

ELECTORAL (No. 2).

No. 39 of 1979.

AN ACT to amend the Electoral Act, 1907-1976.

[Assented to 25th October, 1979.]

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

1. (1) This Act may be cited as the *Electoral Act Amendment Act (No. 2), 1979.* Short title and citation.

(2) In this Act the Electoral Act, 1907-1976 is referred to as the principal Act.

(3) The principal Act as amended by this Act may be cited as the Electoral Act, 1907-1979.

Reprinted as approved for reprint 12th January, 1971 and amended by Acts Nos. 94 of 1972, 70 of 1973, and 129 of 1976.

Commence-
ment.

2. This Act shall come into operation on a date to be fixed by proclamation.

Section 3
amended.

3. Section 3 of the principal Act is amended by deleting the passage "PART VI.—LIMITATION OF ELECTORAL EXPENSES, ss. 174-178." .

Section 4
amended.

4. Section 4 of the principal Act is amended—
- (a) as to the interpretation "candidate", by deleting the passage ", VI" in line one; and
 - (b) by inserting before the interpretation "Province" an interpretation as follows—
 - "prison" means a prison within the meaning of that expression as defined by section four of the Prisons Act, 1903; .

Amendments
re the word
"aboriginal".

5. The principal Act is amended—
- (a) as to section 4—
 - (i) by inserting immediately before the interpretation "absent voter" an interpretation as follows—
 - "Aboriginal" means a person who is an Aboriginal within the meaning of that expression as defined by section four of the Aboriginal Affairs Planning Authority Act, 1972; ; and
 - (ii) by deleting the interpretation "native"; and
 - (b) by deleting the words "a native" in—
 - (i) line two of subsection (5) of section 45;
 - (ii) line two of subparagraph (i) of paragraph (aa) of section 181;
 - (iii) the last line of section 182;
 - (iv) line six of paragraph (1a) of section 183; and

(v) the penultimate line of section 184, and inserting in lieu thereof the words “an Aboriginal”, in each case.

6. Section 17 of the principal Act is amended— Section 17 amended.

(a) as to subsection (2), by deleting the word “Where”, in line one, and inserting in lieu thereof the passage “Subject to paragraph (c) of subsection (1) of section one hundred and seventy-two of this Act, where”; and

(b) as to subsection (3), by adding immediately after the word “sub-district”, in the last line, the following passage—

and any period of absence from such usual place of abode by a person who is not disqualified by section eighteen of this Act—

(a) while serving a sentence of imprisonment for an offence; or

(b) while otherwise in lawful custody or detention in relation to an offence,

shall be deemed to be such occasional absence, and that person shall be deemed not to have his usual place of abode at the place of imprisonment or custody or detention, as the case may be .

7. Section 18 of the principal Act is amended by deleting paragraph (c) and inserting in lieu thereof a paragraph as follows— Section 18 amended.

(c) has been attainted of treason, is under sentence or sentences of imprisonment of or totalling one year or longer, is subject to an order, direction or sentence, as the case may be, to be detained or kept in any kind of custody or prison under any of the following provisions of The Criminal Code—

(i) paragraph (6a) of section nineteen;

- (ii) section six hundred and thirty-one;
 - (iii) section six hundred and fifty-two;
 - (iv) section six hundred and fifty-three or subsection (4) of section six hundred and ninety-three;
 - (v) section six hundred and sixty-one;
 - (vi) section six hundred and sixty-two,
- or is subject to a direction to be detained in an approved hospital under subsection (1) of section forty-seven of the Mental Health Act, 1962;

Section 42
amended.

8. Section 42 of the principal Act is amended—

- (a) as to subsection (1), by deleting paragraph (b) and inserting in lieu thereof a paragraph as follows—

(b) shall be signed by the claimant in the presence of—

(i) where the claimant's name does not appear on any roll—

- (I) an Electoral Officer;
- (II) a Justice of the Peace;
- (III) a clerk of courts; or
- (IV) a Police officer; or

(ii) in any other case, an elector, or a person qualified to be enrolled as an elector, of the Commonwealth Parliament or of the Legislative Assembly of Western Australia,

who shall sign his name on the claim as a witness to the signing of the claim of the claimant, and state the capacity in which he did so; ;

and

- (b) by inserting subsections as follows—

(3) Any person who witnesses the signature of a claimant without being personally acquainted with the facts, or

satisfying himself by inquiry from the claimant or otherwise that the statements contained in the claim are true, is guilty of an offence and liable to a penalty not exceeding one hundred dollars.

(4) In subsection (1) of this section—

“clerk of courts” means a person acting as a clerk of a court of petty sessions pursuant to the Justices Act, 1902, or a person appointed under the Local Courts Act, 1904 as clerk or assistant clerk for a Local Court;

“Electoral Officer” means a member of the Public Service of the State employed in the Electoral Department of the State, or a member of the Commonwealth Public Service employed in the Australian Electoral Office and includes an “officer” within the meaning of that expression as defined in section four of this Act; and

“Police officer” means a member of the Police Force of the State or the Commonwealth.

9. Section 44 of the principal Act is amended— Section 44
amended.

(a) as to subsection (1), by deleting paragraph (f) and inserting in lieu thereof a paragraph as follows—

(f) the usual signature in his own handwriting of the person who, pursuant to the authority of paragraph (b) of subsection (1) of section forty-two of this Act, witnessed the signing of the claim by the claimant, and the capacity in which he did so. ; and

(b) as to subsection (4), by inserting immediately after the word “of” in line two the passage “subsection (1) of” .

Section 52
amended.

10. Subsection (1) of section 52 of the principal Act is amended by deleting paragraph (e) and inserting in lieu thereof a paragraph as follows—

- (e) By removing the names of persons reported as being—
- (i) dead;
 - (ii) disqualified by section eighteen of this Act;
 - (iii) already enrolled in another district or whose names are repeated on the same roll. .

Section 59
repealed and
re-enacted.

11. Section 59 of the principal Act is repealed and re-enacted as follows—

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

59. During the months of January, April, July and October in each year—

- (a) the Director, within the meaning of that expression as defined in section four of the Prisons Act, 1903, shall forward to the Chief Electoral Officer, in the prescribed form, a list containing the names and age of each person of a kind referred in paragraph (c) of section eighteen of this Act and received by him in each of Her Majesty's prisons during the preceding three months, and shall show on the form the address and occupation of each such person prior to the sentence, order or direction, as the case may be, to which he is subject; and
- (b) the Director, within the meaning of that expression as defined in section five of the Mental Health Act, 1962, shall forward to the Chief Electoral Officer, in the prescribed form, a list containing the names and age of each person subject to a direction to be detained in an approved hospital under subsection (1) of section forty-seven of that Act and received by him in an approved hospital, within the meaning

of that expression as defined in section five of that Act, during the preceding three months and shall show on the form the address and occupation of each such person prior to the direction. .

12. Section 90 of the principal Act is amended— Section 90
amended.

(a) as to subsection (1)—

- (i) by deleting the comma at the end of paragraph (e) and inserting in lieu thereof a semi-colon; and
- (ii) by inserting after paragraph (e) a paragraph as follows—

(f) is by reason of—

- (i) serving a sentence of imprisonment for an offence; or
- (ii) being otherwise in lawful custody or detention,

precluded from attending at a polling place, ; and

(b) by inserting a subsection as follows—

(12) Notwithstanding the Prisons Act, 1903 or any regulation or rule thereunder, correspondence, in relation to a postal vote, entitlement thereto, or guidance thereon permitted by this Act, between the Chief Electoral Officer and an elector entitled to a postal vote by virtue of paragraph (f) of subsection (1) of this section shall not be censored. .

13. Section 95 of the principal Act is amended— Section 95
amended.

(a) by inserting a new subsection to stand as subsection (1) as follows—

(1) A person shall not persuade or induce, or associate with any other person in persuading or inducing, an

elector to make application for a postal vote. ; and

- (b) by redesignating subsection (1) as subsection (1a).

Section 100
amended.

14. Section 100 of the principal Act is amended—

- (a) by repealing and re-enacting subsection (1) as follows—

(1) The Minister may, by notice in the *Government Gazette*—

- (a) appoint a chief polling place for each Province and District;

- (b) appoint such other polling place as he thinks necessary for each Province or District, which polling place may be wholly or partly within the boundaries of—

(i) the Province or District;

(ii) any Province or District adjoining that Province or District;

- (c) appoint such other polling places as he thinks fit in any institution or hospital, or both;

- (d) declare any institution or hospital, or both, so appointed to be a special institution or hospital, or both, for the purposes of this Act;

- (e) declare any area of the State in which he considers attendance of electors at a polling place under usual conditions is difficult by reason of remoteness, to be a remote area for the purposes of this Act;

- (f) abolish any polling place;

- (g) cancel or amend a declaration made under paragraph (d) or (e) of this subsection;

(h) establish Sub-districts and fix the boundaries thereof, and abolish Sub-districts. ; and

(b) by inserting a subsection as follows—

(3) Where there is a by-election for any Province or District in the State, the Minister shall by notice in the *Government Gazette* appoint a conveniently situated polling place in the municipal district of the City of Perth for use by absent voters. .

15. Section 100A of the principal Act is amended— Section 100A
amended.

(a) as to subsection (1)—

(i) by deleting the words “during polling hours”, in line eight, and inserting in lieu thereof the passage “; at such times or during such hours as are provided by subsection (2) of this section,”; and

(ii) by deleting the word “the”, in line three of paragraph (b) and inserting in lieu thereof the word “another”;
and

(b) by inserting a subsection as follows—

(2) For the purposes of subsection (1) of this section, the attendance of the presiding officer and another officer at any institution or hospital, to which that section applies, shall be—

(a) where the institution or hospital is a special one for the purposes of this Act by virtue of a declaration under paragraph (d) of subsection (1) of section one hundred of this Act, at such times in the period of fourteen days up to and including polling day as the Chief Electoral Officer thinks fit; or

- (b) where the institution or hospital is not such a special one, during polling hours as provided by paragraph (2) of section one hundred and seventeen of this Act. .

Section 100B
added.

16. The principal Act is amended by inserting a section as follows—

Mobile port-
able ballot
boxes in
certain
remote areas.

100B. (1) Where any area of the State is a remote area of the State for the purposes of this Act by virtue of a declaration under paragraph (e) of subsection (1) of section one hundred of this Act, the presiding officer and other officer appointed under paragraph (5) of section one hundred and two of this Act, notwithstanding any other provision of this Act, shall attend at such places in the remote area, and at such times in the period of fourteen days up to and including polling day, as the Chief Electoral Officer thinks fit, with such number of mobile portable ballot boxes as the Chief Electoral Officer thinks fit and approved by him for the purpose of affording an opportunity to vote to every elector who may have difficulty in attending at a polling place under usual conditions.

(2) For the purposes of subsection (1) of this section, subsections (3) and (4) of section one hundred A of this Act apply with such modifications as are necessary.

(3) Where, for reasonable cause, there is a failure to attend a place in a remote area as required by subsection (1) of this section, the election and the result thereof shall be deemed not to be affected thereby. .

Section 102
amended.

17. Section 102 of the principal Act is amended by inserting after the word "hospital", in the last line, the passage ", and at each place in a remote area where a presiding officer and another officer are required to attend pursuant to section one hundred B of this Act".

18. Section 102A of the principal Act is amended by inserting a subsection as follows—

Section 102A
amended.

(3) Without limiting the generality of subsection (2) of this section, the Chief Electoral Officer may, for the purpose of assisting an elector on request as provided by section one hundred and twenty-nine of this Act, give such directions as he may consider necessary or expedient on and in relation to methods of—

- (a) conveying details on the ballot paper to the elector without conveying political information;
- (b) translating the voter's instructions; and
- (c) eliciting the exact direction of the voter's preferences.

19. Paragraph (2) of section 117 of the principal Act is amended by deleting the word "The", in line one, and inserting in lieu thereof the passage "Subject to sections one hundred A and one hundred B of this Act, the".

Section 117
amended.

20. Section 119 of the principal Act is amended—

Section 119
amended.

- (a) by repealing and re-enacting subsection (1) as follows—

(1) The presiding officer shall put to any person claiming to vote at any election the following question—

- (a) Have you already voted here or elsewhere at this election?

And if question (a) is answered in the negative, the following additional question—

- (b) Do you live in the electoral district of
(*being the electoral district for which the person claims to vote*)

or the electoral district that forms part of the province for which the person claims to vote)?

And if question (b) is answered in the negative, the following additional questions—

- (c) Have you within the last preceding three months *bona fide* lived within that district?
- (d) Where was your place of living in that electoral district?
- (e) Does your name appear on the roll for any other electoral district? ,

but the asking of questions (c), (d), and (e) shall be subject to the provisions of section one hundred and seventy-two of this Act. ;

(b) as to subsection (2)—

- (i) by deleting question (h);
- (ii) by redesignating questions (d) to (j) inclusive, other than question (h), as questions (f) to (m) inclusive; and
- (iii) by inserting at the end of the subsection a passage as follows—

but the presiding officer may decline a scrutineer's request for the asking of any one or more of those questions if the presiding officer considers that the asking of the question or questions would not be reasonable. ; and

(c) by inserting a subsection as follows—

(7) Where it appears to the presiding officer that an elector does not understand any question he is asked pursuant to subsection (1) or (2) of this section—

- (a) the presiding officer shall ask the elector the question in less formal language than the

language provided in the subsection but in words to the like effect; and

- (b) if the elector then finds difficulty with the question, the presiding officer may assist him in answering it. .

21. Section 129 of the principal Act is repealed and re-enacted as follows—

Section 129
repealed and
re-enacted.

129. On request from an elector the presiding officer, an assistant presiding officer, or a poll clerk, in the presence of such scrutineers as are present, or, if there are no scrutineers present, then in the presence of—

Assistance
to electors.

- (a) another electoral officer; or
(b) if the elector so desires, in the presence of a person, other than an electoral officer, appointed by such elector,

shall mark the elector's ballot paper according to the instructions of the elector, and fold and deposit the ballot paper for him, after which the elector and any person appointed by him, shall quit the polling place. .

22. Section 158 of the principal Act is amended by deleting paragraph (5) and inserting in lieu thereof a paragraph as follows—

Section 158
amended.

- (5) be filed in the Central Office of the Supreme Court within forty days after the return of the writ. .

23. Section 169 of the principal Act is amended by inserting after the word "Court", in line three, the passage " , and may in its discretion recommend that costs be paid by the Crown".

Section 169
amended.

24. Section 172 of the principal Act is amended—

Section 172
amended.

- (a) by inserting after the section number "172." the subsection designation "(1)";
(b) by redesignating paragraphs (1), (2), and (3) as paragraphs (a), (b), and (c), respectively; and

(c) by inserting subsections as follows—

(2) The proceedings of the Legislative Council or Legislative Assembly shall not be invalidated by reason of the presence in that House of any person returned under this Act as elected to that House but later subject to a declaration of the Court that—

(a) he was not duly elected to that House; or

(b) his election to that House is void or absolutely void.

(3) Where a person returned under this Act as elected to the Legislative Council or Legislative Assembly receives an appointment to one or more of the principal executive offices of the Government referred to in section forty-three of the Constitution Acts Amendment Act, 1899, but later he is subject to a declaration by the Court that—

(a) he was not duly elected to that House; or

(b) his election to that House is void or absolutely void,

any act, matter, or thing made, done, or executed in the exercise or purported exercise of the functions of that office or those offices from the time of his appointment until the time of the declaration shall not be invalidated by reason of the effect of that declaration apart from this subsection. .

Part VI
repealed.

25. Part VI of the principal Act is hereby repealed.

Section 187
amended.

26. Section 187 of the principal Act is amended by deleting paragraph (3).

Section 190
amended.

27. Section 190 of the principal Act is amended by inserting in the Table of Electoral Offences and Punishments a new offence and punishment in

respect thereof, to stand as the penultimate offence and punishment in columns one and two of the Table respectively, as follows—

<p>During the polling at any election wilfully taking any ballot paper out of a polling place except to one of the voting compartments.</p>	<p>Penalty not exceeding one hundred dollars.</p>
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28. Section 192 of the principal Act is amended— Section 192 amended.

(a) by inserting immediately after the section number “192.” the subsection designation “(1)”;

(b) by redesignating paragraphs (1) to (4) inclusive as (a) to (d) inclusive; and

(c) by inserting subsections as follows—

(2) Subject to subsection (3) of this section, where a polling place has been appointed by the Minister under the provisions of section one hundred of this Act, at any institution or hospital, the acts referred to in subsection (1) of this section are, at all times, prohibited in the institution or hospital, in the grounds thereof, or within six metres from the entrance to the institution or hospital or from the entrance to the grounds thereof, whichever entrance is the furthest distance away from the institution or hospital itself.

(3) Literature relating to political parties may be left at the general office of an institution or hospital referred to in subsection (2) of this section so that such literature may be available on request by any elector who is for the time being resident in the institution or hospital wherein the polling place is

appointed to be by reason of illness or infirmity or in the case of a woman, by reason of approaching maternity.

(4) The acts referred to in subsection (1) of this section are, at all times, prohibited in a prison, in the grounds thereof, or within six metres from the entrance to the prison or from the entrance to the grounds thereof, whichever entrance is the furthest distance away from the prison itself.

(5) Subsection (4) of this section does not apply to prohibit in a prison the reading, seeing, or hearing of electoral publicity in such newspapers or other media as are, under the due administration of the prison, permitted there.

Section 207
amended.

29. Section 207 of the principal Act is amended—

(a) as to subsection (1)

(i) by deleting the first three lines and inserting in lieu thereof the passage “The signatures to forms other than claims may be witnessed by an elector, or a person qualified to be enrolled as an elector, of the Commonwealth”; and

(ii) by deleting the second paragraph;

(b) as to subsection (2), by deleting the word “claims”, in line three, and inserting in lieu thereof the words “a form of the kind wherein the statutory declaration is made”; and

(c) by inserting a subsection as follows—

(3) Section two of the Declarations and Attestations Act, 1913 does not apply to or in relation to a claim required to be signed in the presence of a person of a kind referred to in subparagraph (i) of paragraph (b) of subsection (1) of section forty-two.