# THE PARLIAMENT OF WESTERN AUSTRALIA 

# CONSTITUTIONAL AND ELECTORAL LEGISLATION AMENDMENT (ELECTORAL EQUALITY) BILL 2021 

EXPLANATORY MEMORANDUM

## Glossary

The following abbreviations and acronyms are used throughout this Explanatory Memorandum

| Abbreviation | Definition |
| :--- | :--- |
| Assembly | Legislative Assembly of Western Australia |
| Bill | Constitutional and Electoral Legislation |
| CA | Constitution Act 1889 |
| CAAA | Constitution Acts Amendment Act 1899 |
| Council | Electoral Act 1907 Equality) Bill |
| Act | Western Australian Electoral Commission Council of Western Australia |
| WAEC | Western Australian Electoral Commissioner |
| WA Electoral Commissioner |  |

## CONSTITUTIONAL AND ELECTORAL LEGISLATION AMENDMENT (ELECTORAL EQUALITY) BILL 2021

## GENERAL OUTLINE

The Constitutional and Electoral Legislation Amendment (Electoral Equality) Bill 2021 effects a number of electoral reforms as summarised below.

1. Electoral equality for all electors entitled to vote in the Legislative Council by providing for a single electorate (the whole of State electorate) for the election of members of the Council, instead of the present system, where electors vote for 6 members for their region only (with the State divided into 6 regions). By various amendments to the Electoral Act 1907, each elector in Western Australia, regardless of their postcode, votes for all members of the Council and is represented by, all elected members of the Council.
2. The number of members in the Council increases from 36 to 37 , by amending section 5 of the Constitution Acts Amendment Act 1899.
3. The Council cannot continue to operate if an election wholly fails or is declared by a court to be absolutely void (this amends section 47 of the Constitution Act 1889).
4. The group voting ticket system and full preferential voting are abolished, and replaced with optional preferential voting in the Council, requiring electors to vote for one or more preferred groups above the dividing line on the ballot paper, or at least 20 candidates below the dividing line, to cast a formal vote (refer to deletion of sections 113A, 113B and 128 and insertion of new section 113B and 128).

The abolition of the group voting ticket system brings Western Australia in line with the Australian Senate and the upper houses in New South Wales and South Australia. The group voting ticket and full preferential voting system allow groups to lodge an automatic list of preferences, enabling electors to simply number one square and have their preferences distributed to each of the other candidates in accordance with the wishes of the group for whom they voted.

The Australian Senate first introduced group voting tickets as a solution to the high rates of informal voting. It was designed to make voting easier while retaining full preferential
voting. The system was introduced in Western Australia for the 1989 state general election. Over time, parties learned how to engage in preference swaps to take advantage of the system, commonly referred to as 'preference harvesting'. The preference arrangements, whilst published on the WAEC website (and in a limited number of other places, such as the ABC election pages), are largely neither understood nor visible to the vast majority of WA electors. Electors do not necessarily know that their vote will be used to elect a candidate they did not necessarily wish to elect.
5. Groups of 2 or more candidates may still form for various purposes under the Act. The ballot paper will include registered party groups, followed by other groups, followed by ungrouped candidates. However, only groups with 5 or more candidates are entitled to a square above the dividing line on the ballot paper (s. 113B(5)).
6. Party registration requirements have changed.

Currently, to be eligible for registration as a political party requires a party to submit names and addresses of at least 500 members who are electors and a constitution that specifies as one of its objects or activities, the promotion of the election to the Parliament of a candidate or candidates endorsed by that party (ss. 62C and 62E(d)).

The Bill requires a party seeking registration under the Act also to submit the following with its application for registration:
(a) a fee of \$2000 or such greater amount as is prescribed (currently there is no fee payable); and
(b) declarations signed by at least 500 members in support of the application for registration,
(s. 62E(4)(da) and (g)).

Previously applications for registration simply had to set out the names and addresses of 500 members and attach the party's complying constitution. Members will now be required to sign declarations to that effect. The new requirements ensure that registered political parties have a genuine foundation of community support and are able to provide some evidence of operating as a political party.
7. In addition to the new party registration requirements:
(a) a party seeking to:
(i) contest a general election;
(ii) nominate candidates for that election; and
(iii) seek electoral funding to contest that election,
must lodge its application for registration as a political party at least 12 months prior to the date of the issue of writs for the general election (s. 62HA); and
(b) registered parties must demonstrate their continued eligibility for registration by submitting a return in a form approved by the WA Electoral Commissioner in June each year, or face cancellation of their registration (s. 62KA and s. 62L(2A)); and

A party will not be required to submit further signed declarations from members annually unless requested by the Electoral Commissioner, for instance, where the Commissioner has reason to believe that a member is not unique to the party or where there are new members added to the party's member register during the year that the party relies on for its required 500 members.
8. In order to contest a general election, new parties must make an application for registration with WAEC 12 months prior to the issue of writs for that election.

All existing parties may apply for continued registration within 12 months after commencement of the Act. If they do not apply their registration will be cancelled. If they do apply, their application will be considered by WAEC under the new registration provisions (s. 217).
9. Nomination requirements for candidates have changed.
(a) Candidates in a Council election are required to pay a $\$ 2,000$ deposit (currently $\$ 250$ - s. 81(2)).
(b) The deposit payable is capped at $\$ 10,000$ for groups of more than 5 candidates (s. 81(3).
(c) Unendorsed candidates must submit declarations in support of the nomination by at least 250 electors entitled to vote at the election (s. 78(1)(c)). This will ensure that only serious candidates who are able to demonstrate popular support can contest an election.
(d) There is no change to eligibility for refund of a deposit payable for nomination - the deposit is refundable if the candidate is elected or either the candidate or their group achieves at least 4\% of the primary vote.
10. The death of a candidate for the Council between nomination and the close of the poll no longer requires a fresh writ for a new election in every case:
(a) In a single member election - a fresh writ issues for a new election (s. 88(2)).
(b) where there is more than 1 seat to be filled and the candidates remaining:
(i) are not greater than the number of seats - the remaining candidates are duly elected (s. 88(1)); and
(ii) are greater than the number of seats - the electors' preferences are reallocated to the next and subsequent preferred candidates (s. 146E(7) read with Schedule 1, item 20).
11. In a Council election where there is more than 1 seat to be filled and a candidate dies after the close of polls but before counting is complete and that candidate is elected, the Part IVA vacancy provisions are deemed to apply (s.88(4)).

This amendment has been made due to the change to a whole of State electorate. Previously the death of a candidate in a region required a new election for only that region. Without this amendment there would be the requirement (and the expense) of a new election for the whole of State following the death of any candidate for the Council.
12. The Bill makes consequential amendments to the Local Government Act 1995 and the Salaries and Allowances Act 1975 and also repeals the Electoral (Ballot Paper Forms) Regulations 1990.

# CONSTITUTIONAL AND ELECTORAL LEGISLATION AMENDMENT <br> (ELECTORAL EQUALITY) BILL 2021 

NOTES ON CLAUSES

Part 1 - Preliminary

Clause 1
sets out the short title of the Act. It is a formal provision specifying the title of the Bill, when enacted, will be the Constitutional and Electoral Legis/ation Amendment (Electoral Equality) Act 2021.

Clause 2
provides for the commencement of the Bill on Royal Assent for Part 1 and the day after Royal Assent for the rest of the Bill.

## Part 2 - Constitution Act 1889 amended

provides that this Part amends the Constitution Act 1889.

Clause 4 amends s. $\mathbf{4 7}$ to provide that the Council cannot continue to operate if the election wholly fails or is declared absolutely void. Previously the Council could continue to operate in circumstances where an election for a region failed or was void. Whilst this was appropriate in a regions-based electorate it is not appropriate for a whole of State electorate. This amendment provides that the Council cannot continue to operate where the whole of State election fails or is void.

Part 3 - Constitution Acts Amendment Act 1899 amended


#### Abstract

Clause 6

Clause 7 amends s. 8 by deleting the words 'an election held as part of' because there will no longer be elections for part of a general election for the Council. The Council electorate will now be the whole of State electorate and no longer be a regions-based electorate.

Clause 8 replaces s. 18 to provide that the Assembly is to consist of 59 members to be returned and sit for electoral districts. This amendment does not change the substance of s .18 but modernises the language and adopts a style consistent with s. 5 of the CAAA, that is amended as shown in clause 6 above.


## Part 4 - Electoral Act 1907 amended

Clause $9 \quad$ provides that this Part amends the Electoral Act 1907.

Clause 10
amends s. 4 EA
(a): deletes the following defined terms in s. 4(1):
district and inserts a new meaning;
region because the Council electorate will now be the whole of State electorate and no longer be a regions-based electorate; and voting ticket and voting ticket square because group voting tickets are being abolished by this Bill.
(b): inserts the following new defined terms at s.4(1) to accommodate changes to the council elections being for one whole of State electorate and to recognise the concept of squares on a ballot paper being located above the line and below the line:
above the line, in relation to a square on a ballot paper, has the meaning given in s.128(1)(a);
below the line, in relation to a square on the ballot paper, has the meaning given in s. 128(1)(b);

Council ballot paper means a ballot paper used in a Council election;

Council election, means a general election or other election for the Council;
district means an electoral district for the election of a member of the Assembly; and
whole of State electorate has the meaning given in s. 16C(1).
(c): inserts revised meanings for existing defined terms in s. 4(1), as follows, as a consequence of changing Council elections to reflect one whole of State electorate rather than a regions-based electorate:

## general election -

(a) In relation to the Assembly, means the elections in the districts the writ for which is issued under s. 64(1) or (2);
(b) In relation to the Council, means the election for the Council the writ for which is issued under s. 64(3);
writ means a writ directing the Electoral Commissioner to proceed with an election in a district, districts or a Council election;
(d): amends s. 4(3) as follows, to reflect one whole of State electorate rather than a regions-based electorate:

A reference in this Act to a poll or election for the Council is a reference to a poll or election for the return by the whole of State electorate.
(e): deletes $\boldsymbol{s . 4 ( 4 )}$ because a full Council election will now be the returning of 37 members for the whole of State electorate rather than returning 6 members for each region-based electorate.
(f): Modernises the language and incorporates the Deputy Electoral Commissioner who will also have functions under the Act.
$(\mathrm{g})$ : Incorporates a meaning to reflect the use of the term 'returning officer's functions' under the Act.

Clause 11

Clause 12

Clause 13

Clause 14

Clause 15
deletes the reference to 'each region and' in s. 9 because the Council electorate will now be the whole of State electorate and no longer a regions-based electorate. There will be returning officers for the whole of State electorate and for each district.

Section 10 is replaced because the Council electorate will now be the whole of State electorate and no longer be a regions-based electorate. Returning officers for each district will also be deputy returning officers for the whole of State electorate.

Sections 13 and 14 are replaced because the Council electorate will now be the whole of State electorate and no longer be a regions-based electorate. Returning officers will exist for each district and the whole of State electorate and may be replaced or resign. Note that a returning officer for the whole of State electorate has functions in relation to the writ and the election for the Council. Returning officers for a district have functions in relation to the election for the Council and in relation to the writ and the election for the district.
inserts a new definition for relevant day in s. 16A to mean that on the relevant day specified in s. 16E the State will no longer be divided into regions and districts by the Electoral Distribution Commissioners, but will be divided only into districts, for the purposes of elections of the Assembly.
replaces Part IIA Division 2 by amending:
(a) section 16C to provide that the State is a single electorate (the whole of State electorate) for the purposes of the election of members of the Council and the number of members of the Council is prescribed by s. 5(1) Constitution Acts Amendment Act 1899; and
(b) section 16D to provide that the State must be divided into the same number of electoral districts as the number of members prescribed by s.18(1) Constitution Acts Amendment Act 1899 and each district will return 1 member to serve in the Assembly.

Note that the order of ss. 16C and 16D has been reversed in the Bill to address the election of members to the Council first, and then the election of members to the Assembly second. This reflects the order in which the Houses are dealt with in the CAAA, sections 5 and 18 respectively.

Clause 16

Clause 17

Clause 18

Clause 19

Clause 20

Clause 21
amends the heading to Part IIA Division 3 by deleting the reference to 'regions' and providing that the State will be divided into districts because the Council electorate will now be one whole of State electorate and no longer be a regions-based electorate.
replaces s. 16E, dealing with re-distribution of boundaries, to reflect that the State will be divided into districts only (rather than districts and regions) in accordance with Part IIA as soon as practicable after the day that is 2 years after polling day for each general election for the Assembly, because the Council electorate will now be one whole of State electorate and therefore no re-distribution of boundary is required.
amends s. 16F by deleting the reference to 'the boundaries of the regions' in s. $16 \mathrm{~F}(1)$ and (4) because the Council electorate will now be the whole of State electorate and no longer be a regions-based electorate. There will no longer be regional boundaries.
deletes s. 16H that provided how the State was to be divided into regions because the Council electorate will now be the whole of State electorate and no longer be a regions-based electorate. The metropolitan area of Perth was previously described in the Act to delineate 3 contiguous regions to be known as North, South and East metropolitan regions. The Council electorate is no longer regions based and therefore both ss. $16 \mathrm{H}(1)$ and (2) are deleted.
deletes the reference to 'regions' in s. 161 because the Council electorate will now be one whole of State electorate and no longer be a regions-based electorate. Each of the matters for consideration remain the same for the Electoral Distribution Commissioners' division of the State into districts.
replaces s. 16 K because the Council electorate will now be one whole of State electorate and no longer be a regions-based electorate. Division of the State into districts will take effect and have the force of law on publication
of the Notice that outlines the division in the Gazette by the Electoral Distribution Commissioners. Note that the draft simplifies and modernises the text.

Clause 22

Clause 23
deletes s. 16L because it is a transitional provision inserted as a consequence of the 2005 amendments to the Act, and is no longer current.
amends s. 16M to provide that any Bill that repeals or alters the Constitution Acts Amendment Act 1899 ss. 5(2) or 18(2) or any provisions of this Part, other than ss. 16G(3) or (4), requires an absolute majority of the whole number of the members of the Council and the Assembly.

This modifies the previous s. 16M by now including ss. 16C and 16D of the Act and ss. 5(2) and 18(2) of the CAAA. These provisions cannot be altered or amended by any subsequent Bill unless that Bill is passed with absolute majorities in both Houses. The new provision s. 16 M is designed to entrench electoral equality in the Bill and lend certainty and stability to the law. Section 16M signals to the Legislature the special importance of these reforms and acts as an aide-memoire reminding the Parliament of the reasons relating to the laws protected by s. 16M.
amends s. 17 as follows:
(a) deletes the reference to 'region' in ss. 17(1) and (2) because an elector will vote in a Council election and not in a region;
(b) deletes $\mathrm{s} .17(4)(\mathrm{a})$ because a Council member will no longer be enrolled or deemed to live in a region; and
(c) amends s . 17(5) because the electoral roll for a district will no longer form part of a region. An elector will be on a roll for a district and the roll for the whole of State.
deletes the reference to 'region' in ss. 17A(2)(b)(i) because an elector on the Commonwealth roll living outside Australia will be entitled to vote at any Council election.
deletes the reference to 'region' in ss. 17B(2)(b)(i) because an elector on the Commonwealth roll of no fixed address will be entitled to vote at any Council election.
amends s. 19 as follows:
(a) amends s . 19(1) because there will be an electoral roll for the Whole of State electorate;
(b) amends s. 19(5) because all the rolls for the districts will now form the roll for the whole of State electorate; and
(c) amends s. 19(6) because electors are no longer voting at an election for a region because the Council electorate will now be the whole of State electorate and no longer be a regions-based electorate.
amends s. 25A because the Council electorate will now be the whole of State electorate and no longer be a regions-based electorate. The roll for the whole of State electorate will comprise the rolls for each of the districts. Parliamentary parties and members will be entitled to be provided rolls for each of the districts.
amends $\mathbf{s} .37$ because new rolls will be prepared for each district and the whole of State electorate.
amends s. 47 as follows:
(a) amends $\mathbf{s . 4 7 ( 3 ) ( f )}$ because the Council electorate will now be the whole of State electorate and no longer be a regions-based electorate.

Objections to claims for enrolment will no longer be made in relation to regions, therefore notices cannot issue between the issue of the writ for a Council election or a district election and close of poll; and
(b) amends $\mathbf{s} .47(3)(\mathrm{g})$ because the Council electorate will now be the whole of State electorate and no longer be a regions-based electorate. The reference to 'an election in a region' is replaced with a Council election.
amends ss. 48(1) and 48(2)(e)(iii) because the Council electorate will now be the whole of State electorate and no longer be a regions-based electorate. There will no longer be a roll for the regions. Each of the rolls for the districts will form the roll for the whole of State electorate and where the person objected to lodges a statement in response to the objection, it must be witnessed before another elector of the same district.
amends $\mathbf{s} .53$ because the Council electorate will now be the whole of State electorate and no longer be a regions-based electorate. Alterations to the
roll may only be made between the time for the close of roll for a Council election or an election for the district and the closing of the poll.
deletes the terms member and related political party in s.62C(1); and deletes s. 62C(2). Part IIIA has now been amended. There was previously a reference to "related political party" in 62J(6) (now deleted). New s.62J(4A) now deals with the issue of related political parties.
inserts new provision s. 62CA to outline the membership requirements for qualification as an eligible political party. It provides that eligible political parties must have 500 'unique' members. Whilst a person may be a member of more than 1 political party, more than 1 party cannot rely on the same person for the purpose of qualifying or continuing to qualify as an eligible political party. If 2 or more parties purport to rely on the same person, the Electoral Commissioner is to give the person an opportunity to nominate which party is entitled to rely on the person. If the person fails to nominate a party, none of the parties can rely on the person.
amends s. 62E as follows:
(a) amends s. $62 \mathrm{E}(4)(\mathrm{b})$ to provide that an application for registration of a political party must set out the abbreviation or acronym of its name if it wishes to use the abbreviation or acronym on the ballot papers;
(b) amends s. $62 \mathrm{E}(4)(\mathrm{d})$ to provide that an application for registration of a political party must include the details of at least 500 members on whom the party relies for the purpose of qualifying as an eligible political party;
(c) inserts new provision s. 62E(4)(da) to provide that declarations as to membership of a political party must be in an approved form. The form will be approved by the WA Electoral Commissioner; and
(d) inserts new paragraph $62 \mathrm{E}(4)(\mathrm{g})$ to provide that an application for registration of a political party must be accompanied by a fee of \$2000 or greater amount that is prescribed. Previously there was no fee payable.
amends s. $62 \mathrm{H}(\mathbf{2})(\mathbf{b})$ to provide that the documents setting out the details of the 500 members are not to be included in the Register. This means that
personal particulars of members will not be included in the public Register of the WAEC.

Clause 37

Clause 38

Clause 39
inserts new provision s. 62HA to provide that despite the registration of a party under this Part, the party is not to be taken as a registered political party for the purposes of:
(a) nominations (Part IV Division 2);
(b) printing of party names on a ballot paper (s.113C); and
(c) electoral funding (Part VI Division 2A),
in relation to a general election unless:
(d) the party's application for registration was lodged with the WAEC at least 12 months before the issue of the writs for a general election.
amends s. 62J as follows:
(a) amends s. 62J(1) to acknowledge that an acronym of a political party's name may form part of its application name as set out in the party's application for registration;
(b) inserts a new provision s. $62 \mathrm{~J}(1 \mathrm{~A})$ that the Electoral Commissioner must refuse to register a party that is not an eligible political party. The conditions for eligibility are provided at ss. 62C(1) and 62CA and include that a party must have at least 500 unique members and a relevant constitution to qualify as an eligible political party;
(c) amends s. 62J(3) to provide that a party name cannot have more than 4 words or include capitalisation in the name except for the first letter of a word. This provision is designed to manage the size of the ballot paper;
(d) inserts a new provision s. 62J(4A) to provide that related political parties can have the same or similar names, abbreviations or acronyms of names;
(e) inserts new provision s.62J(4B) that permits capitalisation of an acronym for a party name; and
(f) deletes s. 62J(6) because membership requirements for eligibility are now dealt with at new s. 62CA.
inserts new provision s. 62KA that provides a registered political party must submit an annual return in an approved form between 1 June and 30 June
each year in relation to its continued eligibility under this Part, unless the party has been registered for less than 6 months. This allows the WA Electoral Commissioner to verify each party continues to remain eligible for registration.
replaces $\mathbf{s . 6 2 L}$ as follows:
(a) replaces $\mathbf{s . 6 2 L ( 2 )}$ to provide that the Electoral Commissioner must cancel a party's registration if the Electoral Commissioner is satisfied on reasonable grounds of any of the matters in subsections (a) to (e).
(b) inserts a new s. 62L(2A) that provides that the Electoral Commissioner must cancel the registration of a political party that fails to submit an annual return as required by new s. 62 KA .
amends s. 62Q to provide that it is an offence to make a false or misleading statement in an application to amend the register under s .62 K or in an annual return submitted under new s.62KA (for continued registration as a political party).
amends s. 64 because the Council electorate will now be the whole of State electorate and no longer be a regions-based electorate. Writs will issue for a general election in the whole of State electorate and for each district.
amends s. 71:
(a) amends s. 71(2) to correct the drafting in the previous Act which only referred to part of a periodic election and not to a whole periodic election; and
(b) amends s 71(5) because the Council electorate will now be the whole of State electorate and no longer be a regions-based electorate. It now refers to the general election for the Council or each election in a district.
amends s. $\mathbf{7 4}$ because the Council electorate will now be the whole of State electorate and no longer be a regions-based electorate. Writs will relate to the whole of State electorate and the districts.
replaces s. 75 as follows:
(a) replaces s .75 to provide that advertise means to advertise on the Commission website and in any other way the Electoral Commissioner considers appropriate. This is included because due to declining delivery rates the West Australian newspaper can no longer be described as circulating generally in the State. The provision recognises that the Electoral Commissioner has responsibility for the proper conduct of elections and is therefore responsible for promoting awareness and compliance with whole of State and district elections; and
(b) removes the reference in s. 75(1)(b) to advertising in a 'region or district' because the Council electorate will now be the whole of State electorate and no longer be a regions-based electorate. The language is simplified because the Electoral Commission will be advertising for an election, whether a Council election or an election in a district.
amends s. 76(4) to provide that the Commissioner must publish notice of the extension of time for taking the poll on the Commission website and in any other way the Commissioner considers appropriate. This is amended because due to declining delivery rates the West Australian newspaper can no longer be described as circulating generally in the State. The provision recognises that the Electoral Commissioner has responsibility for the proper conduct of elections and is therefore responsible for promoting awareness and compliance with whole of State and district elections.
amends s. 78 to:
(a) provide that nominations must be in an approved form. This modernises the text, ensures consistency in nomination documents and gives the Electoral Commissioner ability to design relevant forms;
(b) insert new s . 78(1)(c) to require nominations for unendorsed candidates to be accompanied by declarations in support of the nomination, in an approved form, completed and signed by at least 250 electors entitled to vote; and
(c) insert new s78(4) to require nominations to be completed by unique electors and where a declaration is made by an elector for 2 or more candidates, the elector cannot be relied on by any of those candidates.
amends ss. 80(1) and (2A) to use a defined term for group claims, for ease of reading s. 80 generally; and
makes consequential amendments to ss. 80(2), 80(3), 80(4), 80(5) and 80(6) to reflect that a Council election is no longer in respect of a region.
amends s. 81 to provide that applications for nomination of a candidate for a Council election must be lodged with a required deposit of $\$ 2,000$; increased from the current amount of $\$ 250$.

The deposit for a Council election is capped at $\$ 10,000$ for groups of more than 5 candidates.

The deposit for the nomination of a candidate for an Assembly election remains at $\$ 250$.
amends s. 82(2) to provide that withdrawal of a candidate in a group's nomination must be supported by consent, in writing, of all other candidates in the group. This is to ensure that candidates within a group must communicate their intention to withdraw to the Electoral Commission.
amends $\mathbf{s . 8 4 ( 2 )}$ to provide that if a candidate dies before the close of poll, the deposit made by or on behalf of the candidate is returned and if the election wholly fails because of the death of the candidate, remaining candidates are also entitled to a refund.
amends s. 86 as follows:
(a) s. 86(1) so that it is applicable to a single member election, which in turn has been amended in s.4(1) to mean:
(i) an election in a district; or
(ii) a Council election (being a general election or other election for Council) where the relevant number is one; and
(b) s. 86(2b) to update the form of advertising of close of nominations from only advertising in a newspaper to advertising on the Commission website and in any other way the returning officer considers appropriate.
amends s. 87 as follows:
(a) $\mathrm{s} .87(1)$ to reflect the Council electorate will now be the whole of State electorate and no longer be a regions-based electorate. The section outlines the procedure for Council elections on close of nominations;
(b) replaces $s .87(4)$ to modernise the text. There is no substantive change to the provision;
(c) replaces s. 87(5) to provide that where there are 2 or more groups, returning officers must deal with the nominations in separate lots firstly by dealing with nominations of registered party groups, followed by nominations of other groups. The order of the groups within each lot is determined by the ballot procedure outlined at Schedule 2; and
(d) amends s. 87(7) so that the returning officer is to advertise the details of the candidates, in the order prescribed by s. 113B, on the Commission website and in any other way the returning officer considers appropriate. This is included because of declining delivery rates, the West Australian newspaper can no longer be described as circulating generally in the State. The provision recognises that the Commission is responsible for the proper conduct of elections and is therefore responsible for promoting awareness of elections.
amends s. 88 that deals with the death of a candidate after nomination, in light of the changes made by the Bill regarding Council elections. In particular, clause 54:
(a) adds a new $\mathrm{s} .88(1)$ to provide that where there is more than 1 seat to be filled and the number of remaining candidates is less than the number of seats, those candidates are duly elected;
(b) amends s. 88(2) to provide that where a candidate in a single member election dies between declaration of nominations and close of the poll, a fresh writ is to be issued and a new election to be held;
(c) inserts new s.88(2)(bc) and s.82(2)(bd) to require the Electoral Commissioner to notify the President of the Council (or in certain circumstances, the Governor) as soon as the Commissioner receives from the returning officer a report advising of the death of a candidate before the close of the poll on polling day. This is to correct an error in the Act, which currently requires the notice to be given only to the Speaker, even if a candidate for a seat in the Council dies. Note that the

President can also give notice of a vacancy in the Council to the Governor under s. 156B;
(d) amends s. 88(3) because the Council electorate will now be the whole of State electorate and no longer be a regions-based electorate. The provision applies where there is a single member election in either the Council or in a district; and
(e) amends s. 88(4) because the Council electorate will now be the whole of State electorate and no longer be a regions-based electorate. Where there is more than 1 seat to be filled, and a deceased candidate is elected, Part IVA of the Act applies.

Note that in the case of the death of a candidate for the Council where there is more than 1 seat to be filled and there are more candidates than seats, regard must be had to s. 146E(7) and Schedule 1 item 20. amends $\mathbf{s . 9 0}$ by deleting the otiose references to district and region. amends s .97 to correct the numbering referred to in the section. amends s. 99A by:
(a) deleting the reference to region because the Council electorate will now be the whole of State electorate and no longer be a regions-based electorate. Polling places will be established in districts;
(b) deleting the reference to $s .87(4)$ because a candidate will no longer be elected for a region. The reference to s. 87(4) is redundant; and
(c) deleting the reference to s . 88(1) because the s.88(1) to which this reference relates, was previously deleted by an earlier amendment to the Act, and no longer applies.
deletes the reference to 'regions' in s. 100 because the Council electorate will now be the whole of State electorate and no longer be a regions-based electorate.
deletes the otiose reference to district and region in s.100A and modernises the language.
replaces $s .100 B(2 a)$ with $s .100 B(2 A)$ by deleting the otiose reference to district and region, amends the numbering for consistency in the Bill and
makes a consequential amendment to s100B(3).

Clause 61
amends s. 102A because the Council electorate will now be the whole of State electorate and no longer be a regions-based electorate. In the case of conjoint elections, officials appointed to districts are also appointed for a general election for the Council.
amends s. 113(1) by providing that ballot papers are to be in the appropriate approved form, rather than the appropriate prescribed form. This gives the Electoral Commission the ability to design its own forms that still comply with the requirements of the Act, rather than being constrained by prescribed forms of ballot papers in regulations. Given that the quota for the Council (as determined by Schedule 1, item 3) is now $2.63 \%$, the Electoral Commission may have to deal with an increased number of candidates and must be able to manage the size of the ballot paper accordingly.
replaces ss. 113A and 113B that deals with voting tickets for Council elections (being abolished by this Bill) and inserts a new s. 113B that provides:
(a) In s.113B(1) that the names of the candidates are to be printed on the ballot paper in the order under s. 87(6) and a square must be printed opposite the name of each candidate;
(b) in $\operatorname{s.113B(3)(a)~that~in~the~case~of~an~election~where~more~than~} 1$ Council seat is to be filled, groups are to be printed ahead of ungrouped candidates;
(c) in $113 \mathrm{~B}(3)(\mathrm{b})$ and (c) that in the case of an election where more than 1 Council seat is to be filled, where there are 2 or more groups, registered party groups are to be printed in columns sequentially from the left across the ballot paper, followed by other groups and the order within both groups is to be in accordance with s. 80(1);
(d) in $\mathrm{s} .113 \mathrm{~B}(3)(\mathrm{d})$, that ungrouped candidates are to be printed in 1 column or if there are too many names, in 2 or more columns, in the order determined under s. 87(6);
(e) in s.113B(4), that in the case where there are no groups, ungrouped candidates are to be printed in the order determined under s. 87(6);
(f) in $\mathrm{s} .113 \mathrm{~B}(5)(\mathrm{b})$, that a square must be printed opposite the names of each candidate and if there are 5 or more candidates in a group, that group must be allocated a square above the dividing line on the ballot paper; and
(g) in $\mathrm{s} .113 \mathrm{~B}(6)$, that if before polling day for a Council election a candidate is declared by a court to be incapable of being elected, the returning officer may cause the ballot papers to be reprinted or notations or marks to be included on the ballot paper and the order of the candidates is to be determined by the ballot procedure at Schedule 2.
amends s. 113C to delete the reference to 'voting ticket square' in this section that specifies how ballot papers are to be printed. It now provides that candidates in a group may apply to have the name of a political party or the word 'independent' (as the case may be) printed on the ballot papers next to the name of each candidate in the group, and next to the square, if any, printed above the line for that group.
amends s. 113D, not to change the effect of s.113D which deems claims lodged under s. 80 or s.113C as being lodged with the returning officer, but by deleting reference to 'voting ticket' because group voting tickets are abolished by this Bill.
amends s. 122A by deleting the reference to region because the Council electorate will now be the whole of State electorate and no longer be a regions-based electorate.
amends s. 123 by deleting the reference to region because the Council electorate will now be the whole of State electorate and no longer be a regions-based electorate.
replaces s. 128

Section 128 deals with how a ballot paper is to be marked by an elector. The new provisions reflect the change to optional preferential voting above the line and optional preferential voting below the line (with a minimum number of squares to be marked), sometimes referred to as semi-optional preferential due to the requirement to mark a minimum number of squares.

Marking a square above the line or below the line is defined and how an elector votes in certain circumstances is outlined.
(a) In a single member election where there are 2 candidates the elector must place the numeral 1 in the square opposite the name of their preferred candidate: s. 128(2)
(b) In a single member election where there are more than 2 candidates the elector must place the numeral 1 in the square opposite the name of their first preferred candidate and consecutive numerals from 2 in the squares of all remaining candidates to indicate a preference for each candidate: s. 128(3).
(c) In a Council election where the number of members to be returned is more than one and there are:
(i) no squares above the line and:
(A) more than 20 candidates - the elector must mark at least the numerals 1 to 20 in the squares opposite the names of candidates so as to indicate the elector's order of preference for at least 20 candidates: s. 128(4)(a);
(B) 20 or fewer candidates - the elector must place consecutive numerals from 1 against the name of all candidates to indicate the elector's preference for all candidates: s. 128(4)(b);
(ii) squares above and below the line, unless the elector chooses to vote above the line, the elector must number at least 20 squares below the line in the elector's preferred order (if there are more than 20 candidates) and all squares below the line in the elector's preferred order if there are 20 or fewer candidates: s. 128(5)
(iii) 1 or more squares above the line, the elector may choose to vote above the line by placing the numeral 1 in a square above the line so as to indicate their first preference only or, if they choose to do so, may vote by placing the numeral 2 and, if they so choose, further consecutive numerals to indicate their preference for any remaining groups, if any: s. 128(6).
amends $\mathbf{s . ~} 140$ to change a cross-reference from 's.128(1)' which has been deleted, to 's.128(2)' which is inserted by clause 68.
amends s. 141 to remove the reference to 'region' because this Part relates to scrutiny and count in Assembly districts. Counting places will be located in districts.
amends s. 146B because the Council electorate will now be the whole of State electorate and no longer be a regions-based electorate. Counting places will be located in districts.
amends s. 146D to reflect that Council elections will no longer be a regionsbased election.
replaces ss. 146E and 146F, that deal with informal ballot papers, with new provisions ss. 146E, 146EA, 146EB and 146EC to remove references to group voting tickets and voting ticket squares, which are abolished by the Bill. Section 146E now provides that informal ballot papers, as defined in s. 139(a)(c) and (e), continue to be informal.

The section then outlines when a ballot paper is informal where the relevant number is one or more than one:
(a) if only 2 candidates, the elector does not indicate who they vote for; and
(b) if more than 2 candidates, the elector does not indicate a preference for all candidates.

Where the relevant number is more than one, except where an elector votes above the line in accordance with s. 128(6) a ballot paper is informal:
(a) if there are more than 20 candidates, the elector votes below the line and doesn't indicate a preference for at least 20 candidates; or
(b) if there are 20 or fewer candidates, the elector votes below the line and does not indicate a vote for all candidates.

The prescribed manner of marking the ballot paper is defined by reference to s. 128 .

The new provisions include how a ballot paper is to be counted where numerals are repeated or missed for individual candidates (s. 146EA) and where a single tick or cross is marked or numerals are repeated or missed
for groups (s. 146EB) and where an elector chooses to vote above the line (s. 146EC).
amends s. 146G that outlines how each returning officer is to deal with the ballot papers after the close of poll. It provides for opening of the ballot boxes; rejection of informal ballots; counting of first preferences; placing the ballots, rolls and other documents into sealed packets and returning all to the Deputy Returning Officer.

The changes are not substantive, and are made to reflect the different actions required if there are one or more squares above the line on a ballot paper and if there is a single member election. As part of the revision, the parliamentary drafters have also amended s.146G to reflect modern drafting practice.
amends $\mathbf{s} \mathbf{1 4 6 H}$ so as to outline how the deputy returning officer is to deal with the ballot papers which have not been dealt with by returning officers after the close of poll. It provides for counting of first preference votes for opening remaining ballot boxes; rejecting informal ballots; sealing the ballots into packets and returning all packets to the Returning Officer.

The changes are not substantive, and are made to reflect the different actions required if there are one or more squares above the line on a ballot paper and if there is a single member election. As part of the revision, the parliamentary drafters have also amended s.146H to reflect modern drafting practice.
makes a consequential amendment to s.146I.
amends s. 147 as follows:
(a) deletes the otiose reference to region of district in s. 147(2);
(b) deletes $s .147(3)$ because the Council electorate will now be the whole of State and is no longer a regions-based electorate. There will not be certification of results by region; and
(c) inserts 'Council election' instead of 'election in a region' because the Council electorate will now be the whole of State electorate and no longer be a regions-based electorate.
modernises the text and deletes the otiose reference to region or district from s. 150.
amends s. 151 by deleting the reference to 'region' because the Council electorate will now be the whole of State electorate and no longer be a regions-based electorate. The name of the district will be included on the packets where it is an election for a district or districts.
amends s. 152 as follows:
(a) in s. 152(1)(a) by deleting the reference to regions and inserting 'Counci election' because the Council electorate will now be the whole of State electorate and no longer be a regions-based electorate; and
(b) in s. 152(1)(b) by removing the reference to 'region' and by instead referring to a 'general election for the Council' because the Council electorate will now be the whole of State electorate and no longer be a regions-based electorate.
amends s. 155 by removing the reference to 'region' and instead referring to a 'general election for the Council' because the Council electorate will now be the whole of State electorate and no longer be a regions-based electorate.
amends s .156 as follows:
(a) replaces ss. 156(1) to delete the reference to 'region' because the Council electorate will now be the whole of State electorate and no longer be a regions-based electorate. An elector has a duty to vote in both a district and for the whole of State electorate. The new provision also modernises the text
(b) replaces s . 156(2) to delete the reference to 'region' because the Council electorate will now be the whole of State electorate and no longer be a regions-based electorate. The Electoral Commissioner is to prepare a list of electors on the rolls for each district and the whole of State electorate who did not vote at an election.
amends the definition of original election in s. 156A because the Council electorate will now be the whole of State electorate and no longer be a
regions-based electorate. A vacancy will be in relation to the whole of State electorate.

Clause 84

Clause 85

Clause 86

Clause 87

Clause 88

Clause 89

Clause 90
amends s. 156C to provide that the Electoral Commissioner is to advertise the vacancy in the Council on the Commission website and in any other way the Electoral Commissioner considers appropriate. This is included because of declining delivery rates, the West Australian newspaper can no longer be described as circulating generally in the State. The provision recognises that the Electoral Commissioner has responsibility for the proper conduct of elections and is therefore responsible for promoting awareness of a Council election arising from a vacancy.
amends s. 156E because the Council electorate will now be the whole of State electorate and no longer be a regions-based electorate. A writ will issue for an election in the whole of State electorate for the vacancy in the Council in the circumstances described.
amends s. 163 by deleting reference to 'region' because the Council electorate will now be the whole of State electorate and no longer be a regions-based electorate. Electors' names will appear on the rolls for the whole of State electorate and a district.
amends s. 175D(3), being a consequential amendment only.
amends s. 175LA for consistency with related provisions.
deletes ss. 213(3) to (8) that contains the procedure for dealing with the making, and disallowance of, regulations regarding ballot papers. This is a result of the amendment to $s$.113(1) that replaces the concept of ballot papers being 'prescribed' by regulation to ballot papers being in a form that complies with the Act and as approved by the Electoral Commissioner. This gives the Electoral Commission the ability to design its own forms, rather than being constrained by prescribed forms. Accordingly, there is no longer a requirement for the Electoral (Ballot Paper Forms) Regulations 1990

Part 9 is inserted into the Act to provide for transition to the new measures. The previous Act continues to apply where a vacancy arises in the Council prior to 22 May 2025 and members in the Council continue to represent
regions before the commencement of the amending provisions or in the case of a vacancy occurring in the Council before 22 May 2025.

Section 217 provides for continued registration of parties following commencement of the Act:
(a) All existing parties may apply for continued registration within 12 months after commencement of the Act. If they do not apply their registration will be cancelled. If they do apply, their application will be considered under the new registration provisions: s. 217(1) and (3);
(b) New s. 217(3) provides that the Electoral Commissioner must cancel a party's registration if the party does not make an application within 12 months of commencement of the Act or if satisfied that the application would have been refused under s. 62J; and
(c) New s. 217(4) provides that for a cancellation under subsection (3) s. $62 \mathrm{~L}(2)(\mathrm{d}) 3)$ to (6) and 62 N apply in relation unless it is a cancellation under s. $62 \mathrm{~L}(2)(\mathrm{d})$, ie. registration obtained by fraud or misrepresentation.

The heading in Schedule 1 is amended to delete the otiose reference to 'Legislative'. Council is defined in s. 4 to mean Legislative Council.

Schedule 1 is amended as follows:
(a) Schedule 1 item 8 is replaced with new items $8,8 \mathrm{~A}$ and 8 B that:
(i) modernise the text;
(ii) provide for the order in which votes are to be transferred from an excluded candidate. If votes have been obtained by an excluded candidate on transfers from 2 or more candidates, those votes are then transferred in the order in which they were received, the earliest transfer being dealt with first: item 8A; and
(iii) make it clear that a ballot paper that has exhausted all preferences is to be set aside during the count: item 8B.
(b) The text of Schedule 1 items 9 and 10 has been modernised.
(c) Schedule 1 item 13 has been amended to make it clear that a remaining candidate can be elected on less than a full quota.
(d) Schedule 1 item 20 has been inserted to provide that where s. 146E(7) applies, preferences opposite the name of a deceased candidate are to be allocated to the elector's next and subsequent preferences.

Clause 93

Clause 94

Clause 95

Clause 96

Clause 97
provides for the amendments in the Table that delete the reference to 'and regions' in ss. 16A, 16F(1), 24(3) and 51(2) because the Council electorate will now be the whole of State electorate and no longer be a regions-based electorate.
provides for the amendments in the Table that delete the references to 'an election in a region' in ss. 4(1), 80(1), 81A(4), 84(1)(a), 89(2), 99G(3), 114(1)(b), 146A(1) and (2). 146B(1), 147(1a)(b), 156A, 175LF(2) and Schedule 1 item 1 because the Council electorate will now be the whole of State electorate and no longer be a regions-based electorate.
makes consequential amendments to the Local Government Act 1995 because the Council electorate will now be the whole of State electorate and no longer be a regions-based electorate.
makes consequential amendments to the Salaries and Allowance Act 1975 because the Council electorate will now be the whole of State electorate and no longer be a regions-based electorate.
repeals the Electoral (Ballot Paper Forms) Regulations 1990. This is a result of the amendment to $s .113(1)$ that replaces prescribed forms with approved forms. The adoption of a whole of State electorate requires measures to be taken to minimise an unwieldy or impractical ballot paper.

This gives the WAEC the ability to design and approve its own forms, rather than being constrained by prescribed forms. Accordingly, there is no longer to be a requirement for the Electoral (Ballot Paper Forms) Regulations.

