

Electoral Amendment Bill 2012

Explanatory Memorandum

1. GENERAL INFORMATION

This Bill will amend the *Electoral Act 1907* (the Act) and repeal the *Franchise Act 1916*. This Bill contains provisions which will improve and enhance electoral administration for electors, political parties and candidates.

2. CLAUSE 1 – SHORT TITLE

The short title of this amendment is the *Electoral Amendment Bill 2012*.

3. CLAUSE 2 – COMMENCEMENT

Part 1 comes into operation on the day this Bill receives Royal Assent. All other amendments come into operation on a day fixed by proclamation. This provides the Electoral Commission with time to put in place the administrative arrangements needed to effect these amendments.

4. CLAUSE 3

States that other than Part 7, this Bill amends the Act.

5. CLAUSES 4 and 5

Section 4(1) is amended to insert a definition of “approved form”. This definition will standardise the reference to approved forms throughout the Act. In light of this amendment the definition of “approved form” in section 175 is deleted.

6. CLAUSE 6

A new section 211A is inserted into the Act. This new section will allow the Electoral Commission to use modern technology to improve its services in relation to areas such as candidate nominations, applications for early votes, party registration and political finance disclosure returns.

7. CLAUSE 7

Clause 7 provides a table that amends and updates the use of forms throughout the Act to comply with the new definition in clause 4.

8. CLAUSES 8, 9, 10 and 11

Currently, to enrol under the Act a person must fill out a single electoral enrolment form. This form allows persons to enrol to vote in State, Local and Commonwealth elections. However, there are different requirements on the form for State and Commonwealth enrolment.

For State (and therefore local) enrolment a person must sign the form and have the form witnessed by a person eligible to be on the State electoral roll. For Commonwealth enrolment a person must provide evidence of identity. To provide evidence of identity a person must record their drivers licence number, details of their Australian passport, or if neither a driver’s licence nor a passport number can be provided then a witness declaration must be completed. The witness requirements for Commonwealth purposes are that the witness must be on the Commonwealth electoral roll.

It is the experience of the Electoral Commission that persons enrolling or changing their details tend to complete the evidence of identity provisions and not the witnessing requirements to be on the State electoral roll. With this confusion there are currently over 12,000 persons in Western Australia who are on the Commonwealth electoral roll but not the State electoral roll. Importantly, this figure is increasing each year.

Therefore, it is intended to amend the Act to repeal the State's witnessing requirements, so that when a person fulfils the evidence of identity requirements in an enrolment form they are automatically enrolled for both Commonwealth and State purposes. Further, Clause 8 will allow electors to update their enrolment details online provided they have previously completed a signed enrolment form and have not changed their name.

Lastly, these clauses provide that once this legislation is proclaimed the 12,000 electors in Western Australia who are currently enrolled only for Commonwealth elections will automatically be enrolled for State elections.

9. CLAUSE 12

Section 78 of the Act is amended so that candidates who are silent electors (electors whose address is not publicly available on the electoral roll for security reasons) under section 51B do not have to provide their residential address when nominating for an election. In the past the Electoral Commission has received concerns from some candidates about having their residential address publicly declared in these circumstances.

10. CLAUSE 13

Section 80 of the Act is amended so that secretaries of political parties can sign group claim forms on behalf of candidates for party nominations. Currently individual candidates have to each sign the group claim form which can be a time consuming process for candidates across regional and remote Western Australia.

11. CLAUSES 14 and 15

Sections 81 and 81A are amended to allow the Electoral Commission to accept nomination deposits by other prescribed methods. Currently payment for nominations can only be made via money or cheque. This amendment will provide for nomination deposits to be received electronically when technology is sufficiently developed to provide for this.

12. CLAUSES 16 and 17

Sections 86 and 87 of the Act are amended so the Returning Officer must not declare a candidate's residential address if the candidate is a silent elector.

13. CLAUSE 18

Section 90 of the Act is amended so the last day an early postal vote application can be submitted will be on the Wednesday before an election instead of the Thursday before the election. The Electoral Commission's experience on this matter is that there is little practical opportunity for election postal packages to be sent to the elector on the Thursday for receipt by electors on the Friday before the election.

14. CLAUSE 19

Section 92 is amended so that postal votes appropriately witnessed and dated before the close of poll are to be included in the election count in circumstances where the postmark is stamped on the Sunday immediately following polling day. Under the current legislation an elector could cast their postal vote on election day, however because Australia Post does not process letters on a Saturday the postmark for the ballot paper will be on the Sunday after the election. Therefore, that ballot paper will not be included in the election count.

There is also a correction to section 92 to reflect the acceptance of postal ballot papers on the Thursday following polling day.

15. CLAUSE 20

Section 93 is amended to allow persons who are seriously ill or infirm, or over the age of 70 to apply to be a general early voter. A general early voter is a category of elector who automatically receives a postal ballot once an election is called.

16. CLAUSE 21

Section 113A is amended to allow party secretaries to lodge voting tickets on behalf of candidates who have been nominated by a political party.

17. CLAUSE 22

Clause 115 is a correction as currently the Act refers to section 129(1)(b) and this particular section was repealed some years ago.

18. CLAUSES 23, 24, 25 and 26

Currently in the Act the Clerk of the Legislative Assembly and the Clerk of the Legislative Council are responsible for the retention and disposal of ballot papers and other electoral materials. The Clerks of the Parliament have indicated to the Electoral Commissioner that this is an administrative burden. The Electoral Commissioner will now be responsible for the retention of such electoral material. Further, these amendments will allow the Electoral Commissioner to consent to the use of ballot papers and other electoral materials for research purposes in certain circumstances.

19. CLAUSE 27, 28 and 29

These clauses make essential amendments to section 156 of the Act. Section 156 deals with penalties for electors who do not vote at elections. In October 2010, a magistrate in a court case relating to a person who did not vote at the May 2009 Daylight Saving Referendum ruled that the Electoral Commission's provisions regarding referral of non voters to the Fines Enforcement Registry were deficient. If the Act is not amended to comply with the fines enforcement legislation then the Electoral Commission will not be able to refer all non voter offences to the Fines Enforcement Registry.

20. CLAUSE 30

Section 52(1)(d) of the Act is deleted as it refers to section 61. Section 61 was repealed some years ago.

21. CLAUSE 31

Section 175ZC is amended so that the financial disclosure returns of political parties and their associated entities are available publicly on the first working day of February. This aligns with the relevant financial disclosure dates of the Commonwealth.

22. CLAUSE 32

Clause 32 deletes the reference to electoral defamation as an offence in section 183(5) of the Act. Before 2006, defences to the charge of electoral defamation could be found in the Criminal Code and therefore did not infringe on the constitutional right to express an opinion on political matters. These defences were removed with the introduction of the *Defamation Act 2006*.

In recent times there have been important High Court cases which have also impacted on electoral defamation. These High Court decisions have given a broader protection to political speech by finding that material published during an election period is effectively covered by the implied freedom of communication that can be found in the Australian Constitution.

The Electoral Commission has been given legal advice that because of the changes to defences to electoral defamation being removed in the Criminal Code, coupled with High Court decisions, section 183(5) of the Act is probably unconstitutional and therefore invalid legislation.

The Commonwealth Government's response to these matters has been to repeal the defamation provisions found in Commonwealth electoral legislation. Candidates will still be able to seek redress for defamation under the applicable statutory or common law.

23. CLAUSE 33

This clause is a consequential amendment that updates references to the *Interpretation Act 1984*.

24. CLAUSE 34

This clause repeals the *Franchise Act 1916*. The voting entitlements of service men and women are now incorporated into the Act.