Western Australia

Electoral Amendment Bill 2012

CONTENTS

Part 1 — Preliminary

1. Short title 2
2. Commencement 2
3. Act amended 2

Part 2 — Forms and electronic transmission of certain documents

4. Section 4 amended 3
5. Section 175 amended 3
6. Section 211A inserted 3
   211A. Certain documents may be transmitted electronically 3
7. Various references to "form" amended 4

Part 3 — Claims and nominations

Division 1 — Claims

8. Section 42 amended 6
9. Section 43 inserted 7
   43. Claims of certain Commonwealth electors to be taken to be in order 7
10. Section 44 amended 8
11. Section 44A amended 8

Division 2 — Nominations

12. Section 78 amended 9
13. Section 80 amended 9
14. Section 81 amended 10
15. Section 81A amended 10
16. Section 86 amended 10

17. Section 87 amended 11

Part 4 — Voting

18. Section 90 amended 12
19. Section 92 amended 12
20. Section 93 amended 13
21. Section 113A amended 13
22. Section 115 amended 14
23. Section 151 amended 14
24. Section 152 amended 15
25. Section 154 amended 15
26. Section 156D amended 16

Part 5 — Infringement and penalty notices

27. Section 155AB inserted 17
    155AB. Terms used 17
28. Section 156 amended 17
29. Section 156AA inserted 20
    156AA. Evidentiary certificates for section 156 proceedings 20

Part 6 — Other amendments

30. Section 52 amended 22
31. Section 183 amended 22
32. Section 208 amended 22

Part 7 — *Franchise Act 1916* repealed

33. *Franchise Act 1916* repealed 23

Western Australia

LEGISLATIVE ASSEMBLY

(As amended during consideration in detail)

Electoral Amendment Bill 2012

A Bill for

An Act to amend the *Electoral Act 1907* and to repeal the *Franchise Act 1916*.

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This is the *Electoral Amendment Act 2012*.

2. Commencement

This Act comes into operation as follows —

(a) sections 1 and 2 — on the day on which this Act receives the Royal Assent;

(b) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

3. Act amended

This Act, other than Part 7, amends the *Electoral Act 1907*.

Part 2 — Forms and electronic transmission of certain documents

4. Section 4 amended

In section 4(1) insert in alphabetical order:

approved form means a form that —

(a) is approved by the Electoral Commissioner; and

(b) has been published by the Electoral Commissioner by any means (including on an internet site maintained by the Electoral Commissioner) that the Electoral Commissioner thinks fit;

5. Section 175 amended

In section 175 delete the definition of ***approved***.

6. Section 211A inserted

After section 210 insert:

211A. Certain documents may be transmitted electronically

(1) In this section —

certain document means a claim, nomination, application, notice, objection or other communication that is required or permitted to be transmitted to the Electoral Commissioner or any other officer under —

(a) Part IIIA, IV or VI; or

(b) any other provision of the Act as is prescribed;

transmitted includes sent, given, made, forwarded by post, delivered to or lodged with.

(2) If the Electoral Commissioner has established procedures for the electronic transmission and recording of data for certain documents, or a case or class of cases of such documents then, despite anything else in this Act, a document transmitted in accordance with those procedures is to be taken to be transmitted under this Act.

(3) If, under this Act, a certain document is required to be signed by a person, then, despite anything else in this Act, that requirement is to be taken to be satisfied in respect of an electronically transmitted document if procedures established under subsection (2) by the Electoral Commissioner include a method to be used to —

(a) identify the person transmitting the document; and

(b) indicate the person's intention in respect of the information communicated in the document,

and that method is complied with.

7. Various references to "form" amended

Amend the provisions listed in the Table as set out in the Table.

Table

Provision	Delete	Insert
s. 62E(4)	a form approved by the Electoral Commissioner for the purposes of this section,	an approved form

Provision	Delete	Insert
s. 62K(2)	the form and way	an approved form and in a way
s. 78(1)	a form approved by the Electoral Commissioner,	an approved form
s. 80(1)	a form approved by the Electoral Commissioner	an approved form
s. 80(3)	a form approved by the Electoral Commissioner	an approved form
s. 113C(3)(a)	a form approved by the Electoral Commissioner	an approved form
s. 113C(7)(a)	a form approved by the Electoral Commissioner	an approved form

Part 3 — Claims and nominations

Division 1 — Claims

8. Section 42 amended

(1) In section 42:

(a) delete "A claim —" and insert:

(1) A claim —

(b) delete paragraph (b) and insert:

(b) shall be signed by the claimant; and

(ca) shall include or be accompanied by such evidence of identity as is required under the *Commonwealth Electoral Act 1918* section 98AA(2) in relation to an application or claim to which that section applies; and

(2) At the end of section 42 insert:

(2) Despite subsection (1)(b), if —

(a) the claimant is already enrolled; and

(b) the claimant's name is still the same as the name under which the claimant is enrolled,

the requirement that the claim be signed is to be taken to be satisfied if the claimant instead satisfies the requirements to be satisfied in respect of a claim under the *Commonwealth Electoral Act 1918* section 382(7).

(3) In section 42 after paragraph (a) insert:

and

9. Section 43 inserted

Before section 44 insert:

43. Claims of certain Commonwealth electors to be taken to be in order

(1) In this section —

claim means a claim made —

(a) on or after 21 November 2006; but

(b) before commencement day;

commencement day means the day on which the *Electoral Amendment Act 2012* Part 3 Division 1 comes into operation;

Commonwealth elector means a person enrolled under the *Commonwealth Electoral Act 1918* in respect of an address in a Commonwealth subdivision in the State;

in order means in order for the purposes of section 44A.

(2) If a claimant —

(a) is a Commonwealth elector on commencement day; and

(b) made a claim that was rejected as not in order,

then, on and after commencement day, the claim is to be taken to be in order if the claim would have been in order had it been made on commencement day.

10. Section 44 amended

(1) In section 44(1):

(a) in paragraph (e) delete "handwriting; and" and insert:

handwriting.

(b) delete paragraph (f).

(2) Delete section 44(4)(b) and insert:

(b) a person who may attest as to the claimant's identity under the *Commonwealth Electoral Act 1918* section 98AA(2)(c), as read with section 42(1)(ca), certifies in writing that he or she is satisfied that the claimant is not under 18 years of age,

(3) In section 44(1) after each of paragraphs (a) to (d) insert:

and

11. Section 44A amended

In section 44A(1) after "sections 42(b)" insert:

and (ca)

Division 2 — Nominations

12. Section 78 amended

After section 78(1) insert:

(2A) Despite subsection (1)(b), the place of residence of a candidate is not required to be stated on the nomination form if the candidate's residence is not shown on the roll because a request under section 51B has been granted.

13. Section 80 amended

(1) After section 80(1) insert:

(2A) A claim may be made under subsection (1) on behalf of a group —

(a) where all the candidates in the group are the subject of a party nomination, under section 81A, by a particular registered political party — by the secretary of the party; or

(b) where the candidates in the group have been endorsed by different registered political parties — jointly by the secretaries of all of those parties.

(2) In section 80(3) delete "candidates who have made a claim" and insert:

candidates, or a secretary of a political party, or the secretaries of political parties, by whom a claim has been made,

14. Section 81 amended

In section 81(1)(b):

(a) delete "money or" and insert:

money,

(b) delete "Commissioner." and insert:

Commissioner or in such other manner as may be prescribed.

15. Section 81A amended

In section 81A(2)(c):

(a) delete "money or" and insert:

money,

(b) delete "Commissioner." and insert:

Commissioner or in such other manner as may be prescribed under that section.

16. Section 86 amended

After section 86(2) insert:

(2AAA) Despite subsection (2), the returning officer must not declare a candidate's residence if the candidate's residence is not shown on the roll because a request under section 51B has been granted.

17. Section 87 amended

After section 87(3) insert:

(4A) Despite subsection (3), the returning officer must not declare a candidate's residence if the candidate's residence is not shown on the roll because a request under section 51B has been granted.

Part 4 — Voting

18. Section 90 amended

In section 90(5)(a) delete "Thursday" and insert:

Wednesday

19. Section 92 amended

(1) In section 92(4a)(a) delete "Tuesday" and insert:

Thursday

(2) Delete section 92(4c) and insert:

(4C) For the purpose of subsection (2)(f), an envelope addressed to the Electoral Commissioner containing a ballot paper is to be taken to have been posted before the close of the poll if —

(a) the postmark on the envelope is dated any day on or before polling day; or

(b) the postmark on the envelope is dated with the date of the Sunday immediately after polling day and the declaration is witnessed on or before polling day; or

(c) in the case of no postmark being legible, the declaration is witnessed on or before polling day,

and the envelope reaches the Electoral Commissioner before 9 a.m. on the Thursday next succeeding polling day.

20. Section 93 amended

In section 93(1):

(a) in paragraph (aa) delete "person who is" and insert:

person who is permanently disabled,

(b) in paragraph (d) delete "section 17A(2)," and insert:

section 17A(2); or

(c) after paragraph (d) insert:

(e) who has reached the age of 70 years; or

(f) who is seriously ill or infirm,

21. Section 113A amended

After section 113A(2) insert:

(3A) A voting ticket may also be lodged under subsection (1) on behalf of a group —

(a) where all the candidates in the group are the subject of a party nomination, under section 81A, by a particular registered political party — by the secretary of the party; or

(b) where the candidates in the group have been endorsed by different registered political parties — jointly by the secretaries of all of those parties.

22. Section 115 amended

In section 115(1) delete "appointed under section 129(1)(b) to be present while an elector's ballot paper is marked," and insert:

nominated under section 129(1) to mark an elector's ballot paper according to the directions of the elector,

23. Section 151 amended

In section 151:

(a) in paragraph (b) delete "Clerk of the Council or the Clerk of the Assembly, as the case may be;" and insert:

Electoral Commissioner;

(b) in paragraph (c) delete "same Clerk" and insert:

Electoral Commissioner

(c) in paragraph (e) delete "the Clerk of the Council, the Clerk of the Assembly, or the Electoral Commissioner, as the case may be," and insert:

the Electoral Commissioner

Note: The heading to amended section 151 is to read:

Returning officer to send election papers to Electoral Commissioner

24. Section 152 amended

(1) In section 152:

(a) delete "The Clerk of the Council and the Clerk of the Assembly" and insert:

(1) The Electoral Commissioner

(b) after "ballot papers" (second occurrence) insert:

and other documents

(2) At the end of section 152 insert:

(2) If the Electoral Commissioner has consented to the use, for the purposes of research or analysis, of any ballot papers or other documents that are liable to be destroyed under subsection (1), then the Electoral Commissioner may defer their destruction until the conclusion of that research or analysis.

25. Section 154 amended

(1) In section 154(1) delete "Clerk of the Council or the Clerk of the Assembly." and insert:

Electoral Commissioner.

(2) Delete section 154(2) and (3) and insert:

(2) Ballot papers or other documents held by the Electoral Commissioner under section 152 shall not be used or made available for any purpose other than —

(a) a purpose mentioned in subsection (1); or

(b) for the purposes of the election of a member of the Council under sections 156C and 156D; or

(c) a purpose mentioned in section 152.

26. Section 156D amended

In section 156D(12) delete "retain" and insert:

not destroy

Part 5 — Infringement and penalty notices

27. Section 155AB inserted

At the beginning of Part IV Division (7) insert:

155AB. Terms used

In this Division —

infringement notice means a notice under section 156(13A);

penalty notice means a notice under section 156(4);

prepared means produced or generated and recorded or stored, whether mechanically, magnetically, electronically or otherwise;

response date, in relation to —

(a) a penalty notice, means the date referred to in section 156(6)(c) and set out in the notice;

(b) an infringement notice, means the date referred to in section 156(13A)(b) and set out in the notice.

28. Section 156 amended

(1) In section 156(2) delete "prepare, or cause the returning officer to prepare and furnish to the Electoral Commissioner, a list of the names and descriptions" and insert:

ensure that there is prepared a list of the names and addresses

(2) In section 156(2a) delete "person by whom it was prepared." and insert:

Electoral Commissioner, or a person authorised by the Electoral Commissioner.

(3) In section 156(6)(c) delete "date set out in the notice (the ***response date***) —" and insert:

response date set out in the notice —

(4) Delete section 156(12) and insert:

(12) Subsection (13A) applies to an elector if a penalty notice is sent to the elector and —

(a) the elector does not respond to the penalty notice on or before the response date; or

(b) the elector responds to the penalty notice on or before the response date in the manner indicated in subsection (6)(c)(i) or (ii) but the Electoral Commissioner is not satisfied —

(i) in the case of a response under subsection (6)(c)(i) — that the elector voted as required by this Act; or

(ii) in the case of a response under subsection (6)(c)(ii) — that the reason for the failure to vote is a valid and sufficient reason.

(13A) If this subsection applies to an elector the Electoral Commissioner may send to the elector an infringement notice in a prescribed form —

(a) notifying the elector —

(i) that the elector has not responded to a penalty notice; or

(ii) that the elector's response to a penalty notice has not satisfied the Electoral Commissioner,

as the case may be; and

(b) informing the elector that if the elector does not wish to be prosecuted in a court for an alleged offence of failure to vote at an election without a valid and sufficient reason for such failure, the elector may, on or before the response date set out in the infringement notice, pay to the Electoral Commissioner the penalty set out in the infringement notice (the ***modified penalty***).

(5) In section 156(13) delete "a notice under subsection (12)." and insert:

an infringement notice.

(6) In section 156(14) delete "a notice under subsection (12)" and insert:

an infringement notice

(7) In section 156(14a) delete "a notice under subsection (12)" and insert:

an infringement notice

(8) Delete section 156(14b).

(9) In section 156(15)(a) after "notice" insert:

or an infringement notice

(10) In section 156(16)(b) delete "a notice under subsection (12)" and insert:

an infringement notice

(11) In section 156:

(a) after each of subsections (5)(a) and (b) and (6)(c)(i) insert:

or

(b) after subsection (6)(a) insert:

and

29. Section 156AA inserted

At the end of Part IV Division (7) insert:

156AA. Evidentiary certificates for section 156 proceedings

(1) In proceedings for an offence against section 156, a certificate containing a statement described in

subsection (2) and purporting to be signed by the Electoral Commissioner is, without proof of any appointment or signature, evidence of the facts stated in the certificate.

(2) A certificate may state any or all of the following —

(a) a specified date is the date that an election was held;

(b) a specified person was an elector on a specified date;

(c) a specified person did not vote at an election;

(d) a specified person —

(i) was sent a penalty notice or an infringement notice;

(ii) did or did not (as the case may be) respond to a penalty notice or an infringement notice on or by a specified date;

(iii) responded to a penalty notice or an infringement notice in a specified manner;

(e) a penalty notice or an infringement notice was sent on a specified date;

(f) a specified date was the response date for a penalty notice or an infringement notice.

(3) In subsection (2) —

specified means specified in the certificate.

Part 6 — Other amendments

30. Section 52 amended

Delete section 52(1)(d).

31. Section 183 amended

Delete section 183(5).

32. Section 208 amended

In section 208 delete "Without limiting section 31(1) of the *Interpretation Act 1918*," and insert:

Without limiting the *Interpretation Act 1984* sections 75 and 76,

Part 7 — *Franchise Act 1916* repealed

33. *Franchise Act 1916* repealed

The *Franchise Act 1916* is repealed.