes a document in digital or electronic
25 form.

26

1 **25. Section 156D amended**

2 (1) In section 156D(11) after “consenting candidate” insert:

3

4 or the consenting candidate’s official agent

5

6 (2) In section 156D(14) insert in alphabetical order:

7

8 *ballot paper* includes a vote record;

9

10 **26. Section 204 amended**

11 In section 204 delete “one year” and insert:

12

13 one year (except as a summary conviction penalty)

14

15 **27. Schedule 1 amended**

16 In Schedule 1 delete clause 2(1) and insert:

17

18 2. (1) In this Schedule —

19 *ballot paper* includes a vote record;

20 *continuing candidate* means a candidate not already
21 elected or not excluded from the count.

22

23 **28. Various headings replaced or amended**

24 (1) Before section 47 delete “*(i) To claims*” and insert:

25

26 **Subdivision 1 — To claims**

27

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1 (2) Before section 48 delete “*(ii) To enrolment*” and insert:
2

3 **Subdivision 2 — To enrolment**
4

5 (3) Before section 49 delete “*(iii) Powers of Electoral*
6 *Commissioner on appeal*” and insert:
7

8 **Subdivision 3 — Powers of Electoral Commissioner on**
9 **appeal**
10

11 (4) After the heading to Part IV Division (3) delete “*(i) Early and*
12 *absent voting*” and insert:
13

14 **Subdivision 1 — Early and absent voting**
15

16 (5) Before section 100 delete “*(ii) At the poll*” and insert:
17

18 **Subdivision 3 — At the poll**
19

20 (6) Amend the headings listed in the Table as set out in the Table.
21

Table

Heading	Delete	Insert
Pt. III Div. (1)	(1)	1
Pt. III Div. (2)	(2)	2
Pt. III Div. (3)	(3)	3

Heading	Delete	Insert
Pt. III Div. (4)	(4)	4
Pt. III Div. (5)	(5)	5
Pt. IV Div. (1)	(1)	1
Pt. IV Div. (2)	(2)	2
Pt. IV Div. (3)	(3)	3
Pt. IV Div. (4)	(4)	4
Pt. IV Div. (4a)	(4a)	4A
Pt. IV Div. (4b)	(4b)	4B
Pt. IV Div. (5)	(5)	5
Pt. IV Div. (6)	(6)	6
Pt. IV Div. (7)	(7)	7

1

2

