



Western Australia

The Electoral Act 1907

## **Electoral Rules 1908**



# Electoral Rules 1908

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## **Electoral Rules 1908**

### **1. Short title**

These rules may be cited as the *Electoral Rules 1908*.

*[Rule 1 amended: Gazette 3 Jul 2009 p. 2681.]*

### **2. Title of petition**

A petition under Part V of the *Electoral Act 1907* shall be entitled “*Electoral Act 1907. In the Court of Disputed Returns.*” and shall also be entitled “In the matter of the Election” in question, describing it as an election of a member of the Legislative Council, or as an election of a member of the Legislative Assembly for the District in question, or as the case may be.

It shall be divided into paragraphs, each of which, as nearly as may be, shall be confined to a distinct portion of the subject, and each paragraph shall be numbered consecutively.

It shall conclude with a prayer, as for instance that a candidate who was not returned as elected to be declared duly elected, or that the election may be declared absolutely void.

It may be in the form set out in Schedule 1, or to the like effect.

*[Rule 2 amended: Gazette 3 Jul 2009 p. 2681; SL 2022/201 r. 4.]*

### **3. Filing**

The petition shall be filed in the Central Office of the Supreme Court, and the petitioner shall lodge with the petition a copy thereof, and a form of notice thereof for publication as hereinafter provided, and shall deposit with a Court officer in

addition to the sum of \$100 as security for costs a sum sufficient to defray the cost of publication of the petition and notice thereof.

*[Rule 3 amended: Act No. 113 of 1965 s. 8(1); SL 2022/201 r. 5.]*

**4. Publication**

A Court officer shall forthwith, after the filing of a petition, publish a copy thereof in the *Government Gazette*, and shall also forthwith publish in a newspaper circulating generally in the State, or in the district for which the election was held, as the case requires, a notice setting forth the fact of the presentation of the petition, the date of presentation, the name of the petitioner, the nature of the relief claimed, and, as concisely as may be, the grounds on which the election is disputed.

*[Rule 4 amended: SL 2022/201 r. 6.]*

**5. Service of petition**

The petitioner shall, within 14 days of the filing of the petition, or within such further time as a Judge may allow, cause a sealed copy of the petition to be served upon the person whose election or return is disputed by the petition.

Service upon a person returned as elected may be made either personally or by post by prepaid registered letter, addressed to him at his address, as stated in his nomination paper.

*[Rule 5 amended: SL 2022/201 r. 7.]*

**6. Service at an address for service**

Any person who has been returned as a member may send to the Central Office of the Supreme Court a writing signed by him giving an address at which a petition may be served upon him, and may by the same or another like writing appoint some person entitled to practise in the Supreme Court as a legal practitioner to act as his solicitor in respect of such petition.

When such writing has been sent to the Central Office, service of a petition upon the person by whom it was sent may be made by leaving the sealed copy of the petition with some person at the address specified in the writing.

*[Rule 6 amended: SL 2022/201 r. 8.]*

**7. Particulars**

- (a) The Court or a Judge may order any party to the proceedings upon a petition to deliver to any other party particulars, or further and better particulars, of any matter alleged by such party.
- (b) When the petition, not being a petition merely claiming a fresh count of the votes actually counted at the election, claims the seat for a person who has not been returned as a member, alleging that such person had a majority of valid votes cast at the election, each of the parties shall, within 7 days after service of the petition, or within such further time as a Judge may allow, deliver to the Court and to the opposite party a list of the ballot-papers or classes of ballot-papers intended to be claimed or objected to, specifying in the case of ballot-papers claimed the grounds on which the claim is based, and in the case of ballot-papers objected to the grounds of objection on which he intends to rely; and no claim or objection shall be entertained in favour of or against the validity of any ballot-paper upon any ground not specified in the lists so delivered, except by leave of the Court or a Judge, and upon such terms as to amendment of the list, adjournment of the trial, and payments of costs, as the Court or a Judge may order.
- (c) When the petition claims that the election may be declared void on the ground that certain persons who were not qualified to vote voted at the election, the petitioner shall, within 7 days after service of the petition, or within such further time as a Judge may allow, deliver to the Court and to the respondent a list containing the names of all persons alleged to have voted who were not qualified to vote at the election, and no objection

shall be entertained against the vote of any person whose name does not appear in such list, except by leave of the Court or a Judge upon such terms as to amendment of the list, adjournment of the trial, and payment of costs, as the Court or a Judge may order.

*[Rule 7 amended: SL 2022/201 r. 9.]*

**8. Counter charges**

When a petition claims a seat for a person who has not been returned as a member, and the respondent desires to set up that the person for whom the seat is claimed was not duly elected upon some ground other than those mentioned in the last preceding rule, he shall within 7 days after service of the petition, or within such further time as the Court or a Judge may allow, deliver to the Court and to the petitioner, at his address for service, a statement of the grounds on which he intends to rely. The statement shall set forth the grounds in the same manner in which facts relied on to invalidate an election or return are required to be set forth in a petition.

*[Rule 8 amended: SL 2022/201 r. 10.]*

**9. Interlocutory questions**

All interlocutory questions and matters may be heard and disposed of by a Judge at Chambers, who shall have the same control over the proceedings as a Judge at Chambers in the ordinary proceedings of the Supreme Court.

**10. Respondent may give notice that he does not oppose petition**

The respondent may, at any time, give notice that he does not intend to oppose or further oppose the petition by serving notice thereof, in writing, signed by the respondent or his solicitor, on the Court at the Central Office, and on the petitioner or his solicitor.



On such notice being served, the Court or a Judge may make an order in the terms of the prayer of the petition on the *ex parte* application of the petitioner.

The respondent shall not be liable for any costs incurred subsequent to such notice unless the Court or a Judge shall otherwise order.

*[Rule 10 amended: SL 2022/201 r. 11.]*

## **11. Trial**

The trial of the petition shall be held at a time and place to be appointed by the order of a Judge on the application of a party to the petition. Ten days' notice of trial, or such other notice thereof as the Judge may direct, shall be given by the party obtaining the order to the other party to the petition, and, unless the Judge otherwise orders, shall be advertised in a newspaper circulating generally in the State, or in the district for which the election was held, as the case requires.

An order appointing the time and place of trial may be varied from time to time.

*[Rule 11 amended: SL 2022/201 r. 12.]*

## **12. Withdrawal of petition**

A petition may be withdrawn by leave of the Court or a Judge upon such terms as the Court or a Judge may think fit. Unless the Court or a Judge shall otherwise order, 10 days' notice of the intention to apply for leave shall be given to the respondent, and by advertisement in a newspaper circulating generally in the State, or in the district for which the election was held, as the case requires, and at the hearing of the application the Court or a Judge may allow any other person who was competent to present a petition on the like grounds to be substituted for the petitioner. The proceedings upon the petition shall thereupon be

continued as if the person so substituted had been the original petitioner.

*[Rule 12 amended: SL 2022/201 r. 13.]*

**13. Abatement by death of petitioner**

When a sole petitioner dies before the trial of the petition, a Judge may, in his discretion, allow some other person to be substituted as petitioner. The proceedings upon the petition shall thereupon be continued as if the person so substituted had been the original petitioner.

**14. Substitution of parties**

If the Court or a Judge has reason to believe that the parties to a petition are acting in collusion with each other, or with any third person for the purpose of defeating the true intent of the *Electoral Act 1907*, the Court or a Judge may direct some other person to be substituted for the petitioner or respondent, and the proceedings upon the petition shall be continued as if the person so substituted had been an original party to the petition:

Provided that the original party and not the substituted party shall be liable to pay such costs of the proceedings as the Court may order to be paid.

**15. Forms and fees**

The forms prescribed in Schedule 1 may be used, and the fees prescribed in Schedule 2 shall be paid in proceedings in the Court of Disputed Returns.

*[Rule 15 amended: SL 2022/201 r. 14.]*

**16. Application of General Rules of Court**

The General Rules of the Supreme Court, and the Orders of the Supreme Court relating to fees shall, so far as the same are applicable, and are not inconsistent with these rules extend and apply to proceedings in the Court of Disputed Returns.

**Schedule 1 — Forms**

[r. 2 and 15]

[Heading amended: SL 2022/201 r. 15(1).]

*Electoral Act 1907*

*Petition*

In the Court of Disputed Returns.

In the matter of the election of a member of the Legislative Council [or of a member of the Legislative Assembly for the ..... District.]

THE Petition of A.B., of ..... whose name is subscribed.

[Set out the facts relied on in paragraphs.]

Whereupon your petitioner prays that it may be determined .....

[Set out the relief the petitioner claims to be entitled to.]

(Signature.)

Witnesses —

C.D. (Occupation and address.)

E.F. (Occupation and address.)

Filed in the Central Office of the Supreme Court the ..... day of ....., 20....., by ..... of ..... Solicitor for the Petitioner.

Address for Service .....

*Electoral Act 1907*

*Notice of Presentation of Petition,*

NOTICE is hereby given that on the ..... day of ....., 20....., a Petition was presented to the Court of Disputed Returns by ..... of ..... (Name and Address of Petitioner) claiming the following relief namely ..... on the following grounds: — .....

Dated the ..... day of ....., 20.....

Principal Registrar of the Supreme Court.

\_\_\_\_\_

*Electoral Act 1907*

*Address for Service*

To the Supreme Court

I, A.B., ....., returned as a member of the Legislative Council [*or* as a member of the Legislative Assembly for the ..... District] appoint ..... as the address at which a petition under Part V of the *Electoral Act 1907* may be served upon me, and I appoint ....., a legal practitioner entitled to practise in the Supreme Court as my Solicitor in respect of such petition.

Dated the ..... day of ....., 20.....

(Signature) .....

\_\_\_\_\_

*Electoral Act 1907*

*Notice of Application for Leave to withdraw Petition*

In the Court of Disputed Returns.

In the matter of the election of a member of the Legislative Council [*or* of a member of the Legislative Assembly for the ..... District]. And in the matter of the Petition of A.B. claiming [state shortly the relief claimed].

Notice is hereby given that the petitioner will, on the ..... day of ....., 20....., apply to the Court of Disputed Returns in the Supreme Court Buildings, Perth, for the leave of the Court to withdraw his petition filed the ..... day of ....., 20.....

Dated the ..... day of ....., 20.....

*Electoral Act 1907*

*Notice of intention not to oppose Petition*

In the Court of Disputed Returns.

In the matter of the election of a member of the Legislative Council [*or* of a member of the Legislative Assembly for the ..... District].

And in the matter of the petition of A.B., claiming [state shortly the relief claimed].

Take notice that I do not intend to oppose (*or* to further oppose) this petition.

Dated the ..... day of ....., 20.....

.....

Respondent.

To The Supreme Court  
and to the abovenamed Petitioner.

*Electoral Act 1907*

*Notice of Trial*

In the Court of Disputed Returns.

In the matter of the election of a member of the Legislative Council [*or* of a member of the Legislative Assembly for the ..... District].

Notice is hereby given that the time and place for the hearing of the petition of A.B., filed the ..... day of ....., 20....., have been appointed as follows: —

The ..... day of ....., 20....., at the hour of ..... o'clock in the forenoon in the Supreme Court Buildings, Perth.

Dated the ..... day of ....., 20.....

*Electoral Act 1907*  
*Summons of a Witness*

In the Court of Disputed Returns.

In the matter of the election of a member of the Legislative Council [*or* of  
a member of the Legislative Assembly for the .....  
District.]

And in the matter of the Petition of A.B.

To .....,  
of .....

You are hereby required to attend the sittings of the Court of Disputed Returns  
to be holden at the Supreme Court Buildings, Perth, on ..... the  
..... day of ....., 20....., at the hour of .....  
in the ..... noon, and so from day to day until the above Petition is tried,  
to give evidence on behalf of the ..... and also to bring with you  
and produce at the time and place aforesaid .....

..... C. J.  
..... [*or* J.]

This Summons was issued by ....., Solicitor,  
Perth, for and on behalf of the .....

*[Schedule 1, formerly The First Schedule, amended: Gazette  
3 Jul 2009 p. 2681-2; SL 2022/201 r. 15.]*

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## Schedule 2 — Fees

[r. 15]

*[Heading amended: SL 2022/201 r. 16(1).]*

|  | \$   |
|--|------|
| On filing petition .....   | 1.00 |
| On application for leave to withdraw petition .....  | 0.30 |
| On an order for leave to withdraw petition .....   | 0.50 |
| On an order of the Court after notice by respondent of intention<br>not to oppose petition ..... | 0.50 |
| On an order of the Court after trial .....   | 1.00 |
| On any interlocutory application .....   | 0.30 |
| On any interlocutory order .....   | 0.50 |
| For sealing any copy of a document as an office copy, per folio ...                              | 0.02 |
| For making any copy of a document, and sealing same as an<br>office copy, per folio .....        | 0.05 |
| For every summons for the attendance of a witness .....  | 0.05 |

*[Schedule 2, formerly The Second Schedule, amended: Act No. 113 of  
1965 s. 8(1); SL 2022/201 r. 16.]*

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## Notes

This is a compilation of the *Electoral Rules 1908* and includes amendments made by other written laws. For provisions that have come into operation, and for information about any reprints, see the compilation table.

### Compilation table

| <b>Citation</b>   | <b>Published</b>           | <b>Commencement</b>  |
|---|----------------------------|--|
| <i>The Electoral Rules of 1908</i> <sup>1</sup>   | 9 Oct 1908<br>p. 2706-8    | 9 Oct 1908   |
| <i>Decimal Currency Act 1965</i> assented to 21 Dec 1965  |                            | s. 4-9: 14 Feb 1966 (see s. 2(2));<br>balance: 21 Dec 1965   |
| <b>Reprint of <i>The Electoral Rules of 1908</i> as at 19 Oct 2001</b> (includes amendments listed above) |                            |  |
| <i>Electoral Amendment Rules 2009</i>   | 3 Jul 2009<br>p. 2681-2    | r. 1 and 2: 3 Jul 2009 (see r. 2(a));<br>Rules other than r. 1 and 2:<br>4 Jul 2009 (see r. 2(b))      |
| <i>Electoral Amendment Rules 2022</i>   | SL 2022/201<br>22 Nov 2022 | r. 1 and 2: 22 Nov 2022<br>(see r. 2(a));<br>Rules other than r. 1 and 2:<br>23 Nov 2022 (see r. 2(b)) |

### Other notes

<sup>1</sup> Now known as the *Electoral Rules 1908*; citation change (see note under r. 1).