

Electoral and Constitution Amendment Bill 2003

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Western Australia

LEGISLATIVE ASSEMBLY

Electoral and Constitution Amendment Bill 2003

A Bill for

An Act to —

- **make amendments to the *Electoral Act 1907*, the *Constitution Acts Amendment Act 1899* and the *Salaries and Allowances Act 1975* in relation to the dates for general elections; and**
- **make other amendments to the *Electoral Act 1907*, the *Constitution Acts Amendment Act 1899* and the *Electoral Amendment (Political Finance) Act 1992*,
and for related purposes.**

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Electoral and Constitution Amendment Act 2003*.

5 **2. Commencement**

This Act comes into operation on the day on which it receives the Royal Assent.

Part 2 — Amendments about fixed election dates

Division 1 — *Electoral Act 1907* amended

3. The Act amended

The amendments in this Division are to the *Electoral Act 1907**.

5

[* *Reprinted as at 15 December 2000.*

*For subsequent amendments see Western Australian
Legislation Information Tables for 2002, Table 1, p. 115.]*

4. Section 4 amended

10 (1) Section 4(1) is amended in the definition of “general election”
as follows:

(a) in paragraph (a) by deleting “64(1)” and inserting
instead —

“ 64(2) or (3) ”;

15

(b) in paragraph (b) by deleting “64(2)” and inserting
instead —

“ 64(4) ”.

(2) Section 4(1) is amended by inserting in the appropriate
alphabetical positions the following definitions —

20

“**election year**”, in relation to a periodic election,
means the year in which the writ for the periodic
election is issued;

“**periodic election**” means —

25

(a) a general election for the Assembly the writ
for which is issued under section 64(3); or

(b) any general election for the Council;

”.

5. Section 64 replaced

Section 64 is repealed and the following section is inserted instead —

“

5 **64. Issue of writs for general election**

(1) In this section —

“**expiry year**” of an Assembly means the year in which that Assembly, if it is not previously dissolved, will expire by effluxion of time.

10 (2) If an Assembly is dissolved before 1 November last preceding its expiry year, the Governor shall cause a writ for elections in all the districts to be issued not later than 10 days after the dissolution.

15 (3) If an Assembly is not dissolved before 1 November last preceding its expiry year, the Governor shall cause a writ for elections in all the districts to be issued on the third Wednesday of January in the expiry year.

20 (4) In order to fill seats in the Council that are to be vacated by effluxion of time at the end of 21 March in a year, the Governor shall cause a writ for elections in all the regions to be issued on the third Wednesday of January last preceding that 21 March.

”.

6. Section 70 amended

25 (1) Section 70 is amended by inserting before “The” the subsection designation “(1)”.

(2) At the end of section 70 the following subsection is inserted —

“

30 (2) In the case of a periodic election the date fixed as the last day for the nomination of candidates shall be the second Friday following the date of the writ.

”.

7. Section 71 amended

After section 71(3) the following subsections are inserted —

“

5 (4) In the case of a periodic election the date fixed for the polling shall be the third Saturday of February in the election year.

(5) If the third Saturday of February in an election year is an excluded day, the date fixed for the polling shall be the fourth Saturday of February in the election year.

10 (6) In subsection (5) —

15 “**excluded day**” means a day appointed as polling day for an election of the Senate or a general election of the House of Representatives or as the voting day for a referendum as defined in section 3 of the *Referendum (Machinery Provisions) Act 1984* of the Commonwealth.

”.

8. Section 72 amended

After section 72(1) the following subsection is inserted —

20 “

(2) In the case of a periodic election the date fixed as the last day for the return of the writ shall not be later than 21 March after polling day.

”.

25 **9. Section 76 amended**

Section 76(3) is amended by deleting “the time prescribed by the *Constitution Acts Amendment Act 1899*.” and inserting instead —

“ 21 March after polling day. ”.

10. Section 156E amended

Section 156E(2) is repealed and the following subsections are inserted instead —

“

5 (2) A writ shall not be issued under subsection (1) on or after 1 November last preceding the expiry year and, in that case, the vacancy is taken for the purposes of section 64(4) and section 10 of the *Constitution Acts Amendment Act 1899* to occur by effluxion of time at
10 the end of 21 March in the expiry year.

(3) In subsection (2) —

“**expiry year**” means the year in which the term of service of the member whose seat has been vacated would have expired.

15

”.

Division 2 — *Constitution Acts Amendment Act 1899* amended

11. The Act amended

The amendments in this Division are to the *Constitution Acts Amendment Act 1899**.

20

[* *Reprint 12 as at 3 October 2003.*]

12. Section 8 amended and transitional provisions

(1) Section 8(2) and (3) are each amended by deleting “May” and inserting instead —

“ March ”.

25

(2) Section 8(4) is repealed and the following subsection is inserted instead —

“

30

(4) Where an election held as part of a general election fails wholly or partially or is declared to be absolutely void, 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 March next following that general election.

5

”.

(3) Section 8(5) is amended by deleting “(4)(a)” and inserting instead —

“ (4) ”.

(4) Section 8(6) is repealed.

10

(5) If a person who is a member of the Legislative Council on 21 March 2005 is no longer a member on 22 March 2005, the *Salaries and Allowances Act 1975* and parliamentary superannuation arrangements continue to apply in relation to that person in the same way as they would have if —

15

(a) 21 May 2005 had continued to be the day at the end of which the person’s seat became vacant by effluxion of time; and

(b) the person had continued during the subtracted period to hold any higher office that the person held on 21 March 2005.

20

(6) In subsection (5) —

“**higher office**” means the office of —

(a) President of the Legislative Council; or

(b) Chairman or Deputy Chairman of Committees in the Legislative Council;

25

“**parliamentary superannuation arrangements**” means contribution, entitlement and other superannuation arrangements in respect of —

(a) a person by or for whom contributions are being made as at 21 March 2005 to the scheme as defined in section 5 of the *Parliamentary Superannuation Act 1970*; or

30

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Part 2 Amendments about fixed election dates

Division 2 Constitution Acts Amendment Act 1899 amended

s. 13

- (b) a person for whom contributions are being made as at 21 March 2005 under section 29 of the *Parliamentary Superannuation Act 1970*;

“subtracted period” means the period —

- 5 (a) beginning on 22 March 2005; and
- (b) ending on 21 May 2005 or, if the person dies before then, on death.

13. Section 10 amended

10 Section 10(3)(b) is amended by deleting “May” and inserting instead —

“ March ”.

14. Section 21 amended

(1) Section 21(1) is amended as follows:

- 15 (a) by inserting before “Provided” the subsection designation “(2)”;
- (b) by deleting paragraphs (a) and (b) and “and” after paragraph (a) and inserting instead —

“

- 20 (a) whenever any Legislative Assembly would expire by effluxion of time on or after 1 September of any year but before the third Wednesday of January next following, that Legislative Assembly shall continue up to and including the day next preceding that third Wednesday of January and no longer; and

- 25 (b) whenever any Legislative Assembly would expire by effluxion of time on or after the third Wednesday of January of any year but before 1 September of that year, that Legislative Assembly shall cease and determine on the day next preceding that third Wednesday of
- 30 January.

”.

(2) Section 21(2) is repealed.

15. Section 36 amended

Section 36(9) is amended by deleting “May” and inserting instead —

5 “ March ”.

Division 3 — *Salaries and Allowances Act 1975* amended

16. The Act amended

The amendments in this Division are to the *Salaries and Allowances Act 1975**.

10 [* Reprinted as at 8 September 2000.
*For subsequent amendments see Western Australian
Legislation Information Tables for 2002, Table 1, p. 348 and
Gazette 15 August 2003 p. 3685-92.]*

17. Section 6 amended

15 Section 6(5b) is repealed and the following subsection is inserted instead —

“

20 (5b) Notwithstanding any other provision of this Act or any determination, a person elected as a member of the Legislative Council at a general election shall not be entitled to any remuneration as such a member in respect of any period before 22 March next following the general election unless that person —

- 25 (a) was a member of the Legislative Council immediately before the general election; or
- (b) is declared elected under section 156D of the *Electoral Act 1907* to complete the unexpired portion of a term of office ending immediately before that 22 March.

30 ”.

Part 3 — General amendments

Division 1 — *Electoral Act 1907* amended

18. The Act amended

The amendments in this Division are to the *Electoral Act 1907**.

5

[* *Reprinted as at 15 December 2000.*

*For subsequent amendments see Western Australian
Legislation Information Tables for 2002, Table 1, p. 115.]*

19. Long title amended

The long title is amended by inserting after “elections” —

10

“ **and for related purposes** ”.

20. Section 4 amended

- (1) Section 4(1) is amended by inserting in the appropriate alphabetical position the following definition —

15

“

“**authorised witness**” has the meaning given by
section 94;

”.

- (2) Section 4(1) is amended by deleting the definition relating to “print”, “printed” or “printing”.

20

21. Section 5D amended

After section 5D(3) the following subsections are inserted —

“

25

- (4) The Governor, on the recommendation of the Premier, may appoint an Acting Deputy Electoral Commissioner to act in the office of the Deputy Electoral Commissioner —

- (a) when the Deputy Electoral Commissioner is absent from duty for any reason or is absent from the State;

- 5
- (b) when the Deputy Electoral Commissioner is acting in the office of Electoral Commissioner under section 5H(2);
- (c) when the Deputy Electoral Commissioner has been suspended; or
- (d) when the office of Deputy Electoral Commissioner is vacant.
- 10 (5) Before making a recommendation under subsection (4) the Premier shall consult with the Parliamentary leader of each party in the Parliament.
- (6) While the Acting Deputy Electoral Commissioner is so acting —
- 15 (a) he may perform the functions of the Deputy Electoral Commissioner, and anything done by him in so performing those functions has the like effect as if it were done by the Deputy Electoral Commissioner;
- 20 (b) any act or thing that is required under a written law to be done to, by reference to or in relation to the Deputy Electoral Commissioner shall be regarded as effectually done if done to, by reference to or in relation to the Acting Deputy Electoral Commissioner.

”.

25 **22. Section 5F amended**

Section 5F(1)(ea) is deleted and the following paragraph is inserted instead —

“

- 30 (ea) may conduct other elections, referendums or polls —
- (i) if authorised to do so under another written law; or

- (ii) if they are provided for under another written law and the regulations authorise the Electoral Commissioner to conduct them;

5

”.

23. Section 18 amended

Section 18(c) is amended by deleting “one year” and inserting instead —

“ 5 years ”.

10

24. Section 67 amended

Section 67(5) is amended by deleting “32(a)” and inserting instead —

“ 32(1)(a) ”.

25. Section 77 amended

15

After section 77(5) the following subsection is inserted —

“

- (6) If a person who is not an elector entitled to vote at an election of a member of the Assembly nominates himself for election to either House, the nomination is invalid.

20

”.

26. Section 85 amended

Section 85(2) is amended by deleting “6 p.m.” and inserting instead —

25

“ 12 noon ”.

27. Section 90 amended

- (1) Section 90(1) is repealed and the following subsection is inserted instead —

“

- 5 (1) Any elector may make application for an early ballot paper at any time after the polling day for an election has been publicly announced by the Government.

”.

- 10 (2) Section 90(1a) is amended by deleting “at any time during the period referred to in subsection (1)”.

- (3) Section 90(3a)(a) is amended by deleting “who is entitled to apply for an early ballot paper”.

- (4) Section 90(3e)(a)(i) is deleted.

- 15 (5) Section 90(7)(b) is amended by deleting “entitled to an early ballot paper” and inserting instead —

“ an elector ”.

- (6) Section 90(8)(a) is amended by deleting “is entitled to an early ballot paper under subsection (1)(d)” and inserting instead —

“

- 20 will be unable to vote during the hours of polling on polling day because the elector is, or is caring for a person who is, seriously ill or infirm, or approaching maternity

”.

- 25 (7) Section 90(8)(b) is amended by deleting “if the elector is entitled to an early ballot paper issue him with one” and inserting instead —

“ issue the elector with an early ballot paper ”.

- (8) Section 90(12) is amended by deleting “entitled to an early ballot paper by virtue of subsection (1)(f)” and inserting instead —

“

5 who is serving a sentence of imprisonment for an offence or is otherwise in lawful custody or detention

”.

28. Section 92 amended

10 Section 92(4c)(b) is amended by deleting “Tuesday” and inserting instead —

“ Thursday ”.

29. Section 95 amended

Section 95(8) is amended as follows:

15 (a) by deleting “elector is an” and inserting instead —
“ elector is a patient or ”;

(b) by deleting “is an inmate in an institution or is a patient in a hospital”.

30. Section 100 amended

20 (1) Section 100(1)(c) is amended by deleting “institution or hospital, or both” and inserting instead —

“ hospital, prison or other institution ”.

(2) Section 100(1)(d) is amended as follows:

25 (a) by deleting “any institution or hospital, or both,” and inserting instead —

“ any hospital, prison or other institution ”;

(b) by deleting “or hospital, or both, for” and inserting instead —

“ for ”.

31. Section 100A amended

- (1) Section 100A(1), (1)(a), (2)(a) and (b) and (5) are amended by deleting “or hospital”.
- (2) Section 100A(1)(b) is amended by deleting “record his”.
- 5 (3) Section 100A(2) is amended by deleting “or hospital,”.

32. Section 100B amended

Section 100B(2a) is amended by inserting after “The” —
“ Electoral Commissioner or the ”.

33. Section 102 amended

10 Section 102(5) is amended by deleting “or hospital”.

34. Section 132 amended

Section 132(2) is amended as follows:

- (a) by deleting “a special institution or hospital” and inserting instead —
15 “ an institution ”;
- (b) by deleting “or (d)”.

35. Section 192 amended

- (1) Section 192(2) and (3) are amended by deleting “or hospital” in each place in which it occurs.
- 20 (2) Section 192(4) is repealed.
- (3) Section 192(5) is amended as follows:
- (a) by deleting “Subsection (4)” and inserting instead —
“ This section ”;
- (b) by deleting “a prison” and inserting instead —
25 “ an institution ”;
- (c) by deleting “the prison” and inserting instead —
“ the institution ”.

36. Section 188 amended

- (1) Section 188(1) and (2) are deleted and the following are inserted instead —

“

- 5 (1) Penalty for bribery or undue influence —
- (a) if the offence relates to an early ballot paper or early vote: \$24 000 or imprisonment for 2 years; or
- 10 (b) in any other case: \$12 000 or imprisonment for 12 months.
- (2) Penalty for any other illegal practice —
- (a) if the offence relates to an early ballot paper or early vote: \$12 000 or imprisonment for 12 months; or
- 15 (b) in any other case: \$6 000.

”.

37. Schedule 1 amended

- (1) Schedule 1 clause 5 is repealed and the following clause is inserted instead —

20 “

5. Unless all the vacancies have been filled, the surplus votes (if any) of any candidate elected under clause 4, or elected subsequently under this clause, shall be transferred to the continuing candidates as follows —
- 25 (a) the number of surplus votes of the elected candidate shall be divided by the number of votes received by him and the resulting fraction shall be the surplus fraction;
- 30 (b) in relation to any particular ballot papers for surplus votes of the elected candidate, the surplus fraction shall be multiplied by the transfer value at which those ballot papers were transferred to the elected candidate, or by one if they expressed first

preference votes for the elected candidate, and the product shall be the continued transfer value of those particular ballot papers;

5

(c) the total number of ballot papers for surplus votes of the elected candidate that each —

(i) express the next available preference for a particular continuing candidate; and

10

(ii) have a particular continued transfer value, shall be multiplied by that transfer value, the number so obtained (disregarding any fraction) shall be added to the number of votes of the continuing candidate and all those ballot papers shall be transferred to the continuing candidate,

15

and if on the completion of the transfer of the surplus votes of the elected candidate to a particular continuing candidate that candidate has received a number of votes equal to or greater than the quota, that candidate shall be elected.

”.

(2) Schedule 1 clause 7 is repealed.

20

(3) Schedule 1 clause 9 is amended by deleting “4(a) and (b)” and inserting instead —

“ (5) ”.

38. Minor amendments

The Act is amended as set out in the Table.

25

Table

Provision amended	Amendment
section 60(1)	deletion of “56(a)” and insertion instead of — “ 56 ”.
section 61	repeal of the section.
section 62I(2)	insertion after “one member of” of — “ the ”.

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Division 2 Constitution Acts Amendment Act 1899 amended

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Provision amended	Amendment
section 62N(1)(c)	insertion before “decision” of — “ a ”.
section 75(1)(b)	deletion of “nomination” and insertion instead of — “ declaration of nominations ”.
section 77(1)(b)	insertion after “as” of — “ , or from being, ”.
section 87(7)	deletion of “113A” and insertion instead of — “ 113B ”.
section 141(1)	deletion of “, (b)”.
section 156A	deletion of “(1)”.
section 186	deletion of “incapable of being chosen or of sitting as” and insertion instead of — “ disqualified from being elected as, or from being, ”.

Division 2 — Constitution Acts Amendment Act 1899 amended

39. The Act amended

The amendments in this Division are to the *Constitution Acts Amendment Act 1899**.

5 [* Reprint 12 as at 3 October 2003.]

40. Sections 7 and 20 amended and saving provision

(1) Sections 7 and 20 are each amended by inserting after “person who” —

10 “
is an Australian citizen as defined in section 4(1) of the *Electoral Act 1907* and
”.

- (2) A person who is a member of the Legislative Assembly or the Legislative Council immediately before the commencement —
- (a) does not become disqualified, on the commencement, for membership of the Legislative Assembly or the Legislative Council for the purposes of section 38(a) or 40(a) of the *Constitution Acts Amendment Act 1899*; and
- (b) is not prevented from completing his or her current term as a member,

5

10

by reason only of not being an Australian citizen as defined in section 4(1) of the *Electoral Act 1907*.

- (3) In subsection (2) —
“commencement” means the commencement of this section.

41. Section 32 amended and saving provision

15

- (1) Section 32 is amended by inserting before “A person” the subsection designation “(1)”.
- (2) Section 32(b) is deleted and the following paragraph is inserted instead —

20

“

(b) has been convicted of an offence for which the penalty specified by a law is or includes —

(i) imprisonment for life; or

(ii) imprisonment for a period that may exceed 5 years.

”.

25

- (3) At the end of section 32 the following subsection is inserted —

30

“

(2) In subsection (1)(b) —
“offence” means an offence against a law of this State, the Commonwealth, another State or a Territory.

”.

- (4) A person who is a member of the Legislative Assembly or the Legislative Council immediately before the commencement —
- 5 (a) does not become disqualified, on the commencement, for membership of the Legislative Assembly or the Legislative Council for the purposes of section 38(b) or 40(b) of the *Constitution Acts Amendment Act 1899*; and
- (b) is not prevented from completing his or her current term as a member,
- 10 by reason only of a conviction that occurred before the commencement.

- (5) In subsection (4) —
- “commencement”** means the commencement of this section.

Division 3 — *Electoral Amendment (Political Finance) Act 1992* amended

15 **42. The Act amended**

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

[* *Act No. 75 of 1992.*]

43. Sections 5 and 6 repealed

20 Sections 5 and 6 are repealed.
