

Western Australia

Electoral Legislation Amendment Act 2006

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No. 64 of 2006

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Electoral Legislation Amendment Act 2006

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Western Australia

Electoral Legislation Amendment Act 2006

No. 64 of 2006

An Act to amend the —

- *Constitution Acts Amendment Act 1899*; and
- *Electoral Act 1907*; and
- *Electoral Amendment (Political Finance) Act 1992*,
and for related purposes.

[Assented to 8 December 2006]

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This is the *Electoral Legislation Amendment Act 2006*.

2. Commencement

- (1) This Part comes into operation on the day after the day on which this Act receives the Royal Assent.
- (2) This Act, other than this Part, comes into operation on a day fixed by proclamation.
- (3) Different days may be fixed under subsection (2) for different provisions.

**Part 2 — Constitution Acts Amendment
Act 1899 amended**

3. The Act amended in this Part

The amendments in this Part are to the *Constitution Acts Amendment Act 1899**.

[* *Reprint 14 as at 21 April 2006.*

For subsequent amendments see Act Nos. 5 and 28 of 2006.]

4. Section 7 repealed

Section 7 is repealed.

5. Section 15 repealed

Section 15 is repealed.

6. Section 20 repealed

Section 20 is repealed.

7. Section 33 amended

Section 33 is amended by inserting after “Part” —

“ or the *Electoral Act 1907* section 149A(2) ”.

8. Section 35 repealed

Section 35 is repealed.

9. Section 38 amended

Section 38(a) is amended by deleting “section 7 or section 20 to be elected a member of the House of which he is a member;” and inserting instead —

“

the *Electoral Act 1907* section 76A to be
elected as a member of the Legislature;

”.

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10. Section 40 amended

Section 40(a) is amended by deleting “section 7 or section 20 to be elected” and inserting instead —

“

the *Electoral Act 1907* section 76A to be elected as

”.

Part 3 — *Electoral Act 1907* amended

11. The Act amended in this Part

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

[* *Reprint 13 as at 9 September 2005.*

For subsequent amendments see Act No. 34 of 2004.]

12. Long title amended

The long title is amended by inserting after “elections” —

“ **and for related purposes** ”.

13. Section 4 amended

- (1) Section 4(1) is amended by inserting in the appropriate alphabetical positions —

“

“**authorised witness**” has the meaning given by section 94;

“**enrolment information**” means a roll, information on a roll or other information relating to electors;

”.

- (2) Section 4(1) is amended by deleting the definition relating to “print”, “printed” or “printing”.

14. Section 5D amended

- (1) After section 5D(3) the following subsections are inserted —

“

- (4) The Governor, on the recommendation of the Premier, may appoint an Acting Deputy Electoral Commissioner to act in the office of the Deputy Electoral Commissioner —

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- (a) when the Deputy Electoral Commissioner is absent from duty for any reason or is absent from the State; or
 - (b) when the Deputy Electoral Commissioner is acting in the office of Electoral Commissioner under section 5H(2); or
 - (c) when the Deputy Electoral Commissioner has been suspended; or
 - (d) when the office of Deputy Electoral Commissioner is vacant.
- (5) Before making a recommendation under subsection (4) the Premier shall consult with the Parliamentary leader of each party in the Parliament.
- (6) While the Acting Deputy Electoral Commissioner is so acting —
- (a) he may perform the functions of the Deputy Electoral Commissioner, and anything done by him in so performing those functions has the like effect as if it were done by the Deputy Electoral Commissioner;
 - (b) any act or thing that is required under a written law to be done to, by reference to or in relation to the Deputy Electoral Commissioner shall be regarded as effectually done if done to, by reference to or in relation to the Acting Deputy Electoral Commissioner.
- ”.
- (2) Section 5D(1) is amended by inserting after paragraph (a) —
- “ or ”.

15. Section 5F amended

Section 5F(1) is amended as follows:

- (a) by deleting paragraph (ea) and inserting instead —

“

(ea) may conduct other elections, referendums or polls —

(i) if authorised to do so under another written law; or

(ii) if they are provided for under another written law and the regulations authorise the Electoral Commissioner to conduct them;

and

”;

- (b) after each of paragraphs (a) to (e), (eb) and (f) by inserting —

“ and ”.

16. Section 17 amended

- (1) Section 17(2) is amended by inserting after “elector” —

“ enrolled under subsection (1) ”.

- (2) Section 17(3) is amended by deleting “who is not disqualified by section 18”.

- (3) Section 17(5) is amended by inserting after “subsection (4)” —

“ and section 17A ”.

17. Section 17A inserted

After section 17 the following section is inserted —

“

17A. Enrolled voters leaving Australia and retaining enrolment under Commonwealth Act

- (1) This section applies to a person if —
 - (a) the name of the person appeared on —
 - (i) the roll for a district or sub-district; and
 - (ii) the electoral roll maintained under the *Commonwealth Electoral Act 1918* for a Commonwealth subdivision in the State, in respect of the same address; and
 - (b) by virtue of an application made under the *Commonwealth Electoral Act 1918* section 94(1) before the person ceased to reside in Australia, the name of the person is retained on the electoral roll maintained under that Act for the Commonwealth subdivision referred to in paragraph (a)(ii); and
 - (c) the Commonwealth roll referred to in paragraph (b) is annotated to indicate that the person is an eligible overseas elector under the *Commonwealth Electoral Act 1918* section 94.
- (2) While the name of the person continues to be included on the Commonwealth roll referred to in subsection (1)(b) with the annotation referred to in subsection (1)(c) —
 - (a) the name of the person is to be retained on the roll for the district or sub-district referred to in subsection (1)(a)(i); and

- (b) the person is entitled to vote at —
 - (i) any election in the region of which the district or sub-district forms part; and
 - (ii) any election in the district or the district of which the sub-district forms part.

”.

18. Section 18 amended

(1) Section 18 is amended as follows:

- (a) by inserting before “Every” the subsection designation “(1)”;
- (b) by deleting “being enrolled as an elector, or if enrolled, from”;
- (c) in paragraph (c) by deleting “, totalling one year or longer”.

(2) At the end of section 18 the following subsection is inserted —

“

- (2) A person mentioned in subsection (1)(a), (b) or (d) is disqualified from being enrolled as an elector.

”.

19. Section 22 amended

(1) Section 22(1) is amended as follows:

- (a) by deleting “Subject to section 51B, rolls” and inserting instead —
“ Rolls ”;
- (b) by deleting “residence of each elector” and inserting instead —

“

, subject to section 51B, the residence in respect of which each elector is enrolled

”.

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- (2) Section 22(2) is amended by deleting “or derived from rolls is made available under section 25 or provided under section 25A.” and inserting instead —

“

rolls or other information relating to electors is provided or made available under section 25A, 25B or 25C.

”.

20. Section 25 amended

- (1) Section 25(2), (3) and (4) are repealed.
(2) Section 25(5) is amended by deleting “or information on rolls”.

Note: The heading to section 25 will be altered by deleting “and purchase”.

21. Section 25A amended

Section 25A(1) is amended as follows:

- (a) in paragraph (a) by inserting after “region” —

“

and the prescribed information relating to each elector

”;

- (b) in paragraph (b) by inserting after “elected” —

“

and the prescribed information relating to each elector for each district in the region

”;

- (c) in paragraph (c) by deleting “elected;” and inserting instead —

“

elected and the prescribed information relating to each elector for the district.

”.

- (d) in paragraphs (b) and (c) by deleting “Legislative”;
 - (e) by deleting paragraph (d).
- (2) After section 25A(1) the following subsection is inserted —
- “
- (1a) In subsection (1) —
 - “**prescribed information**” relating to an elector means —
 - (a) the elector’s postal address; and
 - (b) details of when the particulars on the roll relating to the elector were entered or most recently changed; and
 - (c) the local government district in which, and if that district is divided into wards the ward in which, the elector’s residence is situated.
- ”.
- (3) Section 25A(4) and (5) are repealed and the following subsections are inserted instead —
- “
- (4) If by virtue of section 51B information is not shown on a roll, that information is not to be provided under this section.
 - (5) Without limiting subsection (1) or (2), the Electoral Commissioner may comply with a requirement of this section by providing the required enrolment information in the form of particulars recorded or stored on a mechanical, electrical, or other device.
- ”.

22. Sections 25B to 25E inserted

After section 25A the following sections are inserted —

“

25B. Availability of enrolment information to others

- (1) Subject to this section, the Electoral Commissioner may, at the request of a person or organisation not referred to in section 25A, make enrolment information available to that person or organisation.
- (2) Enrolment information is not to be made available under this section unless the Electoral Commissioner considers that the public interest in making the enrolment information available outweighs the public interest in protecting the privacy of personal information.
- (3) The Electoral Commissioner must obtain from the person or organisation to which enrolment information is to be made available under this section an undertaking that the person or organisation —
 - (a) will only use the enrolment information for the purpose for which the Commission agreed to make it available; and
 - (b) will not copy the enrolment information or give it to any other person or organisation; and
 - (c) will return the enrolment information to the Electoral Commissioner or destroy the enrolment information after using it for the purpose for which the Electoral Commissioner agreed to make it available.
- (4) If by virtue of section 51B information is not shown on a roll, that information is not to be made available under this section.

- (5) The regulations may provide that if by virtue of section 51B information relating to a person is not shown on a roll, that person's name may be omitted when the Electoral Commissioner makes enrolment information available under this section.
- (6) The Electoral Commissioner may charge a fee that covers the cost of making enrolment information available under this section.

25C. Provision of enrolment information to government organisations

The Electoral Commissioner may provide enrolment information to a department or organisation as defined in the *Public Sector Management Act 1994* section 3(1) by arrangement with its chief executive officer or chief employee.

25D. Use of enrolment information

- (1) A person or organisation that has acquired enrolment information under section 25A, 25B or 25C must not use that enrolment information except for a permitted purpose.

Penalty: \$1 000.

- (2) In this section —

“permitted purpose” means —

- (a) for a member of the Council or a member of the Assembly —
 - (i) the exercise of the member's functions; or
 - (ii) a purpose connected with an election or referendum; or
 - (iii) monitoring the accuracy of information in the roll; or

- (iv) research regarding electoral matters;
and
- (b) for a parliamentary party —
 - (i) the exercise by a party member of the member's function as a member of the Council or the Assembly; or
 - (ii) a purpose connected with an election or referendum; or
 - (iii) monitoring the accuracy of information in the roll; or
 - (iv) research regarding electoral matters;
and
- (c) for a person or organisation to whom or which enrolment information is made available under section 25B, the purpose for which the Electoral Commissioner agreed to make the enrolment information available;
and
- (d) for a department or organisation referred to in section 25C, use in connection with the functions of that department or organisation.

25E. Prohibition of disclosure or commercial use of enrolment information

- (1) For the purposes of this section, enrolment information is protected information in relation to a person if the person knows, or has reasonable grounds for believing, that the information has been provided or made available under section 25A, 25B or 25C.
- (2) A person must not disclose protected information unless the disclosure would be a use of the information for a permitted purpose under section 25D.

Penalty: \$1 000.

- (3) A person must not use protected information for a commercial purpose.

Penalty: \$10 000.

”.

23. Section 40 amended

After section 40(1) the following subsection is inserted —

“

- (1a) Subsection (1)(b)(iii) does not apply to a person whose name is on the existing roll because of section 17(4) or 17A.

”.

24. Section 48 amended

Section 48(2)(b) is amended by deleting “\$2” and inserting instead —

“ \$50 ”.

25. Section 59 replaced

Section 59 is repealed and the following section is inserted instead —

“

59. Returns in respect of certain prisoners and other persons under detention

- (1) In this section —

“**chief executive officer, prisons**” means the chief executive officer as defined in the *Prisons Act 1981* section 3;

“**mentally impaired accused**” has the meaning given to that term in the *Criminal Law (Mentally Impaired Accused) Act 1996* Part 5;

“prisoner” means a person of a kind referred to in section 18(b) to (cd) who is detained in a prison;

“required information”, in relation to a person, means that person’s name, address, date of birth, occupation and sex;

“secretary, Mentally Impaired Accused Review Board” means the secretary of the Mentally Impaired Accused Review Board established under the *Criminal Law (Mentally Impaired Accused) Act 1996*.

- (2) As soon as practicable after the beginning of each month —
- (a) the chief executive officer, prisons must forward to the Electoral Commissioner —
 - (i) a list containing the required information for each person who became a prisoner during the preceding month; and
 - (ii) a list containing the required information for each person who ceased to be a prisoner during the preceding month;

and

 - (b) the secretary, Mentally Impaired Accused Review Board must forward to the Electoral Commissioner —
 - (i) a list containing the required information for each person who became a mentally impaired accused during the preceding month; and
 - (ii) a list containing the required information for each person who ceased

to be a mentally impaired accused
during the preceding month.

- (3) Within 4 days after the date of the writ for an election —
- (a) the chief executive officer, prisons must forward to the Electoral Commissioner —
- (i) a list containing the required information for each person who became a prisoner during the period since a list was last forwarded under subsection (2)(a)(i); and
 - (ii) a list containing the required information for each person who ceased to be a prisoner during the period since a list was last forwarded under subsection (2)(a)(ii);
- and
- (b) the secretary, Mentally Impaired Accused Review Board must forward to the Electoral Commissioner —
- (i) a list containing the required information for each person who became a mentally impaired accused during the period since a list was last forwarded under subsection (2)(b)(i); and
 - (ii) a list containing the required information for each person who ceased to be a mentally impaired accused during the period since a list was last forwarded under subsection (2)(b)(ii).

”.

26. Section 60 amended

- (1) Section 60(1) is amended by deleting “the lists referred to in section 56(a) and section 59,” and inserting instead —

“ a list under section 56, ”.

- (2) After section 60(1) the following subsections are inserted —

“

(2) Upon receipt of a list under section 59(2)(a)(i), (2)(b)(i), (3)(a)(i) or (3)(b)(i), the Electoral Commissioner shall cause the names of the persons on the list who are enrolled as electors to be ascertained and cause the roll to be annotated in a manner that will enable those persons to be identified for the purposes of section 18(1).

(3) Upon receipt of a list under section 59(2)(a)(ii), (2)(b)(ii), (3)(a)(ii) or (3)(b)(ii), the Electoral Commissioner shall cause the names of the persons who are on the list, and in respect of whom there is an annotation under subsection (2), to be ascertained and cause that annotation to be removed from the roll.

”.

Note: The heading to section 60 will be altered to “**Removal of names from, and annotation of, roll**”.

27. Sections 76A and 76B inserted and saving provision

- (1) Before section 77 the following sections are inserted in Part IV Division (2) —

“

76A. Qualification of persons for election

- (1) Unless this Act or another enactment provides otherwise, a person who —
- (a) has reached the age of 18; and
 - (b) is not subject to any legal incapacity; and

- (c) is an Australian citizen; and
- (d) has resided in the State for one year; and
- (e) is an elector entitled to vote at an election in a district,

is qualified to be elected as a member of the Council or the Assembly.

- (2) The reference in subsection (1)(e) to an elector entitled to vote at an election in a district includes a reference to a person if —
 - (a) the person is qualified to be an elector entitled to vote at an election in a district; and
 - (b) the person's name appeared on a roll or the person has made a claim for enrolment; and
 - (c) by mistake, the Electoral Commissioner or an enrolment officer has omitted or removed the person's name from a roll or has not included the person's name on a roll.

76B. Disqualification of persons for election

- (1) A person to whom the *Constitution Acts Amendment Act 1899* section 32 or 34(1) applies is disqualified from being elected as a member of the Council or the Assembly.
- (2) A person to whom the *Constitution Acts Amendment Act 1899* section 34(2) applies is disqualified from being elected as a member of the House of which the person is not a member.

”.

- (2) A person who is a member of the Legislative Assembly or the Legislative Council immediately before the commencement —
 - (a) does not become disqualified, on the commencement, for membership of the Legislative Assembly or the

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Legislative Council for the purposes of the *Constitution Acts Amendment Act 1899* section 38(a) or 40(a); and

- (b) is not prevented from completing his or her current term as a member,

by reason only of not being an Australian citizen as defined in the *Electoral Act 1907* section 4(1).

- (3) A person who has been elected as a member of the Legislative Council but has not begun his or her term as a member before the commencement —

- (a) does not become disqualified, on the commencement for membership of the Legislative Assembly or the Legislative Council for the purposes of the *Constitution Acts Amendment Act 1899* section 38(a) or 40(a); and
- (b) is not prevented from beginning and completing his or her term as a member,

by reason only of not being an Australian citizen as defined in the *Electoral Act 1907* section 4(1).

- (4) In subsections (2) and (3) —

“**commencement**” means the coming into operation of this section.

28. Section 77 amended

- (1) After section 77(3) the following subsection is inserted —

“

- (3a) If a person who is not qualified under section 76A nominates himself as a candidate in an election, the nomination is invalid.

”.

- (2) Section 77(4) is amended in the penalty by deleting “\$200.” and inserting instead —

“ \$1 000. ”.

29. Section 90 amended

(1) Section 90(1) is amended as follows:

- (a) in paragraph (e) by deleting “those hours;” and inserting instead —
“ those hours, ”;
- (b) by deleting paragraph (f);
- (c) after each of paragraphs (a) to (db) by inserting —
“ or ”.

(2) Section 90(1a) is amended as follows:

- (a) by deleting paragraph (e) and “or” after it and inserting instead —
“
(e) a registrar as defined in the *Magistrates Court Act 2004* section 3, other than a Deputy Registrar appointed under section 26(5) of that Act; or
”;
- (b) after each of paragraphs (a) to (d) by inserting —
“ or ”.

(3) Section 90(3a) is amended as follows:

- (a) by deleting paragraph (c) and inserting instead —
“
(c) be sent to an issuing officer by post.
”;
- (b) after paragraph (a) by inserting —
“ and ”.

(4) Section 90(4)(c) is amended by deleting “post to the elector or deliver to him at the place of issue” and inserting instead —

“ issue to the elector by post — ”.

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- (5) Section 90(4b) is amended as follows:
- (a) by deleting “deliver” and inserting instead —
“ issue ”;
 - (b) in paragraph (a) by deleting “and a declaration in the form so prescribed”;
 - (c) by deleting paragraph (b) and inserting instead —
“
(b) an envelope marked “ballot paper”,
”.
- (6) After section 90(4b) the following subsection is inserted —
“
- (4c) Immediately on issuing the ballot paper and envelope to the elector under subsection (4b), the issuing officer shall —
- (a) if a copy of the electoral roll is available, make a record of the elector’s name on a copy of the roll in the manner prescribed for the purposes of section 126(1); or
 - (b) if a copy of the electoral roll is not available —
 - (i) issue the elector with a declaration in the prescribed form; and
 - (ii) make a record of the name of the elector and of such other particulars as are prescribed.
- ”.
- (7) Section 90(8) is amended as follows:
- (a) in paragraph (a) by inserting after “elector an” —
“ oral ”;
 - (b) in paragraph (b) by inserting after “section” —
“ and section 92(3) ”.

(8) Section 90(10) is amended in the penalty by deleting “\$4 000 or”.

(9) Section 90(12) is repealed.

Note: The heading to section 90 will be altered to “**Applications for early ballot papers**”.

30. Section 92 amended

(1) After section 92(1) the following subsection is inserted —

“

(1a) Subsection (2) applies if an elector is issued with an early ballot paper under section 90(4)(c).

”.

(2) After section 92(2)(e) the following paragraph is inserted —

“

(f) The elector shall, before the close of the poll, post or deliver the envelope, or cause it to be posted or delivered, to the Electoral Commissioner.

”.

(3) Section 92(4) is repealed and the following subsections are inserted instead —

“

(3) If an elector is issued with an early ballot paper under section 90(4b) —

(a) the elector shall, if issued with a declaration under section 90(4c)(b), complete the declaration before the issuing officer and return it to the officer; and

(b) the elector shall indicate the elector’s vote on the early ballot paper in the manner prescribed by section 128, but so that neither the issuing officer nor any other person can see the vote; and

- (c) the elector shall fold the ballot paper, put it in the envelope marked “ballot paper”, fasten the envelope and return it to the issuing officer.
 - (4) An issuing officer who receives a declaration under subsection (3)(a) shall sign the declaration as the authorised witness and add the date he signs and his address at that date.
 - (4aa) An issuing officer shall send any declaration signed under subsection (4) and any envelope received under subsection (3)(c) to the Electoral Commissioner forthwith.
- ”.
- (4) Section 92(4a) is amended as follows:
 - (a) by deleting “the elector” and inserting instead —
“
an elector who votes as directed under subsection (2)
”;
 - (b) in paragraph (a) by deleting “(4)” and inserting instead —
“ (2)(f) ”;
 - (c) in paragraph (b) by deleting “(4)” and inserting instead —
“ (2)(f) ”.
 - (5) Section 92(5) is amended as follows:
 - (a) by deleting paragraph (a) and inserting instead —
“
(a) If an elector cannot vote without assistance because the elector is sight impaired, physically incapacitated or illiterate, the elector may nominate a person (other than a candidate at the election) to assist the elector, and the nominated person must, in accordance with the

directions of the elector, do any act required or authorised by subsection (2), (3) or (4a).

”;

- (b) in paragraph (b) by deleting “An elector” and inserting instead —

“

If the elector has been issued with a declaration under section 90(4)(c) or 90(4c)(b), the person

”;

- (c) after paragraph (b) by inserting —

“

- (baa) If the elector’s name has been recorded under section 90(4c)(a), a person appointed under paragraph (a) must give the issuing officer his full name and address and satisfy the issuing officer that he has been appointed by the elector to mark the ballot paper for the elector.

”;

- (d) in paragraph (ba) by deleting “(4)” and inserting instead —

“ (3)(c) ”;

- (e) after paragraph (d)(i) by inserting —

“ and ”.

- (6) Section 92(6) is amended after “issued” by inserting —

“ under section 90(4)(c) ”.

- (7) Section 92(8) is amended by deleting “the declarations relating to the” and inserting instead —

“ declarations relating to ”.

- (8) Section 92(9) is amended as follows:

- (a) in paragraph (d) by inserting after “(2)(b)” —

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- “ or (3)(a) ”;
- (b) by inserting after paragraphs (a) and (b) —
“ or ”.
- (9) Section 92(10) is amended as follows:
- (a) in paragraph (a) by deleting “the declaration” and inserting instead —
“ a declaration ”;
- (b) in paragraph (b) by deleting “the declaration” in the first 2 places where it occurs and inserting instead —
“ a declaration ”;
- (c) in paragraph (b) by deleting “the early” in the first place where it occurs and inserting instead —
“ an early ”.

31. Section 118 repealed

Section 118 is repealed.

32. Section 119 amended

Section 119(1) is repealed and the following subsection is inserted instead —

“

- (1) The presiding officer shall put to any person claiming to vote at any election the following questions —
- (a) Have you cast an early vote for this election (or these elections, as the case requires) or already voted today?
- (b) What is your full name?
- (c) Where do you live?

and may then put any other question the presiding officer considers necessary to determine whether the person is enrolled to vote.

”.

33. Section 120 amended

- (1) Section 120 is amended by inserting before “If” the subsection designation “(1)”.
- (2) At the end of section 120 the following subsection is inserted —
“
 - (2) If by virtue of section 51B information relating to an elector is not shown on the roll, subsection (1) does not apply to a refusal to answer the question put to the elector under section 119(1)(c).”.

34. Section 122 amended

Section 122(3) is amended by deleting “shall be deemed to have made such declaration.” and inserting instead —
“
and made a declaration as required under section 92,
shall be deemed to have made a declaration under this
section.”.

35. Section 129 amended

- (1) Section 129(1) is repealed and the following subsections are inserted instead —
“
 - (1) If an elector cannot vote without assistance because the elector is sight impaired, physically incapacitated or illiterate, the elector may nominate a person (other than a candidate at the election or a scrutineer for a candidate) to assist the elector, and the nominated person must mark the elector’s ballot paper according”.

to the directions of the elector and fold and deposit the ballot paper in the ballot box.

- (1a) Dealings with a ballot paper under subsection (1) are to be conducted in the presence of such scrutineers as are present, or, if there are no scrutineers present, then in the presence of an electoral officer who is not the person nominated to assist the elector.

”.

- (2) Section 129(3)(b) is amended by deleting “and folded by an electoral officer” and inserting instead —

“ , folded and deposited in a ballot box by a person ”.

- (3) Section 129(4) is amended by deleting “, or who marks and folds a ballot paper under subsection (3)(b),”.

36. Section 137 amended

- (1) Section 137(1) is amended by deleting “one scrutineer” and inserting instead —

“ scrutineers ”.

- (2) Section 137(2) is amended by deleting “Such appointment” and inserting instead —

“ An appointment under subsection (1) ”.

- (3) After section 137(2) the following subsection is inserted —

“

- (3) For each place where the scrutiny and count of votes are conducted, each candidate may appoint not more than —

- (a) 2 scrutineers; or
(b) if counting of votes takes place simultaneously at 2 or more locations in that place, one scrutineer for each of those locations,

unless the Returning Officer, or Assistant Returning Officer, as the case may be, allows a greater number.

”.

37. Section 146C amended

- (1) Section 146C(1)(c) is amended by deleting “one scrutineer” and inserting instead —

“ not more than 2 scrutineers ”.

- (2) Section 146C(2)(a) is amended by deleting “one scrutineer” and inserting instead —

“ not more than 2 scrutineers ”.

38. Section 147 amended

- (1) Section 147(1) is amended as follows:

- (a) by deleting paragraph (a) and “and” after it and inserting instead —

“

- (a) declare the result of the election and the name of the candidate, or names of the candidates, elected; and

”.

- (b) after paragraph (b)(i) by inserting —

“ and ”.

- (2) After section 147(1) the following subsection is inserted —

“

- (1a) A declaration under subsection (1) is to be made —

- (a) in the case of an election in a district, within the district at a place appointed by the Returning Officer, unless the Electoral Commissioner decides that the declaration is to be made at a place outside the district; or

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- (b) in the case of an election in a region, at a place appointed by the Electoral Commissioner.

”.

39. Section 149A inserted

After section 149 the following section is inserted in Part IV Division (5) —

“

149A. Election of unqualified or disqualified person void

- (1) If a person not qualified under section 76A is elected as a member of the Council or the Assembly, the election of that person is void.
- (2) If a person disqualified under section 76B(1) is elected as a member of the Council or the Assembly, the election of that person is void.
- (3) If a person disqualified under section 76B(2) from being elected as a member of a House is elected as a member of that House, the election of that person is void.

”.

40. Section 153 amended

Section 153(1) is amended by deleting “\$10” and inserting instead —

“ \$100 ”.

41. Section 156 amended

Section 156(9) and (10) are repealed.

42. Section 180 amended

Section 180 is amended by deleting “by a penalty not exceeding \$400, or”.

43. Section 182 amended

Section 182 is amended by deleting “horse and carriage hire” and inserting instead —

“ transport ”.

44. Section 187B inserted

After section 187A the following section is inserted —

“

187B. Publication of electoral advertisements on the internet

- (1) A person is guilty of an illegal practice if —
- (a) the person publishes an electoral advertisement on the internet or causes, permits or authorises an electoral advertisement to be published on the internet; and
 - (b) the electoral advertisement is intended to affect voting in an election; and
 - (c) the electoral advertisement is paid for by the person or another person; and
 - (d) the name and address of the person who authorised the advertisement do not appear at the end of the advertisement.
- (2) Subsection (1) does not apply if the matter published on the internet forms part of a general commentary on an internet website.

”.

45. Section 188 replaced

Section 188 is repealed and the following section is inserted instead —

“

188. Punishment for illegal practices

- (1) Bribery or undue influence is punishable —
 - (a) if the offence relates to an early ballot paper or early vote, by imprisonment for 2 years;
 - (b) in any other case, by imprisonment for 12 months.
- (2) Any other illegal practice is punishable —
 - (a) if the offence relates to an early ballot paper or early vote, by imprisonment for 12 months;
 - (b) in any other case, by a fine of \$6 000.

”.

46. Section 190 amended

Section 190 is amended in the second column of the Table of Electoral Offences and Punishments as follows:

- (a) by deleting “\$300.” in both places where it occurs and inserting instead —
“ \$1 000. ”;
- (b) by deleting “exceeding \$100.” in each of the 3 places where it occurs and inserting instead —
“ exceeding \$1 000. ”;
- (c) by deleting “\$4.” and inserting instead —
“ \$1 000. ”;
- (d) by deleting “Penalty not less than \$10 nor more than \$100.” and inserting instead —
“ Penalty not exceeding \$1 000. ”.

47. Section 191 amended

Section 191(1) is amended in the penalty by deleting “\$40.” and inserting instead —

“ \$1 000. ”.

48. Section 192 amended

Section 192(4) and (5) are repealed.

49. Section 192A amended

Section 192A is amended in the penalty by deleting “\$100.” and inserting instead —

“ \$1 000. ”.

50. Section 195 amended

Section 195(2) is amended in the penalty by deleting “\$4.” and inserting instead —

“ \$100. ”.

51. Section 210 amended

Section 210(1) is repealed and the following subsection is inserted instead —

“

- (1) If this Act provides for electoral matter to be transmitted by post, the matter may be transmitted by electronic means if it is practicable to do so.

”.

52. Schedule 1 amended

- (1) Schedule 1 clause 5 is repealed and the following clause is inserted instead —

“

5.

Unless all the vacancies have been filled, the surplus votes (if any) of any candidate elected under clause 4, or elected subsequently under this clause, shall be transferred to the continuing candidates as follows —

- (a) the number of surplus votes of the elected candidate shall be divided by the number of votes received by him and the resulting fraction shall be the surplus fraction;
- (b) in relation to any particular ballot papers for surplus votes of the elected candidate, the surplus fraction shall be multiplied by the transfer value at which those ballot papers were transferred to the elected candidate, or by one if they expressed first preference votes for the elected candidate, and the product shall be the continued transfer value of those particular ballot papers;
- (c) the total number of ballot papers for surplus votes of the elected candidate that each —
 - (i) express the next available preference for a particular continuing candidate; and
 - (ii) have a particular continued transfer value, shall be multiplied by that transfer value, the number so obtained (disregarding any fraction) shall be added to the number of votes of the continuing candidate and all those ballot papers shall be transferred to the continuing candidate,

and if on the completion of the transfer of the surplus votes of the elected candidate to a particular continuing candidate that candidate has received a number of votes equal to or greater than the quota, that candidate shall be elected.

”.

- (2) Schedule 1 clause 7 is repealed.
- (3) Schedule 1 clause 9 is amended by deleting “4(a) and (b)” and inserting instead —

“ 5 ”.

53. Minor amendments

The Act is amended as set out in the Table.

Table

Provision amended	Amendment
section 60(1)	the deletion of “56(a)” and insertion instead of — “ 56 ”.
section 61	the repeal of the section.
section 62I(2)	the insertion after “one member of” of — “ the ”.
section 62N(1)(c)	the insertion before “decision” of — “ a ”.
section 67(5)	the deletion of “32(a)” and insertion instead of — “ 32(1)(a) ”.
section 75(1)(b)	the deletion of “nomination” and insertion instead of — “ declaration of nominations ”.
section 77(1)(b)	the insertion after “as” of — “ , or from being, ”.
section 85	the deletion of “6 p.m.” and insertion instead of — “ 12 noon ”.
section 87(7)	the deletion of “113A” and insertion instead of — “ 113B ”.
section 92(4c)(b)	the deletion of “Tuesday” and insertion instead of — “ Thursday ”.
section 100B(2a)	the insertion after “The” of — “ Electoral Commissioner or the ”.
section 119(7)	the deletion of “or (2)”.

Electoral Legislation Amendment Act 2006
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Provision amended	Amendment
section 141(1)	the deletion of “, (b)”.
section 156A	the deletion of “(1)”.
section 186	the deletion of “incapable of being chosen or of sitting as” and insertion instead of — “ disqualified from being elected as, or from being, ”.

**Part 4 — *Electoral Amendment (Political Finance)*
Act 1992 amended**

54. The Act amended in this Part

The amendments in this Part are to the *Electoral Amendment (Political Finance) Act 1992**.

[* Act No. 75 of 1992.]

55. Sections 5 and 6 repealed

Sections 5 and 6 are repealed.
