

WESTERN AUSTRALIA
W4444444U

LEGISLATIVE COUNCIL

[HON JOHN COWDELL]

5 **CONSTITUTION OF WESTERN
 AUSTRALIA BILL 1997**

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WESTERN AUSTRALIA
W4444444U

LEGISLATIVE COUNCIL

CONSTITUTION OF WESTERN AUSTRALIA BILL 1997

A BILL FOR

**AN ACT to re-enact and consolidate several enactments
forming part of the *Law and Constitution of the State of
Western Australia* and for other purposes.**

The Parliament of Western Australia enacts as follows:

cl. 1

PART 1 — PRELIMINARY

Short title

1. This Act may be cited as the Constitution of Western Australia.

5 Commencement

2. This Act shall come into operation the first day of January 1998.

PART II - THE PARLIAMENT

Division I - Constitution and Powers

Constitution of Parliament

5 **3.** The Parliament of Western Australia shall consist of the Queen and the Legislative Council and the Legislative Assembly.

Legislative Power of the Parliament

4. (1) The Parliament shall have power to make laws for the peace, order and good government of the State of Western Australia.

10 (2) Every Bill after its passage through the Legislative Council and the Legislative Assembly, shall, subject to section 11 of this Act, be presented to the Governor for assent by or in the name of the Queen and shall be of no effect unless it has been duly assented to by or in the name of the Queen.

15 Sessions of Parliament, Prorogation and Dissolution

5. The Governor may appoint the place and such times for holding the sessions of the Legislative Council and Legislative Assembly, and may also from time to time by proclamation or otherwise, prorogue the Legislative Council and Legislative
20 Assembly, and dissolve the Legislative Assembly by proclamation or otherwise.

Powers of the two Houses in respect of Legislation

6. (1) Except as provided in this section, the Legislative Council shall have equal power with the Legislative Assembly in
25 respect of all Bills.

(2) A Bill which appropriates revenue or moneys for the ordinary annual services of the Government shall deal only with such appropriation.

cl. 7

(3) Bills imposing taxation shall deal only with the imposition of taxation.

5 (4) Bills appropriating revenue or moneys, or imposing taxation, shall not originate in the Legislative Council; but a Bill shall not be taken to appropriate revenue or moneys, or to impose taxation, by reason only of its containing provisions for the imposition or appropriation of fines or other pecuniary penalties, or for the demand of payment or appropriation of fees for licences, or fees for registration or other services under the Bill.

10 (5) The Legislative Council may not amend Loan Bills, or Bills imposing taxation, or Bills appropriating revenue or moneys for the ordinary annual services of the Government.

(6) The Legislative Council may not amend any Bill so as to increase any proposed charge or burden on the people.

15 (7) The Legislative Council may at any stage return to the Legislative Assembly any Bill which the Legislative Council may not amend, requesting by message the omission or amendment of any item or provision therein: provided that any such request does not increase any proposed charge or burden on the people. The
20 Legislative Assembly, may if it thinks fit, make such omissions or amendments, with or without modifications.

(8) A vote, resolution, or Bill for the appropriation of revenue or moneys shall not be passed unless the purpose of the appropriation has in the same session been recommended by
25 message of the Governor to the Legislative Assembly.

(9) Any failure to observe any provision of this section shall not be taken to affect the validity of any Act.

All Revenues to form Consolidated Fund

30 7. Except as otherwise provided by any written law all revenues or moneys received by the Crown in the right of the State of Western Australia shall form one Consolidated Fund.

Consolidated Fund permanently charged with expenses of collection.

5 **8.** The costs, charges and expenses incident to the collection, management and receipt of the Consolidated Fund shall be met from the Consolidated Fund and in the event that the appropriations of the Consolidated Fund including these purposes are not approved by the Legislature in any year, the Consolidated Fund is to the necessary extent hereby appropriated accordingly.

10 **No part of Public Revenue to be issued except on warrants from Governor**

9. No part of the public revenue of the State shall be issued except in pursuance of warrants under the hand of the Governor directed to the Treasurer.

15 **Consolidated Fund to be appropriated by Act of the Parliament**

10. The Consolidated Fund shall be appropriated for such purposes as any Act of the Parliament shall prescribe.

Alteration of the Constitution

20 **11.** (1) Subject to the succeeding provisions of this section the Parliament shall have full power and authority, from time to time, by any Act, to repeal or alter any of the provisions of this Act.

25 (2) It shall not be lawful to present to the Governor for Her Majesty's assent any Bill by which any change in the constitution of the Legislative Council or the Legislative Assembly including any change in sections 36 or 49 shall be effected, unless the second and third readings of such Bill shall have been passed with the concurrence of an absolute majority of the whole number of the members for the time being of the Legislative Council and the Legislative Assembly respectively.

cl. 11

(3) A Bill that —

- 5
- (a) expressly or impliedly provides for the abolition of or alteration in the office of Governor, or
- (b) expressly or impliedly provides for the abolition of the Legislative Council or of the Legislative Assembly; or
- (c) expressly or impliedly provides that the Legislative Council or the Legislative Assembly shall be composed of members other than members chosen directly by the people; or
- 10
- (d) expressly or impliedly provides for a reduction in the numbers of the members of the Legislative Council or the Legislative Assembly; or
- (e) expressly or impliedly in any way affects any of the following sections of this Constitution, namely —
- 15
- sections 3, 4, 11, 32 and 42.

shall not be presented for assent by or in the name of the Queen unless —

- 20
- (f) the second and third readings of the Bill shall have been passed with the concurrence of an absolute majority of the whole number of the members for the time being of the Legislative Council and the Legislative Assembly respectively; and
- (g) the Bill has also prior to such presentation been approved by the electors in accordance with this section,
- 25
- and a Bill assented to consequent upon its presentation in contravention of this subsection shall be of no effect as an Act.

(4) On a day fixed by the Governor by Order in Council, being a day not sooner than two months, and not later than six months,

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after the passage through the Legislative Council and the Legislative Assembly of a Bill of a kind referred to in subsection (3) of this section, the question for the approval or otherwise of the Bill shall be submitted to the electors qualified to vote for the election
5 of members of the Legislative Assembly.

(5) When the Bill is submitted to the electors the vote shall be taken in such manner as is fixed by law.

(6) If a majority of the electors voting approve the Bill, it shall be presented to the Governor for assent by or in the name of the
10 Queen.

(7) Any person entitled to vote at a general election is entitled to bring proceedings in the Supreme Court for a declaration, injunction or other remedy to enforce the provisions of this section either before or after a Bill of a kind referred to in subsection (3) of
15 this section is presented for assent by or in the name of the Queen.

(8) Subsection (3) does not apply to a Bill by reason that the Bill provides for a vacancy in the seat of a member of the Legislative Council to be filled by appointment if the vacating member was elected or appointed to represent a political party.

20 (9) In subsection (8) "vacancy" does not include a vacancy that occurs because of —

- (a) the expiration of the term of service of a member;
- (b) an election failing wholly or partially; or
- (c) an election being declared to be absolutely void.

cl. 12

Division II - Legislative Council

Composition of Legislative Council

12. The Legislative Council shall consist of 34 members.

Electoral regions and representations

5 **13.** (1) The State shall be divided into 6 electoral regions under the *Electoral Distribution Act 1947*.

(2) The electoral regions known, respectively, as the North Metropolitan Region and the South West Region shall each return 7 members to serve in the Legislative Council.

10 (3) The electoral regions known, respectively, as the South Metropolitan Region, the East Metropolitan Region, the Agricultural Region and the Mining and Pastoral Region shall each return 5 members to serve in the Legislative Council.

Election of members

15 **14.** (1) In this section —

“general election” means a general election for the Legislative Council;

“member” means a member of the Legislative Council.

20 (2) The seat of a member elected at a general election shall become vacant at the expiration of the period of 4 years beginning on 22 May next following the day of his election as member.

(3) A member elected at a general election shall not sit or vote before 22 May next following the day of his election as member.

25 (4) Where an election held as part of a general election fails wholly or partially or is declared to be absolutely void —

- (a) the seat of a member elected at an election held by reason of that failure or declaration shall become vacant at the expiration of the period of 4 years beginning on 22 May next following that general election; and
- 5 (b) if a member elected at an election held by reason of that failure or declaration is so elected before 22 May next following that general election, that member shall not sit or vote before that 22 May.
- (5) Subsections (2) and (4) (a) do not affect the operation of
10 any enactment under which a member may cease to be a member, or the seat of a member may become vacant, otherwise than by effluxion of time.
- (6) In order to fill seats vacated by effluxion of time writs for elections in all the electoral regions —
- 15 (a) shall be issued before 10 April last preceding the occurrence of those vacancies but not more than one year before the occurrence of those vacancies; and
- (b) shall be returnable not later than 21 May next following that 10 April.

20 **Resignation of members**

15. Any member of the Legislative Council may resign his seat by writing under his hand addressed to the President, or if there be no President, or if the President is absent from the State, to the Governor, and upon the receipt of such resignation by the
25 President or the Governor, as the case may be, the seat of such member shall become vacant.

Tenure of Seat by Member filling Vacancy

16. (1) A member of the Legislative Council elected to fill any
30 vacancy arising otherwise than by effluxion of time shall hold the seat during the unexpired portion of the term for which the

cl. 17

previous member would have been entitled to hold it, and no longer.

5 (2) Subsection (1) does not affect the operation of any enactment under which a member may cease to be a member, or the seat of a member may become vacant, otherwise than by effluxion of time.

Election of President

10 **17.** Whenever the office of President of the Legislative Council becomes vacant, the Council at their first meeting thereafter shall elect one of their members to be President, and the President so elected shall preside at all meetings of the Council, provided that pending such first meeting the Chairman of Committees shall fill the office and perform the duties of the President, subject, however, to section 20.

15 **Absence of President**

18. Before or during any absence of the President the Legislative Council may choose a member to perform his duties in his absence.

Council may proceed to business although full number of writs shall not have been returned

20 **19.** After any general election the Legislative Council may proceed to the despatch of business, at the time appointed by the Governor for that purpose notwithstanding that the electors shall have failed to elect the required number of members to serve in the Legislative Council.

25 **President to hold office in certain cases until meeting of Parliament**

30 **20.** The member of the Legislative Council holding office as the President who shall vacate his seat by periodical retirement when the Council is not in session, shall continue in office and be deemed to be the President of the Legislative Council until the next meeting of Parliament, unless he shall not be re-elected a member

of the Legislative Council; but nothing in this section shall enable a President hereby continued in office to preside at any meeting of the Legislative Council.

Quorum - division, casting vote

5 **21.** (1) The presence of at least one-third of the members of the Legislative Council, exclusive of the President, shall be necessary to constitute a quorum for the despatch of business; and all questions which shall arise in the Legislative Council shall be
10 decided by a majority of votes of the members present, other than the President, and when the votes are equal the President shall have the casting vote.

(2) If the total number of members constituting the Legislative Council shall not be exactly divisible by 3, the quorum of the Legislative Council shall consist of such whole number as is next
15 greater than one-third of the members of the Legislative Council.

Division III - Legislative Assembly

Composition of Legislative Assembly

22. The Legislative Assembly shall consist of 57 members.

Duration

20 **23.** (1) Every Legislative Assembly shall exist and continue for 4 years from the day of the first meeting thereof and no longer; subject, nevertheless, to being sooner prorogued or dissolved by the Governor.

(2) Whenever any Legislative Assembly would expire by the
25 effluxion of time between the last day of August of any year and the first day of February next thereafter, such Legislative Assembly shall continue up to and including the day next preceding such first day of February and no longer, and

(3) Whenever the Legislative Assembly would expire by the
30 effluxion of time between the last day of January and the first day

of September of any year, such Legislative Assembly shall cease and determine on the last day of January of that year.

Electoral districts

5 **24.** The State shall be divided into 57 electoral districts under the provisions of the *Electoral Distribution Act 1947*, each returning one member to serve in the Legislative Assembly.

Writs for General Election

25. The Governor may cause writs to be issued for general elections of members of the Legislative Assembly.

10 **Assembly may proceed to business although full number of writs shall not have been returned**

15 **26.** After any general election the Legislative Assembly may proceed to the despatch of business, at the time appointed by the Governor for that purpose, notwithstanding that any of the writs of election not exceeding five shall not have been returned, or that in any of the electoral districts the electors shall have failed to elect a member to serve in the Legislative Assembly.

Election of Speaker

20 **27.** The members of the Legislative Assembly shall, upon their first assembling after every general election, proceed to elect one of their number to be Speaker, and in case of his death, resignation, or removal by a vote of the Legislative Assembly, the members shall again elect one of their number to be Speaker. The Speaker so elected shall preside at all meetings of the Legislative Assembly.

Absence of Speaker

28. Before or during any absence of the Speaker, the Legislative Assembly may choose a Member to perform his duties in his absence.

5 **Speaker to hold office till meeting of new Parliament unless not re-elected.**

10 **29.** In case of any dissolution of Parliament the Speaker of the Legislative Assembly at the time of such dissolution shall continue in office and shall be deemed to be the Speaker of the Legislative Assembly until the first meeting of the new Parliament, unless he shall not be re-elected a member of the said Assembly; but nothing in this section shall enable a Speaker hereby continued in office to preside at any meeting of the Legislative Assembly.

Resignation of members

15 **30.** Any member of the Legislative Assembly may resign his seat by writing under his hand, addressed to the Speaker, or if there be no Speaker, or if the Speaker is absent from the State, to the Governor, and upon the receipt of such resignation by the Speaker or the Governor, as the case may be, the seat of such member shall
20 become vacant.

Quorum - division, casting vote

31. (1) The presence of at least one-third of the members of the Legislative Assembly, exclusive of the Speaker, shall be necessary to constitute a quorum for the despatch of business; and all
25 questions which shall arise in the Legislative Assembly shall be decided by a majority of votes of the members present, other than the Speaker, and when the votes shall be equal the Speaker shall have the casting vote.

(2) If the total number of members constituting the Legislative
30 Assembly shall not be exactly divisible by 3, the quorum of the Legislative Assembly shall consist of such whole number as is next greater than one-third of the members of the Legislative Assembly.

Division IV - Both Houses of Parliament - General

Yearly Sessions

5 **32.** There shall be a session of the Legislative Council and CA S.4
Legislative Assembly once at least in every year, so that a period of
12 months shall not intervene between the last sitting of the
Legislative Council and Legislative Assembly in one session and
the first sitting of the Legislative Council and Legislative Assembly
in the next session.

Standing Orders and Rules

10 **33.** The Legislative Council and Legislative Assembly may CA
S.34 each adopt Standing Orders and Rules, jointly as well as
otherwise for —

- (a) the regulation and orderly conduct of their proceedings
and the despatch of business;
- 15 (b) the manner in which the Legislative Council and
Legislative Assembly shall be presided over in the
absence of the President or the Speaker,
- (c) the mode in which the Legislative Council and
Legislative Assembly shall confer, correspond. and
20 communicate with each other; and
- (d) the passing, intituling, and numbering of Bills and for
the presentation of the same to the Governor for Her
Majesty's assent.

Privileges of Houses

25 **34.** The Parliament may make laws defining the privileges,
immunities, and powers to be held, enjoyed, and exercised by the
Legislative Council, Legislative Assembly, and their members.

Salaries of members etc

5 **35.** The salary of the President of the Legislative Council CA S.35 shall be at least equal to the salary of the Speaker of the Legislative Assembly; and the salaries and allowances of the various officers of the Legislative Council shall be the same as those of the corresponding officers of the Legislative Assembly; and the Chief Clerk for the time being of the Legislative Council and of the Legislative Assembly shall respectively be removable from office only in accordance with a vote of the House of which he is an officer.

10 **Division V - Membership of Council and Assembly**

Qualification of members

15 **36.** Subject as hereinafter provided, any person who has resided in Western Australia for 12 months shall be qualified to be elected a member of a House of Parliament, if such a person is of the full age of 18 years, and not subject to any legal incapacity, and who is either an elector entitled to vote at an election of a member of the Parliament, or is qualified to become such an elector.

Oath or Affirmation of Allegiance

20 **37.** No member of the Legislative Council or Legislative Assembly shall sit or vote therein until the member has taken and subscribed before the Governor, or some person authorised by the Governor in that behalf, an oath or affirmation of allegiance in the form set out in Schedule A to this Act.

25 **Holders of office or places not disqualified except under provisions of the Electoral Act**

30 **38.** Except as provided by the *Electoral Act* —
 (a) the election of a person as a member of the Parliament shall not be rendered void or affected in any other way;
 (b) the seat of a person as a member of the Parliament shall not become vacant,

by reason of his holding any office or place of profit from or under the Crown or any other office or place.

Presence of unqualified persons not to invalidate proceedings

5 **39.** The proceedings of the Legislative Council or Legislative Assembly shall not be invalidated by reason of the presence in that House of any person not qualified to be a member of that House.

Supreme Court to have Jurisdiction

10 **40.** (1) Any person entitled to vote for the election of a member of the Legislative Assembly at a general election may apply to the Supreme Court, in accordance with Rules of Court, for a declaration as to whether or not —

15 (a) by operation of the *Electoral Act* the election of that person or another person as a member of the Legislature is void; or

(b) by operation of the *Electoral Act* the seat of that person or another person as a member of the Legislature has become vacant; or

20 (c) by operation of the *Electoral Act* that person or another person has vacated an office or place.

(2) Upon any application made under subsection (1) by a person other than the person in respect of whom a declaration is sought, the person in respect of whom a declaration is sought shall be the respondent; and the applicant shall give security for the costs of the proceedings in such amount as the Supreme Court may direct.

(3) An application under subsection (1) shall be heard and determined by the Full Court of the Supreme Court.

Division VI - Electoral

- 41.** The existing laws relating to the qualification of electors, the mode of elections, and all other matters concerning elections shall apply to the election of members to serve in the Legislative Assembly and Legislative Council until Parliament otherwise provides.
- 5

PART III - THE EXECUTIVE GOVERNMENT

Division I - The Governor

Office of Governor

5 **42.** (1) The Queen's representative in Western Australia is the Governor who shall hold office during Her Majesty's pleasure.

(2) Abolition of or alteration in the office of Governor shall not be effected by an Act of the Parliament except in accordance with section 11(3).

10 (3) In this Act and in every other Act a reference to the Governor shall be taken —

(a) to be a reference to the person appointed for the time being by the Queen by Commission under Her Majesty's Royal Sign Manual to the office of Governor of the State of Western Australia;

15 (b) to include any other person appointed by dormant or other Commission under the Royal Sign Manual to administer the Government of the State of Western Australia; and

20 (c) to also include any other person exercising, by virtue of an appointment by the Governor in accordance with Letters Patent any powers and authorities of the Governor.

(4) In this section "Royal Sign Manual" means the signature or royal hand of the Sovereign.

25 ***Division II - The Executive***

Ministers of State

43. (1) There may be Ministers of State liable to vacate their offices on political grounds

(2) The appointment of Ministers of State shall be vested in the Governor alone.

(3) The offices shall be such 17 offices as shall be designated and declared by the Governor in Council, from time to time, to be
5 the 17 Ministers of State for the purposes of this Act.

(4) One at least of such offices shall always be held by a member of the Legislative Council.

No Person to draw salaries for 2 offices

10 **44.** If any person accepts any 2 or more of the offices of Ministers of State, it shall not be competent for him to receive the salary of more than one office.

Parliamentary Secretaries

45. (1) The Governor in Council may —
15 (a) appoint a person who is a member of the Parliament to be the Parliamentary Secretary to a Minister; and

(b) at any time revoke such an appointment.

(2) An office of Parliamentary Secretary under this section is not one to which section 45 applies.

20 (3) The functions of a Parliamentary Secretary appointed under this section are such as the Governor in Council may specify in the instrument of appointment.

(4) If the Premier so approves, a Parliamentary Secretary appointed under this section shall be paid an allowance under subsection (5) but otherwise shall not receive any remuneration in
25 respect of that office.

cl. 46

(5) The allowance referred to in subsection (4) —

(a) is an allowance for and in respect of expenses necessarily or reasonably incurred in connection with the office of Parliamentary Secretary; and

5 (b) shall be determined under section 6 of the *Salaries and Allowances Act 1975*.

Division III - Public Offices

10 **46.** (1) The appointment to all public offices under the Government of the State which hereafter become vacant or are created, whether such offices be salaried or not, shall be vested in the Governor in Council.

15 (2) This enactment shall not extend to minor appointments which by Act of the Legislature or by order of the Governor in Council may be vested in heads of departments or other officers or person within the State.

(3) The power to suspend or remove any civil servant from his office shall be vested in the Governor in Council.

PART IV - THE JUDICIARY

The Supreme Court of Western Australia

5 **47.** There shall continue to be established a Supreme Court of Western Australia and such other Courts as Parliament from time to time provides.

Tenure of Offices

10 **48.** The offices of all the present and future Judges of the Supreme Court , shall be, continue and remain in full force during their good behaviour, until a statutory retiring age subject to a power of removal by the Governor upon the address of both Houses of Parliament.

cl. 49

PART V - LOCAL GOVERNMENT

Elected local governing bodies

5 **49.** (1) The Parliament shall maintain a system of local governing bodies elected and constituted in such manner as the Parliament may from time to time provide.

(2) Each elected local governing body shall have such powers as the Parliament may from time to time provide being such powers as the Parliament considers necessary for the better government of the area in respect of which the body is constituted.

10 **Certain laws not affected**

50. Section 49 of this Act does not affect the operation of any law —

- 15 (a) prescribing circumstances in which the offices of members of a local governing body shall become and remain vacant; or
- (b) providing for the administration of any area of the State —
- (i) to which the system maintained under that section does not for the time being extend; or
- 20 (ii) when the offices of all the members of the local governing body for that area are vacant; or
- (c) limiting or otherwise affecting the operation of a law relating to local government; or
- 25 (d) conferring any power relating to local government on a person other than a duly constituted local governing body.

Savings Provisions

51. Except as expressly provided by this Act, nothing in this Act alters or affects the interpretation and application of any of its provisions in a way that is different from the interpretation and application of that same provision before this Act came into operation.

SCHEDULE A

OATH

(to be taken in accordance with S.37).

10 I, _____, do swear that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, her heirs and successors, according to law.

So help me God.

AFFIRMATION

15 I, _____, do solemnly and sincerely affirm and declare that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, her heirs and successors, according to law.

20 (Note:- The name of the reigning Sovereign for the time being is to be substituted from time to time.)