

Electoral Amendment (Miscellaneous) Bill 2008

Explanatory Memorandum

General Information

This Bill will amend the *Electoral Act 1907* (the Act). This Bill contains provisions which will improve and enhance electoral administration for certain categories of electors, particularly people with no fixed address, overseas electors and prisoners serving a sentence of less than one year. The Bill will also provide for candidates to distribute how-to-vote-cards on election day. Finally, there are minor and consequential changes to the Act and regulations.

Clause 1 – Short title

The short title of this amendment is the *Electoral Amendment (Miscellaneous) Bill) 2008*.

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.

Clause 3

States that the *Electoral Act 1907* is being amended.

Clause 4

Repeals section 4(4) of the Act and replaces it with a new section 4(4). This change is necessary because section 4(4) currently refers to members of the Legislative Council prior to the “one vote one value” legislation. The “one vote one value” legislation determined that each region for the Legislative Council would return six members to the Legislative Council.

Clause 5

Section 17(5) is amended by adding electors with no fixed address to the list of categories who may be enrolled in an electoral district in which they do not live.

Clause 6

A new section 17B is inserted into the Act. Section 17B will allow citizens who have no fixed address to vote in Western Australian State elections. Currently the Act requires that a citizen must have lived at an address for one month before they are eligible to claim enrolment to vote.

Section 17B will replicate Commonwealth electoral legislation that allows people with no fixed address to vote. Under Commonwealth electoral legislation a person with no fixed address can vote and the electorate in which they are determined to reside is in the following descending order:

- the electorate for which the elector was last enrolled; or
- if not previously enrolled, the electorate for which the elector’s next of kin is enrolled; or
- if there are no next of kin, the electorate in which the elector was born; or
- if the elector was not born in Australia, the electorate with which the elector has the closest connection.

The Commission will use Commonwealth electoral administrative procedures in providing this service to Western Australian electors who have no fixed address.

Clause 7

Section 18(1)(c) of the Act that disqualifies prisoners from voting is amended. In August 2007 the High Court ruled in *Roach v Australian Electoral Commissioner and the Commonwealth* that the provisions of the Commonwealth's electoral legislation that disqualified all sentenced prisoners from voting in Commonwealth elections were invalid. However, the High Court found that the former provisions of the Commonwealth's electoral legislation that allowed prisoners serving a sentence of less than three years to vote were valid.

In March 2007 section 18(1)(c) of the Act was amended to replicate the Commonwealth prior to the *Roach* case, meaning that all sentenced prisoners were disqualified from voting in State elections. Prior to March 2007 persons serving a sentence less than one year could vote in a State election.

The Government accepts the High Court's ruling that a total blanket ban that prevents prisoners from voting is unconstitutional. Therefore, section 18(1)(c) will be amended to allow prisoners serving a sentence of less than one year to vote in a State election.

Clause 8

Section 25A of the Act is amended to include elector's date of birth within the meaning of prescribed information that parliamentary parties, members of the Legislative Council and the Legislative Assembly receive when they are sent the electoral roll. This amendment will make State electoral legislation consistent with the Commonwealth.

Clause 9

Section 40(1a) of the Act is amended so that electors with no fixed address shall not be excluded from the electoral roll.

Clause 10

A new section 59(4) is inserted. This section will require the Chief Executive Officer of Prisons to forward to the Electoral Commissioner the length of the prison term of a prisoner, thus identifying those prisoners able to vote where their sentence is less than one year.

Clause 11

Section 62 is repealed. Currently, section 62 allows prisoners to re-enrol when they are no longer disqualified from voting. Changes to the Act in 2007 allowed prisoners to remain on the electoral roll. Therefore, section 62 is now redundant.

Clause 12

A new section 90(1)(dc) is inserted. This section will allow prisoners serving a sentence under one year and people who are in lawful custody to apply for a postal vote. This entitlement was withdrawn from prisoners when the Act was amended in 2007. The 2007 amendment excluded prisoners (regardless of their prison term) from voting.

Clause 13

Section 93(1) will be amended to allow overseas electors to be registered as General Early Voters. The term General Early Voter describes certain categories of electors who receive a postal ballot once an election is called. Currently, overseas electors are not registered as General Early Voters. This means that overseas electors cannot receive a postal ballot automatically from the Electoral Commission once an election is called. However, under Commonwealth electoral legislation overseas electors are registered as General Early Voters.

This amendment will make the Act consistent with Commonwealth electoral legislation and make the process of voting significantly easier for overseas electors.

Clause 14

Section 175C(2) of the Act is amended. Currently, under section 175C(2) the appointed agent for a political party is not automatically deemed to be the default agent for endorsed candidates of a political party.

The Western Australian Electoral Commission's experience on this issue is that many candidates for the major political parties are not aware that they need to nominate a party agent. This leads to confusion and Commission staff having to spend considerable time following up on these matters leading to significant delays in compliance with disclosure requirements for all involved.

Clause 15

Section 183(6) is repealed. Currently, this section states that if a candidate personally solicits the vote of an elector on polling day, then the candidate is guilty of undue influence. This has proven to be a contentious section in relation to candidates handing out how-to-vote-cards on polling day.

There is a legal view that if a candidate distributes a how-to-vote-card on polling day, coupled with a request or appeal or other approach to an elector, then this would be construed as personally soliciting the vote of an elector and therefore a breach of section 183(6)

Repealing section 183(6) would make Commonwealth and State electoral legislation consistent on this issue. Under Commonwealth electoral legislation, candidates can distribute how-to-vote-cards on polling day, provided they are six metres from the entrance to a polling place. Currently, section 192(b)(1) of the Act in its application prevents candidates distributing how-to-vote-cards in a polling place or within six metres from the entrance of a polling place.