

# Electoral Amendment Bill (No.2) 2008

## Explanatory Memorandum

### General Information

This Bill will amend the *Electoral Act 1907* (the Act) and the *Electoral (Political Finance) Regulations 1996* (the Regulations). This Bill contains provisions which will improve and enhance electoral administration for certain categories of electors, particularly people with no fixed address, overseas electors and prisoners serving a sentence of less than three years. The Bill will also provide for candidates to distribute how-to-vote-cards on election day. Lastly, this Bill will improve transparency in political donations by reducing the current political finance disclosure threshold from \$1800 to \$1000. There are also minor and consequential changes to the Act and regulations.

### Part One - Preliminary

#### Clause 1 – Short title

This clause cites the short title of the Act - the *Electoral Amendment Act (No.2) 2008*.

#### Clause 2 – Commencement

Sections 1 and 2 of the Bill will come into operation on the day this Act receives Royal Assent, while sections 13, 14, 16 and Part 3 of the Bill come into operation on the day after. All other amendments come into operation on a day fixed by proclamation. This provides the Electoral Commission with time to put in place the administrative arrangements needed to effect these amendments.

### Part Two – *Electoral Act 1907* amended

#### Clause 3

Clause 3 provides that the amendments in Part 2 of the Bill are to the *Electoral Act 1907*.

#### Clause 4

This clause repeals section 4(4) of the Act and replaces it with a new section 4(4). This change is necessary because section 4(4) currently refers to members of the Legislative Council prior to the “one vote one value” legislation. The “one vote one value” legislation determined that each region for the Legislative Council would return six members to the Legislative Council.

#### Clause 5

Section 17(5) is amended by adding electors with no fixed address to the list of categories who may be enrolled in an electoral district in which they do not live.

#### Clause 6

This clause inserts a new section 17B into the *Electoral Act*. Section 17B will allow citizens who have no fixed address to vote in Western Australian State elections. Currently the Act requires that a citizen must have lived at an address for one month before they are eligible to claim enrolment to vote.

Section 17B will replicate Commonwealth electoral legislation that allows people with no fixed address to vote. Consistent with Commonwealth electoral legislation, the clause provides that a person with no fixed address can vote and the electorate in which they are taken to reside is determined in the following descending order:

- the electorate for which the elector was last enrolled; or
- if not previously enrolled, the electorate for which the elector’s next of kin is enrolled; or
- if there are no next of kin, the electorate in which the elector was born; or
- if the elector was not born in Australia, the electorate with which the elector has the closest connection.

The Commission will use Commonwealth electoral administrative procedures in providing this service to Western Australian electors who have no fixed address.

#### **Clause 7**

Clause 7 amends section 18(1)(c) of the Act, which, at present, disqualifies prisoners from voting. In August 2007 the High Court ruled in *Roach v Australian Electoral Commissioner and the Commonwealth* that the provisions of the Commonwealth's electoral legislation that disqualified all sentenced prisoners from voting in Commonwealth elections were invalid. However, the High Court found that the former provisions of the Commonwealth's electoral legislation that allowed prisoners serving a sentence of less than three years to vote were valid.

In March 2007 section 18(1)(c) of the Act was amended to replicate the Commonwealth prior to the *Roach* case, meaning that all sentenced prisoners were disqualified from voting in State elections. Prior to March 2007 persons serving a sentence less than one year could vote in a State election.

The State Solicitor's Office is of the view that if the current section 18(1)(c) of the Act, which prevents prisoners regardless of the term of their sentence from voting, was challenged in the courts then such a challenge would be likely to succeed.

Therefore, section 18(1)(c) is amended to allow prisoners serving a sentence of less than three years to vote in State elections.

#### **Clause 8**

Section 40(1a) of the Act is amended so that electors with no fixed address shall not be excluded from the electoral roll.

#### **Clause 9**

A new section 59(4) is inserted. This section will require the Chief Executive Officer of Prisons to forward to the Electoral Commissioner the length of the prison term of a prisoner, thus identifying those prisoners who will be entitled to vote.

#### **Clause 10**

Section 62 is repealed. Currently, section 62 allows prisoners to re-enrol when they are no longer disqualified from voting. Changes to the Act in 2007 allowed prisoners to remain on the electoral roll. Therefore, section 62 is now redundant and is repealed by this clause.

#### **Clause 11**

Clause 11 inserts a new section 90(1)(dc) into the *Electoral Act*. This section will allow prisoners serving a sentence under three years and people who are in lawful custody to apply for a postal vote. This entitlement was withdrawn from prisoners when the Act was amended in 2007. The 2007 amendment excluded prisoners (regardless of their prison term) from voting.

#### **Clause 12**

Section 93(1) will be amended to allow overseas electors and prisoners to be registered as General Early Voters. The term General Early Voter describes certain categories of electors who receive a postal ballot once an election is called. Currently, overseas electors and prisoners are not registered as General Early Voters. This means that overseas electors and prisoners cannot receive a postal ballot automatically from the Electoral Commission once an election is called. However, under Commonwealth electoral legislation overseas electors and prisoners are registered as General Early Voters.

This amendment will make the Act consistent with Commonwealth electoral legislation and make the process of voting significantly easier for overseas electors and prisoners.

#### **Clause 13**

Section 175 is amended by reducing the specified amount from \$1500 to \$1000. The specified amount is the term used to describe the political donation disclosure threshold. When section 175 came into operation in 1996 the specified amount was set at \$1500 linked to rises in the Consumer

Price Index (CPI). Under section 175 the CPI is assessed within 30 days after polling day in a State general election. The current specified amount after CPI increases is \$1800.

#### **Clause 14**

Inserts a new subsection 6(A) into section 175A. Subsection 6(A)(a) determines that the new specified amount of \$1000 will commence within 30 days after the next State general election in relation to the disclosure of gifts and other income in the following areas:

- disclosure of gifts received by candidates during an election;
- disclosure of gifts received by groups;
- disclosure of gifts by other persons; and
- gifts accepted by unidentified donors.

Currently, under the Act political parties and other entities are required to lodge an annual return to the Electoral Commissioner by 30 November each year, disclosing all gifts and other income received for the previous financial year. New subsection (6A)(b) determines that for annual reporting purposes the new specified amount of \$1000 will commence on 1 July 2009. The areas affected by this change are the:

- annual disclosure of gifts and other income received by political parties; and
- annual reporting responsibilities of Public sector agencies.

Subsection 175A (6A) determines that the current specified amount of \$1800 published as required by the Electoral Commissioner in the *Government Gazette* on 18 March 2005, will remain the specified amount until the next State general election. The new specified minimum of \$1000 will commence within 30 days after the next State general election.

#### **Clause 15**

Section 175C(2) of the Act is amended. Currently, under section 175C(2) the appointed agent for a political party is not automatically deemed to be the default agent for endorsed candidates of a political party.

The Electoral Commission's experience on this issue is that many candidates for the major political parties are not aware that they need to nominate a party agent. This leads to confusion and Commission staff having to spend considerable time following up on these matters leading to significant delays in compliance with disclosure requirements for all involved.

#### **Clause 16**

Section 175ZF is amended by changing the reference to \$1500 to \$1000. Section 175ZF is further amended by deleting reference to the *Electoral Amendment (Political Finance) Act 1992* and replacing it with the *Electoral Amendment Act (No.2) 2008*.

#### **Clause 17**

Section 183(6) is repealed. Currently, this section states that if a candidate personally solicits the vote of an elector on polling day, then the candidate is guilty of undue influence. This has proven to be a contentious section in relation to candidates handing out how-to-vote-cards on polling day.

There is a legal view that if a candidate distributes a how-to-vote-card on polling day, coupled with a request or appeal or other approach to an elector, then this would be construed as personally soliciting the vote of an elector and therefore a breach of section 183(6).

Repealing section 183(6) will make Commonwealth and State electoral legislation consistent on this issue. Under Commonwealth electoral legislation, candidates can distribute how-to-vote-cards on polling day, provided they are six metres from the entrance to a polling place. Currently, section 192(b)(1) of the Act in its application prevents candidates distributing how-to-vote-cards in a polling place or within six metres from the entrance of a polling place.

### **Part Three – Electoral (Political Finance) Regulations 1996**

#### **Clause 18**

Clause 18 provides that the amendments in Part Three of the Bill are to the *Electoral (Political Finance) Regulations 1996*.

#### **Clause 19**

Regulation 3(2) sets out the formula which is used to set the indexation of the specified amount. Regulation 3(2) is amended by changing the reference to \$1500 and replacing it with \$1000 and deleting reference to the *Electoral (Political Finance) Regulations 1996* and replacing it with the *Electoral Amendment Act (No.2) 2008* section 13.

Regulation 3(4) is amended by deleting \$1500 and replacing it with \$1000.

A new subregulation 3(5) is inserted. This regulation provides that the Electoral Commissioner is not to apply the indexation formula for the specified amount (as required under subsection 2) between the coming into operation of section 13 of the *Electoral Amendment Act No.2 2008* and 1 July 2009.