

WESTERN AUSTRALIA

ANNO TRIGESIMO NONO

VICTORIÆ REGINÆ

No. 10

An Act to amend the Law relating to Election Petitions and to provide more effectually for the prevention of Corrupt Practices at the Election of Members of the Legislative Council.

[Assented to 21st December, 1875.]

WHEREAS it is expedient to amend the laws relating to election petitions and to provide more effectually for the prevention of corrupt practices at elections of members to serve in the Legislative Council: Be it therefore enacted by His Excellency the Governor of the Colony of Western Australia and its Dependencies, by and with the advice and consent of the Legislative Council thereof, as follows:—

Interpretation
of terms

1. The following terms shall in this Act have the meanings hereinafter assigned to them unless there is something in the context repugnant to such construction (that is to say):—

‘Election’ shall mean an election of a member or members to serve in the Legislative Council.

‘Candidate’ shall mean any person elected to serve in the Legislative Council at an election and any person who has been nominated as or declared himself a candidate at an election.

‘Corrupt practices’ or ‘corrupt practice’ shall mean bribery, treating and undue influence or any of such offences as defined by the Ordinance passed in the thirty-third year of the reign of Her present Majesty and numbered 13.

‘Rules’ shall mean rules to be made by the Supreme Court as hereinafter mentioned.

‘Prescribed’ shall mean prescribed by the rules of the Supreme Court.

2. From and after the passing of this Act no petition respecting disputed returns of members to serve in the Legislative Council shall be referred by the said Council to the Chief Justice, pursuant to the provisions of section 31 of an Ordinance passed in the thirty-third year of the reign of Her present Majesty, and numbered 13; but a petition complaining of an undue return or undue election of a member to serve in the Legislative Council for any electoral district may be presented to the Supreme Court by any one or more of the following persons:—

- (I.) Some person who voted or who had a right to vote at the election to which the petition relates; or
- (II.) Some person claiming to have had a right to be returned or elected at such election; or

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- (iii.) Some person alleging himself to have been a candidate at such election ;

And such petition is hereinafter referred to as an election petition. All such provisions of the said Ordinance passed in the thirty-third year of the reign of Her present Majesty, and numbered 13, as are applicable to a petition referred to the Chief Justice pursuant to the thirty-third section thereof, shall, subject to the provisions of this Act, be equally applicable to a petition presented to the Supreme Court pursuant to the provisions of this section.

3. The following enactments shall be made with respect to the presentation of an election petition under this Act :—

- (i.) The petition shall be signed by the petitioner, or all the petitioners if more than one.
- (ii.) The petition shall be presented within twenty-one days after notice of the return of the member to whose election the petition relates shall have been given in the ' Government Gazette,' unless it question the return or election upon an allegation of corrupt practices, and specifically alleges a payment of money or other reward to have been made by any member or on his account or with his privity since the time of such return in pursuance or furtherance of such corrupt practices, in which case the petition may be presented at any time within twenty-eight days after the date of such payment: Provided always that in the case of the Northern District the above period shall be extended to sixty days.
- (iii.) Presentation of a petition shall be made by delivering it to the Registrar or otherwise dealing with it in manner prescribed.
- (iv.) Within six days after an election petition shall have been presented pursuant to the provisions of this Act security shall be given on behalf of the petitioner that he, the petitioner, will pay all costs, charges and expenses that may become payable by him either to any person summoned as a witness on his behalf or to the member whose election or return is complained of (who is hereinafter referred to as the respondent), and that he, the petitioner, will duly prosecute the petition, and will not withdraw the same without leave of the Supreme Court as hereinafter provided ; such security shall be to an amount of five hundred pounds ; it shall be given either by way of bond to be entered into with any number of sureties not exceeding four, or by a deposit of money in manner prescribed, or partly in one way and partly in the other. Any such bond shall be taken by the prescribed officer to the use of Her Majesty, and any such deposit of money shall be made in the name of the prescribed officer.

4. Notice of the presentation of a petition under this Act and of the nature of the proposed security, accompanied with a copy of the petition, shall within the prescribed time, not exceeding ten days after

Recognizance
may be objected
to

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such petition shall have been so presented, be served by the petitioner on the respondent, and it shall be lawful for the respondent, where the security is given wholly or partially by recognizance, within a further prescribed time not exceeding ten days from the date of the service on him from the notice, to object in writing to such recognizance on the ground that the sureties or any of them are insufficient, or that a surety is dead, or that he cannot be found or ascertained from the want of a sufficient description in the recognizance, or that the person named in the recognizance has not duly acknowledged the same.

Determination of
objection to
recognizance

5. Any objection made to the security given shall be heard and decided on in the prescribed manner. If an objection to the security is allowed it shall be lawful for the petitioner within a further prescribed time, not exceeding ten days, to remove such objection by a deposit in the prescribed manner of such sum of money as may be deemed by any Judge of the Supreme Court or the prescribed officer to make the security sufficient. If on objection made the security is decided to be insufficient and such objection is not removed in manner hereinbefore mentioned, no further proceedings shall be had on the petition; otherwise, on the expiration of the time limited for making objections or after objection made on the sufficiency of the security being established, the petition shall be deemed to be at issue.

6. The following enactments shall be made with respect to the trial of election petitions under this Act:—

- (i.) The trial of every election petition shall be conducted before the Chief Justice of the Supreme Court. If at any future time the Supreme Court shall consist of more than one Judge, such trial shall be conducted before the Chief Justice and at least one other Judge.
- (ii.) Notice of the time and place at which an election petition will be tried shall be given not less than fourteen days before the day on which the trial is to be held in the prescribed manner.
- (iii.) The Judge or Judges presiding at the trial may adjourn the same from time to time and from place to place as to him or them may seem expedient.
- (iv.) At the conclusion of the trial the Judge or Judges who tried the petition shall determine whether the member whose return or election is complained of or any and what other person was duly returned or elected, or whether the election was void, and shall forthwith certify in writing such determination to the Governor and also to the Speaker of the Legislative Council, and upon such certificate being given such determination shall be final to all intents and purposes.
- (v.) Where any charge is made in an election petition of any corrupt practice having been committed at the election to which the petition refers, the presiding Judge or Judges shall in addition to such certificate and at the same time report in writing to the Speaker as follows:—

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- (a) Whether any corrupt practice has or has not been proved to have been committed by or with the knowledge and consent of any candidate at such election, and the nature of such corrupt practice :
- (b) The names of all persons (if any) who have been proved at the trial to have been guilty of any corrupt practice :
- (c) Whether corrupt practices have or whether there is reason to believe that corrupt practices have extensively prevailed at the election to which the petition relates.

The presiding Judge or Judges may at the same time make a special report to the Speaker as to any matters arising in the course of the trial an account of which in his or their judgment ought to be submitted to the Legislative Council.

- 7. Where the said presiding Judge or Judges make a special report the Legislative Council may make such order in respect of such special report as they think proper. Legislative Council may make order on special report
- 8. On the trial of an election petition, unless the presiding Judge or Judges shall otherwise direct, any charge of a corrupt practice may be gone into and evidence in relation thereto received before any proof has been given of agency on the part of any candidate in respect of such corrupt practice. Evidence of corrupt practice, how received
- 9. The trial of an election petition shall be proceeded with, notwithstanding the resignation by the respondent of his seat in the Legislative Council. Resignation not to stop petition
- 10. An election petition under this Act shall be served as nearly as may be in the manner in which a writ or summons is served or in such other manner as may be prescribed. Service of petition
- 11. The Supreme Court may from time to time make, and may from time to time revoke and alter, general rules and orders (in this Act referred to as the Rules) for the effectual execution of this Act, and of the intention and object thereof, and the regulation of the practice, procedure and costs of election petitions, and the trial thereof and the certifying and reporting thereon. Any general rules and orders made as aforesaid shall be deemed to be within the powers conferred by this Act, and shall be of the same force as if they were enacted in the body of this Act. Any general rules and orders made in pursuance of this section shall be laid before the Legislative Council within three weeks after they are made, if the Council be then sitting, and if not then sitting, within three weeks after the beginning of the then next session of the Legislative Council. Rules to be made by Chief Justice
- 12. Witnesses shall be subpoenaed and sworn in the same manner as nearly as circumstances admit, as in a trial at the Supreme Court, and shall be subject to the same penalties for perjury. Summons of witnesses
- 13. On the trial of an election petition any Judge of the Supreme Court may by order under his hand compel the attendance of any person as a witness who appears to him to have been concerned in the election to which the petition refers, and any person refusing to obey such order shall be guilty of contempt of Court. The Judge or Judges Chief Justice may summon and examine witnesses

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presiding at the trial of any petition under this Act may examine any witness so compelled to attend or any person in Court, although such witness is not called and examined by any party to the petition. After the examination of a witness as aforesaid by the presiding Judge or Judges, such witness may be cross-examined by or on behalf of the petitioner and respondent or either of them.

Expenses of witnesses

14. The reasonable expenses incurred by any person in appearing to give evidence at the trial of an election petition, according to the scale allowed to witnesses on the trial of civil actions in the Supreme Court, may be allowed to such person by a certificate under the hand of a Judge of the Supreme Court or of the prescribed officer, and such expenses, if the witness was called and examined by the said Judge or Judges, shall be deemed to be costs of the petition.

Prosecutions for bribery

15. Where the said presiding Judge or Judges have reported to the Legislative Council that certain persons named by him have been guilty of bribery or treating, such report, with the evidence taken by the said Judge or Judges, shall be laid before the Attorney General, with a view to his instituting a prosecution against such persons, if the evidence should in his opinion be sufficient to support a prosecution.

In actions for penalties, parties, &c., to be competent witnesses

16. On the trial of any action for recovery of any pecuniary penalty under the said Ordinance, passed in the thirty-third year of the reign of Her present Majesty, and numbered 13, the parties to such action and the husbands and wives of such parties respectively shall be competent and compellable to give evidence in the same manner as parties and their husbands and wives are compelled and compellable to give evidence in actions and suits under the Ordinances 16 Vic., No. 9, and 18 Vic., No. 14: Provided always that any such evidence shall not thereafter be used in any information or criminal proceeding against the party giving it.

Withdrawal of petition and substitution of new petitioners

17. An election petition under this Act shall not be withdrawn without the leave of the Supreme Court upon special application, to be made in and at the prescribed manner, time and place. No such application shall be made for the withdrawal of a petition until the prescribed notice has been given in the electoral district to which the petition relates of the intention of the petitioner to make an application for the withdrawal of his petition. On the hearing of the application for withdrawal, any person or persons who might have been a petitioner or petitioners in respect of the election to which the petition relates may apply to the said Court to be substituted as a petitioner or petitioners for the petitioner so desirous of withdrawing the petition. The said Court may, if it think fit, substitute as a petitioner any such applicant or applicants as aforesaid, and may further, if the proposed withdrawal is in the opinion of the said Court induced by any corrupt bargain or consideration, by order direct that the security given on behalf of the original petitioner shall remain a security for any costs that may be incurred by the substituted petitioner, and that to the extent of the sum named in such security the original petitioner shall be liable to pay the costs of the substituted petitioner. If no such order be made with respect to the security given on behalf of the original petitioner, security to the same amount as would be required in the case of a new

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petition, and subject to the like conditions, shall be given on behalf of the substituted petitioner before he proceeds with his petition, and within the prescribed time after the order of substitution. Subject as aforesaid, a substituted petitioner shall stand in the same position, as nearly as may be, and be subject to the same liabilities as the original petitioner. If a petition is withdrawn the petitioner shall be liable to pay the costs of the respondent. Where there are more petitioners than one, no application to withdraw a petition shall be made except with the consent of all the petitioners.

18. In every case of the withdrawal of an election petition the said Court shall report to the Speaker whether, in its opinion, the withdrawal of such petition was the result of any corrupt arrangement, or in consideration of the withdrawal of any other petition, and if so the circumstances attending the withdrawal.

Chief Justice to report to the Speaker circumstances of withdrawal

19. An election petition shall be abated by the death of a sole petitioner or of the survivor of several petitioners. The abatement of a petition shall not affect the liability of the petitioner to the payment of costs previously incurred. On the abatement of a petition, the prescribed notice of such abatement having taken place shall be given in the electoral district to which the petition relates, and within the prescribed time after the notice is given any person or persons who might have been a petitioner or petitioners in respect of the election to which the petition relates may apply to any Judge of the Supreme Court, in and at the prescribed manner, time and place, to be substituted as a petitioner or petitioners. The said Judge may, if he think fit, substitute as a petitioner or petitioners any such applicant or applicants who is or are desirous of being substituted, and on whose behalf security to the same amount is given as is required in the case of a new petition.

Abatement of petition

20. If, before the trial of any election petition, any of the following events happen in the case of the respondent (that is to say) :—

Admission in certain cases of voters to be respondents

- (i.) If he dies.
- (ii.) If the Legislative Council have determined that his seat is vacant, on the question being referred to them by the Governor pursuant to the Act in that behalf.
- (iii.) If he gives in and at the prescribed manner and time notice to the Supreme Court that he does not intend to oppose the petition.

Notice of such event having taken place shall be given in the electoral district to which the petition relates, and within the prescribed time after the notice is given any person who might have been a petitioner in respect of the election to which the petition relates may apply to a Judge of the Supreme Court to be admitted as a respondent to oppose the petition, and such person shall, on such application, be admitted accordingly, either with the respondent, if there be a respondent, or in place of the respondent; and any number of persons not exceeding three may be so admitted.

21. A respondent who has given the prescribed notice that he does not intend to oppose the petition shall not be allowed to appear or act as a party against such petition in any proceedings thereon.

Respondent not opposing not to appear as party or to sit

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Provisions for cases of double return where the member complained of declines to defend his return

22. Where an election petition complains of a double return, and the respondent has given notice to the prescribed officer that it is not his intention to oppose the petition, and no party has been admitted in pursuance of this Act to defend such return, then the petitioner, if there be no petition complaining of the other member returned on such double return, may withdraw his petition by notice addressed to the prescribed officer, and upon the receipt of such notice the prescribed officer shall report the fact of the withdrawal of such petition to the Speaker, and the Legislative Council shall thereupon give the necessary directions for amending the said double return by taking off the file the indenture by which the respondent so declining to oppose the petition was returned, or otherwise as the case may require.

General costs of petition

23. All costs, charges and expenses of and incidental to the presentation of a petition and to the proceedings consequent thereon, with the exception of such costs, charges and expenses as are by this Act otherwise provided for, shall be defrayed by the parties to the petition in such manner and in such proportions as the said Court or the Judge or Judges presiding at the trial of such petition may determine, regard being had to the disallowance of any costs, charges or expenses which may in the opinion of the said Court or the said Judge or Judges have been caused by vexatious conduct, unfounded allegations or unfounded objections on the part either of the petitioner or the respondent, and regard being had to the discouragement of any needless expense by throwing the burden of defraying the same on the parties by whom it has been caused, whether such parties are or not on the whole successful. The costs may be taxed in the prescribed manner, but according to the same principles as costs between attorney and client are taxed in a suit in chancery, and such costs may be recovered in the same manner as the costs of an action at law or in such other manner as may be prescribed.

Recognizance when to be estreated, &c

24. If any petitioner in an election petition neglect or refuse for the space of six months after demand to pay to any person summoned as a witness on his behalf or to the respondent any sum certified to be due to him for his costs, charges and expenses, and if such neglect or refusal be within one year after such demand proved to the satisfaction of any Judge of the said Court, or if such petitioner be pronounced by the said Court or the Judge or Judges presiding at the trial of such petition to have failed or neglected to duly prosecute his petition, or if he withdraw the same without leave of the said Court, in every such case every person who has entered into a recognizance relating to such petition shall be held to have made default in his said recognizance, and the prescribed officer shall thereupon certify such recognizance to be forfeited, and the same shall be dealt with in manner provided by the Ordinance of the twenty-fifth year of the reign of Her present Majesty and numbered 5; or in case a deposit of money has been made such money may be declared by the said Court to have been forfeited to the use of Her Majesty.

Punishment of candidate personally guilty of bribery

25. Where it is found by the report of the presiding Judge or Judges upon an election petition that bribery has been committed by or with the knowledge and consent of any candidate at an election, such candidate shall be deemed to have been personally guilty of bribery at such election, and his election, if he has been elected, shall be void, and

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he shall be incapable of being elected to and of sitting in the Legislative Council during the seven years next after the date of his being found guilty, and he shall further be incapable during the said term of seven years—

- (I.) Of being registered as a voter and voting at any election in Western Australia ; and
- (II.) Of holding any municipal office ; and
- (III.) Of holding any judicial office, and of being appointed and of acting as a Justice of the Peace.

26. If on the trial of any election petition any candidate is proved to have personally engaged at the election to which such petition relates, as a canvasser or agent for the management of the election, any person knowing that such person has within seven years previous to such engagement been found guilty of any corrupt practice by any competent legal tribunal or been reported guilty of any corrupt practice by the report of the presiding Judge or Judges upon an election petition, the election of such candidate shall be void.

Penalty for employing corrupt agent

27. Any person other than a candidate found guilty of bribery in any proceeding in which after notice of the charge he has had an opportunity of being heard, shall during the seven years next after the time at which he is so found guilty, be incapable of being elected to and sitting in the Legislative Council ; and also be incapable—

Disqualification of persons found guilty of bribery

- (I.) Of being registered as a voter and voting at any election in Western Australia ; and
- (II.) Of holding any municipal office ; and
- (III.) Of holding any judicial office, and of being appointed and of acting as a Justice of the Peace.

28. If at any time after any person has become disqualified by virtue of this Act, the witnesses or any of them on whose testimony such person shall have so become disqualified, shall upon the prosecution of such person be convicted of perjury in respect of such testimony, it shall be lawful for such person to move the Supreme Court to order, and the Court shall upon being satisfied that such disqualification was procured by reason of perjury, order that such disqualification shall thenceforth cease and determine, and the same shall cease and determine accordingly.

Removal of disqualification on proof that same was procured by perjury

29. If any Returning Officer wilfully delays, neglects or refuses duly to return any person who ought to be returned to serve in the Legislative Council for any electoral district, such person may in case it has been determined on the hearing of an election petition that such person was entitled to have been returned, sue the officer having so wilfully delayed, neglected or refused duly to make such return at his election in the Supreme Court, and shall recover double the damages he has sustained by reason thereof, together with full costs of suit : Provided such action be commenced within one year after the commission of the act on which it is grounded or within six months after the conclusion of the trial relating to such election.

Returning Officer may be sued for neglecting to return any person duly elected

30. Where an election petition complains of the conduct of a Returning Officer, such Returning Officer shall for all the purposes of

Returning Officer, if complained of, to be respondent

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this Act, except the admission of respondents in his place, be deemed to be a respondent.

Petition complaining of no return

31. A petition complaining of no return presented to the Supreme Court, shall be deemed to be an election petition within the meaning of this Act, and the said Court may make such order thereon as he may think expedient for compelling a return to be made, or may allow such petition to be heard in manner hereinbefore provided with respect to ordinary election petitions.

Recrimination when petition for undue return

32. On the trial of a petition complaining of an undue return and claiming the seat for some person, the respondent may give evidence to prove that the election of such person was undue in the same manner as if he had presented a petition complaining of such election.

Repeal of secs. 31, 32, 35, and 36 of the Ordinance 33 Vic., No. 13

33. Sections 31, 32, 35 and 36 of the said recited Ordinance passed in the thirty-third year of the reign of Her present Majesty, and numbered 13, are hereby repealed.

WILLIAM C. F. ROBINSON,
GOVERNOR.
