



Western Australia

## **Constitution Act 1889**

Compare between:

[02 Dec 2005, 05-c0-05] and [01 Jan 2006, 05-d0-03]



## Constitution Act 1889

### **An Act to confer a Constitution on Western Australia, and to grant a Civil list to Her Majesty.<sup>1</sup>**

#### **Preamble**

Whereas by the 32nd section of the Imperial Act passed in the session holden in the 13th and 14th years of the Reign of Her present Majesty<sup>2</sup>, intituled “*An Act for the better Government of Her Majesty’s Australian Colonies*”, it was among other things enacted that, notwithstanding anything thereinbefore contained, it should be lawful for the Governor and Legislative Council of Western Australia, from time to time, by any Act or Acts, to alter the provisions or laws for the time being in force under the said Act or otherwise concerning the election of the elective members of such Legislative Council, and the qualification of electors and elective members, or to establish in the said Colony, instead of the Legislative Council, a Council and a House of Representatives, or other separate Legislative Houses, to consist of such members to be appointed or elected by such persons and in such manner as by such Act or Acts should be determined, and to vest in such Council and House of Representatives, or other separate Legislative Houses, the powers and functions of the Legislative Council for which the same might be substituted; and whereas it is expedient that the powers vested by the said Act in the said Governor and Legislative Council should now be exercised, and that a Legislative Council and a Legislative Assembly should be substituted for the present Legislative Council, with the powers and functions hereinafter contained:

Be it therefore enacted by His Excellency the Governor of Western Australia and its Dependencies, by and with the advice and consent of the Legislative Council thereof, as follows: —

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*[1. Repealed by No. 10 of 1998 s.76.]*

## **Part I — Parliamentary**

### **2. Legislature to be constituted in Western Australia**

- (1) There shall be, in place of the Legislative Council now subsisting, a Legislative Council and a Legislative Assembly: and it shall be lawful for Her Majesty, by and with the advice and consent of the said Council and Assembly, to make laws for the peace, order, and good Government of the Colony of Western Australia and its Dependencies: and such Council and Assembly shall, subject to the provisions of this Act, have all the powers and functions of the now subsisting Legislative Council.
- (2) The Parliament of Western Australia consists of the Queen and the Legislative Council and the Legislative Assembly.
- (3) Every Bill, after its passage through the Legislative Council and the Legislative Assembly, shall, subject to section 73, 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.

*[Section 2 amended by No. 59 of 1978 s.4.]*

### **3. Governor may fix place and time of sessions, prorogue Houses and dissolve Assembly**

It shall be lawful for the Governor to fix the place and time for holding the first and every other session of the Legislative Council and Legislative Assembly, and from time to time to vary the same as he may judge advisable, giving sufficient notice thereof: and also to prorogue the Legislative Council and Legislative Assembly from time to time, and to dissolve the Legislative Assembly by Proclamation or otherwise whenever he shall think fit.

**4. A session every year**

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

**5. First calling together of Legislature**

The Legislative Council and Legislative Assembly shall be called together for the first time at some period not later than 6 months after the commencement of this Act.

**6. Appointment of members of Council<sup>3</sup>**

Before the first meeting of the Legislative Council and Legislative Assembly the Governor in Council may, in Her Majesty's name, by instruments under the Public Seal of the Colony, summon to the Legislative Council such persons, to the number of 15, as he shall think fit, and thereafter may from time to time, as vacancies occur, in like manner summon to the Legislative Council such other persons as he shall think fit, and every person so summoned shall thereby become a member of the Legislative Council.

*[Section 6 amended by No. 78 of 1984 s.5.]*

**7. Tenure of seats in Council**

Every member of the Legislative Council shall, subject to the provisions of this Act, hold his seat therein until Part III shall come into operation.

**8. Resignation of members of Council<sup>3</sup>**

Any member of the Legislative Council may resign his seat therein by a letter to the Governor, and upon the receipt of such letter by the Governor the seat of such member shall become vacant.

**9. Appointment of President; who may take part in debate**<sup>3</sup>

The Governor may from time to time, by an instrument under the Public Seal of the Colony, appoint one member of the Legislative Council to be President, and may remove him and appoint another in his stead; and the President may at any time take part in any debate or discussion in the said Council.

*[10, 11. Repealed by 57 Vict., No. 14 s.2.]*

**12. Convoking of Assembly**<sup>4</sup>

For the purpose of constituting the Legislative Assembly, the Governor, before the time appointed for the first meeting of the Legislative Council and Legislative Assembly, and thereafter from time to time, as occasion shall require, may in Her Majesty's name issue writs under the Public Seal of the Colony for the general election of members to serve in the Legislative Assembly.

**13. Assembly may proceed to business although full number of members not elected at general election**

Upon any general election the Legislative Assembly shall be competent to proceed to the despatch of business, at the time appointed by the Governor for that purpose, notwithstanding that in any of the electoral districts the electors shall have failed to elect a member to serve in the said Assembly.

*[Section 13 amended by No. 36 of 2000 s.22.]*

*[14. Repealed by 63 Vict., No. 19 s.2.]*

**15. Election of Speaker**

The members of the Legislative Assembly shall, upon their first assembling after every general election, proceed forthwith to elect one of their number to be Speaker; and in case of his death, resignation, or removal by a vote of the said Assembly, the members shall again elect one of their number to be Speaker.

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The Speaker so elected shall preside at all meetings of the said Assembly.

*[16, 17. Repealed by No. 78 of 1984 s.6.]*

*[18-21. Repealed by 63 Vict., No. 19 s.2.]*

**22. Oath or affirmation of allegiance**

No member of the Legislative Council or Legislative Assembly shall sit or vote therein until he has taken and subscribed before the Governor, or some person authorised by the Governor in that behalf, an oath or affirmation of ~~allegiance~~[office](#) in ~~the~~[a](#) form set out in Schedule E.

*[Section 22 inserted by No. 15 of 1980 s.2; [amended by No. 24 of 2005 s. 6.](#)]*

*[23-30. Repealed by 63 Vict., No. 19 s.2.]*

*[31. Repealed by 57 Vict., No. 14 s.2.]*

*[32, 33. Repealed by 63 Vict., No. 19 s.2.]*

**34. Standing Rules and Orders**

The Legislative Council and Legislative Assembly, in their first session, and from time to time afterwards as there shall be occasion, shall each adopt Standing Rules and Orders, joint as well as otherwise, for the regulation and orderly conduct of their proceedings and the despatch of business, and for the manner in which the said Council and Assembly shall be presided over in the absence of the President or the Speaker, and for the mode in which the said Council and Assembly shall confer, correspond, and communicate with each other, and for the passing, intituling, and numbering of Bills, and for the presentation of the same to the Governor for Her Majesty's assent.

*[Section 34 amended by No. 51 of 1987 s.3.]*



**35. Salaries of President, Speaker, and officers**

The salary of the President of the Legislative Council 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.

**36. Privileges of both Houses**

It shall be lawful for the Legislature of the Colony, by any Act to define the privileges, immunities, and powers to be held, enjoyed, and exercised by the Legislative Council and Legislative Assembly, and by the members thereof respectively.

*[Section 36 amended by No. 41 of 2004 s. 4.]*

## **Part II — Electoral**

[37. *Repealed by 57 Vict., No. 14 s.2.*]

### **38. Electoral laws**<sup>4</sup>

Except as otherwise provided in this Act, the existing laws relating to the qualification of electors, the mode of election, and all other matters concerning elections, shall be in force, and apply to the election of members to serve in the Legislative Assembly, in the same manner as they are now in force in respect of election to the existing Legislative Council.

The electoral laws existing at the date of the coming into operation of Part III shall, except as otherwise provided in this Act, be in force and apply to the election of members to serve in the Legislative Council for electoral divisions, in the same manner as such laws shall then be in force in respect of election to the Legislative Assembly for electoral districts.

[39. *Repealed by 57 Vict., No. 14 s.2.*]

[40. *Repealed by 63 Vict., No. 19 s.2.*]

### **41. Electoral lists**<sup>4</sup>

The names of electors under this Act shall be inserted in the electoral lists of the electoral districts, and (when Part III shall come into operation) in the electoral lists of the electoral divisions, in which they shall be respectively qualified; and all such lists shall specify the Christian and surnames of all such electors, the nature of the qualification, and the place where they respectively reside; and all such lists shall be signed, delivered, printed, and hung up for public inspection by the persons and in the way prescribed in the Electoral Acts for the time being in force, and shall be subject to such claims and notice from any person whose name shall have been omitted therein, and to such objections and notice as to the names of any persons inserted therein, and to such modes of altering, amending, or continuing

any such lists as are, or shall be, in these said several respects provided for in the said Electoral Acts, as nearly as may be consistently with the rights of such new electors.

Provided that it shall be lawful, in order to the convenient holding of the first general election under this Act to the Legislative Assembly, and of the general election, mentioned in Part III, to the Legislative Council, for the Governor in Council to make such arrangements, appoint such persons, and fix such dates and periods, as may to him seem under the circumstances to be required for the doing of any matter or thing necessary to be done under any Electoral Act, notifying the same in the *Government Gazette*. Any Electoral Act affected by such notice shall be deemed to be varied accordingly, for the purposes of the said elections.

## **Part III — Elective Council**

### **42. Operation**

When 6 years shall have elapsed from the date of the first summoning, under section 6, of persons to the Legislative Council, or when the Registrar General of the Colony shall have certified, by writing under his hand to be published in the *Government Gazette*, that the population of the Colony has, to the best of his knowledge and belief, exclusive of aboriginal natives, attained to 60 000 souls, whichever event shall first happen, this Part shall come into operation, provided that the Governor in Council shall have power, by proclamation in the *Government Gazette*, to further postpone the operation of this Part for any period not exceeding 6 months.

### **43. Certain sections to lapse**

On the coming into operation of this Part, the first paragraph of section 6, and sections 8, 9 and 30 shall, saving validity of things done, cease to have any operation.

*[44, 45. Repealed by 57 Vict., No. 14 s.2.]*

### **46. Convoking of elected Council**

For the purpose of constituting the Legislative Council, the Governor, before the time appointed for the first meeting of the Legislative Council and Legislative Assembly, after this Part shall be in operation, may, in Her Majesty's name, issue writs under the Public Seal of the Colony for a general election of members to serve in the Legislative Council.

### **47. Council may proceed to business although full number of vacancies not filled at general election**

Upon any general election the Legislative Council shall be competent to 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.

*[Section 47 inserted by No. 40 of 1987 s.4.]*

*[48. Repealed by 57 Vict. No. 14 s.2.]*

**49. Election of President<sup>5</sup>**

The members of the Legislative Council shall, upon their first assembly after the general election, proceed forthwith to elect one of their number to be President; and in case of his death, resignation, or removal by a vote of the Council, the members shall again elect one of their number to be President. The President so elected shall preside at all meetings of the said Council.

## **Part IIIA — The Governor**

*[Heading inserted by No. 59 of 1978 s.5.]*

### **50. Office of Governor**

- (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 73(2).
- (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; and
  - (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
  - (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.

*[Section 50 inserted by No. 59 of 1978 s.5; amended by the Australia Act 1986 (U.K.) s.14(2) (see WA Act No. 65 of 1985 and also the Australia Act 1986 (Cwlth.) s.14(2)).]*

### **51. Instructions to Governor**

In section 50 the expression “**Royal Sign Manual**” means the signature or royal hand of the Sovereign.

*[Section 51 inserted by No. 59 of 1978 s.5; amended by the Australia Act 1986 (U.K.) s.14(3) (see WA Act No. 65 of 1985 and also the Australia Act 1986 (Cwlth.) s.14(3)).]*

## **Part IIIB — Local government**

*[Heading inserted by No. 88 of 1979 s.3.]*

### **52. Elected local governing bodies**

- (1) The Legislature shall maintain a system of local governing bodies elected and constituted in such manner as the Legislature may from time to time provide.
- (2) Each elected local governing body shall have such powers as the Legislature may from time to time provide being such powers as the Legislature considers necessary for the better government of the area in respect of which the body is constituted.

*[Section 52 inserted by No. 88 of 1979 s.3.]*

### **53. Certain laws not affected**

Section 52 does not affect the operation of any law —

- (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
    - (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
  - (d) conferring any power relating to local government on a person other than a duly constituted local governing body.

*[Section 53 inserted by No. 88 of 1979 s.3.]*

**Part IV — Judicial**

**54. Judges continued in the enjoyment of their offices during good behaviour<sup>6</sup>**

The Commissions of the present Judges of the Supreme Court and of all future Judges thereof shall be, continue, and remain in full force during their good behaviour, notwithstanding the demise of Her Majesty (whom may God long preserve), any law, usage, or practice to the contrary notwithstanding.

**55. But they may be removed by the Crown on the address of both Houses**

It shall be lawful nevertheless for Her Majesty to remove any such Judge upon the Address of both Houses of the Legislature of the Colony.

*[56. Repealed by No. 35 of 1950 s.4.]*



## Part V — Legal

### 57. Existing law saved

All laws, statutes, and ordinances which at the commencement of this Act are in force within the Colony shall until repealed or varied by any Act of the Legislature continue to be of the same force, authority, and effect as if this Act had not been passed, except in so far as the same are repugnant to this Act (in which case they are to that extent hereby amended and repealed as necessary).

### 58. Courts of justice, commissions, officers, etc.

All Courts of Civil and Criminal Jurisdiction, and all legal commissions, powers, and authorities, and all officers, judicial, administrative, or ministerial, within the Colony at the commencement of this Act shall except in so far as they are abolished, altered, or varied by this or any future Act of the Legislature of the Colony or other competent authority, continue to subsist in the same form and with the same effect as if this Act had not been passed.

### 59. Custom duties may be imposed not differential

It shall be lawful for the Legislature of the Colony, subject to the provisions of this Act, to impose and levy such duties of Customs as to it may seem fit, on the importation into the Colony of any goods whatsoever, whether the produce of or exported from the United Kingdom or any of the Colonies or Dependencies of the United Kingdom or any Foreign Country. Provided always, that, except as authorised by the Imperial Act known as the *Australian Colonies Duties Act 1873*, no new duty shall be imposed upon the importation into the Colony of any article the produce or manufacture of or imported from any particular country or place which shall not be equally imposed on the importation into the Colony of the like article the produce

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or manufacture of or exported from all other countries and places whatsoever.

**60. Duties not to be levied on supplies for Governor or troops nor any duties inconsistent with treaties**

It shall not be lawful for the Legislature of the Colony to levy any duty upon articles imported bona fide for the supply of the Governor or of Her Majesty's Land or Sea Forces, nor to levy any duty, impose any prohibition or restriction, or grant any exemption or any drawback or other privilege upon the importation or exportation of any articles, nor to enforce any dues or charges upon shipping contrary to or at variance with any treaty concluded by Her Majesty with any foreign Power.

**61. Separation of the Colony**

Nothing in this Act contained shall prevent Her Majesty from dividing the Colony of Western Australia as she may from time to time think fit, by separating therefrom any portion thereof, and either erecting the same or any part thereof into a separate Colony or Colonies under such form of Government as she may think fit, or from subdividing any Colony so created, or from re-uniting to the Colony of Western Australia any part of any Colony so created.

**62. After separation, Act to apply to remaining part of Colony**

In the event of any such separation or other proceeding as in the last preceding section mentioned, the provisions of this Act shall apply, so far as practicable, to the Colony of Western Australia as for the time being existing.

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## Part VI — Financial

**63. Liability of separated portion of Colony for public debt**

Whenever any portion of the Colony is about to be separated therefrom the Lords Commissioners of Her Majesty's Treasury may if requested by the Governor in Council, on report and accounts furnished by him, declare what portion of the public debt of the Colony has been expended within the territory about to be separated, and the interest and sinking fund, if any, upon the portion of the public debt mentioned in any such declaration shall be a reserved charge payable to the Government of Western Australia by the Government of the separated territory, and due provision for such reserved charge shall be made in any Act regulating the constitution of the separated territory. Provided always, that nothing herein contained, and no declaration or provision as aforesaid, shall in any way prejudice or affect the security of any debentures which may have been issued by the Government of Western Australia before the separation of any such territory.

**64. All duties and revenues to form Consolidated Fund**

All taxes, imposts, rates, and duties, and all territorial, casual, and other revenues of the Crown (including royalties) from whatever source arising within the Colony, over which the Legislature has power of appropriation, shall form one Consolidated Fund together with all other moneys lawfully credited to that Fund, and that Fund shall be appropriated to the Public Service of the Colony in the manner and subject to the charges hereinafter mentioned.

*[Section 64 amended by No. 6 of 1993 ss.9 and 11.]*

**65. Consolidated Fund permanently charged with expenses of collection**

The Consolidated Fund shall be permanently charged with all the costs, charges, and expenses incident to the collection,

management, and receipt thereof; such costs, charges, and expenses being subject nevertheless to be reviewed and audited in such manner as is directed by the *Audit Act 1881*<sup>7</sup>, or as may from time to time be directed by any Act of the Legislature.

*[Section 65 amended by No. 6 of 1993 s.11.]*

*[66, 67. Repealed by No. 34 of 1921 s.2.]*

**68.        No part of public revenue to be issued except on warrants from Governor**

No part of the public revenue of the Colony arising from any of the sources aforesaid shall be issued except in pursuance of warrants under the hand of the Governor directed to the Treasurer.

*[69.        Repealed by 60 Vict., No. 18 s.2.]*

*[70.        Repealed by No. 14 of 1905 s.65.]*

**71.        Compensation to officers**

And whereas by the operation of this Act certain officers of the Government may lose their offices on political grounds, and it is just to compensate such officers for such loss, be it enacted that the sums set opposite to the names of the persons in Schedule D, who at present respectively hold the offices therein mentioned, shall be payable to them annually by way of retiring allowance upon their ceasing to hold office on political grounds after the commencement of this Act; and all such sums shall be paid to such persons out of the Consolidated Fund, and the Treasurer shall make such payments accordingly, on warrants under the hand of the Governor. Provided that if after any such annual allowance shall have become payable, the person entitled thereto shall accept any appointment under the Crown in any part of Her Majesty's Dominions, then such allowance shall, during the tenure of such appointment, be suspended or be reduced *pro tanto* according as the salary of such appointment

added to such allowance is greater than the salary of the office vacated in consequence of this Act.

*[Section 71 amended by No. 6 of 1993 s.11.]*

**72. Consolidated Fund to be appropriated by Act of the Legislature: certain charges not affected**

After and subject to the charges hereinbefore mentioned, all the Consolidated Fund shall be appropriated to such purposes as any Act of the Legislature shall prescribe. Provided that nothing in this Act shall affect the payment of the annual interest or the principal sums mentioned in any outstanding debentures, or of any other charge upon the public revenue, as such interest, principal, or charge becomes due. Nor shall anything in this Act affect any pensions or superannuation allowances which at the commencement of this Act are by law chargeable upon the public revenue of the Colony, but all such pensions and superannuation allowances shall remain and be so chargeable, and shall be paid out of the Consolidated Fund, and all rights and benefits which at the commencement of this Act are by law claimable by or accruing to any civil servant of the Government are hereby reserved and maintained. Provided nevertheless, that the power to suspend or remove any civil servant from his office shall be vested in the Governor in Council.

*[Section 72 amended by No. 6 of 1993 s.11.]*

## **Part VII — Miscellaneous**

**73.        Legislature as constituted by this Act empowered to alter any of its provisions**

- (1) Subject to the succeeding provisions of this section, the Legislature of the Colony shall have full power and authority, from time to time, by any Act, to repeal or alter any of the provisions of this Act. Provided always, that 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 of the Legislative Assembly 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. Provided also, that every Bill which shall be so passed for the election of a Legislative Council at any date earlier than by Part III provided, and every Bill which shall interfere with the operation of sections 69, 70, 71, or 72, or of Schedules B, C, or D, or of this section, shall be reserved by the Governor for the signification of Her Majesty's pleasure thereon<sup>8</sup>.
- (2) A Bill that —
  - (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
  - (d) expressly or impliedly provides for a reduction in the numbers of the members of the Legislative Council or of the Legislative Assembly; or

- (e) expressly or impliedly in any way affects any of the following sections of this Act, namely —

sections 2, 3, 4, 50, 51 and 73,

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

- (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,

and a Bill assented to consequent upon its presentation in contravention of this subsection shall be of no effect as an Act.

- (3) On a day fixed by the Governor by Order in Council, being a day not sooner than 2 months, and not later than 6 months, after the passage through the Legislative Council and the Legislative Assembly of a Bill of a kind referred to in subsection (2), the question for the approval or otherwise of the Bill shall be submitted to the electors qualified to vote for the election of members of the Legislative Assembly according to the provisions of the *Electoral Act 1907*.
- (4) When the Bill is submitted to the electors the vote shall be taken in such manner as is fixed by law.
- (5) 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 Queen.
- (6) Any person entitled to vote at a general election of members of the Legislative Assembly 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

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of a kind referred to in subsection (2) is presented for assent by or in the name of the Queen.

*[Section 73 amended by No. 59 of 1978 s.6.]*

**74. Appointment to offices under the Government of the Colony to be vested in the Governor**

The appointment to all public offices under the Government of the Colony hereafter to become vacant or to be created, whether such offices be salaried or not, shall be vested in the Governor in Council, with the exception of the appointments of officers liable to retire from office on political grounds, which appointments shall be vested in the Governor alone. Provided always, that 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 persons within the Colony.

**75. Interpretation**

For the purposes of this Act —

“**Her Majesty**” means, when not repugnant to the context, Her Majesty, her heirs and successors.

“**Governor in Council**” means the Governor acting with the advice of the Executive Council.

“**Treasurer**” means the Treasurer of the Colony for the time being.

“**Aborigines Protection Board**” means the Board established under the *Aborigines Protection Act 1886*, or any Board with similar functions established in its place under any Act adding to, amending, or substituted for the said Act<sup>9</sup>.

“**Person**” includes a corporation or association of persons.

“**Month**” means calendar month.

*[Section 75 amended by No. 59 of 1978 s.7.]*



**76. Operation of Act**

The foregoing provisions of this Act shall have no force or effect until so much and such parts of the following Acts of the Parliament of the United Kingdom, that is to say: — 13th and 14th Victoria, chapter 59, intituled *An Act for the better Government of Her Majesty's Australian Colonies*; 5th and 6th Victoria, chapter 76, intituled *An Act for the better Government of New South Wales and Van Dieman's Land*; 7th and 8th Victoria, chapter 74, intituled *An Act to explain and amend the Act for the Government of New South Wales and Van Dieman's Land*; as severally relate to the Colony of Western Australia, and are repugnant to this Act, shall have been repealed<sup>10</sup>.

**77. Act to be proclaimed**

This Act shall be proclaimed in Western Australia, by the Governor, within 3 months after he shall have received official information of the Royal Assent thereto, and shall commence and, except as provided in section 42, take effect from the date of such proclamation<sup>1</sup>.

**78. Short title<sup>11</sup>**

This Act may be cited for all purposes as the *Constitution Act 1889*.

*[Schedule A and Schedule B repealed by 60 Vict., No. 18 s. 2.]*

*[Schedule C related to section 70 which was repealed by No. 14 of 1905 s.65.]*

**Schedule D**

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**Schedule D**

	[Section 71]		
	£	s	d
Sir Malcolm Fraser, K.C.M.G., Chief Secretary	700	0	0
Charles Nicholas Warton, Esq., Attorney General	333	6	8
Anthony O'Grady Lefroy, C.M.G., Treasurer .....	550	0	0
John Forrest, C.M.G., Surveyor General and Commissioner of Crown Lands .....	550	0	0
	£2,083	6	8

*[Schedule D amended by No. 8 of 1925 s.2.]*

**Schedule E- — Oath and affirmation of office**

[Sections. 22]

**OATH**

[Heading inserted by No. 24 of 2005 s. 7.]

Either —

(a) I, \_\_\_\_\_, ~~do swear~~ [name], [insert an oath or affirmation according to the Oaths, Affidavits and Statutory Declarations Act 2005] that I will faithfully serve the people of Western Australia as a member of the \*Legislative Council/Legislative Assembly.

[\*Delete the inapplicable.]

or —

(b) I, [name], [insert an oath or affirmation according to the Oaths, Affidavits and Statutory Declarations Act 2005] that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, her heirs and successors, according to law and will faithfully serve the people of Western Australia as a member of the \*Legislative Council/Legislative Assembly.

~~So help me God.~~

**AFFIRMATION**

~~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.~~

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

[\*Delete the inapplicable.]

[Schedule E inserted by No. ~~1524~~ of ~~1980~~2005 s.~~37~~ 7.]

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**Notes**

<sup>1</sup> This is a compilation of the *Constitution Act 1889* and includes the amendments made by the other written laws referred to in the following table<sup>1a</sup>.

**Compilation table**

<b>Short title</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>
<i>Constitution Act 1889</i>	52 Vict. No. 23	Reserved for Royal Assent 29 Apr 1889. Assented to 15 Aug 1890	Except for Part III, 21 Oct 1890 (see section 77 and <i>Gazette</i> 23 Oct 1890, pp.790-1). Part III: 18 Oct 1893 (see section 42 and <i>Gazette</i> 18 Jul 1893, p.727)
<i>The Constitution Act Amendment Act 1893,</i> section 2	57 Vict. No. 14 (Repealed by 63 Vict., No. 19)	13 Oct 1893	18 Oct 1893 (see section 1)
<i>The Constitution Act 1889 Amendment Act 1894,</i> section 2	58 Vict. No. 15 (Repealed by 63 Vict., No. 19)	8 Nov 1894	8 Nov 1894
<i>Constitution Act Amendment Act 1896,</i> section 2	60 Vict. No. 18 (Repealed by 63 Vict., No. 19)	8 Oct 1896	12 Apr 1897 (see <i>Gazette</i> 12 Apr 1897, p.683)
<i>Constitution Acts Amendment Act 1899,</i> section 2	63 Vict. No. 19	Reserved for Royal Assent 16 Dec 1899	Proclaimed 18 May 1900 (see section 52 and <i>Gazette</i> 18 May 1900, p.1686)
<i>Constitution Act Amendment Act 1900</i>	64 Vict. No. 5 (as amended by No. 45 of 1963)	5 Dec 1900	5 Dec 1900

Short title	Number and year	Assent	Commencement
<i>Aborigines Act 1905</i> , section 65	14 of 1905	Reserved for Royal Assent 23 Dec 1905. Assented to 4 Apr 1906 (see <i>Gazette</i> 23 Apr 1906, pp.1221 and 1261, and <i>Gazette</i> 27 Apr 1906, p.1263)	1 Apr 1898 (see section 65)
<i>Constitution Act Amendment Act 1921</i>	34 of 1921	30 Dec 1921	30 Dec 1921
<i>Ministers' Titles Act 1925</i>	8 of 1925	24 Sep 1925	24 Sep 1925
<i>Judges' Salaries and Pensions Act 1950</i> , section 4	35 of 1950	16 Dec 1950	16 Dec 1950
<i>Statute Law Revision Act 1970</i> , section 4	10 of 1970	29 Apr 1970	29 Apr 1970
<i>Acts Amendment (Constitution) Act 1978</i> , Part I	59 of 1978	Reserved for Royal Assent 20 Sep 1978. Assented to 15 Nov 1978	Proclaimed 22 Dec 1978 (see <i>Interpretation Act 1918</i> , section 8 and <i>Gazette</i> 22 Dec 1978, pp.4769-70)
<i>Constitution Act Amendment Act 1979</i>	88 of 1979	11 Dec 1979	11 Dec 1979
<i>Constitution Amendment Act (No. 3) 1980</i>	15 of 1980	15 Oct 1980	15 Oct 1980
<i>Acts Amendment and Repeal (Disqualification for Parliament) Act 1984</i> , Part IV	78 of 1984	14 Nov 1984	Proclaimed 1 Jul 1985 (see section 2 and <i>Gazette</i> 17 May 1985, p.1671)
<i>Australia Act 1986</i> (U.K.), section 14 (See WA Act No. 65 of 1985, s.4 and <i>Australia Act 1986</i> (Cwlth.) s.14)	1986 c.2	17 Feb 1986	3 Mar 1986 at 5 a.m. GMT (see <i>Statutory Instruments 1986</i> No. 319 c.8)

<b>Short title</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>
<i>Acts Amendment (Electoral Reform) Act 1987, Part II</i>	40 of 1987	12 Jul 1987	Proclaimed 30 Oct 1987 (see section 2 and <i>Gazette</i> 30 Oct 1987, p.3977)
<i>Constitution Amendment Act 1987</i>	51 of 1987	30 Oct 1987	30 Oct 1987 (see section 2)
<i>Financial Administration Legislation Amendment Act 1993, sections 9 and 11</i>	6 of 1993	27 Aug 1993	Deemed operative 1 Jul 1993 (see section 2(1))
<i>Statutes (Repeals and Minor Amendments) Act (No. 2) 1998, section 76</i>	10 of 1998	30 Apr 1998	30 Apr 1998 (see section 2(1))
<i>Electoral Amendment Act 2000 section 22</i>	36 of 2000	10 Oct 2000	Proclaimed 21 Oct 2000 (see section 2(1) and <i>Gazette</i> 20 Oct 2000 p.5899)
<i>Constitution (Parliamentary Privileges) Amendment Act 2004 Pt. 2</i>	41 of 2004	3 Nov 2004	3 Nov 2004 (see s. 2)

<sup>1a</sup> — On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.

**Provisions that have not come into operation**

<b>Short title</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>
<i>Oaths, Affidavits and Statutory Declarations (Consequential Provisions) Act 2005 Pt. 3<sup>12</sup></i>	24 of 2005	2 Dec 2005	<del>To be proclaimed</del> <a href="#">1 Jan 2006</a> (see s. 2 and <i>Gazette</i> <a href="#">23 Dec 2005 p. 6244</a> )

N.B.: The *Constitution Act 1889* was or is affected by —

An Act to augment Ministerial Salaries. 55 Vict. No. 23 (1892).  
(Repealed by 60 Vict. No. 18.)

*The Officers of Parliament Act 1893*. (56 Vict. No. 17).  
(Repealed by 63 Vict. No. 19.)

*Constitution Acts Amendment Act 1933*. (No. 25 of 1933).  
(Amended by Act No. 46 of 1963, s.10. Repealed by Act No. 57 of 1965.)

*Constitution Acts Amendment (Temporary) Act 1934*. (No. 3 of 1934).  
(Expired on 31 December 1934 (see section 4). Repealed by Act No. 57 of 1965.)

*Judges' Retirement Act 1937*. (No. 8 of 1937).

*Constitution Acts Amendment Act 1942*. (No. 29 of 1942).  
(Amended by Act No. 45 of 1950 and Act No. 46 of 1963, s.10. Repealed by Act No. 57 of 1965.)

<sup>2</sup> Queen Victoria.

<sup>3</sup> This provision ceased to operate on 18 October 1893. See s.43.

<sup>4</sup> Now see *Electoral Act 1907* (No. 27 of 1907), s.64.

<sup>5</sup> See now s.11 of the *Constitution Acts Amendment Act 1899*.

<sup>6</sup> Now see *Judges' Retirement Act 1937* (No. 8 of 1937), s.3.

<sup>7</sup> Now see *Financial Administration and Audit Act 1985* (No. 98 of 1985).

<sup>8</sup> *Australia Act 1986* (U.K.), s.9(2) and *Australia Act 1986* (Cwlth), s.9(2) (set out in the Schedules to the *Australia Acts (Request) Act 1985* (WA)) read as follows —

“

(2) No law or instrument shall be of any force or effect in so far as it purports to require the reservation of any Bill for an Act of a State for the signification of Her Majesty's pleasure thereon.

”

<sup>9</sup> This expression was used only in s.70 which has been repealed.

<sup>10</sup> See *Western Australia Constitution Act 1890* (U.K.) (53, 54 Vict. c.26), s.2 which effected these repeals as from the proclamation of this Act in WA *i.e.* 21 October 1890. As to the proviso in s.2 of that Act now see *Australia Act 1986* (U.K.), ss.7-9. Paragraph (a) of the proviso reads as follows —

“

(a) The provisions of the Acts of the session held in the 13<sup>th</sup> and 14<sup>th</sup> years of Her Majesty, chapter 59, and of the session held in the 5<sup>th</sup> and 6<sup>th</sup> years of Her Majesty, chapter 76 (being 2 of the Acts mentioned in the said

schedule), which relate to the giving or withholding of Her Majesty's assent to Bills, ... and the instructions to be conveyed to Governors for their guidance in relation to the matters aforesaid, and the disallowance of Bills by Her Majesty, shall apply to Bills to be passed by the Legislative Council and Assembly constituted under the scheduled Bill and this Act, and by any other legislative body or bodies which may at any time hereafter be substituted for the said Legislative Council and Assembly.

”

[Note the proviso was amended by the *Australian States Constitution Act 1907* (U.K.) (7 Ed. VII c.7).]

<sup>11</sup> Citation changed by Act No. 10 of 1970, s.4.

<sup>12</sup> ~~On the date as at which this compilation was prepared, the *Oaths, Affidavits and Statutory Declarations (Consequential Provisions) Act 2005 Pt. 3* had not come into operation. It reads as follows:~~

“

### ~~Part 3 — Constitution Act 1889 amended~~

#### ~~5. — The Act amended in this Part~~

~~The amendments in this Part are to the *Constitution Act 1889*.~~

#### ~~6. — Section 22 amended~~

~~Section 22 is amended as follows—~~

~~(a) by deleting “allegiance” and inserting instead  
“ office ”;~~

~~(b) by deleting “the” before “form” and inserting instead  
“ a ”.~~

#### ~~7. — Schedule E replaced~~

~~Schedule E is repealed and the following Schedule is inserted instead—~~

“

### ~~Schedule E — Oath and affirmation of office~~

~~[s. 22]~~

~~Either—~~

~~(a) I, [name], [insert an oath or affirmation according to the *Oaths, Affidavits and Statutory Declarations Act 2005*] that I~~



---

~~will faithfully serve the people of Western Australia as a member of the \*Legislative Council/Legislative Assembly.~~

~~————— [\*Delete the inapplicable.]~~

~~or —~~

~~(b) I, [name], [insert an oath or affirmation according to the Oaths, Affidavits and Statutory Declarations Act 2005] that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, her heirs and successors, according to law and will faithfully serve the people of Western Australia as a member of the \*Legislative Council/Legislative Assembly.~~

~~————— [\*Delete the inapplicable.]~~

~~”~~

~~”~~