

ELECTORAL.4^c GEO. VI., No. XVIII.**No. 18 of 1940.**

AN ACT to amend sections seventy-six, eighty-seven, and eighty-eight of the Electoral Act, 1907-1936, and for other purposes relative thereto.

[Assented to 29th November, 1940.]

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

1. This Act may be cited as the *Electoral Act Amendment Act*, 1940, and shall be read as one with the Electoral Act, 1907-1936 (as reprinted in the Appendix to the Sessional Volume of the Statutes for the year 1928 and amended by the Acts No. 38 of 1931, No. 39 of 1934, and No. 10 of 1936), hereinafter referred to as the principal Act.

Short title.
cf. No. 10
of 1936, s. 4.

2. Section seventy-six of the principal Act is amended as follows:—

Amendment
of s. 76.

(a) by inserting in paragraph (b) of subsection (1) after the word "elected" the words "and is not disqualified from being elected";

(b) by adding to the section a subsection as follows:—

(3) No person shall nominate himself as a candidate either in an election for the Council or in an election for the Assembly if, prior to and until the hour of nomination, as fixed in accordance with section eighty-five of this Act, he is, either by this Act or by any other Act, disqualified from being elected at such election as, or from being, a member of the Council or of the Assembly, as the case may be, for which the election is being held.

Any person who nominates himself as a candidate in contravention of this subsection shall be guilty of an offence.

Penalty—One hundred pounds, or imprisonment for six months.

Amendment
of s. 87.
Repeal and
new section.

3. Section eighty-seven of the principal Act is repealed and a new section is inserted in lieu thereof as follows:—

Withdrawal
or death of
candidate
after nomina-
tion.

87. (1) If, after the nominations have been declared and before polling day, any candidate withdraws his nomination and there remains only one candidate, such last-mentioned candidate shall forthwith be declared to be elected and the writ shall be returned.

(2) If, after the nominations have been declared and before or on polling day before the hour of closing the poll, any candidate in an election dies, such election shall, by reason of such death, be deemed to have wholly failed and the writ issued in respect thereof shall be deemed to be vacated, and in such case the following provisions shall apply—

(a) Where the candidate dies before polling day the returning officer shall, upon being satisfied of the fact of the death of the candidate—

(i) countermand the notice of the poll;

(ii) report the fact of the death to the Chief Electoral Officer;

- (iii) indorse upon the writ, which is vacated as aforesaid, the fact of the death and the date of the proof thereof and of the countermand of the notice of the poll; and
 - (iv) return such writ indorsed as aforesaid to the Clerk of the Writs.
- (f) Where the candidate dies on polling day, the Returning Officer shall, upon being satisfied of the fact of the death of the candidate—
- (i) immediately close the poll;
 - (ii) report the fact of the death to the Chief Electoral Officer;
 - (iii) indorse upon the writ, which is vacated as aforesaid, the fact of the death and of the time of the closing of the poll by him as aforesaid; and
 - (iv) return such writ indorsed as aforesaid to the Clerk of the Writs.
- (e) Where any poll is interrupted in consequence of the death of a candidate, all ballot papers placed in the several ballot boxes shall be taken out by the several presiding officers, and, being made up into sealed packages, shall be sent by them respectively unopened to the Returning Officer or deputy returning officer, who shall forthwith, in the presence of a magistrate or justice of the peace, burn or otherwise destroy the sealed packages unopened.
- (d) Upon the return to the Clerk of the Writs of a writ which has been vacated as aforesaid, a fresh writ shall be issued forthwith for a new election in the place of the election which has failed as aforesaid, and, save and except as in this subsection otherwise provided, all proceedings in connection with such new election shall be had and taken anew.
- (c) The roll which was in force and required to be used at the election which has failed shall, without any amendment thereof or addition thereto, be used at the new election.

- (f) Candidates who had duly nominated for the election which has failed and had not withdrawn their nomination prior to the failure of such election, shall be deemed to have been duly nominated for the new election and shall not be required to renominate for such new election, but, subject as hereinafter provided, may withdraw their nomination before the polling day fixed in relation to the new election:

Provided that—

(i) If a candidate withdraws his nomination at or before the hour of nomination on the nomination day fixed in relation to the new election he shall be entitled to a refund of the deposit lodged by him with his original nomination notwithstanding anything to the contrary contained in section eighty-one of this Act; and

(ii) the right of a candidate to withdraw his nomination after the hour of nomination on the nomination day fixed in relation to the new election shall be subject to the provisions of section eighty-one of this Act.

- (g) The appointment of officials and of polling places as made for and in connection with the election which has failed as aforesaid, shall not merely by reason of the failure of such election, be void or in any way affected, and may continue and apply for and in connection with the new election.

Provided that nothing in this paragraph shall operate so as to prevent the cancellation of any of the appointments aforesaid or the making of new appointments of officials or of polling places for and in connection with the new election.

- (3) If, after the close of the poll on polling day and before the counting of the votes in the election has been completed, a candidate dies, and on the completion of the count of the votes it is found that such candidate, if still living, would have been entitled to be declared and to be returned as elected,

no candidate shall be returned as elected at the election, and section eighty-eight of this Act shall apply.

4. Section eighty-eight of the principal Act is repealed and a new section is inserted in lieu thereof, as follows :—

Amendment
of s. 88.
Repeal and
new section.

88. If no candidate is nominated for an election, or if no candidate is returned as elected at an election, the election shall be deemed to have wholly failed, and a new writ shall forthwith be issued for a supplementary election.

Failure of
election
when no
candidate
nominated or
returned as
elected.

5. The principal Act as amended by this Act may be cited as the Electoral Act, 1907-1940.

Citation of
principal Act
as amended.
