

ELECTORAL.12^o and 13^o GEO. VI., No. LXIII.

No. 63 of 1948.

AN ACT to amend the Electoral Act, 1907-1940.*[Assented to 21st January, 1949.]*

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

Short title
and com-
mencement.

1. This Act may be cited as the *Electoral Act Amendment Act, 1948*, and shall be read as one with the Electoral Act, 1907-1940 (Act No. 27 of 1907, as reprinted pursuant to the Amendments Incorporation Act, 1938, in Volume 2 of the Reprinted Acts of the Parliament of Western Australia (1943)), hereinafter referred to as the principal Act, and shall come into operation on a day to be fixed by proclamation.

Citation of
principal
Act as
amended.

2. The principal Act, as amended by this Act, may be cited as the Electoral Act, 1907-1948.

Amendment
of s. 4.

3. Section four of the principal Act is amended by inserting after the word "appears" in lines one and two a new definition as follows:—

"Absent voter" means any person who votes under the provisions of section ninety-nine A of this Act.

4. Section seven of the principal Act is amended Amendment
of s. 7.
by—

(a) inserting after subsection (1) a new subsection as follows:—

(2) The Governor may, for such periods and subject to such conditions, if any, as he may think fit, delegate to the Minister the power to appoint any such substitute, and may, at will, revoke any such delegation; and

(b) by deleting the figure “2” in brackets thus “(2)” and substituting therefor the figure “3” in brackets thus “(3)”.

5. Section seventeen of the principal Act is amended Amendment
of s. 17.
by—

(a) deleting the words “one month” in line four of paragraph (c) of subsection (1) and substituting therefor the words “three months”; and

(b) deleting the word “three” in line four of the proviso to subsection (1) and substituting therefor the word “six”.

6. Section forty-two of the principal Act is amended Amendment
of s. 42.
by—

(a) inserting before the word “Claims” in line one of the section, the figure one in brackets thus “(1)”; and

(b) by adding a new subsection as follows:—

(2) The prescribed form shall contain immediately above the space for the signature of the claimant, a warning, printed in red lettering, as follows:—

If you claim to have resided in the district for three months when you have not done so, or if you state that you are a natural born or naturalised British subject when you are not, you are liable to a penalty of not less than £5 nor more than £50.

Amendment
of s. 44.

7. Section forty-four of the principal Act is amended by—

- (a) inserting after paragraph (b) of subsection (1) new paragraphs as follow:—
 - (c) the date of birth of the claimant; and
 - (d) the place of birth of the claimant; and
- (b) by deleting the letter “c” in brackets thus “(c)” and the letter “d” in brackets thus “(d)” in lines five and seven, respectively, of subsection (1) and substituting therefor the letter “e” in brackets thus “(e)” and the letter “f” in brackets thus “(f)” respectively.

Amendment
of s. 47.

8. Section forty-seven of the principal Act is amended by—

- (a) deleting paragraph (g) and the proviso thereto of subsection (2) and substituting therefor new paragraphs as follow:—
 - (g) No objection shall be lodged between the day on which a writ is issued for an election in the Province or District, as the case may be, and either the close of polling at such election or, if only one candidate is nominated, the close of nominations for such election; and
 - (h) if any objection has not been heard and determined on the fourteenth day next preceding the day fixed for an election in the Province or District, as the case may be, and the claim was received by the Registrar not less than fourteen days before the issue of the writ, it shall be the duty of the Registrar to enrol the claimant:

Provided that the Registrar shall place a mark in the prescribed manner against the claimant's name when enrolled, and no person whose name is so marked shall be entitled at any election to obtain a ballot paper and record his vote unless he

has delivered to the presiding officer a declaration duly made by himself in the prescribed form; and

- (b) deleting paragraph (f) and the proviso thereto of subsection (3) and substituting therefor new paragraphs as follow:—

(f) No notice of objection shall be given by the Registrar between the day on which a writ is issued for an election in the Province or District, as the case may be, and either the close of polling at such election, or if only one candidate is nominated, the close of nominations for such election, but a claim may be rejected pursuant to paragraph (b) of this subsection at any time before the fourteenth day next preceding the day fixed for an election in the Province or District, as the case may be; and

- (g) if any appeal has not been heard and determined on the fourteenth day next preceding the day fixed for an election in the Province or District, as the case may be, and the claim was received by the Registrar not less than fourteen days before the issue of the writ, it shall be the duty of the Registrar to enrol the claimant:

Provided that the Registrar shall place a mark in the prescribed manner against the claimant's name when enrolled, and no person whose name is so marked shall be entitled at any election to obtain a ballot paper and record his vote unless he has delivered to the presiding officer a declaration duly made by himself in the prescribed form.

Amendment
of s. 48.

9. Section forty-eight of the principal Act is amended by—

- (a) deleting the words “before the issue of a writ for” in lines four and five of paragraph (g) of subsection (2) and substituting therefor the words “not less than fourteen days before” and
- (b) deleting the words “If a writ is issued for an election before the appeal is heard and determined” in lines one and two of paragraph (f) of subsection (3) and substituting therefor the words “If the appeal has not been heard and determined on the fourteenth day next preceding the day fixed for an election in the Province or District, as the case may be,”.

Amendment
of s. 51.

10. Section fifty-one of the principal Act is amended by inserting after the word “remove” in line four of subsection (1) the words “or may himself remove”.

Amendment
of s. 52.

11. Section fifty-two of the principal Act is amended by—

- (a) inserting before the word “In” in line one the figure “1” in brackets thus “(1)”;
- (b) inserting after the word “by” secondly appearing in line two the words “the Chief Electoral Officer or by”;
- (c) deleting the words “pursuant to an order in writing under the hand of the Chief Electoral Officer” in lines one and two of paragraph (d);
- (d) deleting the words “pursuant to an order in writing under the hand of the Chief Electoral Officer” in lines one and two of paragraph (e);
- (e) deleting the words “pursuant to an order in writing under the hand of the Chief Electoral Officer” in lines one and two of paragraph (f);
- (f) deleting the word “subsection” in line four of paragraph (f) and substituting therefor the word “paragraph”; and

(g) adding a new subsection as follows:—

(2) No alteration under the provisions of paragraphs (d), (e) or (f) of subsection (1) of this section shall be made by the Registrar except pursuant to an order in writing under the hand of the Chief Electoral Officer.

12. The principal Act is amended by repealing section fifty-three and substituting therefor a new section as follows:—

Repeal of
s. 53 and sub-
stitution of
new section.

53. No addition to or alteration of the roll shall be made between the date of the issue of the writ for an election for the Province or the District, as the case may be, and the closing of the poll at such election, or if only one candidate is nominated, the close of nominations for such election, except that—

Time for
altering
rolls.

- (a) claims received not less than fourteen days before the issue of the writ may be enrolled after the issue of the writ if no notice of objection to such claim has been lodged or given under the provisions of section forty-seven of this Act;
- (b) a claimant may be enrolled after the issue of the writ pursuant to the provisions of paragraph (g) of subsection (2), or the provisions of paragraph (f) of subsection (3) of section forty-seven of this Act;
- (c) alterations may be made after the issue of the writ pursuant to the provisions of paragraph (f) of subsection (2), or the provisions of paragraph (b) or paragraph (e) of subsection (3) of section forty-eight of this Act;
- (d) alterations may be made after the issue of the writ pursuant to applications received under section fifty of this Act before the issue of the writ; and
- (e) alterations may be made at any time not later than the fourteenth day next preceding the day fixed for the election pursuant to the provisions of sections fifty-one and fifty-two of this Act.

Amendment
of s. 70.

13. Section seventy of the principal Act is amended by—

- (a) deleting the word “thirty” in line two and substituting therefor the word “forty-five”;
- (b) adding a proviso as follows:—

Provided that the date fixed for the nomination of candidates for any election in the North Province or in any District situated therein shall be not less than thirty-five days before the date fixed for the polling.

Amendment
of s. 71.

14. Section seventy-one of the principal Act is amended by—

- (a) deleting the word “thirty” in line two and substituting therefor the word “forty-five”;
- (b) deleting the proviso to the section.

Amendment
of s. 72.

15. Section seventy-two is amended by deleting the word “sixty” in line two and substituting therefor the word “ninety”.

Amendment
to subdivision
(i) of
Division 3 of
Part IV.

16. The principal Act is amended by deleting the words “In absence” after the figure one in brackets thus “(1)” in the sub-heading (1) to Division (3) of Part IV. and substituting therefor the words “Postal and Absent Voting.”.

Amendment
of s. 90.

17. Section ninety of the principal Act is amended by deleting the words “at which he is entitled to vote” in line three of paragraph (a) of subsection (1).

Insertion of
new section
99A.

18. The principal Act is amended by inserting after section ninety-nine a new section as follows:—

Absent
voting.

99A. (1) Where, on polling day for a general election, an elector is not at any time during which the poll is open within the boundaries of the Province or District for which he is enrolled and has not

applied for or obtained a ballot paper under and in accordance with the provisions of section ninety of this Act, such elector shall, subject to the regulations relating to absent voting, be permitted to vote in person in the prescribed manner as an absent voter at any polling place at which a polling booth is open outside the Province or District for which he is enrolled.

(2) For the purposes of this section, the Chief Electoral Officer may make all arrangements for the opening of polling booths and the taking therein of absent votes at any one or more of the polling places appointed by the Minister under the provisions of section one hundred of this Act in any Province or District for which a candidate shall have been declared elected before the polling day under the provisions of sections eighty-seven or eighty-eight of this Act.

(3) The regulations relating to absent voting may prescribe all matters (not inconsistent with this Act) necessary or convenient to be prescribed for carrying this section into effect, and in particular may provide for—

- (a) the forms of absent voters' ballot papers;
- (b) the manner in which votes are to be marked on absent voters' ballot papers;
- (c) the method of dealing with absent voters' ballot papers, including the scrutiny thereof and the counting of votes thereon; and
- (d) the grounds upon which absent voters' ballot papers are to be rejected as informal.

(4) Absent voters' ballot papers containing votes and enclosed in any prescribed envelope may, if so provided by the regulations, be placed in any ballot box in use at the polling place at which the votes were cast, but notwithstanding anything contained in this Act a prescribed envelope containing an absent voter's ballot paper shall (unless the regulations otherwise provide) only be opened and the

ballot paper dealt with, as regards the scrutiny thereof and the counting of the votes thereon by the Chief Electoral Officer or the Assistant Returning Officer appointed under the provisions of section one hundred and forty-two A of this Act.

(5) The Returning Officer or Assistant Returning Officer who is authorised under the provisions of this Act to open the ballot box, shall, without opening the envelope containing any absent voter's ballot paper, transmit it in the manner prescribed to the Chief Electoral Officer.

(6) Nothing in this section shall authorise any elector to vote more than once at any election.

Amendment
of s. 119.

19. Section one hundred and nineteen of the principal Act is amended by inserting after the figure five in brackets thus "(5)" in line one of subsection (5) the words "Subject to the provisions of section one hundred and twenty-two A of this Act,".

Insertion of
new section
122A.

20. The principal Act is amended by inserting after section one hundred and twenty-two a new section as follows:—

Vote of per-
son whose
name is not
on roll or has
been struck
off roll or is
on roll and
cannot be
found or has
been struck
out under
s. 126.

122A. (1) Notwithstanding anything contained in this Act, when any person who is entitled to be enrolled on the roll for a Province or District claims to vote at an election at a polling place appointed for that Province or District, and his name has been omitted from or struck off the roll owing to an error of an officer or a mistake of fact or when any person who is enrolled on the roll for a Province or District claims to vote at an election at a polling place appointed for that Province or District and his name cannot be found by the presiding officer on the roll or his name has been struck out on the copy of the roll under the provisions of section one hundred and twenty-six of this Act, he may, subject to this Act and the regulations, be permitted to vote if—

(a) in the case of a person whose name has been omitted from the roll—

- (i) he sent or delivered to the Registrar of the Province or District as the case may be, a duly completed claim for enrolment in respect of such Province or District and the claim was received by the Registrar not less than fourteen days before the issue of the writ for the election; and
 - (ii) no circumstances occurred after sending or delivering the claim as would have compelled or authorised the Registrar to reject the claim under the provisions of section forty-seven of this Act or to strike the name off the roll under the provisions of section forty-eight of this Act; or
- (b) in the case of a person whose name has been struck off the roll—
- (i) his name was not, to the best of his knowledge, struck off the Roll for the Province or District as the case may be, owing to objection, or duplication of enrolment or disqualification; and
 - (ii) he had from the time of his enrolment for the Province or District, as the case may be, to the date of the issue of the writ for the election, continuously retained his right to enrolment for that Province or District; or
- (c) in the case of a person whose name is on the Roll for a Province or District as the case may be but cannot be found by the presiding officer, he claims that his name appears or should appear on the Roll; or

(d) in the case of a person whose name has been struck out of a copy of the Roll under the provisions of section one hundred and twenty-six of this Act, he denies that he has been previously handed a ballot paper or has voted at that election,

and if, in every such case, such person makes a declaration in the prescribed form before the presiding officer at the polling place.

(2) Where a voter claims to vote under the provisions of this section he shall mark and fold his ballot paper in the manner prescribed and return it so folded to the presiding officer.

(3) The presiding officer shall thereupon, in the presence of the voter and of such scrutineers as are present, and without unfolding the ballot paper, enclose it in an envelope bearing the declaration of the voter and addressed to the Chief Electoral Officer and shall forthwith securely fasten the envelope and deposit it in a ballot box.

(4) The Returning Officer or Assistant Returning Officer who is authorised under the provisions of this Act to open the ballot box, shall, without opening the envelope forthwith transmit it to the Chief Electoral Officer.

(5) The Chief Electoral Officer or an Assistant Returning Officer appointed under the provisions of section one hundred and forty-two A of this Act shall, on receipt of the envelope containing the ballot paper as aforesaid and before opening the envelope or allowing any other person to do so, examine the declaration of the voter, and, if it is in order and he is satisfied, after making such inquiry as may be necessary that the voter is a person to whom paragraph (a), (b), (c) or (d) of subsection (1) of this section applies, shall deal with the ballot paper in the manner prescribed in connection with the scrutiny and counting of absent voters' ballot papers and the Chief Electoral Officer shall forthwith direct that such correction (if any) as is necessary be made in the roll by the Registrar, and the correction shall be made accordingly.

(6) Where the claim of any person to vote under this section is refused, the presiding officer shall make a note in writing of the fact of the claim and the reasons for the refusal thereof, and the presiding officer and a poll clerk shall sign the note in the presence of such scrutineers as are present. Any of those scrutineers may also sign the note.

21. The principal Act is amended by inserting after section one hundred and forty-two a new section as follows:—

Insertion of
new section
142A.

142A. (1) The Governor may appoint Assistant Returning Officers for the purpose of counting, under the direction of the Chief Electoral Officer, absent votes and votes cast under the provisions of section one hundred and twenty-two A of this Act.

Appointment
of Assistant
Returning
Officers for
counting ab-
sent votes
and votes
under
s. 122A.

(2) Each such Assistant Returning Officer shall certify in writing addressed to the Returning Officer of the Province or District concerned, the number of votes or first preference votes, as the case may be, given for each candidate on the absent voters' ballot papers and ballot papers used for voting under the provisions of section one hundred and twenty-two A counted by him.

(3) Any such Assistant Returning Officer may communicate by telegraph to the Returning Officer of the Province or District concerned, the number of votes or first preference votes, as the case may be, given for each candidate on the absent voters' ballot papers and ballot papers used for voting under the provisions of section one hundred and twenty-two A counted by him, and the Returning Officer in ascertaining the result of the poll may act upon the information so received.

(4) Each such Assistant Returning Officer shall, as soon as possible after completing the count of the votes on such absent voters' ballot papers and ballot papers used for voting under the provisions of section one hundred and twenty-two A of this Act, transmit the same in the prescribed manner to the Returning Officer of the Province or District concerned.

Amendment
of s. 144.

22. Section one hundred and forty-four of the principal Act is amended by—

- (a) inserting after the word “Officers” in line seven of subparagraph (i) of paragraph (b) of subsection (1) the words “and by absent voters and persons voting under the provisions of section one hundred and twenty-two A of this Act.”;
- (b) inserting after the word “Officers” in line seven of subparagraph (i) of paragraph (b) of subsection (2) the words “and by absent voters and persons voting under the provisions of section one hundred and twenty-two A of this Act.”;
- (c) inserting after the word “Officers” in line three of subparagraph (i) of paragraph (d) of subsection (2), the words “including absent voters’ ballot papers and ballot papers used for voting under the provisions of section one hundred and twenty-two A of this Act.”; and
- (d) adding a new subsection as follows:—

(4) Where the Returning Officer is satisfied that the votes—

- (a) on any ballot papers issued at some remote polling place in connection with the election, which have not been received by him; and
- (b) on any absent voters’ ballot papers or ballot papers used for voting under the provisions of section one hundred and twenty-two A of this Act which have not been received by him,

cannot, having regard to the number of those ballot papers, possibly affect the result of the election, he may, subject to the concurrence of the Chief Electoral Officer—

- (c) if there are only two candidates, declare the candidate who has received the largest number of votes on the ballot papers then received and counted to be duly elected; or
- (d) if there are more than two candidates and one candidate has received an absolute majority of the votes on the ballot papers then received and counted, declare such candidate to be duly elected; or
- (e) if no candidate has an absolute majority of the votes, then received and counted, proceed with the scrutiny;

without awaiting the receipt of the ballot papers which have not been received by him.

23. Section one hundred and fifty-six of the principal Act is amended by— Amendment
of s. 156.

- (a) inserting after subsection (11) new subsections as follow:—

(12) The Chief Electoral Officer may send to any elector whose reason for failure to vote at the election is decided by the Returning Officer in accordance with subsection (8) of this section not to be a valid and sufficient reason for such failure to vote and in which decision the Chief Electoral Officer concurs, a notification in the prescribed form advising him to that effect and indicating that such elector has the option of having the matter dealt with by the Chief Electoral Officer or by a court of summary jurisdiction and such notification may also indicate that if such elector within twenty-eight days from the date of such notification shall advise the Chief Electoral Officer that he consents to having the matter dealt with by the Chief Electoral Officer and is prepared to abide by the decision of that

officer, and at the same time shall remit to the Chief Electoral Officer such sum by way of penalty not exceeding ten shillings for a first offence and not exceeding two pounds for any subsequent offence as the Chief Electoral Officer shall order, no further proceedings shall be taken against such elector for such failure to vote.

(13) On receipt of any such notification as is referred to in the next preceding subsection of this section, any elector who desires the matter to be dealt with by the Chief Electoral Officer, and who is prepared to abide by the decision of that officer, shall, within the period mentioned, advise the Chief Electoral Officer to that effect in the prescribed form and shall at the same time remit to the Chief Electoral Officer the sum ordered to be paid by way of penalty as mentioned in the notification of the Chief Electoral Officer to him; and on receipt of such advice and sum by the Chief Electoral Officer, no further proceedings shall be taken against such elector.

(14) If, within the time mentioned in subsection (12) of this section, the elector does not forward to the Chief Electoral Officer the advice referred to in subsection (13) of this section and the sum ordered to be paid by way of penalty, such elector shall be deemed to have intimated to the Chief Electoral Officer that he does not consent to the matter being dealt with by such officer and proceedings may be had and taken against such elector before a court of summary jurisdiction accordingly.

(15) At the conclusion of an election, the Chief Electoral Officer shall remove or shall direct the Registrar to remove from the roll the names of any persons who failed or neglected to fill up and sign and post to the Returning Officer the form referred to in subsections (6) and (7) of this section and

any person whose name has been removed from the roll pursuant to this subsection, shall be required to furnish a new claim for enrolment before the name of such person shall be reinstated on the roll;

- (b) by deleting the figure twelve in brackets thus “(12)” and substituting therefor the figure sixteen in brackets thus “(16)”; and
- (c) by deleting the figure thirteen in brackets thus “(13)” and substituting therefor the figure seventeen in brackets thus “(17)”.

24. Section one hundred and sixty-two of the principal Act is amended by inserting after paragraph (c) of subsection (1) new paragraphs as follow:—

Amendment
of s. 162.

- (ca) To grant to any party to the petition, leave to inspect in the presence of a prescribed officer, the rolls and other documents (except ballot papers) used at or in connection with any elections and to take, in the presence of the prescribed officer, extracts from those rolls and documents.
- (cb) To permit, at any stage of the proceedings and on such terms as may be just, all such amendments to the petition or other pleadings, as shall appear to the Court to be necessary or convenient.

25. Section one hundred and seventy-two of the principal Act is amended by adding after the word “held” in line two of paragraph (3) the words “and, notwithstanding any provisions elsewhere in this Act contained, except where the Court otherwise orders, the same roll as was used for the voided election, shall be used for such new election.”.

Amendment
of s. 172.

26. Section one hundred and eighty-three of the principal Act is amended by deleting the word “thereof” in line three of paragraph (4) and substituting therefor the words “from the entrance thereto from the nearest street or way”.

Amendment
s. 183.

Amendment
of s. 190.

27. Section one hundred and ninety of the principal Act is amended by—

- (a) inserting after the word “claim” in line thirty-four of the first column of the Table of Electoral Offences and Punishments, the words “other than a false statement to the effect that the claimant has lived in a district or sub-district for a continuous period of three months immediately preceding the date of the claim, or that the claimant is a natural born or naturalised subject of His Majesty, or wilfully making false statement in any”; and
- (b) by inserting—

- (i) after the word “Act” in line thirty-six of the first column of the Table of Electoral Offences and Punishments a new paragraph as follows:—

Wilfully making false statement in any claim to the effect that the claimant has lived in a district for a continuous period of three months immediately preceding the date of the claim or that the claimant is a natural born or naturalised subject of His Majesty; and

- (ii) in the second column of the said Table opposite to such new paragraph the words “Penalty not less than five pounds nor more than fifty pounds.”

Amendment
of s. 192.

28. Section one hundred and ninety-two of the principal Act is amended by deleting the word “thereof” in line three and substituting therefor the words “from the entrance thereto from the nearest street or way”.

Amendment
of s. 205.

29. Section two hundred and five of the principal Act is amended by adding after the word “conviction” in line two the words “and for any such offence complaint may be made within twelve months from the time when the matter of complaint arose.”.