

WESTERN AUSTRALIA.

CONSTITUTION ACTS AMENDMENT.

63° Victoriae No. 19.

(Affected by Act No. 113 of 1965.⁴)

[As amended by Acts:

No. 2 of 1900, assented to 25/9/1900;
No. 20 of 1904, assented to 22/4/1904;
No. 27 of 1907, assented to 20/12/1907;
No. 31 of 1911, assented to 16/2/1911;
No. 48 of 1919, assented to 17/12/1919;
No. 7 of 1920, assented to 3/11/1920;
No. 34 of 1921, assented to 30/12/1921;
No. 25 of 1927, assented to 14/12/1927;
No. 25 of 1933, assented to 1/12/1933;
No. 40 of 1934, assented to 4/1/1935;
No. 29 of 1942, assented to 23/12/1942;
No. 52 of 1945, assented to 30/1/1946;
No. 2 of 1947, assented to 26/9/1947;
No. 4 of 1947, assented to 2/10/1947;
No. 52 of 1947, assented to 19/12/1947;
No. 12 of 1948, assented to 11/11/1948;
No. 17 of 1949, assented to 24/9/1949;
No. 2 of 1950, assented to 24/10/1950;
No. 35 of 1950, assented to 16/12/1950;
No. 45 of 1950, assented to 18/12/1950;
No. 63 of 1950, assented to 29/12/1950;
No. 32 of 1954, assented to 18/12/1954;
No. 34 of 1955, assented to 28/11/1955;
No. 48 of 1955, assented to 4/5/1956;
No. 2 of 1958, assented to 19/9/1958;
No. 71 of 1959, assented to 16/3/1960;
No. 48 of 1962, assented to 20/11/1962;
No. 46 of 1963, assented to 3/12/1963;
No. 72 of 1963,¹ assented to 17/12/1963;
No. 2 of 1965, assented to 13/8/1965;
No. 49 of 1965,² assented to 8/11/1965;
No. 105 of 1965,³ reserved 20/12/1965;

and reprinted pursuant to the Amendments Incorporation Act, 1938.]

AN ACT to amend the Constitution Act, 1889, and to amend and consolidate the Acts amending the same.

[*Reserved, 16th December, 1899.*]

[*Royal Assent proclaimed 18th May, 1900.*]

WHEREAS by the Constitution Act, 1889, it is provided that the Legislature of Western Australia shall have full power and authority from

¹ Came into operation 26th March, 1964; see *Government Gazette* 6/3/64, p. 993.

² Came into operation 15th November, 1965; see *Government Gazette* 12/11/65, p. 3913.

³ Royal Assent proclaimed in *Government Gazette* on 29/4/65, p. 1017.

⁴ Decimal Currency Act, 1965.

time to time to repeal or alter any of the provisions of the said Act: And whereas it is expedient to amend the said Act and to amend and consolidate the Acts amending the same: Be it therefore enacted by the Queen'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:—

Short title.
Amended by
No. 105 of
1965, s. 1.

1. This Act may be cited as the *Constitution Acts Amendment Act, 1899-1965*.

Repeal.

2. The enactments mentioned in the First Schedule hereto are thereby repealed to the extent therein stated.

Interpre-
tation.
52 Vict., 23,
s. 75.
Amended by
No. 7 of 1920,
s. 2.
No. 46 of
1963, s. 3.

3. For the purposes of this Act—

“Her Majesty” means, when not repugnant to the context, Her Majesty, her heirs and successors.

“Governor” means the person for the time being lawfully administering the Government of Western Australia, or the lawfully appointed Deputy of such person.

“Governor in Council” means the Governor acting with the advice of the Executive Council.

“Minister” means the Minister charged with the execution of this Act.

“Treasurer” means the Treasurer of the State for the time being.

“Person” means an individual of either sex.

Division of
Act into
parts.
52 Vict., 23,
s. 1.

4. This Act is divided into three Parts, namely:—

PART I.—LEGISLATURE.

PART II.—EXECUTIVE.

PART III.—MISCELLANEOUS.

PART I.—LEGISLATURE.

Legislative Council.

5. The Legislative Council shall consist of thirty elected members, who shall be returned and shall sit for Electoral Provinces as defined pursuant to section six of this Act.

Legislative Council to consist of 30 members.
60 Vict., 18, s. 3.
Amended by No. 46 of 1963, s. 4.

6. (1) The State shall be divided into fifteen Electoral Provinces, under the provisions of the Electoral Districts Act, 1947, and shall return in all thirty members to serve in the Legislative Council.

Electoral Provinces.
Repealed and re-enacted by No. 46 of 1963, s. 5.
Amended by No. 72 of 1963, s. 3.

(2) Each Electoral Province shall return two members.

7. Subject as hereinafter provided, any person who has resided in Western Australia for one year shall be qualified to be elected a member of the Legislative Council, if such person is of the full age of twenty-one years, and not subject to any legal incapacity, and is a natural born or naturalised subject of Her Majesty the Queen and who is either an elector entitled to vote at an election of a member of the Legislative Assembly, or is qualified to become such an elector.

Qualification of members of Legislative Council.
57 Vict., 14, s. 6.
Amended by No. 7 of 1920, s. 2.
No. 48 of 1962, s. 2 and No. 72 of 1963, s. 4.

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;

Extension and limitation of terms of service of certain members.
Repealed and re-enacted by No. 72 of 1963, s. 5.

(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.

Retirement
of members
periodically.

(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—

- (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.

Times for
issue and
return of
writ.

(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.

(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) Subjects 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.

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.

Determination of members whose terms are extended or limited. Added by No. 72 of 1963, s. 6.

(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.

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. Added by No. 72 of 1963, s. 7.

(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.

9. Any member of the Legislative Council may resign his seat therein, by writing under his hand addressed to the President, or if there be no President, or if the President is absent from the State, to the Governor, and upon the receipt of such resignation by the President or the Governor, as the case may be, the seat of such member shall become vacant.

Resignation of members.
57 Vict., 14, s. 9, and see 60 Vict., 18, s. 7.
Amended by No. 46 of 1962, s. 8.

10. Subject to section eight of this Act the member elected to fill any vacancy arising otherwise than by effluxion of time shall hold the seat during the unexpired portion of the term for which the previous member would have been entitled to hold it, and no longer.

Tenure of seat by member filling vacancy.
57 Vict., 14, s. 11.

11. Whenever the office of President of the Legislative Council becomes vacant, the Council at their first meeting thereafter shall elect one of their members to be President, and the President so elected shall preside at all meetings of the Council:

Election of President.
Amended by No. 32 of 1954, s. 2.

Provided that pending such first meeting the Chairman of Committees shall fill the office and perform the duties of the President, subject, however, to section thirteen hereof.

Absence of President provided for. Amended by No. 32 of 1954, s. 3.

12. In case of the absence of the President upon leave of absence granted to him by the Legislative Council, or by reason of illness or other unavoidable cause, the Chairman of Committees shall fill the office and perform the duties of the President during such absence.

President of Council to hold office in certain cases until meeting of Parliament. 56 Vict., 17, ss. 1 and 3.

13. The member of the Legislative Council holding office as the President thereof who shall vacate his seat by periodical retirement when the Council is not in session, shall continue in office and be deemed to be the President of the said Council until the next meeting of Parliament, unless he shall not be re-elected a member of the said Council; but nothing in this section shall enable a President hereby continued in office to preside at any meeting of the said Council.

Quorum—division, casting vote. 57 Vict., 14, s. 7.

14. The presence of at least one-third of the members of the Legislative Council, exclusive of the President, shall be necessary to constitute a quorum for the despatch of business; and all questions which shall arise in the Legislative Council shall be decided by a majority of votes of the members present, other than the President, and when the votes are equal the President shall have the casting vote: Provided always, that if the whole number of members constituting the Legislative Council shall not be exactly divisible by three, the quorum of the Legislative Council shall consist of such whole number as is next greater than one-third of the members of the Legislative Council.

Qualification and dis-qualification of electors. Repealed and re-enacted by No. 72 of 1963, s. 8.

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.

16. [Repealed by No. 72 of 1963, s. 9.]

17. [Repealed by No. 72 of 1963, s. 10.]

Legislative Assembly.

18. The Legislative Assembly shall consist of fifty-one members, who shall be elected for the several Electoral Districts as defined pursuant to section nineteen of this Act.

Legislative Assembly to consist of 51 members.
Amended by No. 46 of 1963, s. 6; No. 49 of 1965, s. 3.

19. The State shall be divided into fifty-one Electoral Districts, under the provisions of the Electoral Districts Act, 1947, each returning one member to serve in the Legislative Assembly.

Electoral Districts.
Repealed and re-enacted by No. 46 of 1963, s. 7.
Amended by No. 49 of 1965, s. 4.

20. Subject as hereinafter provided any person who has resided in Western Australia for twelve months shall be qualified to be elected a member of the Legislative Assembly, if such person is the full age of twenty-one years and not subject to any legal incapacity and is a natural born or naturalised subject of Her Majesty the Queen, and who is either an elector entitled to vote at an election of a member of the Legislative Assembly or is qualified to become such an elector.

Qualification of members of Legislative Assembly.
57 Vict., 14, s. 17.
Amended by No. 7 of 1920, s. 2.
No. 48 of 1962, s. 4.

21. Every Legislative Assembly shall exist and continue for three years from the day of the first meeting thereof and no longer; subject, nevertheless, to being sooner prorogued or dissolved by the Governor.

Duration of Assembly.
See 52 Vict., 23, s. 14.
Amended by No. 48 of 1919, s. 2.

Provided that, subject as aforesaid—

- (a) whenever any Legislative Assembly would expire by the effluxion of time between the last day of August of any year and the first day of February next thereafter, such Legislative Assembly shall continue up to and including the day next preceding such first day of February and no longer; and

- (b) whenever the Legislative Assembly would expire by effluxion of time between the last day of January and the first day of September of any year, such Legislative Assembly shall cease and determine on the last day of January of that year.

Absence of
Speaker
provided for.

22. In case of the absence of the Speaker upon leave of absence granted to him by the Legislative Assembly, or by reason of illness, or other unavoidable cause, the Chairman of Committees shall perform the duties and exercise the authority of Speaker in relation to all proceedings of the House as Deputy Speaker; and, in the absence of the Chairman of Committees, the Assembly shall thereupon elect some other member to fill the office and perform the duties of the Speaker during such absence.

Speaker to
hold office
till meeting
of new
Parliament
unless not
re-elected.
56 Vict., 17,
s.s. 2 and 3.

23. In case of any dissolution of Parliament the Speaker of the Legislative Assembly at the time of such dissolution shall continue in office and shall be deemed to be the Speaker of the said Assembly until the first meeting of the new Parliament, unless he shall not be re-elected a member of the said Assembly; but nothing in this section shall enable a Speaker hereby continued in office to preside at any meeting of the said Assembly.

Quorum—
division,
casting vote.
57 Vict., 14,
s. 18.

24. The presence of at least one-third of the members of the Legislative Assembly, exclusive of the Speaker, shall be necessary to constitute a quorum for the despatch of business; and all questions which shall arise in the Legislative Assembly shall be decided by a majority of votes of the members present, other than the Speaker, and when the votes shall be equal the Speaker shall have the casting vote: Provided always, that if the whole number of members constituting the Legislative Assembly shall not be exactly divisible by three, the quorum of the Legislative Assembly shall consist of such whole number as is next greater than one-third of the members of the Legislative Assembly.

25. Any member of the Legislative Assembly may resign his seat therein, by writing under his hand, addressed to the Speaker, or if there be no Speaker, or if the Speaker is absent from the State, to the Governor, and upon the receipt of such resignation by the Speaker or the Governor, as the case may be, the seat of such member shall become vacant.

Resignation of members.
57 Vict., 14, s. 19.
See 60 Vict., 18, s. 10.
Amended by No. 46 of 1963, s. 8.

26, 27, 28, 29, 30. [*Repealed by Act No. 27 of 1907, s. 211.*]

31. No person shall be qualified to be a member of the Legislative Council or Legislative Assembly, if he—

Disqualification for membership of either House.
See 52 Vict., 23, s. 23.

- (1) Be a member of the other House of the Legislature; or
- (2) Be a Judge of the Supreme Court; or
- (3) Be the Sheriff of Western Australia; or
- (4) Be a clergyman or minister of religion; or
- (5) Be an undischarged bankrupt, or a debtor against whose estate there is a subsisting receiving order in bankruptcy; or
- (6) Has been in any part of Her Majesty's dominions attained or convicted of treason or felony.

32. Any person who shall directly or indirectly, himself, or by any person whomsoever in trust for him, or for his use or benefit, or on his account, undertake, execute, hold, or enjoy in the whole or in part any contract, agreement, or commission made or entered into with, under, or from any person whomsoever, for or on account of the Government of the State;

Persons holding contracts for the public service shall be incapable of being elected or sitting.
52 Vict., 23, s. 24.
Amended by No. 46 of 1963, s. 8.

Or shall knowingly furnish or provide in pursuance of any such contract, agreement, or commission any money to be remitted abroad, or any goods whatsoever to be used or employed in the service of the public;

And any member of any company, and any person holding any office or position in any company formed for the construction of any railway or other public work, the payment for which, or the interest on the cost of which has been promised or guaranteed by the Government of the State;

shall be disqualified from being a member of the Legislative Council or Legislative Assembly during the time, he shall execute, hold, or enjoy any such contract, agreement, or commission, or office or position, or any part or share thereof, or any benefit or emolument arising from the same.

If member not qualified election to be void.

33. If any person not qualified to be a member of the Legislative Council or Legislative Assembly shall, nevertheless, be elected and returned as a Member to serve in the said Council or Assembly, such election and return shall be void.

Any member accepting a contract, or continuing to hold any contract after the commencement of the next session, his seat shall be void.
52 Vict., 23, s. 25.
Amended by No. 46 of 1963, s. 8.

34. If any person, being a member of the Legislative Council or Legislative Assembly, shall directly or indirectly, himself, or by any person whomsoever in trust for him, or for his use or benefit, or on his account, enter into, accept, or agree for, undertake or execute, in the whole or in part, any such contract, agreement, or commission as aforesaid, or if any person being a member of the said Council or Assembly, and having already entered into any such contract, agreement, or commission, or any part or share of any such contract, agreement, or commission, by himself, or by any other person whomsoever in trust for him, or for his use or benefit, or upon his account, shall, after the commencement of the next Session of the Legislature, continue to hold, execute, or enjoy the same, or any part thereof, the seat of every such member shall be void: Provided that nothing in this or the last preceding section shall extend to persons contributing towards any loan for public purposes heretofore or hereafter raised by the State, or to the holders of any bonds issued for the purpose of any such loan.

35. The foregoing provisions shall not extend to any contract, agreement, or commission made, entered into, or accepted by any incorporated company where such company consists of more than twenty persons, and where such contract, agreement, or commission is made, entered into, or accepted for the general benefit of such company, nor to any contract or agreement in respect of any lease, license, or agreement in respect to the sale or occupation of Crown lands, nor to any contract or agreement (not being a contract or agreement for the construction of any public work within the meaning of the Public Works Act, 1902-1933¹) made or entered into by any person with the Crown for the rendering of any service by such person for the Crown, or for the supply of any goods, wares or merchandise or the rendering of any service to such person or for the making of any loan to such person upon the security of a mortgage, bill of sale, lien or other security at prices or rates or upon and subject to conditions which are similar to those charged or imposed by the Crown in its transactions of a like nature with other persons in the ordinary course of business of supplying goods, wares or merchandise or rendering the service or making loans as aforesaid, and which the said first mentioned person under the said contract or agreement is legally bound to pay or observe and comply with; nor to any sale of goods or to any performance of work by any person to or for the Crown in the usual and ordinary course of a commercial business as already established and being carried on by such person in a town or portion of the State where there is no other person carrying on the same kind of business and—

Not to extend to incorporated trading companies.
52 Vict., 23, s. 26.
Amended by No. 52 of 1945, s. 2.

- (i) it is necessary, in order to avoid delay, expense, or other inconvenience, that the Crown shall obtain such goods or the performance of such work in such town or portion of the State;
- (ii) the goods are not sold or the work is not performed in pursuance of a written agreement which by virtue of its provisions has a continuing operation; and

¹ Now Public Works Act, 1902-1966.

- (iii) the goods or work are not required for or in connection with the construction of a public work within the meaning of the Public Works Act, 1902-1933.¹

For the purposes of this section, the term "the Crown" includes the Crown, a Minister of the Crown in his ministerial capacity, any State Government officer acting in his official capacity, any State Government department, any State trading concern, State instrumentality, State public utility, and any other person or body, whether corporate or non-corporate who or which under the authority of an Act of Parliament administers or carries on for the benefit of the State any public social service or public utility.

Not to extend to contracts by descent.
52 Vict., 23, s. 27.

36. The foregoing provisions shall not extend to any person on whom, after the commencement of this Act, the completion of any contract, agreement, or commission shall devolve by descent, or limitation, or by marriage, or as devisee, or legatee, until twelve months after he shall have been in possession of the same, or to any executor or administrator until three years after he shall have been in possession of the same.

Office holder taking the oath as member thereby to vacate his office.
52 Vict., 23, s. 28.

Amended by No. 2 of 1947, s. 2.

No. 12 of 1946, s. 2,

No. 2 of 1950, s. 2.

No. 2 of 1965, s. 2.

Chief executive offices excepted.

See 60 Vict., 18, s. 13.

37. Subject to the second proviso to section thirty-eight of this Act, if any person while holding an office of profit under the Crown, other than that of an officer of Her Majesty's sea or land forces on full, half, or retired pay, be elected a member of the Legislative Council or of the Legislative Assembly, he shall, if he takes the oath or makes the affirmation hereinbefore prescribed, be held by so doing to vacate his said office.

Provided that this section shall not apply to the twelve principal executive offices of the Government liable, in accordance with this Act, to be vacated on political grounds.

¹ Now Public Works Act, 1902-1966.

38. If any member of the Legislative Council or Legislative Assembly, after his election—

Seats in Parliament vacated in certain cases. 52 Vict., 23, s. 29. Amended by No. 4 of 1947, as amended by No. 46 of 1963. Further amended by No. 12 of 1948, as amended by No. 46 of 1963.

- (1) Ceases to be qualified or becomes disqualified as aforesaid; or
- (2) Takes the benefit, whether by assignment, composition, or otherwise, of any law relating to bankrupt or insolvent debtors; or
- (3) Becomes of unsound mind; or
- (4) Takes any oath or makes any declaration or acknowledgment of allegiance, obedience, or adherence to any foreign Prince or Power, or does, concurs in, or adopts any act whereby he may become a subject or citizen of any foreign State or Power, or whereby he may become entitled to the rights, privileges, or immunities of a subject or citizen of any foreign State or Power; or
- (5) Fails to give his attendance in the Legislative Council or in the Legislative Assembly, as the case may be, for two consecutive months of any session thereof without the permission of the said Council or Assembly, as the case may be, entered upon its journals; or
- (6) Accepts any pension during pleasure or for term of years other than an allowance under section seventy-one of the Constitution Act, 1889, or any office of profit from the Crown, other than that of an officer of Her Majesty's sea or land forces on full, half, or retired pay;

his seat shall thereupon become vacant:

Provided that, notwithstanding anything in this or any other Act, a Member of the Legislative Assembly shall not vacate his seat by reason only of his acceptance of an office of profit from or under the Crown if that office be one which the holder is liable to vacate on political grounds and which is referred to in sections six and seventy-four of the

Constitution Act, 1889 (52 Vict. No. 23), and in sections thirty-seven, forty-two, forty-three and forty-four of this Act.

Provided further that, on and after the twelfth day of June, one thousand nine hundred and forty-seven, for the purposes of this and the last preceding section, the holding or acceptance of the offices following, or either of them, shall not of itself constitute the holding of an office of profit under the Crown or the acceptance of an office of profit from the Crown:—

- (a) The office of an approved pharmaceutical chemist under and for the purposes of the Pharmaceutical Benefits Act, 1947, of the Commonwealth.
- (b) The office of a medical practitioner approved under section eleven of the said Pharmaceutical Benefits Act, 1947.

Election of disqualified persons void. 52 Vict., 23, s. 32. 53 Vict., 15. Amended by No. 113 of 1965, s. 8.¹

39. If any person under any of the disqualifications mentioned in this Act, shall presume to sit or vote as a member of the said Council or Assembly, such person shall forfeit the sum of four hundred dollars, to be recovered, subject as hereinafter provided, by any person who shall sue for the same in the Supreme Court.

Added by No. 25 of 1933, as amended by No. 46 of 1963.

39A. Notwithstanding the provisions of section six of the Constitution Act, 1889, or sections thirty-two, thirty-four, thirty-seven, thirty-eight, and thirty-nine of this Act, no disability, disqualification, or penalty shall be incurred by any person who is at present both a member of Parliament and a member of the Commission constituted under the Lotteries (Control) Act, 1932, by reason of having accepted or continuing to hold before or after the commencement of this Act the office of a member of the said Commission, or any emolument pertaining to that office, but no such office or emolument arising therefrom shall be held or enjoyed by any such member of Parliament beyond the thirty-first day of December, one thousand nine hundred and thirty-four.

¹ Decimal Currency Act, 1965.

39B. Notwithstanding the provisions of section six of the Constitution Act, 1889, or sections thirty-two, thirty-four, thirty-seven, thirty-eight, and thirty-nine of this Act—

No disability, disqualification or penalty in certain cases. Added by No. 29 of 1942, as amended by No. 46 of 1963. Further amended by No. 45 of 1950, s. 3, as amended by No. 46 of 1963.

- (a) the seat of a member of Parliament shall not become vacant and shall not be deemed or taken to have become vacant;
- (b) the election or appointment of any person to be a member of Parliament shall not be invalidated and shall not be deemed or taken to have been in any way invalidated;
- (c) no person shall be or be deemed or taken to have been disqualified from or incapable of being elected or appointed or being or continuing a member of Parliament or be or be deemed or taken to have been incapable of sitting or voting in Parliament; and
- (d) no member of Parliament or person sitting or voting as a member shall be or be deemed or taken to have been liable to any penalty

by reason only—

- (1) that during the continuance of the war in which His Majesty is at the commencement of this Act engaged and for a period of six months thereafter such member or person accepts or holds or has at any time since the third day of September, one thousand nine hundred and thirty-nine, accepted or held—
 - (a) any office or place in the Naval, Military, or Air Forces of the Commonwealth of Australia or in the Naval, Military, or Air Forces of the United Kingdom or of any other part of His Majesty's dominions;
 - (b) any office or place of profit or other employment from or under the Crown (whether in right of the

Commonwealth or of any State or of the United Kingdom or of any other part of His Majesty's dominions)—

- (i) provided for by or under the National Security Act, 1939, or by or under that Act as amended at any time or by or under any regulations made under that Act, or under that Act as so amended, or by or under any order or rule made under any such regulations; or
- (ii) which the Minister of State for Defence certifies, by writing under his hand, is, in his opinion, connected with the defence of the Commonwealth or the efficient prosecution of the war,

or receives, or has since the third day of September, one thousand nine hundred and thirty-nine, received any pay or allowance in respect of or in connection with any such office, place, or employment.

- (2) that such member or person accepts or holds or has at any time since the third day of September, one thousand nine hundred and thirty-nine, accepted or held any pension in respect of or arising out of his service since the third day of September, one thousand nine hundred and thirty-nine, in any Force hereinbefore referred to in this section;
- (3) that such member or person accepts or holds or has accepted or held any office or place of profit from or under the Crown which the Minister of State for Defence certifies in writing under his hand, is, in his opinion, connected with the defence of the Crown.

40. The proceedings of the Legislative Council or Legislative Assembly shall not be invalidated by reason of the presence thereof of any person by this Act disabled or declared to be incapable to sit or vote in the said Council or Assembly.

Presence of unqualified persons not to invalidate proceedings. 52 Vict., 23, s. 33.

41. No member of the Legislative Council or Legislative Assembly shall vacate his seat by reason of his accepting the office of Administrator of the Government of the State and any Member of either House duly appointed thereto may hold the said office.

Member may accept office of Administrator without vacating his seat. 54 Vict., 6, s. 1. Amended by No. 46 of 1963, s. 8.

41A. Notwithstanding anything to the contrary contained elsewhere in this Act or in any other Act, a member of the Legislative Council or of the Legislative Assembly who is appointed as a member of a Select Committee (whether a Select Committee of either House or a Joint Select Committee) or as a member of any Royal Commission, or as a member of the Executive Council with the designation "Honorary Minister," or who is approved by the Governor as a representative of either House of Parliament or of the Commonwealth Parliamentary Association shall not vacate his seat or incur disqualification under this Act by reason of accepting, for and in respect of expenses which may necessarily or reasonably be incurred by him in connection with or incidentally to the discharge by him of his duties as such member of such Select Committee or Royal Commission or such Executive Council or as such representative (as the case may be), payment from the Crown of an expenses allowance as prescribed by regulation which the Governor shall be and is hereby authorised to make under and for the purposes of this section.

Protection of members in certain cases. Added by No. 52 of 1945, s. 3. Amended by No. 2 of 1958, s. 2.

42. When a person has been elected a member of the Legislative Council or Legislative Assembly after his acceptance of one of the offices liable to be vacated on political grounds, the subsequent acceptance by him from the Crown of another of such offices, whether both offices are held together, or the one office is accepted in lieu of and in immediate succession to the other, shall not vacate his seat.

Responsible Minister changing his office not to vacate seat. 54 Vict., 6, s. 2.

PART II.—EXECUTIVE.

Twelve principal executive offices.
60 Vict., 18, s. 13.

43. (1) There may be twelve principal executive offices of the Government liable to be vacated on political grounds, and no more.

To be designated by Governor.
Amended by No. 25 of 1927, s. 2.
No. 2 of 1950, s. 2.
No. 2 of 1965, s. 3.

(2) The said offices shall be such twelve offices as shall be designated and declared by the Governor in Council, from time to time, to be the twelve principal executive offices of the Government for the purposes of this Act.

(3) One at least of such executive offices shall always be held by a member of the Legislative Council.

No person to draw salaries for two offices.
54 Vict., 6, s. 3.

44. If any person accepts any two or more of the offices liable to be vacated on political grounds, it shall not be competent for him to receive the salary of more than one office.

Amount payable out of Consolidated Revenue Fund.
60 Vict., 18, s. 14.
Amended by No. 25 of 1927, s. 3.
No. 52 of 1947, s. 4.
No. 17 of 1949, s. 3.
No. 2 of 1950, s. 2.
No. 48 of 1955, s. 2.

45. There shall be payable to Her Majesty, out of the Consolidated Revenue Fund, for defraying the expenses of the services and purposes set forth in the Fourth Schedule to this Act, the amounts prescribed in that Schedule which amounts shall be payable, and shall be issued by the Treasurer in discharge of such warrants as shall from time to time be directed to him under the hand of the Governor.

PART III.—MISCELLANEOUS.

Powers of the two Houses in respect of legislation.
Substituted by No. 34 of 1921, s. 2.
Amended by No. 63 of 1950, s. 2.
See Com'th Constitution Act, s. 53.

46. (1) Bills appropriating revenue or moneys, or imposing taxation, shall not originate in the Legislative Council; but a Bill shall not be taken to appropriate revenue or moneys, or to impose taxation, by reason only of its containing provisions for the imposition or appropriation of fines or other pecuniary penalties, or for the demand of payment or appropriation of fees for licenses, or fees for registration or other services under the Bill.

(2) The Legislative Council may not amend Loan Bills, or Bills imposing taxation, or Bills appropriating revenue, or moneys for the ordinary annual services of the Government.

(3) The Legislative Council may not amend any Bill so as to increase any proposed charge or burden on the people.

(4) The Legislative Council may at any stage return to the Legislative Assembly any Bill which the Legislative Council may not amend, requesting by message the omission or amendment of any item or provision therein: provided that any such request does not increase any proposed charge or burden on the people. The Legislative Assembly, may if it thinks fit, make such omissions or amendments, with or without modifications.

(5) Except as provided in this section, the Legislative Council shall have equal power with the Legislative Assembly in respect of all Bills.

(6) A Bill which appropriates revenue or moneys for the ordinary annual services of the Government shall deal only with such appropriation.

Appropriation Bills.
Ibid., s. 54.

(7) Bills imposing taxation shall deal only with the imposition of taxation, and any provision therein dealing with any other matter shall be of no effect.

Tax Bills.
Ibid., s. 55.

(8) A vote, resolution, or Bill for the appropriation of revenue or moneys shall not be passed unless the purpose of the appropriation has in the same session been recommended by message of the Governor to the Legislative Assembly.

Recommendation of money votes.
Ibid., s. 56.

(9) No infringement or non-observance of any provision of this section shall be held to affect the validity of any Act assented to by the Governor at any time prior to the thirty-first day of January, 1951.

47. Subject to the provisions of the Electoral Districts Act Amendment Act, 1963, notwithstanding the creation of any new Province or District, or the alteration of the name or boundaries of any Province or District by this Act,¹ every member of

Members' seats to be unaffected by new division.
60 Vict., 18, s. 15.
Amended by No. 72 of 1963, s. 11.

¹ Now see Electoral Districts Act, No. 51 of 1947.

the Legislative Council shall continue to represent in Parliament the Province of the same name as the Province for which he was elected, but with the boundaries assigned to it by this Act,¹ and during the present Parliament every member of the Legislative Assembly shall continue to represent in Parliament the District for which he was elected as if this Act had not been passed.

Electoral Registrars to amend electoral rolls in accordance with new division of Provinces and Districts.
60 Vict., 18, s. 11.

48. ¹(1) It shall be the duty of the Electoral Registrars, immediately after the commencement of this Act, to amend the Electoral Roll for each Province and District by removing from the roll the name of every elector whose qualification by the operation of this Act is situate or arises in some other Province or District, and to insert every name so removed on the Electoral Roll of the Province or District to which the qualification is, by the operation of this Act, transferred.

Temporary roll for newly formed Province or District.

(2) In the case of a Province or District created by this Act for which there is no electoral roll in existence, the Electoral Registrar shall remove from the roll of the Province or District of which the newly created Province or District formed part, the name of every elector whose qualification by the operation of this Act is situate or arises in such newly formed Province or District, and shall compile a roll for every such lastmentioned Province or District of the names so removed in the form prescribed by the Electoral Act, 1899,² and such roll shall be forwarded by such Electoral Registrar to the Electoral Registrar of the newly formed Province or District, and such roll shall be the electoral roll for every such newly formed Province or District until a new roll is completed, and every elector whose name appears thereon, pursuant to this section, shall be entitled to vote for a member or members for such newly formed Province or District.

Commencement of action.
58 Vict., 15, s. 3.

49. No action or other proceeding to recover any forfeiture, penalty, or sum of money under this Act shall be commenced except within three months

¹ Now see Electoral Districts Act, No. 51 of 1947.

² Repealed by Act No. 20 of 1904.

after the time at which the right to bring such action or to take such proceeding first arose.

50. No action or other proceeding for the recovery of any penalty, forfeiture, or sum of money in respect of the breach or violation of any of the provisions of this Act shall be commenced unless and until the plaintiff shall pay into Court the sum of two hundred dollars as security for all such costs as may be awarded to the defendant in such action or proceeding, and such sum shall abide the order of the Court or a Judge.

Plaintiff to give security for costs.
58 Vict., 15, s. 4.
Amended by No. 113 of 1965, s. 8.¹

51. No action or other legal proceedings shall lie or be maintained against the President of the Legislative Council, or the Speaker of the Legislative Assembly, or against the Chairman of Committees, or other officer of either House of Parliament, or any member of the Police Force, for anything done by, or under the warrant, or by the direction of, such President, Speaker, or other officer, under or purporting to be under the standing orders or other the order or resolution of the House in which he presides, or of which he is an officer, as the case may be, or under or purporting to be under the provisions of "An Act for defining the Privileges, Immunities, and Powers of the Legislative Council and Legislative Assembly of Western Australia, respectively."

No action to lie against officials of either House.
58 Vict., 15, s. 6.

54 Vict., 4.

52. This Act shall be proclaimed in Western Australia by the Governor so soon as he shall have received a notification by telegraph or otherwise of the Royal Assent thereto, and shall commence and take effect from the date of the publication of such Proclamation, but the constitution of the existing Legislative Assembly shall remain unaffected by this Act until the said Assembly is dissolved by effluxion of time or otherwise.

Proclamation of Royal Assent and commencement of Act.

I hereby reserve this Bill for the signification of Her Majesty's pleasure thereon.

GERARD SMITH,
Governor.

¹ Decimal Currency Act, 1965.

Section 2.

SCHEDULE I.

Enactments Repealed.

Session and Number.	Extent of Repeal.
52 Vict., No. 23	Sections 14, 18 to 21 inclusive, 23 to 30 inclusive, and 32, 33, and 40.
54 Vict., No. 6	The Whole.
55 Vict., No. 32	Section 30, subsections (1a) and (4); Section 31.
56 Vict., No. 17	The Whole.
57 Vict., No. 14	The Whole.
58 Vict., No. 15	The Whole.
60 Vict., No. 18	The Whole.

[Schedule II repealed by No. 46 of 1963, s. 9.]

SCHEDULE III.

Section 30.

[Section 30 to which this Schedule was related was repealed by Act No. 27 of 1907, s. 211.]

SCHEDULE IV.

Section 45.

	Governor—	\$
	On and after the first day of September, one thousand nine hundred and sixty-five, at the rate per annum of	14,500
	Private Secretary—	
	For the year commencing on the first day of December, one thousand nine hundred and fifty-five, and for each year thereafter, at the rate per annum of	1,000
	Clerk of the Executive Council—	
	For the year commencing on the first day of December, one thousand nine hundred and fifty-five and for each year thereafter, at the rate per annum of	700

Amended.
25 of 1927,
s. 4; 52 of
1947, s. 4;
17 of 1949,
s. 3; No. 2 of
1950, s. 2;
and No. 35
of 1950, s. 4
and Schedule.
Repealed and
re-enacted by
No. 48 of 1955,
s. 3.
Amended by
No. 71 of 1959,
s. 2.
No. 105 of
1965, s. 2.
No. 113 of
1965, s. 8.¹

¹ Decimal Currency Act, 1965.