

Western Australia

Electoral Amendment and Repeal Act 2005

As at 20 May 2005

No. 1 of 2005

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Electoral Amendment and Repeal Act 2005

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Western Australia

Electoral Amendment and Repeal Act 2005

No. 1 of 2005

An Act to —

- **amend the *Electoral Act 1907* and the *Constitution Acts Amendment Act 1899*;**
- **repeal the *Electoral Distribution Act 1947*; and**
- **make consequential amendments to other Acts.**

[Assented to 20 May 2005]

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This is the *Electoral Amendment and Repeal Act 2005*.

2. Commencement

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

Part 2 — Amendment of *Electoral Act 1907*

3. The Act amended

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

[* *Reprinted as at 15 December 2000.*

*For subsequent amendments see Western Australian
Legislation Information Tables for 2004, Table 1, p. 136-7.]*

4. Part IIA inserted

After Part II the following Part is inserted —

“

Part IIA — Representation in Parliament

Division 1 — Preliminary

16A. Terms used in this Part

In this Part —

“**average district enrolment**” has the meaning given to that term in section 16G(1);

“**Commissioners**” means the Electoral Distribution Commissioners appointed under section 16B including any person appointed under section 16B(2), (3) or (4) to act in the office of an Electoral Distribution Commissioner;

“**Government Statistician**” means the Government Statistician appointed under the *Statistics Act 1907*;

“**relevant day**”, in relation to a division of the State into districts and regions in accordance with this Part, means the day specified in section 16E(a) or (b) as the day as soon as practicable after which the division is to be carried out.

16B. Electoral Distribution Commissioners

- (1) For the purposes of this Part there shall be 3 Electoral Distribution Commissioners of whom —
 - (a) one shall be the Chief Justice of Western Australia who shall be chairman;
 - (b) one shall be the Electoral Commissioner; and
 - (c) one shall be the Government Statistician.
- (2) If the office of Chief Justice of Western Australia is vacant, or the Chief Justice is absent or is for any other reason unable to act as an Electoral Distribution Commissioner, the Governor may appoint another Judge of the Supreme Court to act in the office of Electoral Distribution Commissioner and as chairman under subsection (1)(a) during the vacancy, absence or inability.
- (3) A person acting in the office of the Electoral Commissioner under section 5D or 5H(2) shall, while so acting, act in the office of Electoral Distribution Commissioner under subsection (1)(b).
- (4) If the office of the Government Statistician is vacant, or the holder of that office is absent or is for any other reason unable to act as an Electoral Distribution Commissioner, the Governor, on the recommendation of the Premier, may appoint a suitable person to act in the office of Electoral Distribution Commissioner under subsection (1)(c) during the vacancy, absence or inability.
- (5) Before making a recommendation under subsection (4) the Premier shall consult with, and seek the written views of, the parliamentary leader or representative of each party and Independent members in the Parliament.

- (6) The Commissioners shall meet as often as may be necessary for carrying out their duties under this Part.
- (7) For the purposes of this Part the Commissioners have the powers of a duly appointed Royal Commission, and of a chairman of a Royal Commission, under the *Royal Commissions Act 1968*.
- (8) The moneys reasonably required for the purposes of the Commissioners shall be charged, on the certificate of the Auditor General, to the Consolidated Fund, which this subsection appropriates to the necessary extent.

Division 2 — Districts, regions and representation

16C. Electoral districts and representation

- (1) The State shall be divided into 57 electoral districts.
- (2) Each district will return one member to serve in the Assembly.

16D. Electoral regions and representation

- (1) The State shall be divided into 6 electoral regions.
- (2) Each region will return 6 members to serve in the Council.

Division 3 — Division of State into districts and regions

16E. Division required after each election

The State shall be divided into districts and regions in accordance with this Part —

- (a) as soon as practicable after 26 February 2007;
and

- (b) as soon as practicable after the day that is 2 years after polling day for any subsequent general election for the Assembly.

16F. Commissioners' functions

- (1) The Commissioners shall divide the State into districts and regions in accordance with this Part whenever a division of the State is required under this Part.
- (2) For the purposes of carrying out their duty under subsection (1) the Commissioners shall —
 - (a) by notice published in the *Gazette* and in a newspaper circulating throughout the State —
 - (i) invite written suggestions relating to the division of the State as required by subsection (1) to be lodged with the Commissioners within 30 days from the day of the publication of the notice in the *Gazette*; and
 - (ii) invite written comments being comments on the suggestions lodged under subparagraph (i) to be lodged with the Commissioners within 14 days from the expiration of the period of 30 days referred to in that subparagraph;
 - (b) forthwith after the expiration of the period of 30 days referred to in paragraph (a)(i), cause copies of the suggestions lodged with the Commissioners under paragraph (a)(i) to be made available for perusal at the office of the Electoral Commissioner;
 - (c) consider all of the suggestions and comments lodged with the Commissioners under paragraph (a);

- (d) within 42 days from the expiration of the period of 14 days referred to in paragraph (a)(ii), formulate proposals for the division of the State in the manner required under subsection (1) and the names proposed to be assigned to the districts and publish in the *Gazette* and in a newspaper circulating throughout the State —
 - (i) a map or maps setting out those proposals; and
 - (ii) a statement of the Commissioners' reasons for making those proposals;
 - (e) consider any objections in writing that may be lodged with the Commissioners within 30 days from the day of the publication of the map or maps and statement in the *Gazette* under paragraph (d); and
 - (f) as soon as practicable, but not more than 90 days after the expiration of the period of 30 days referred to in paragraph (e), by notice published in the *Gazette*, divide the State in the manner required under subsection (1).
- (3) Any additional details and explanatory information that the Commissioners think appropriate may be included on or published with the map or maps mentioned in subsection (2)(d).
- (4) The notice mentioned in subsection (2)(f) shall set out —
- (a) the average district enrolment at the relevant day;
 - (b) in respect of each of the 57 districts —
 - (i) the name assigned to the district;
 - (ii) the boundaries fixed for the district; and
 - (iii) the number of electors within the boundaries as so fixed;

and

(c) the districts included in each of the regions, and shall include a map or maps showing the boundaries of the districts and the boundaries of the regions.

- (5) Suggestions under subsection (2)(a)(i), comments under subsection (2)(a)(ii) and objections under subsection (2)(e) may be made by any person.

16G. Basis for division of the State into districts

- (1) For the purposes of this section the Commissioners shall divide the number of electors by the number of districts, and the result of that division is referred to as the **“average district enrolment”**.
- (2) The Commissioners shall divide the State into districts in accordance with the principle that, for each district, the number of electors that the district would have had at the relevant day must not be more than 10% greater, or more than 10% less, than the average district enrolment at the relevant day.
- (3) If a district has an area of 100 000 square kilometres or more, subsection (2) does not apply but the sum of —
- (a) the number of electors that the district would have had at the relevant day; and
 - (b) the large district allowance,
- must not be more than 10% greater, or more than 20% less, than the average district enrolment at the relevant day.
- (4) In subsection (3) —
- “large district allowance”** means 1.5% of the number of square kilometres in the area of the district.

16H. Basis for division of the State into regions

- (1) The Commissioners shall divide the State into regions so that those regions generally reflect the recognised communities of interest and land use patterns in the State and so that —
 - (a) 3 contiguous regions, to be known, respectively, as the North Metropolitan Region (being a region that is generally to the north of the Swan River), the South Metropolitan Region (being a region that is generally to the south of the Swan River) and the East Metropolitan Region (being a region that includes the hills and foothills of the Darling Escarpment) —
 - (i) each consist of approximately the same number of complete and contiguous districts; and
 - (ii) together form an area that is generally coextensive with the metropolitan area of Perth;
 - (b) one region, to be known as the Mining and Pastoral Region, consists of complete and contiguous districts that together form an area that is remote from Perth and in which the land use is primarily for mining and pastoral purposes;
 - (c) one region, to be known as the Agricultural Region, consists of complete and contiguous districts that together form an area that is generally south, or south and west, of and adjacent to the Mining and Pastoral Region and in which the land use is primarily for agricultural purposes; and
 - (d) one region, to be known as the South West Region (being a region that includes coastal and

forest areas in the south-west of the State),
consists of complete and contiguous districts.

(2) In subsection (1) —

“metropolitan area of Perth” means the part of the
State that comprises —

- (a) the region that was, as at the relevant day,
described in the Third Schedule to the
*Metropolitan Region Town Planning Scheme
Act 1959*; and
- (b) Rottnest Island.

**16I. Matters to be considered in dividing the State into
regions and districts**

In making the division of the State into regions and
districts the Commissioners shall give due
consideration to —

- (a) community of interest;
- (b) land use patterns;
- (c) means of communication and distance from the
capital;
- (d) physical features;
- (e) existing boundaries of regions and districts;
- (f) existing local government boundaries; and
- (g) the trend of demographic changes.

**16J. Power of Commissioners to modify boundaries of
districts**

In the exercise of the powers conferred on the
Commissioners by this Part, the boundaries of the
districts may be modified by the Commissioners by
excising portions from them, or by adding other
portions to them and the districts may be designated
and redesignated.

16K. Effect of notice dividing the State into districts and regions

On and by virtue of a notice being published in the *Gazette* under section 16F(2)(f), the division of the State by the Commissioners into districts and regions as set out in that notice takes effect and has the force of law and applies in respect of —

- (a) elections in districts held after the date of the publication of the notice other than elections held before the first general election for the Assembly held after that date; and
- (b) elections in regions held after the date of the publication of the notice other than elections held before the first general election for the Council held after that date,

unless and until a further division of the State into districts and regions takes effect under this section.

16L. Transitional provisions

- (1) In this section —

“previous electoral distribution” means the division of the State into districts and regions for the election of members of the Assembly and the Council that was in effect on 26 February 2005.

- (2) Despite the repeal of the *Electoral Distribution Act 1947* by section 8 of the *Electoral Amendment and Repeal Act 2005*, the previous electoral distribution continues to apply in respect of —

- (a) elections in districts held before the first general election for the Assembly held after the commencement of the *Electoral Amendment and Repeal Act 2005*;
- (b) elections in regions held before the first general election for the Council held after the

commencement of the *Electoral Amendment and Repeal Act 2005*; and

- (c) the representation of electoral districts and electoral regions by members of the Assembly and the Council elected —
 - (i) before the commencement of the *Electoral Amendment and Repeal Act 2005*;
 - (ii) at elections referred to in paragraphs (a) and (b); or
 - (iii) under sections 156C and 156D before 22 May next following the first general election for the Council held after the commencement of the *Electoral Amendment and Repeal Act 2005*.

16M. Absolute majorities required for Bills affecting one vote one value principle

- (1) A Bill that repeals or alters any of the provisions of this Part, other than Division 2, section 16G(3) or (4) or section 16L, shall not be presented for assent by or in the name of the Queen unless 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 Council and the Assembly, respectively.
- (2) A Bill assented to consequent upon its presentation in contravention of subsection (1) shall be of no effect as an Act.

”.

5. Section 24 amended

Section 24(3) is amended by deleting “under section 3(2)(f) of the *Electoral Distribution Act 1947*”.

6. Section 51 amended

Section 51(2) is amended by deleting “under the *Electoral Distribution Act 1947*”.

Part 3 — Amendment or repeal of other Acts

7. Constitution Acts Amendment Act 1899 amended

- (1) The amendments in this section are to the *Constitution Acts Amendment Act 1899**.

[* *Reprint 12 as at 3 October 2003.*
For subsequent amendments see Western Australian Legislation Information Tables for 2004, Table 1, p. 88-9.]

- (2) Section 5 is amended as follows:

- (a) by deleting “34” and inserting instead —
“ 36 ”;
- (b) by deleting “as defined under section 6”.

- (3) Section 6 is repealed.

- (4) Sections 18 and 19 are repealed and the following section is inserted instead —

“

18. Constitution of Legislative Assembly

The Legislative Assembly shall consist of 57 elected members who shall be returned and sit for electoral districts.

”.

8. Electoral Distribution Act 1947 repealed

The *Electoral Distribution Act 1947* is repealed.

9. Juries Act 1957 amended

- (1) The amendments in this section are to the *Juries Act 1957**.

[* *Reprinted as at 3 July 2000.*
For subsequent amendments see Western Australian Legislation Information Tables for 2004, Table 1, p. 232.]

- (2) Section 11(1) is amended by deleting “the *Electoral Distribution Act 1947*, or any other” and inserting instead —
“ any ”.

10. *Salaries and Allowances Act 1975* amended

- (1) The amendments in this section are to the *Salaries and Allowances Act 1975**.

[* *Reprinted as at 8 September 2000.*
For subsequent amendments see Western Australian Legislation Information Tables for 2004, Table 1, p. 403.]

- (2) Section 6(6) is amended by deleting “action taken under the *Electoral Distribution Act 1947*” and inserting instead —

“
a subsequent division of the State into electoral districts and electoral regions
”.

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