

Explanatory Memorandum

General Information

This Bill contains provisions which will improve electoral administration generally. In particular, these provisions include the clarification of the qualifications for nominating as a candidate, modification of the counting method for the Legislative Council, removal of prisoner voting rights, simplified early voting procedures, increased provisions for the privacy of electoral information and penalties for misuse, and other minor amendments.

Clause 1 – Short title

The short title of this amendment Act is the *Electoral Legislation Amendment Act 2006*.

Clause 2 – Commencement

Part 1 of this Act comes into operation on the day after the day on which this Act receives the Royal Assent. All other amendments come into operation on a day fixed by proclamation for that particular provision. These may vary for each provision.

Clause 3

The amendments in Part 2 are to the *Constitution Acts Amendment Act 1899*.

Clauses 4 to 10

Clauses 4, 5, 6 and 8 repeal provisions in the *Constitution Acts Amendment Act 1899* relating to the qualification and disqualification of candidates for the Legislative Assembly and the Legislative Council in order to insert them into the *Electoral Act 1907*. Clauses 7, 9, and 10 make other minor necessary adjustments to this end.

Clauses 11 and 12

The amendments in Part 3 are general amendments to the *Electoral Act 1907*. The long title of the *Electoral Act 1907* is amended to read “An Act to regulate Parliamentary elections *and for related purposes*.”

Clause 13

Section 4 of the Act is amended to incorporate the definition of “authorised witness”, as stated in section 94, to apply to the whole Act. This has the effect of preventing candidates acting as an authorised witness for any activity under the Act in connection with an election. A definition of “enrolment information”, made necessary by the changes to the dissemination of roll information at clauses 19 to 22 below, is also incorporated into this section.

Clause 14

Section 5D of the Act is amended to include a provision to appoint an Acting Deputy Electoral Commissioner. This ensures that there will be a person in the agency with statutory powers should the Electoral Commissioner or Deputy Electoral Commissioner be unavailable. An Acting Deputy Electoral Commissioner would be appointed under a process similar to that currently in place for the appointment of an Acting Electoral Commissioner, requiring appointment by the Governor after the Premier has consulted with the other parties in the Parliament.

Clause 15

There exists a deficiency in the power of the Electoral Commissioner to conduct non-parliamentary elections provided for or authorised under other written law. A technical amendment is required to confirm that the Electoral Commissioner is able to conduct such other elections. A minor adjustment to section 5F(1)(ea) of the Act, as provided under this clause, achieves this.

Clause 16

Section 17 of the Act is amended to clarify the qualification of electors for enrolment, particularly in the context of the insertion of the provision at clause 17.

Clause 17

A new section is inserted which provides for electors who have gone overseas, but who intend to return to Western Australia within 6 years, to apply to be treated as eligible overseas electors in line with the Commonwealth provision at section 94 of the *Commonwealth Electoral Act 1918*.

Clause 18

Any elector serving a sentence of imprisonment is now disqualified from voting, in line with Commonwealth provisions at section 93(8AA) of the *Commonwealth Act 1918*. Section 96A of the Commonwealth Act allows prisoners meeting other eligibility criteria for enrolment to remain enrolled or to enrol while serving their sentence. In keeping with the Commonwealth, this amendment, along with amendments to sections 59 and 60 of the Electoral Act, allows for enrolment of all prisoners.

Clauses 19 to 22

Currently, provision is made in the Act for the supply of rolls and roll information to political parties, members of Parliament and other entities with identified entitlement. These amendments remove from the Act the requirement to provide rolls to the public, retain the right of the Electoral Commissioner to use discretion in responding to requests for roll information, provide for cost recovery in providing rolls to those organisations with an entitlement, and also protect electors' privacy by clearly limiting the use of the information provided. Commercial use is expressly forbidden and penalties for this and other unauthorised use are proscribed. The provision of roll information to parliamentary parties and Assembly and Council members will be preserved.

These amendments are required due to the fact that there are an increasing number of requests for roll information without any guidance within this Act or other State legislation as to how the information may be used. It is considered appropriate that the Act incorporates privacy provisions to ensure that electors' rights are protected and also so that potential electors are not discouraged from enrolling due to a lack of this protection.

Clause 23

Section 40 is amended to allow for members of Parliament and their spouses, and overseas electors, to remain on the roll for the nominated district in spite of them not residing in that district.

Clause 24

The fee for an objection by an elector to a name on the roll is increased from \$2 to \$50.

Clauses 25 and 26

Section 59 is replaced to provide for returns to be forwarded to the Electoral Commissioner in respect to prisoners and other persons in detention. This enables the Electoral Commissioner to annotate the roll with information regarding those electors, in order to determine who is eligible to vote at any given election. These returns are to be provided monthly and within 4 days after the issue of the writ for an election. This is necessitated by the amendments which disqualify all prisoners from voting, while being able to retain or obtain enrolment. Section 60 is amended to include provisions which allow for

the annotation of the rolls according to the information from the lists returned under sections 56 and 59.

Clauses 27 and 28

Sections 76A and 76B are inserted, and section 77 amended, to require any person nominating for either House to be enrolled to vote and to be an Australian citizen for their nomination and election to be valid. This amendment confirms a commitment by candidates to participation in the electoral process and representation of electors. Saving provisions mean that this amendment applies to future candidates only, not those currently completing a term as a member. The penalty for nominating without these qualifications is increased from \$200 to \$1,000.

Clauses 29 and 30

Amendments to section 90 of the Act provide for several changes to early voting. Section 90(1a)(e) is amended to exclude police officers, as Deputy Registrars under the *Magistrates Court Act 2004*, from being appointed as issuing officers. This amendment was required to make the administration of this process more manageable. Other changes to early voting remove the requirement for electors casting an early vote (in person) to complete a written declaration witnessed by an 'authorised witness' to accompany the ballot paper(s). This will apply only to those issuing locations which have a copy of the roll against which the elector can be marked off. It is provided that those locations without a roll still require a written declaration witnessed in the usual manner. The declaration procedure is essential for early votes (by post) that are completed in a non-regulated environment. Related to this clause is the introduction of a specific penalty for undue influence in relation to early voting at clause 45. Amendments to section 92(5)(a) provides a common form of wording with the amendments to Section 129(1) covered in Clause 35.

Clauses 31 to 33

The three questions which are put to electors are amended to: "Have you cast an early vote for this election (or these elections, as the case requires) or already voted today?"; "What is your full name?"; and, "Where do you live?". The presiding officer may then put any other question the presiding officer considers necessary to determine whether the person is enrolled to vote. Electors frequently misunderstand the current questions and many are unaware of their electoral district. These amendments ensure consistency with practice at Commonwealth elections in accordance with section 229 of the *Commonwealth Electoral Act 1918*. Silent electors are excused from providing their address under an amendment to section 120.

Clause 34

A minor amendment to section 122 is necessary due to the amendments to early voting (in person) at clauses 29 and 30 above.

Clause 35

Electors who require assistance to mark their ballot paper(s) may now request assistance from a person other than a polling official if they so choose. This is amended as a result of criticism from various disability groups. It also brings the provision into line with those for assistance for early voting under section 92(5)(a), and Commonwealth provisions under section 234 of the *Commonwealth Electoral Act 1918*.

Clauses 36 and 37

Until now Legislative Assembly candidates have been able to appoint only one scrutineer to represent them at the counting of the votes. Legislative Council groups are able to currently appoint three scrutineers, while individual Council candidates not included in a group are able to appoint one scrutineer. As there is often more than one counting table, with a number of people counting votes on each, it is difficult for one scrutineer to cover all tables, particularly for Assembly elections. These clauses amend sections 137 and 146C to provide for individual candidates (Assembly and Council) to appoint up to 2 scrutineers. For Assembly candidates this applies to each counting location, with some Returning Officer discretion allowed.

Clause 38

Section 147 is amended to allow for the declaration of the result of the election to be announced at a place other than a place in that particular district or region, if the Electoral Commissioner so determines. As the centralised counting of votes in elections is increasingly the most practicable option for both the Commission and Returning Officers, it makes sense that the Returning Officer should not necessarily have to travel to the district or region to declare the result of the election when the result will already be widely known as soon as the counting is complete.

Clause 39

Section 149A is inserted to provide for the election of a person who does not meet the new candidacy requirements outlined in clauses 27 and 28 above to be considered void.

Clause 40

Increasing the fee charged under section 153, from \$10 to \$100, will discourage 'frivolous' requests for rolls under this section.

Clause 41

Repealing section 156(9) and (10) removes the requirement to automatically send a second penalty notice to a non-voter at an election. This means that if a first penalty notice is sent and the response is not satisfactory a further and final notice may still be sent. However, failure to provide a satisfactory response to either of these two notices may result in the Electoral Commissioner referring the matter for resolution under the *Fines, Penalties and Infringement Notices Enforcement Act 1994*.

Clause 42

The provision for a fine is removed from section 180 leaving just a provision for a penalty of no more than one year imprisonment. This updates the penalty for breach or neglect of official duty to reflect current values. A fine may then be awarded by a court in line with section 41 of the *Sentencing Act 1995*. This ensures that up to date amounts are used.

Clause 43

A minor amendment to the language in section 182 reflects modern day usage.

Clause 44

Currently the Act does not specifically cover the internet when referring to the publication of any electoral advertisement, handbill, or pamphlet requiring the name and address of the authorising person and the name and place of business of the printer. Advances in electronic publishing systems and the rise of the internet have facilitated a more immediate and wider dissemination of electoral advertising. This amendment extends the provisions of section 187 to include an electoral advertisement on the internet, but do not apply if the matter published on the internet forms part of a general commentary on a website. This amendment will ensure that electronic electoral advertisements are authorised so that electors are aware of who is responsible for the statements contained in them, and where the information is coming from.

Clause 45

Penalties for bribery, undue influence and other illegal practices have been increased generally, and particularly in relation to early ballot papers or early votes, in order to discourage incidences of these offences as early voting is often conducted in a non-regulated environment. Increasing the standard penalty for bribery or undue influence to 12 months imprisonment can then allow for this Act to remain consistent with provisions under the *Sentencing Act 1995* that provide for a court to impose a fine of \$1,000 for each month of imprisonment applicable to that offence. The penalty for other illegal practices increases from \$200 to \$6,000. In both cases the penalty for bribery or undue influence or other illegal practices is doubled where the offence relates to early ballot papers or votes.

Clause 46

Financial penalties for several electoral offences under this section currently range from amounts not exceeding \$4 to amounts not exceeding \$1,000. These penalties are now increased to an amount not exceeding \$1,000 (except for the wearing or displaying by an officer or scrutineer in a polling place on polling day any badge or emblem of a candidate or political party). Offences committed with intent to disrupt or affect the outcome of an election should be subject to penalties which are high enough to be a deterrent to such behaviour. Penalties under this section of more than \$1,000 or which impose a term of imprisonment remain unchanged.

Clause 47

The penalty under section 191(1) for false statements is increased from \$40 to \$1,000.

Clause 48

Sections 192 (4) and (5) are no longer necessary as no prisoner is entitled to vote under the amendments at clauses 18, 25 and 26, and they are now repealed.

Clauses 49 and 50

The penalty under section 192A is increased to \$1,000 and the penalty under section 195(2) is increased to \$100 to provide more reasonable deterrents for the relevant offences under these sections.

Clause 51

Electoral matter which is, under the Act, to be transmitted by post may also be transmitted by electronic means. This amendment brings the Act into line with modern day practices.

Clause 52

Amendments to Schedule 1 of the Act modify the counting provisions for the Council to remove the possible situation in which a ballot paper may increase in value during the transfer of surplus ballot papers to continuing candidates in the count. This revised method ensures that each ballot paper reduces in value when transferred as part of a surplus. The new method, also referred to as the Weighted Inclusive Gregory method, is an improvement on the current Inclusive Gregory method. It is the method developed and recommended by the Proportional Representation Society of Australia for the transfer of surplus votes in proportional voting systems. The process will be more detailed but is not expected to take longer to count as it will be completed using computers.

Clause 53

The table at clause 53 contains minor amendments of a mechanical nature which will serve to streamline the electoral process and ensure consistency throughout the Act.

An amendment to section 92(4)(c) allows for early ballot papers to be received up until 9am on the Thursday following polling day, instead of Tuesday as is currently the case, providing the packages are postmarked prior to the close of poll. This provides more time for the return of packages and is more consistent with timeframes permitted in other Australian jurisdictions.

Section 85 has been amended to make the time for close of nominations 12 noon instead of 6pm. This change is consistent with provisions for the Commonwealth and other States and assists the Electoral Commission with the processing of nominations and production of ballot papers.

Under 100B(2a) the Returning Officer has previously been responsible for writing to each candidate to advise of the place and times for mobile polling. In many cases this can be better handled centrally by the Electoral Commissioner. This amendment allows the Returning Officer or Electoral Commissioner to undertake this task.

Several other minor amendments have been made in this clause to correct errors or omissions in the *Electoral Act 1907*.

Clause 54

The amendments in Part 4 are to the *Electoral Amendment (Political Finance) Act 1992*.

Clause 55

The provisions in sections 5 and 6 of this Act to insert sections 191A and 191C in the *Electoral Act 1907* have never been proclaimed. Section 191A prohibits the publishing of Government advertising during the election period and section 191C imposes restrictions on air travel by members of Parliament during that period. Section 191A was considered unworkable and section 191C had some serious difficulties in implementation. Administration arrangements have since been put in place to deal with these matters, as recommended by COG.