

CONSTITUTION (No. 2).

12° Elizabeth II., No. LXXII.

No. 72 of 1963.

AN ACT to amend the Constitution Acts Amendment Act, 1899-1963.

[Assented to 17th December, 1963.]

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 *Constitution Acts Amendment Act (No. 2), 1963*. Short title and citation.

(2) In this Act the Constitution Acts Amendment Act, 1899-1963, is referred to as the principal Act.

(3) The principal Act as amended by this Act may be cited as the Constitution Acts Amendment Act, 1899-1963.

Commence-
ment.

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

S. 6
amended.

3. Section six of the principal Act is amended—

- (a) by substituting for the word, “ten” in line one of subsection (1), the word, “fifteen”; and
- (b) by substituting for the word, “three” in line two of subsection (2), the word, “two”.

S. 7
amended.

4. Section seven of the principal Act is amended—

- (a) by substituting for the words “two years” in line two, the words, “one year”; and
- (b) by substituting for the word, “thirty” in line three, the word, “twenty-one”.

S. 8
repealed and
re-enacted.

5. Section eight of the principal Act is repealed and re-enacted as follows—

Extension
and
limitation
of terms of
service of
certain
members.

8. (1) On and after the coming into operation of the amending Act—

- (a) each of the ten members who would, but for the amending Act, be required to vacate his seat on the twenty-first day of May, nineteen hundred and sixty-four, shall not be required to vacate his seat, subject to this Act, until the twenty-first day of May, nineteen hundred and sixty-five;
- (b) each of the five members, ascertained in accordance with section eight A of this Act, who would but for the amending Act, be required to vacate his seat on the twenty-first day of May, nineteen hundred and sixty-six, shall be required to vacate his seat, subject to this Act, on the twenty-first day of May, nineteen hundred and sixty-five; and

- (c) each of the five members, ascertained in accordance with section eight A of this Act, who would but for the amending Act, be required to vacate his seat on the twenty-first day of May, nineteen hundred and sixty-six shall not be required to vacate his seat, subject to this Act, until the twenty-first day of May, nineteen hundred and sixty-eight.

(2) After the coming into operation of the amending Act, each of the members who is elected a member at a general election for the Legislative Council—

Retirement
of members
periodically.

- (a) in the year nineteen hundred and sixty-five, shall vacate his seat, subject to this Act on the twenty-first day of May, nineteen hundred and seventy-one;
- (b) in the year nineteen hundred and sixty-eight, shall vacate his seat, subject to this Act on the twenty-first day of May, nineteen hundred and seventy-four,

and so on, so that the seat of each member shall become vacant, subject to this Act, at the expiration of six years from the beginning of his term of service as a member.

(3) For the purposes of subsection (2) of this section, the term of service of a member shall be taken to begin on the twenty-first day of May next following the day of his election as member.

(4) (a) Every writ for the election of a member to fill any seat vacated by effluxion of time under this section, shall be issued before the tenth day of April last preceding the occurrence of such vacancy, and every such writ shall be returnable not later than the twenty-first day of May next succeeding the first mentioned day.

Times for
issue and
return of
writ.

(b) The member elected to fill any such vacancy shall not sit or vote until after such twenty-first day of May, at the close of which day the retiring member shall vacate his seat.

(5) Subject to subsections (6) and (7) of this section, when and as often as the seat of a member is vacated, otherwise than by effluxion of time, during the period between the first day of January and the twenty-first day of May, both days inclusive, in the year in which that seat would have been vacated under this section, that seat shall be deemed to have been vacated by effluxion of time, and the member elected to fill such vacancy is entitled to sit and vote on and after the twenty-first day of May in that year.

(6) Notwithstanding any other provision of this or any other Act, where before the day fixed by the proclamation referred to in subsection (5) of section eleven A of the Electoral Districts Act, 1947, the seat for an Electoral Province is vacated otherwise than by effluxion of time and there is insufficient time during the period between the occurrence of such vacancy and that day to hold an election for, and elect a member to, that seat under and in accordance with the Electoral Act, 1907, if the seat that is so vacated—

(a) is that of a member whose term of service expires on the twenty-first day of May, nineteen hundred and sixty-five, the seat shall be deemed to have been vacated by effluxion of time and the member elected to fill such vacancy—

(i) shall be elected at the next succeeding general election for the Legislative Council held in the year nineteen hundred and sixty-five; and

- (ii) is entitled to sit and vote on and after the twenty-first day of May, nineteen hundred and sixty-five;
- (b) is that of a member whose term of service expires on the twenty-first day of May, nineteen hundred and sixty-eight the Houses of Parliament shall, sitting and voting together, choose a person to hold the seat until the expiration of the term of service of the member whose seat has become vacant, but if the Houses of Parliament are not in Session at the time the vacancy occurs, the Governor shall appoint a person to hold the seat until the expiration of fourteen days after the beginning of the next Session of Parliament when the Houses so sitting and so voting shall either confirm such appointment made by the Governor or choose another person to hold the seat in place of the person appointed by the Governor, and the provisions of section eight B of this Act apply to the seat.

(7) Notwithstanding any other provision of this or any other Act, where the seat for an Electoral Province is vacated otherwise than by effluxion of time during the period between the first day of January, nineteen hundred and sixty-five and the twenty-first day of May, nineteen hundred and sixty-five, if the seat that is so vacated is that of a member whose term of service expires on the twenty-first day of May, nineteen hundred and sixty-eight, the Houses of Parliament shall, sitting and voting together, choose a person to hold the seat until the expiration of the term of service of the member whose seat has become vacant, but if the Houses of Parliament are not in Session at the time the vacancy occurs, the Governor shall appoint a person to hold the seat until the expiration of fourteen days after the beginning

of the next Session of Parliament when the Houses so sitting and so voting shall either confirm such appointment made by the Governor or choose another person to hold the seat in place of the person appointed by the Governor, and the provisions of section eight B of this Act, so far as they can be made to apply, apply to the seat.

(8) In this section—

“member” means a member of the Legislative Council;

“the amending Act” means the Constitution Acts Amendment Act (No. 2), 1963.

S. 8A
added.

6. The principal Act is amended by adding after section eight a section as follows—

Determina-
tion of
members
whose terms
are extended
or limited.

8A. (1) The five members referred to in paragraph (b) of subsection (1) of section eight of this Act, are those five members, excluding any member who was elected unopposed, who of the ten members elected as such in the year, nineteen hundred and sixty, each obtained a smaller winning margin percentage when so elected than the lowest winning margin percentage of any one of the remaining five members, and the last mentioned five members including any member elected unopposed, are the members referred to in paragraph (c) of subsection (1) of section eight of this Act.

(2) If the seat of a member to which this section applies is vacated otherwise than by effluxion of time, for the purposes of this section the member elected to fill that seat shall be deemed to be the member in whose place he is elected.

(3) For the purposes of this section—

“member” means a member of the Legislative Council; and

“winning margin percentage” in relation to a member elected at an election in nineteen hundred and sixty means the percentage that the number of votes, including preference votes, by which the member won that election bears to the total number of votes cast at that election in respect of the electoral province for which the member was elected.

7. The principal Act is amended by adding a section as follows—

S. 8B
added.

8B. (1) Subject to subsections (6) and (7) of section eight of this Act, when the State is divided into fifteen Electoral Provinces under the provisions of the Electoral Districts Act, 1947, each of the fifteen members of the Legislative Council, who is not required to vacate his seat until the twenty-first day of May, nineteen hundred and sixty-eight, shall make written application to the Governor within a period of fourteen days after the first general election in respect of those fifteen Electoral Provinces held in the year nineteen hundred and sixty-five, specifying the Electoral Province for which he desires to sit.

Allocation of
Electoral
Provinces to
sitting
member.

(2) If a member is the only member applying to sit for an Electoral Province, the Governor shall as soon as practicable after the period referred to in subsection (1) of this section declare by Order in Council that the member shall sit and vote for that Electoral Province and on and from the date of the Order the member shall sit and vote accordingly.

(3) Where more than one of such fifteen members apply to sit pursuant to subsection (1) of this section for the same Electoral Province, the Governor shall cause, as soon as practicable after the period referred to in subsection (1) of this section, the names of the applicants to be sent to the Chief Electoral Officer, appointed under the Electoral Act, 1907,

and in respect of that Electoral Province their applications shall be determined as soon as practicable after the receipt of the names by the Chief Electoral Officer, as follows—

- (a) the Chief Electoral Officer shall deal with each Electoral Province in alphabetical order and before the applicants concerned, if they desire to be present, and any other persons desiring to be present, make out a slip bearing the name of each applicant, enclose the respective slips in separate blank envelopes of exact similarity and deposit the several envelopes in a locked ballot box;
- (b) the Chief Electoral Officer shall then shake and rotate the ballot box and shall permit any other person, if he so desires, to do the same;
- (c) the ballot box shall then be unlocked and an officer of the Electoral Department of the State, other than the Chief Electoral Officer, shall take out and open one of the envelopes therefrom; and
- (d) the applicant whose name appears on the slip enclosed in the envelope first taken from the ballot box shall be the member who shall thereafter sit for the Electoral Province.

(4) Nothing in this section prevents any one of the fifteen members referred to in subsection (1) of this section from applying to sit for any one of a number of Electoral Provinces but a member who sat for an Electoral Province in the Metropolitan Area, the Agricultural, Mining and Pastoral Area, or the North-West Area may apply to sit only for an Electoral Province that is in the area in which the Electoral Province for which he previously sat, was included; and

if after members have been allotted the Electoral Provinces for which they shall respectively sit pursuant to subsection (2) or (3) of this section, there remains any Electoral Province or Electoral Provinces in respect of which no such allotment has been made, the Governor shall, as soon as practicable thereafter, by Order in Council allocate a member who has not been allotted a seat, to sit for that Electoral Province or one of those Electoral Provinces and on and from the date of the Order the member shall, subject to this Act, sit accordingly.

8. Section fifteen of the principal Act is repealed and re-enacted as follows—

S. 15
repealed and
re-enacted.

15. Subject to the disqualifications prescribed by section eighteen of the Electoral Act, 1907, the qualification of electors of members of the Legislative Council is that which is prescribed by section seventeen of that Act as the qualification for electors of members of the Legislative Assembly.

Qualification
and dis-
qualification
of electors.

9. Section sixteen of the principal Act is repealed.

S. 16
repealed.

10. Section seventeen of the principal Act is repealed.

S. 17
repealed.

11. Section forty-seven of the principal Act is amended by substituting for the word, "Notwithstanding" in line one, the passage, "Subject to the provisions of the Electoral Districts Act Amendment Act, 1963, notwithstanding".

S. 47
amended.
