



**REPORT OF THE**

**STANDING COMMITTEE ON**

**LEGISLATION**

**IN RELATION TO**

***ELECTORAL AMENDMENT (CONSTITUTIONAL***

***PROVISIONS) BILL 1997***

Presented by the Hon Bruce Donaldson MLC (Chairman)

Report 50

## STANDING COMMITTEE ON LEGISLATION

### **Date first appointed:**

21 December 1989

### **Terms of Reference:**

- 1 There is hereby appointed a standing committee to be known as the *Legislation Committee*.
- 2 The Committee consists of 5 members.
- 3 A Bill originating in either House, other than a Bill which the Council may not amend, may be referred to the Committee after its second reading or during any subsequent stage by motion without notice.
- 4 A referral under clause 3 includes a recommittal.
- 5 The functions of the Committee are to consider and report on
  - (a) Bills referred under this order;
  - (b) what written laws of the State and spent or obsolete Acts of Parliament might be repealed from time to time;
  - (c) what amendments of a technical or drafting nature might be made to the statute book;
  - (d) the form and availability of written laws and their publication.

### **Members at the time of this inquiry:**

Hon Bruce Donaldson MLC (Chairman)

Hon Bill Stretch MLC (Deputy Chairman)

Hon John Cowdell MLC

Hon Derrick Tomlinson MLC

Hon Giz Watson MLC

### **Staff at the time of this inquiry:**

Mr Michael Coleman ARO (resigned 26 February 1999) and Dr Steven Churches, General Counsel

Ms Connie Fierro, and Ms Kate Fitzgerald, Committee Clerks

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**SCHEDULE A**

**SCHEDULE B**

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**Report of the Standing Committee on  
Legislation  
in relation to  
*ELECTORAL AMENDMENT (CONSTITUTIONAL PROVISIONS) BILL 1997***

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**1 EXECUTIVE SUMMARY**

[≡THE BILL≡ WHEREVER REFERRED TO IS THE *ELECTORAL AMENDMENT (CONSTITUTIONAL PROVISIONS) BILL 1997*. ATHE 1899 ACT≡ WHEREVER REFERRED TO IS THE *CONSTITUTION ACTS AMENDMENT ACT 1899*. “THE AMENDED BILL” WHEREVER REFERRED TO IS THE BILL AS AMENDED IN ACCORDANCE WITH THE COMMITTEE’S RECOMMENDATIONS IN THIS REPORT. A COPY OF THE AMENDED BILL IS ATTACHED TO THIS REPORT. THE WORD “LEGISLATURE” WHEREVER IT APPEARED IN THE PROVISIONS OF THE 1899 ACT NOW PROPOSED TO BE MOVED TO THE *ELECTORAL ACT 1907* HAS BEEN ALTERED TO “PARLIAMENT”].

- 1.1 The Committee is satisfied that certain provisions pertaining to eligibility for election to the Parliament ought to be transferred from the 1899 Act to the *Electoral Act 1907*. The Committee notes that the purpose in moving all matters going to eligibility for election into the *Electoral Act 1907* is to consolidate into that one Act all matters going to eligibility both to vote, and also to stand for election to the Parliament.
- 1.2 The Committee is of the view that the Bill as originally drafted exceeded the intention to provide in the *Electoral Act 1907* a single statutory reference point for both voters and electoral candidates wishing to ascertain their position at law. Much of the Bill was concerned with matters going to disqualification and analogous matters regarding persons who were already elected to the Parliament. The Committee recommends that such matters remain in the 1899 Act, and they do not appear in the Amended Bill.
- 1.3 Of the matters formerly dealt with in proposed Schedule 4 of the Bill, only Part 1 of that Schedule is now referred to in the Amended Bill. The Committee recommends that the list of offices which formerly constituted Part 1 of Schedule 4 be replaced with a formula identifying the sort of public officials disqualified from membership of the Parliament, that formula being one of reference to such public officials being removable by motion of either or both Houses of Parliament, or by the Governor, acting on the advice of the Executive Council. This formula has now been inserted into the text of proposed section 174D in the Amended Bill.
- 1.4 The Bill was drafted to accompany a consolidation of the Western Australian Constitution, but that consolidation is not yet ready to proceed. Accordingly, the

Committee is of the view that references in the Bill to the consolidated Constitution should be deleted, and replaced with references to the existing legal provisions.

- 1.5 The Committee recommends that those sections of the 1899 Act replicated in the *Electoral Act 1907* be deleted from the 1899 Act. The Committee also recommends that those provisions left in the 1899 Act be amended consequentially to reflect legislative material which the Committee recommends be moved to *the Electoral Act 1907* as proposed in Part 3 of the Amended Bill.
- 1.6 Scrutiny of the provisions of the *Electoral Act 1907* going to eligibility for election to the Parliament led the Committee to the view that the electoral nomination provisions of the *Electoral Act 1907* were currently not well expressed, and were capable of improvement. Consequently, the Committee recommends amendments to section 77 of the *Electoral Act 1907*.

## 2 RECOMMENDATIONS

Recommendations are grouped as they appear in the text:

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### **Recommendation 1:**

The Committee supports the Bill's addition of a new Part to the *Electoral Act 1907* defining eligibility for election to the Parliament. It therefore endorses the Bill insofar as it proposes the addition of new sections 174A, 174B, 174C, 174D, and Part 1 of Schedule 4.

### **Recommendation 2:**

The Committee recommends that the present eligibility provisions for membership of the Parliament, contained in sections 7 and 20 of the *Constitution Acts Amendment Act 1899* be removed from that Act, consolidated, and be inserted in Part 2 of the Bill and that the consolidated provision require Australian citizenship of a candidate.

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### **Recommendation 3:**

The Committee recommends that the originally proposed Part 1 of Schedule 4 of the *Electoral Act 1907*, as set out in the *Electoral Amendment (Constitutional Provisions) Bill 1997* be deleted and replaced with a formula in the following words in proposed section 174D of the *Electoral Act 1907*, to the effect that a person is disqualified from being chosen for membership of the Parliament if that person: "holds any office, the holder of which may be removed only by vote of either or both the Legislative Council and Legislative Assembly, or by the Governor acting on the advice of the Executive Council."

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### **Recommendation 4:**

The Committee considers that those clauses governing the qualification and disqualification of members ought to remain in the *Constitution Acts Amendment Act 1899* and not be contained in the *Electoral Act 1907*.

The Committee therefore recommends that proposed new sections 174E, 174F, 174G, 174H, 174I and Parts 2 and 3 of Schedule 4 be deleted from the Bill.

**Recommendation 5:**

The Committee recommends that proposed section 174D(1) of the *Electoral Act 1907* have the reference to Athe Constitution of Western Australia  $\cong$  deleted, to be replaced with reference to the current legislative provisions.

**Recommendation 6:**

The Committee recommends that sections 33, 37, 40 and 41 of the *Constitution Acts Amendment Act 1899* be amended to reflect the changes to be made to that Act pursuant to this Report. Similarly, the Committee recommends the deletion of sections 7, 20, 32, 34 and 35 and Part 1 of Schedule V from the *Constitution Acts Amendment Act 1899*.

**Recommendation 7:**

The Committee recommends that subsection 77(1) of the *Electoral Act 1907* be amended so that the reference to disqualification is not to Abeing elected  $\cong$  but rather to being chosen as or to sitting as a member of the Parliament.

**Recommendation 8:**

The Committee recommends that subsection 77(4) of the *Electoral Act 1907* be amended so that illegal self nomination is defined by reference to disqualification for being chosen as or sitting as a member of the relevant House of the Parliament.

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### **3 INTRODUCTION: THE HISTORY OF THE BILL AND ITS UNDERLYING PRINCIPLES**

#### **3.1 The Referral of the Bill to the Committee**

- 3.1.1 The *Electoral Amendment (Constitutional Provisions) Bill 1997* (Athe Bill $\equiv$ ) was introduced and read a first time and the second reading speech was delivered by Hon John Cowdell MLC, on 21 October 1997.<sup>1</sup>
- 3.1.2 On 13 November 1997 the Order of the Day was discharged and the Bill referred to the Legislation Committee on a motion by Hon John Cowdell MLC.<sup>2</sup> No reporting date was fixed.
- 3.1.3 Parliament was prorogued on 7 August 1998, upon which the Bill (and consequently the referral to this Committee) lapsed. Subsequent to the resumption of Parliament on 11 August 1998 the Bill was restored to the Notice Paper of the Legislative Council on a motion of the Leader of the House, Hon N.F. Moore MLC, on 13 August 1998.<sup>3</sup> The Bill was re-referred to the Committee again on a motion of the Leader of the House, on 9 September 1998.<sup>4</sup>
- 3.1.4 Parliament was again prorogued on 6 August 1999, upon which the Bill (and consequently the re-referral to this Committee) lapsed. Subsequent to the resumption of Parliament on 11 August 1999 the Bill was restored to the Notice Paper of the Legislative Council and re-referred on a motion of the Leader of the House, Hon N.F. Moore MLC, on 11 August 1999.<sup>5</sup>

#### **3.2 The procedure of this inquiry**

- 3.2.1 The Bill was not read a second time before referral to this Committee. The policy of the Bill has therefore not been determined by the House, meaning that the Committee may consider the policy of the Bill.
- 3.2.2 The Committee has considered policy and has also considered matters of a technical or drafting nature such as the feasibility or clarity of particular clauses.
- 3.2.3 Following the reference of the Bill on 13 November 1997, the Committee commenced consideration of the Bill on 19 November 1997.

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<sup>1</sup> Hansard, Legislative Council 21/10/97, p. 7058/1.

<sup>2</sup> Hansard, Legislative Council 13/11/1997, p. 7840/3.

<sup>3</sup> Hansard, Legislative Council 13/8/1998, p. 161.

<sup>4</sup> Hansard, Legislative Council 9/9/1998, p. 1015.

<sup>5</sup> Hansard, Legislative Council 11/08/1999, p. 28.



- 3.2.4 The amendments to the Statute book proposed by the Bill are generally speaking not substantive in nature. The chief effect of the Bill is to transfer a number of existing clauses of the 1899 Act to the *Electoral Act 1907*. The Bill also makes some minor and consequential amendments. Because the practical effects of the Bill are limited, the Committee did not invite public submissions to the inquiry.
- 3.2.5 The Committee was fortunate in having available to it the services of Ms Lyn Auld, the former Acting Electoral Commissioner, who gave valuable advice concerning the practical operation of the State's electoral provisions. The Committee is grateful for her assistance.

### 3.3 Purpose of the bill

- 3.3.1 The intent of the Bill, as indicated by the Hon John Cowdell in his second reading speech, is to give effect to certain recommendations contained in the Final Report of the Joint Select Committee on the Constitution, which was tabled on 24 October 1991, ("the 1991 Report").
- 3.3.2 The 1991 Report states on page 25:

*The Constitution Acts Amendment Act 1899 contains a number of sections on the disqualification of members. The provision for the qualification of members requires that he or she be an elector. The lengthy provisions for entitlement of an elector are contained in the Electoral Act. The Committee considered both the possibilities of moving certain Electoral Act provisions into the Constitution and alternatively moving these provisions for the disqualification of members out to the Electoral Act.*

*It was decided that the disqualification provisions were better placed in the Electoral Act for a number of reasons:*

1. *These provisions require a degree of detail which is somewhat out of place in a Constitution.*
2. *Such details have been frequently changed in the past and are likely to be in the future. It is not appropriate to be regularly amending the Constitution.*
3. *It is not appropriate for a Constitution which is about fundamental, long-term principles to contain detailed, frequently changing provisions.*

4. *There is some convenience in having connected matters all together in the Electoral Act.*

5. *The problems raised by section 73(1) of the Constitution Act 1889 ... are lessened.*

*Schedule V to the Constitution Acts Amendment Act 1899 contains some 15 pages of offices which are referenced in provisions for disqualification of members. This should also be transferred to the Electoral Act for the reasons given above.≡*

3.3.3 Mr Cowdell stated in his second reading speech:

*It is appropriate that all qualifications and disqualifications of candidates or requirements to take a seat in Parliament should be set out in the Electoral Act. There should be no need to refer to the Constitution as well.≡*

3.3.4 Mr Cowdell felt that other aspects of the recommendations of the 1991 Report needed further investigation. He said:

*Those sections pertaining to the disqualification of sitting members may be contained in either the Constitution or the Electoral Act. The current 19 page Schedule V of the Constitution Acts Amendment Act 1899 should not be in the Constitution. However, I am not sure that it should be in the Electoral Act either.≡*

### **3.4 Committee=s deliberations**

3.4.1 The 1991 Report finding on which the Bill is based is given in very broad terms: that the 1899 Act provisions relating to qualification and disqualification of members should be removed to the *Electoral Act 1907*.

3.4.2 The Committee agrees that putting into effect the 1991 Report's recommendation would create a more streamlined Constitution. However in considering the detail of how the recommendation should be implemented, a careful analysis is needed as to whether the *Electoral Act 1907* is in fact the correct place for each individual provision relating to qualification and disqualification.

3.4.3 The *Electoral Act 1907* operates during the election period. It operates beyond the election period only in ancillary ways, for example, in maintaining electoral rolls in readiness for elections and in dealing with financial disclosure requirements for political parties. It does not regulate Members of Parliament between elections except to the extent they may also be candidates. Some of the provisions of the 1899 Act which the

Bill proposes to add to the *Electoral Act 1907* relate to the disqualification of sitting Members. The proposal of the Bill would therefore result in the *Electoral Act 1907* entering new territory.

- 3.4.4 The 1991 Report finding did not distinguish between provisions of the 1899 Act which relate to **candidates** and those which relate to **members**. The distinction between the two types of provision is not always clear, for the reason that a number of matters which disqualify a person from candidacy also disqualify a person from membership and there is some interaction between the two types of provisions.
- 3.4.5 Nevertheless, as a general principle, the Committee perceives a distinction between the two areas. The provisions regarding qualification of candidates should go to the *Electoral Act 1907*, while those regarding disqualification of sitting members should remain in the 1899 Act. The implications of this distinction for the Bill are set out in the section on the Committee's Findings.
- 3.4.5 The wider question also emerges as to whether a more substantive review of the framing of the present provisions is also desirable. This is particularly pertinent to a consideration of Schedule V of the 1899 Act, which under the Bill was to become Schedule 4 of the *Electoral Act 1907*. The 1991 Joint Select Committee criticised the Schedule as unduly lengthy and requiring frequent amendment. In moving the Schedule and associated provisions to the *Electoral Act 1907*, the Bill merely transferred the problem. It may be timely to consider alternative strategies for achieving the equivalent outcome, which is to define those offices the holding of which is incompatible with parliamentary membership or more importantly, defining offices the holding of which is incompatible with candidacy for election.
- 3.4.6 It should also be noted that the complexities involved in the disqualification provisions stem from the adoption by amendment to the 1899 Act in 1984 of the recommendations of the Joint Select Committee Report of 1982.<sup>6</sup> That Report recommended the removal of the disqualification provisions as they then existed in the 1899 Act, based as they then were on principles of disqualification for holding office of profit under the Crown, or having a contract with the Crown for the supply of goods or services by the member. Those recommendations and consequent amendments are notable for the complexity of the case by case disqualification they introduced (in Schedule V of the 1899 Act) in place of the general principle of holding office under the Crown, and for abolishing without replacement disqualification for contractual relationships with the Crown.

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<sup>6</sup> "Report of the Joint Select Committee of the Legislative Council and Legislative Assembly on Offices of Profit of Members of Parliament and Members (sic) Contracts with the Crown" tabled 3 November 1982 ("the 1982 Report").

- 3.4.8 Although the control of the eligibility for membership of either House of Parliament is *A...a question of the utmost importance in the life of any democratic state*<sup>7</sup>, the existing constitutional provisions in Western Australia leave open the opportunity for the State Parliament to alter the standards of eligibility for membership of the Parliament by simple legislation, devoid of any manner and form restrictions.<sup>8</sup>
- 3.4.9 The High Court determined in *WA v Wilsmore* (1982) 149 CLR 79 that the limitations on the capacity of the plenary power of the Western Australian Parliament expressed in section 73 of the *Constitution Act 1889* (limitations as to legislation affecting *Athe Constitution of the Legislative Council or the Legislative Assembly*) were irrelevant if the subject matter of the limitation was removed from the *Constitution Act 1889* and placed in other legislation, such as the 1899 Act or the *Electoral Act 1907*. Such removal would have to have taken place in accordance with the restrictions on manner and form set out in section 73 of the *Constitution Act 1889*, but once the removal was successfully accomplished, the matters so removed to other legislation might be the subject of ordinary Parliamentary power.
- 3.4.10 Matters going to eligibility for membership of either House of the Parliament and for eligibility to be on the electoral roll were removed to the 1899 Act, and matters going to eligibility to be on the electoral roll commenced a migration to the *Electoral Act 1907* in the years of those enactments. Matters of eligibility had been the subject of amendment to the *Constitution Act 1889* in 1893, but that had been by way of amendment to the *Constitution Act 1889* itself. From 1899 it is apparent that once matters are removed from the fabric of the *Constitution Act 1889*, they are no longer

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<sup>7</sup> Per Ipp J in *Yougarla v WA* (WA Supreme Court, Full Court, 11 November 1999) at p. 20.

<sup>8</sup> “Manner and form” restrictions on Parliamentary legislative capacity arise from the operation of a parliament in the context of a written constitution. The United Kingdom parliament operates in a context in which there is no written constitution inhibiting the subject matters on which it may legislate, or presenting a special mode for the passing of any particular legislation. On the other hand, all Australian Parliaments operate in jurisdictions under written constitutions. It is common for such constitutions to prescribe particular methods for the passage of particular legislation, most often legislation affecting the working of the constitution, such as the composition of the Parliament. The section of the constitution prescribing that there be special legislative provisions will itself require the special legislative treatment if it is to be guarded against simple Parliamentary removal. Sections of the constitution so protected are said to be entrenched against alteration by what is otherwise the plenary legislative power of Parliament. The special legislative treatment prescribed for altering entrenched provisions is most often a requirement of majorities of all members eligible to sit, or sometimes two thirds majorities, or, more rarely (except for the Commonwealth Constitution, where it is a universal requirement for any alteration of the Constitution) a majority of the electorate at a referendum. Such special legislative treatment comprises the *A manner and form* requirements for dealing with portions of the constitution not within the ordinary legislative competence of Parliament. In Western Australia, the protected provisions, and the manner and form requirements are set out in section 73 of the *Constitution Act 1889*.

subject to the limitations expressed in section 73 of the *Constitution Act 1889* on Parliamentary power.

- 3.4.11 The proposals entertained in this Report for removing provisions going to the eligibility of candidates for election from the 1899 Act to the *Electoral Act 1907* do not attract any of the requirements for special majorities or a referendum referred to in Section 73 of the *Constitution Act 1889*, and neither will future amendment of these provisions in the *Electoral Act 1907* attract the need for such special majorities.

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## 4 COMMITTEE'S FINDINGS

### 4.1 Qualification and disqualification of candidates

- 4.1.1 The *Electoral Act 1907* sets out provisions relating to the calling of nominations of candidates. Section 77(1)(b) of that Act requires that a candidate must be qualified to be elected. A prospective candidate must look further to the 1899 Act where at sections 7 and 20, qualification requirements are set out. Amongst these requirements is a requirement to either be an elector or to be qualified to be an elector, sending one back to consult the enrolment provisions of the *Electoral Act 1907* which are principally contained at sections 17 and 18 of that Act.
- 4.1.2 Section 77(1)(b) of the *Electoral Act 1907* also requires that a candidate not be disqualified from being elected as a Member. Again, the 1899 Act must be consulted and at sections 31 to 42 are contained several provisions relating to disqualifications. In particular, holders of certain listed offices are disqualified from being a Member, or must resign that office before taking their seat. Schedule V is then appended to the Act, listing the offices and bodies affected by these provisions. Because of its nature, this Schedule is extensive and is subject to frequent amendment. There were, for example, 37 amendments to the Schedule during the last Parliament.
- 4.1.3 In addition, an undischarged bankrupt or a person who has been attainted or convicted of treason or felony is also disqualified from being a Member. Again one must look beyond the *Electoral Act 1907* to ascertain how those provisions operate.
- 4.1.4 It is therefore apparent that the qualification and disqualification provisions for candidates are not concisely dealt with, and their placement in different and poorly drafted Acts makes it difficult for prospective candidates to determine their eligibility to nominate for Parliament. This lack of clarity is especially significant when one considers the provisions of section 77(4) of the *Electoral Act 1907* which makes it an offence punishable by a fine of \$200 or imprisonment for 6 months, if a person nominates as a candidate, when disqualified from being elected as a Member.
- 4.1.5 The Bill solves problems of this nature by substantially replicating in the *Electoral Act 1907* all provisions of the 1899 Act which relate to the eligibility of a person to become a candidate. The Committee endorses this proposal. The provisions to be removed are listed in the Table immediately below.

<b>Proposed <i>Electoral Act</i> section</b>	<b>Purpose</b>	<b>1899 Act section</b>
174A	Interpretation	31
174B	Disqualification from candidacy by reason of bankruptcy or conviction	32
174C	Disqualification from candidacy of certain office-holders and members of other Parliaments	34
174D	Election of unqualified or disqualified person void	35
Part 1 Schedule 4	Set of excluded office holders	Part 1 Sch V

4.1.6 The Committee considers that sections 7 and 20 of the 1899 Act, which the Bill did not propose be included in the new Part of the 1907 Act, are relevant to the issue of candidacy. If all sections pertaining to eligibility for membership of the Parliament are to be removed from the 1899 Act and placed in the *Electoral Act 1907*, then these sections should also be transferred.

4.1.7 The Committee considers that these sections may be consolidated. It is also considered appropriate now that Australia is a sovereign state that a requirement of Australian citizenship be introduced at State level for candidacy.

**Recommendation 1:**

The Committee supports the Bill's addition of a new Part to the *Electoral Act 1907* defining eligibility for election to the Parliament. It therefore endorses the Bill insofar as it proposes addition of new sections 174A, 174B, 174C, 174D, and Part 1 of Schedule 4.

**Recommendation 2:**

The Committee recommends that the present eligibility provisions for membership of the Parliament, contained in sections 7 and 20 of the *Constitution Acts Amendment Act 1899* be removed from that Act, consolidated, and be inserted in Part 2 of the Bill and that the consolidated provisions require Australian citizenship of a candidate.

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## 4.2 Redrafting Schedule 4

- 4.2.1 The Committee has considered the difficulties associated with the current Schedule V of the 1899 Act, which under the Bill would have become Schedule 4 of the *Electoral Act 1907*.
- 4.2.2 Holders of certain public offices listed in Part 1 of Schedule V are disqualified for membership of the Parliament by section 34 of the 1899 Act. Under the *Electoral Act 1907*, such a person cannot become a candidate. A person holding a listed office must resign that office before nominating as a candidate.
- 4.2.3 The list in Division 1 of Part 1 consists mostly of judicial and quasi-judicial offices, while Division 2 lists independent statutory offices such as the Ombudsman, the Auditor General, the Electoral Commissioner and the Public Sector Standards Commissioner, the Clerks of the Houses of Parliament, and chief executive officers and senior executive officers under the *Public Sector Management Act 1994*.
- 4.2.4 It is appropriate that the section excluding these office holders from candidacy should be transferred to the *Electoral Act 1907*. It should also be noted that the complexities involved in the disqualification provisions, stem from the adoption by amendment to the 1899 Act in 1984 of the recommendations of the 1982 Report. That Report recommended the removal of the disqualification provisions as they then existed in the 1899 Act, based as they then were on principles of disqualification for holding office of profit under the Crown, or having a contract with the Crown for the supply of goods or services by the member. Those recommendations and consequent amendments are notable for the complexity of the case by case disqualification they introduced in place of the general principle of holding office under the Crown, and for abolishing without replacement disqualification for contractual relationships with the Crown.
- 4.2.5 Other Australian jurisdictions have retained the eighteenth century British formula which proscribed from candidacy for election, or sitting as a Member those who held an office of profit under the Crown, or who were engaged in a contractual agreement with the Crown: see the Commonwealth Constitution section 44 (iv) and (v); New South Wales *Constitution Act* sections 13 and 13B; Tasmania *Constitution Act* sections 32 and 33. South Australia disqualifies judges and those holding offices of profit: *Constitution Act* sections 44 and 45; while Victoria and Queensland provide for the disqualification of those that are in contractual relations with the Crown: respective Constitution Acts, sections 54 and 6.
- 4.2.6 The departure from the eighteenth century formula occurred in this State in 1984, when the 1899 Act was amended in conformity with the recommendations of the 1982 Report. Those amendments, in so far as they list office by office those who are disqualified from standing for election, are now proposed to be superseded by a new formula which rests not on the possibility of the Crown's manipulation of those holding office under the



Crown or in contractual relations with the Crown, but on the need for senior office holders in the State to be seen to be politically non-partisan. That need is reflected in the proposed formula (now to be found in proposed section 174D of the *Electoral Act 1907*) which provides that holders of the prescribed offices may be removed only by one or both Houses of Parliament, or by the Governor on the advice of the Executive Council, and must resign from office before being eligible for election. This is in contradistinction to the position of less senior public officials, whose position continues to be dealt with in the 1899 Act, section 37, which provides for such office holders to stand for election, but resign from the office if elected.

- 4.2.7 For the above reasons, the Committee has preferred a brief formula to define the relevant public offices requiring resignation prior to candidacy, rather than the case by case list in the present Part 1 of Schedule V of the 1899 Act.

### **Recommendation 3:**

The Committee recommends that the originally proposed Part 1 of Schedule 4 of the *Electoral Act 1907*, as set out in the *Electoral Amendment (Constitutional Provisions) Bill 1997* be deleted and replaced with a formula in the following words in proposed section 174D of the *Electoral Act 1907*, to the effect that a person is disqualified from being chosen for membership of the Parliament if that person: “holds any office, the holder of which may be removed only by vote of either or both the Legislative Council and Legislative Assembly, or by the Governor acting on the advice of the Executive Council.”

### **4.3 Qualification and Disqualification of Members**

- 4.3.1 The Committee in its finding above recommends that provisions of the 1899 Act relating to **candidates** should be found in the *Electoral Act 1907* as the Bill proposes. However, provisions relating to **Members** are quite different in nature from those relating to candidates and would be inappropriately placed in the *Electoral Act 1907*.
- 4.3.2 Some provisions of the 1899 Act which under the Bill were to be reproduced in the *Electoral Act 1907* (as set out in the table below) fall into this category.

<b>Proposed <i>Electoral Act</i> section</b>	<b>Purpose</b>	<b>1899 Act section</b>
174E	Certain offices and places to be vacated before member takes seat or automatic vacation of certain offices on election	36
174F		37
174G	Seats in Parliament vacated in certain cases	38
174H	Provision for relief	39
174I	Power to amend Schedule V	42
Parts 2 and 3, Schedule 4	Set of excluded office holders	Parts 2 and 3, Sch V

These proposed new provisions should therefore be deleted from the Bill.

**Recommendation 4:**

The Committee considers that those clauses governing the qualification and disqualification of members ought to remain in the *Constitution Acts Amendment Act 1899* and not be contained in the *Electoral Act 1907*.

The Committee therefore recommends that proposed new sections 174E, 174F, 174G, 174H, 174I and Parts 2 and 3 of Schedule 4 be deleted from the Bill.

#### **4.4 Other Amendments Necessary**

- 4.4.1 The Bill was drafted on the basis that it would accompany a consolidation of the State's constitutional machinery. The Committee is dealing with the Bill as a discrete matter, and regards the references in the Bill to the *A Constitution of Western Australia* as inappropriate, as that document does not exist.
- 4.4.2 Accordingly, it would be appropriate to delete references in the Bill to the *A Constitution of Western Australia* and replace sections so referred to in their present statutory positions. The only proposed section in the Bill so affected is 174D(1).

**Recommendation 5:**

The Committee recommends that proposed section 174D (1) of the *Electoral Act 1907* have the reference to *Athe Constitution of Western Australia* deleted, to be replaced with reference to the current legislative provisions.

4.4.3 Some consequential changes will be necessary to the 1899 Act.

4.4.4 Sections 33, 37, 40 and 41 of the 1899 Act are not proposed to be removed to the Electoral Act 1907, but contain numerous references to sections of the 1899 Act which are proposed to be removed, via the Bill, to the Electoral Act 1907. The Committee is of the view that those references should be consequently altered. Provision should similarly be made for the deletion from the 1899 Act of sections 7, 20, 32, 34 and 35 and Part 1 of Schedule V.

**Recommendation 6:**

The Committee recommends that sections 33, 37, 40 and 41 of the *Constitution Acts Amendment Act 1899* be amended to reflect the changes to be made to that Act pursuant to this Report. Similarly, the Committee recommends the deletion of sections 7, 20, 32, 34 and 35 and Part 1 of Schedule V from the *Constitution Acts Amendment Act 1899*.

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## **5 THE CONTENT OF THE AMENDED BILL**

### **5.1 The content of the Bill originally before the Committee**

- 5.1.1 The Committee has drafted an Amended Bill (Schedule A) to give effect to its recommendations.
- 5.1.2 The Bill intended the wholesale removal from the 1899 Act to the *Electoral Act 1907* of all provisions going not merely to qualification to stand for election to Parliament, but of all matters going to qualification to be and remain a member of Parliament. However, sections 7 and 20 of the 1899 Act, providing the formula for qualification to stand for membership of the respective Houses of the Parliament, were not dealt with in the Bill.
- 5.1.3 The Bill contained proposed sections 174B and 174C of the *Electoral Act 1907* going to certain grounds of disqualification from being a Member, and these proposed sections have been retained (as sections 174C and 174D of the Amended Bill) because they are tied to the issue of ineligibility to stand for election, by the immediately following section. Proposed section 174D of the Amended Bill has been redrafted to move away from the concept of disqualification for membership of the Parliament to disqualification from being a candidate to be chosen for membership of the Parliament. The change to “chosen for membership” and to “Parliament” instead of “Legislature” is to accord with the wording of the Commonwealth Constitution.
- 5.1.4 The remaining sections of the Bill, being proposed sections 174E to 174I and a new Schedule 4 to the *Electoral Act 1907*, have been deleted from the amended Bill, as not being restricted to the matter of eligibility to stand for election. The relevant portion of Schedule 4, being Part 1 of the Bill, has been condensed to a formula and retained in the amended Bill.

### **5.2 The amended Bill: Provisions going to eligibility for nomination**

- 5.2.1 The Amended Bill proposes amendment of paragraph 77(1)(b) and sub-section 77(4) of the *Electoral Act 1907*, as the present wording contains a circularity in the reference to a person not being capable of being elected if he is Adisqualified from being elected ≡. That phrase is proposed to be removed, and replaced with a reference to a person not being disqualified from being chosen or sitting as a Member. It is disqualification from being chosen or sitting as a Member which is the touchstone of ineligibility to stand, as shown in proposed section 174E of the *Electoral Act 1907*.

**5.3 Problems arising from the present drafting of the *Electoral Act 1907***

- 5.3.1 As noted in paragraph 5.2.1 above, paragraph 77(1)(b) of the *Electoral Act 1907* presently provides that persons are not eligible for election unless they are both qualified to be elected and not disqualified from being elected to membership of the House for which they are standing. In the light of that conjunction in the test for eligibility for candidacy, there is a strong argument in logic that the matters which define both qualification and disqualification for membership of either House be kept together in the same piece of legislation. Further, if the argument has been made for moving the disqualification provisions to the *Electoral Act 1907*, it follows that the matters defining qualification should also be placed in that Act.
- 5.3.2 The Committee notes that subsection 77(1) of the *Electoral Act 1907* presently provides that a *person shall not be capable of being elected...unless he...is qualified to be elected and is not disqualified from being elected...≡*. The Committee views this definition of incapacity as unduly circular. It presently provides, with regard to disqualification, that persons are not capable of being elected if they are disqualified from being elected. In the view of the Committee, the reference to disqualification needs to be a reference to capacity to be chosen as or to sit as a member of the Parliament, rather than capacity to being elected, to break the circularity in the definition.
- 5.3.3 Sections 31, 32, 34 and 35 of the 1889 Act all refer to the concept of a person disqualified for membership of the Parliament. It is these provisions which the Bill intends to move to the *Electoral Act 1907*, although the replacement for section 34, proposed section 174D in the Amended Bill to amend the *Electoral Act 1907* has been altered to refer to disqualification to be a candidate to be chosen for membership of the Parliament. In the view of the Committee it may be appropriate both for reasons of logic and drafting style to use the phrase *disqualified to be chosen as or to sit as a member of the Parliament*≡ consistently in the *Electoral Act 1907*, including in section 77.
- 5.3.4 The Committee notes that subsection 77(4) of the *Electoral Act 1907*, providing for penalty for illegal self-nomination for election, distinguishes between disqualification from standing for election on the one hand, and on the other, disqualification for membership of the relevant House. In the view of the Committee if the ineligibility were properly defined in subsection 77(1), this double definition would not be required in subsection 77(4). The Committee is of the view that the proposed alterations to section 77 will achieve the required clarity.

**Recommendation 7:**

The Committee recommends that subsection 77(1) of the *Electoral Act 1907* be amended so that the reference to disqualification is not to *being elected* ≡ but rather to *being chosen as or to sitting as a member of the Parliament*.

**Recommendation 8:**

The Committee recommends that subsection 77(4) of the *Electoral Act 1907* be amended so that illegal self nomination is defined by reference to disqualification for being chosen as or sitting as a member of the relevant House of the Parliament.

**6 SCHEDULES TO THIS REPORT**

- 6.1 The Amended Bill is annexed as a Schedule A to this Report. Clause notes, explaining the proposed amendments to the Bill and associated legislation is attached as Schedule B to this Report.



**Hon Bruce Donaldson MLC**

**Chairman**

**Date: 31 May 2000**

## **SCHEDULE A**



WESTERN AUSTRALIA

•••••

LEGISLATIVE COUNCIL

[HON JOHN COWDELL]

**ELECTORAL AMENDMENT  
(CONSTITUTIONAL PROVISIONS)  
BILL 2000**

A BILL FOR

AN ACT to amend the *Electoral Act 1907*

The Parliament of Western Australia enacts as follows:

**PART 1 — PRELIMINARY**

**Short title**

1. This Act may be cited as the *Electoral Amendment Act 2000*.

**Commencement**

2. This Act shall come into operation on the day that it receives the Royal Assent.

**PART 2 — AMENDMENTS TO THE *ELECTORAL ACT 1907***

No. 66 — 1

*Electoral Amendment (Constitutional Provisions) Bill 2000*

**Principal Act**

3. In this Part, the *Electoral Act 1907* is referred to as the principal Act.

**Amendment of Part IV Division 2 of the principal Act**

**3A** In paragraph 77 (1) (b) of the principal Act delete the word “elected” and insert the words “chosen or sitting”.

**3B** In subsection 77 (4) of the principal Act delete the word “is” where first appearing and insert the words “would be, if elected” and delete the word “elected” and insert the word “chosen” and delete the word “being”, where second appearing, and insert the words “sitting as”.

**Part V A inserted**

4. After section 173 of the principal Act the following Part is inserted —

“

**PART V A — ELIGIBILITY FOR ELECTION TO PARLIAMENT**

**Interpretation**

**174A.** In the succeeding provisions of this Part —

(a) **“disqualified for membership of the Parliament”** means disqualified for membership of the Legislative Council and for membership of Legislative Assembly;

**“member of the Parliament”** means a member of the Legislative Council or the Legislative Assembly;

(b) a reference to the holding of any office or place is a reference to the holding of that office or place in a permanent, temporary or acting capacity on a full-time, part-time or casual basis.

**Qualification of members of the Parliament**

**174B** 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 Parliament, if such person is an Australian citizen, and such person is of the full age of 18 years, and not subject to any legal incapacity, and who is either an elector entitled to vote at an election of a member of the Parliament, or is qualified to become such an elector.

**Disqualification by reason of bankruptcy or convictions**

**174C** A person is disqualified for membership of the Parliament if he —

- (a) be an undischarged bankrupt, or a debtor against whose estate there is a subsisting receiving order in bankruptcy; or
- (b) has been in any part of Her Majesty's dominions attainted or convicted of treason or felony.

**Disqualification of certain office-holders and members of other Parliaments or Houses**

**174D** (1) Subject to this Act a person is disqualified from being chosen for membership of the Parliament if that person —

- (a) holds any office, the holder of which may only be removed by vote of either or both the Legislative Council or the Legislative Assembly, or by the Governor on the advice of the Executive Council; or
- (b) is a member of the Parliament of the Commonwealth or the legislature of a Territory or another State of the Commonwealth.

(2) A member of either House of the Parliament is disqualified for membership of the other House.

**Election of unqualified or disqualified person void**

**174E** (1) If any person not qualified under section 174B to be elected as a member of a House of the Parliament is elected as a member of that House, his election shall be void.

(2) If any person disqualified for membership of the Parliament by section 174C or section 174D(1) is elected as a member of the Parliament, his election shall be void.

(3) If any person disqualified for membership of one House of the Parliament by section 174D(2) is elected as a member of that House, his election shall be void.”

**PART 3 - AMENDMENTS TO THE  
CONSTITUTION ACTS AMENDMENT ACT  
1899**

**Principal Act**

**6.** In this Part, the *Constitution Acts Amendment Act 1899* is referred to as the principal Act.

**Deletions from the principal Act**

**7.** Delete sections 7, 20, 32, 34 and 35 and Part 1 of Schedule V of the principal Act.

**Amendment of section 33 of the principal Act**

**8.** Section 33 of the principal Act is amended by inserting after the words “by the succeeding sections of this Part” the words “or in Part VA of the *Electoral Act 1907*”.

**Amendment of section 37 of the principal Act**

**9.** Section 37 of the principal Act is amended by deleting the words “mentioned in Part 1 of Schedule V” and replacing them with the words “referred to in section 174D of the *Electoral Act 1907*”.

**Amendment of section 40 of the principal Act**

**10.** Section 40 of the principal Act is amended by :

deleting from (a) the words "section 7 or section 20" and replacing them with the words "section 174B of the *Electoral Act 1907*"; and

deleting from (b) the words "section 32 or section 34" and replacing them with the words "section 174C and section 174D of the *Electoral Act 1907*".

**Amendment of section 41 of the principal Act**

**11.** Section 41 of the principal Act is amended by:

deleting from (a) in subsection (1) the number "35" and replacing it with the words "174E of the *Electoral Act 1907*".

## **SCHEDULE B**

<u><b>BILL</b></u>	<u><b>AMENDED BILL</b></u>	<u><b>NOTES</b></u>
<p><b>PART 1 — PRELIMINARY</b>  <b>Short title</b>  1. This Act may be cited as the <i>Electoral Amendment Act 1997</i>.</p>	<p><b>PART 1 - PRELIMINARY</b>  <b>Short title</b>  1.This Act may be cited as the <i>Electoral Amendment Act 2000</i></p>	<p>Amendment of date.</p>
<p><b>Commencement</b>  2. This Act shall come into operation the first day of January 1998.</p>	<p><b>Commencement</b>  2. This Act shall come into operation on the day that it receives the Royal Assent.</p>	<p>A new commencement date has been inserted.</p>
<p><b>PART 2 — PRELIMINARY</b>  <b>Principal Act</b>  3. In this Act, the <i>Electoral Act 1907</i> is referred to as the principal Act.</p>	<p><b>PART 2 AMENDMENTS TO THE ELECTORAL ACT 1907</b>  <b>Principal Act</b>  3. In this Part, the <i>Electoral Act 1907</i> is referred to as the principal Act.</p>	<p>The Bill has been redrafted to deal with consequential amendments to other legislation, so that the <i>Electoral Act 1907</i> is only the principal Act in Part 2 of this Bill, and the Heading to Part 2 has been consequentially altered.</p>
	<p><b>Amendment of Part IV Division 2 of the principal Act</b>  <b>3A</b> In paragraph 77 (1) (b) of the principal Act delete the word “elected” and insert the words “chosen or sitting”.</p>	<p>The proposed amendment is to stop the present circularity in the definition of those not capable of being elected. The test would now be not disqualification from being elected, but disqualification from being able to be chosen or to sit as a member.</p>
	<p><b>3B</b> In subsection 77 (4) of the principal Act delete the word “is” where first appearing and insert the words “would be, if elected” and delete the word “elected ”, and insert the word “chosen” and delete the word “being”, where second appearing, and insert the words “sitting as”.</p>	<p>The same principle applies as to the preceding clause, this clause dealing with the provision for penalties on those who self-nominate when incapable of being chosen or sitting as a member.</p>

<u>BILL</u>	<u>AMENDED BILL</u>	<u>NOTES</u>
<p><b>Part V A inserted</b>  <b>4.</b> After section 173 of the principal Act the following Part is inserted —</p> <p><b>“PART V A — PARLIAMENTARY MEMBERSHIP REQUIREMENTS</b></p>	<p><b>Part V A inserted</b>  <b>4.</b> After section 173 of the principal Act the following Part is inserted –</p> <p><b>PART V A ELIGIBILITY FOR ELECTION TO PARLIAMENT</b></p>	<p>The heading attached to proposed Part VA has been amended to reflect the limited ambit of the provisions being inserted into the <i>Electoral Act 1907</i>.</p>
<p><b>Interpretation</b>  <b>174A.</b> In the succeeding provisions of this Part —</p> <p>(a) <b>“disqualified for membership of the Legislature”</b> means disqualified for membership of the Legislative Council and for membership of Legislative Assembly;</p> <p><b>“member”</b> in relation to a commission, council, board, committee, authority, trust or other body means —</p> <p>(i) any member of the body whether known as a member, commissioner, councillor, trustee, director or by any other title;</p> <p>(ii) any deputy, alternate or acting member of the body,</p> <p>and includes a person holding the office of chairman or president or any other office on the body;</p> <p><b>“member of the Legislature”</b> means a member of the Legislative Council or the Legislative Assembly;</p>	<p><b>Interpretation</b>  <b>174A.</b> In the succeeding provisions of this Part</p> <p>(a) <b>“disqualified for membership of the Parliament”</b> means disqualified for membership of the Legislative Council and for membership of the Legislative Assembly;</p> <p><b>“member of the Parliament”</b> means a member of the Legislative Council or the Legislative Assembly;</p>	<p>The definition of “member” has been deleted, as sections 36 and 37 of the <i>Constitution Acts Amendment Act 1899</i> (the 1899 Act) which used the concept of “member” of various government bodies are now not proposed to be moved to the <i>Electoral Act 1907</i>.</p> <p>References to “Legislature” have been altered throughout to “Parliament” to bring these provisions into line with the terminology of the Commonwealth Constitution.</p>



<u><b>BILL</b></u>	<u><b>AMENDED BILL</b></u>	<u><b>NOTES</b></u>
(b) a reference to the holding of any office or place is a reference to the holding of that office or place in a permanent, temporary or acting capacity on a full-time, part-time or casual basis.	(b) a reference to the holding of any office or place is a reference to the holding of that office or place in a permanent, temporary or acting capacity on a full-time, part-time or casual basis.	
	<p><b>Qualification of members of the Parliament</b></p> <p><b>174B</b> 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 Parliament, if such person is an Australian citizen, and such person is of the full age of 18 years, and not subject to any legal incapacity, and who is either an elector entitled to vote at an election of a member of the Parliament, or is qualified to become such an elector.</p>	<p>This proposed section substantially contains the words of the present sections 7 and 20 of the 1899 Act, which provided for qualification for the respective Houses of Parliament. The two sections are in identical form as to qualification for membership, and have been amalgamated to refer to eligibility for membership of the Parliament. The requirement of Australian citizenship has been added to the matters going to eligibility.</p>
<p><b>Disqualification by reason of bankruptcy or convictions</b></p> <p><b>174B.</b> A person is disqualified for membership of the Legislature if he —</p> <p>(a) be an undischarged bankrupt, or a debtor against whose estate there is a subsisting receiving order in bankruptcy; or</p>	<p><b>Disqualification by reason of bankruptcy or convictions</b></p> <p><b>174C</b> A person is disqualified for membership of the Parliament if he</p> <p>(a) be an undischarged bankrupt, or a debtor against whose estate there is a subsisting receiving order in bankruptcy; or</p>	<p>The words of this proposed section are the exact words of present section 32 of the 1899 Act.</p>

<u><b>BILL</b></u>	<u><b>AMENDED BILL</b></u>	<u><b>NOTES</b></u>
<p>(b) has been in any part of Her Majesty's dominions attainted or convicted of treason or felony.</p>	<p>(b) has been in any part of Her Majesty's dominions attainted or convicted of treason or felony.</p>	
<p><b>Disqualification of certain office-holders and members of other Parliaments or Houses</b>  <b>174C.</b> (1) Subject to this Act a person is disqualified for membership of the Legislature if he —</p> <p>(a) holds any office mentioned in Part 1 of Schedule 4; or</p> <p>(b) is a member of the Parliament of the Commonwealth or the legislature of a Territory or another State of the Commonwealth.</p> <p>(2) A member of either House of the Legislature is disqualified for membership of the other House.</p>	<p><b>Disqualification of certain office-holders and members of other Parliaments or Houses</b>  <b>174D</b> (1) Subject to this Act a person is disqualified from being chosen for membership of the Parliament if that person</p> <p>(a) holds any office, the holder of which may only be removed by vote of either or both the Legislative Council or the Legislative Assembly, or by the Governor acting on the advice of the Executive Council; or</p> <p>(b) is a member of the Parliament of the Commonwealth or the legislature of a Territory or another State of the Commonwealth.</p> <p>(2) A member of either House of the Parliament is disqualified for membership of the other House.</p>	<p>The words of this proposed section are, with the exception of subsection (1), the exact words of section 34 of the 1899 Act. The reference in paragraph 1(a) of section 34 to “Part 1 of Schedule V” (of the 1899 Act) has been altered to refer to a formula defining disqualification from membership of the Parliament on the basis of public office so senior that removal may only be performed by one or both Houses of Parliament or the Governor on the advice of the Executive Council.</p> <p>The concept of disqualification now refers, not to membership of the Parliament, but to eligibility to be chosen for membership of the Parliament.</p>
<p><b>Election of unqualified or disqualified person void</b>  <b>174D.</b> (1) If any person not qualified under section 36 of the Constitution of Western Australia to be elected as a member of a House of the Legislature is elected as a member of that House, his election shall be void.</p>	<p><b>Election of unqualified or disqualified person void</b>  <b>174E</b> (1) If any person not qualified under section 174B to be elected as a member of a House of the Parliament is elected as a member of that House, his election shall be void.</p>	<p>The words of this proposed section are, with minor consequential amendments, the exact words of section 35 of the 1899 Act. The reference in subsection 1 of section 35 to “section 7 or section 20”(of the 1899 Act), was altered in the Bill to refer to a section of the proposed “Constitution of Western Australia”. As that document</p>

<u><b>BILL</b></u>	<u><b>AMENDED BILL</b></u>	<u><b>NOTES</b></u>
<p>(2) If any person disqualified for membership of the Legislature by section 174B or section 174C (1) is elected as a member of the Legislature, his election shall be void.</p> <p>(3) If any person disqualified for membership of one House of the Legislature by section 174C (2) is elected as a member of that House, his election shall be void.</p>	<p>(2) If any person disqualified for membership of the Parliament by section 174C or section 174D(1) is elected as a member of the Parliament, his election shall be void.</p> <p>(3) If any person disqualified for membership of one House of the Parliament by section 174D(2) is elected as a member of that House, his election shall be void.”</p>	<p>does not exist at this time, and sections 7 and 20 have been proposed to be amalgamated as section 174B of the <i>Electoral Act 1907</i>, that section has been placed in proposed clause 174E of the Amended Bill. The sections referred to in subsections 2 and 3 have been consequentially altered to refer to the proposed sections in the <i>Electoral Act 1907</i>.</p>
<p><b>Certain offices and places must be vacated before member can take seat</b>  <b>174E.</b> (1) Subject to subsections (2) and (8), this section applies to a person who —</p> <p>(a) holds an office or place in the service of the Crown in right of the Commonwealth or another State of the Commonwealth or in the service of the government of, or any department or agency of the government of, the Commonwealth or a Territory or another State of the Commonwealth; or</p>		<p>This section of the Bill has been deleted as going beyond the issues of eligibility for election to the Parliament.</p>
<p>(b) holds an office as a member of any commission, council, board, committee, authority, trust or other body, and was appointed as such a member by the Crown in right of the Commonwealth or another State</p>		<p>This section of the Bill has been deleted as going beyond the issues of eligibility for election to the Parliament.</p>

<b><u>BILL</u></b>	<b><u>AMENDED BILL</u></b>	<b><u>NOTES</u></b>
of the Commonwealth, or by the government of, or any department or agency of the government of, the Commonwealth or a Territory or another State of the Commonwealth.		
(2) Subject to subsection (4), the Governor may, by Order in Council exempt any office or place from the operation of this section and whilst that office or place remains so exempted this section shall not apply to a person by reason of his holding that office or place.		This section of the Bill has been deleted as going beyond the issues of eligibility for election to the Parliament.
(3) Subject to subsection (4), the Governor may, by subsequent Order in Council, amend an Order made under subsection (2) or revoke the Order either absolutely or for the purpose of substituting another Order.		This section of the Bill has been deleted as going beyond the issues of eligibility for election to the Parliament.
(4) An Order in Council shall be made under this section if and only if the making of the Order has been recommended by resolution passed by both Houses of the Legislature.		This section of the Bill has been deleted as going beyond the issues of eligibility for election to the Parliament.
(5) Subject to subsection (6), an Order in Council made under this section shall take and have effect on and from the day on which it is published in the <i>Gazette</i> .		This section of the Bill has been deleted as going beyond the issues of eligibility for election to the Parliament.

<u>BILL</u>	<u>AMENDED BILL</u>	<u>NOTES</u>
(6) Where, by reason of an Order in Council made under subsection (3), an office or place previously exempted from the operation of this section will no longer be so exempted, that Order shall take and have effect at and from the expiration of 30 days from the day on which it is published in the <i>Gazette</i> .		This section of the Bill has been deleted as going beyond the issues of eligibility for election to the Parliament.
(7) The Clerk of the Parliaments shall keep in his custody a copy of every Order in Council made under this section.		This section of the Bill has been deleted as going beyond the issues of eligibility for election to the Parliament.
(8) This section does not apply to a person by reason of his being a member of the Citizen Forces or the Reserve Forces within the meaning of the <i>Defence Act 1903</i> of the Parliament of the Commonwealth.		This section of the Bill has been deleted as going beyond the issues of eligibility for election to the Parliament.
(9) If any person to whom this section applies is elected as a member of the Legislative Council at a general election, his seat shall become vacant on 22 May next following the election if he has not, before that date, resigned from or otherwise ceased to hold the office or place by reason of which this section applies to him.		This section of the Bill has been deleted as going beyond the issues of eligibility for election to the Parliament.
(10) If any person to whom this section applies is elected as a member of the Legislature otherwise than as referred to in subsection (9) —  (a) he shall not take the oath, or make the affirmation, pursuant to section 37 of the <i>Constitution of Western Australia</i> until he has		These sections of the Bill have been deleted as going beyond the issues of eligibility for election to the Parliament.

<u><b>BILL</b></u>	<u><b>AMENDED BILL</b></u>	<u><b>NOTES</b></u>
<p>resigned from or otherwise ceased to hold the office or place by reason of which this section applies to him; and</p> <p>(b) his seat shall become vacant at the expiration of 21 days after the date on which he is declared to be elected if he has not, before the expiration of that period, resigned from or otherwise ceased to hold the office or place by reason of which this section applies to him.</p>		<p>These sections of the Bill have been deleted as going beyond the issues of eligibility for election to the Parliament.</p>
<p><b>Office or place vacated in certain cases</b>  <b>174F.</b> (1) Subject to subsection (2), this section applies to a person who —</p> <p>(a) holds any office or place mentioned in Part 2 of Schedule 4 not being an office also mentioned in Part 1 of Schedule 4; or</p> <p>(b) is a member of any commission, council, board, committee, authority, trust or other body mentioned in Part 3 of Schedule 4.</p> <p>(2) This section does not apply to a person by reason of his being the holder of any office or place, or a member of any body, <i>ex officio</i> as the holder of any of the principal executive offices of the Government liable to be vacated on political grounds.</p>		<p>These sections of the Bill have been deleted as going beyond the issues of eligibility for election to the Parliament.</p>

<u><b>BILL</b></u>	<u><b>AMENDED BILL</b></u>	<u><b>NOTES</b></u>
<p>(3) If any person to whom this section applies is declared to be elected as a member of the Legislature, he shall, upon and by virtue of being so declared, vacate the office or place by reason of which this section applies to him.</p>		<p>This section of the Bill has been deleted as going beyond the issues of eligibility for election to the Parliament.</p>
<p><b>Seats in Parliament vacated in certain cases</b>  <b>174G.</b> Subject to any resolution passed by the Legislature under section 39, if any member of the Legislature, after his election —</p> <p>(a) ceases to be qualified under section 36 of the <i>Constitution of Western Australia</i> to be elected a member of the House of which he is a member; or</p> <p>(b) becomes disqualified for membership of the Legislature by section 174B or section 174C; or</p> <p>(c) becomes a person to whom section 174E or section 174F applies; or</p> <p>(d) takes the benefit, whether by assignment, composition, or otherwise, of any law relating to bankrupt or insolvent debtors; or</p>		<p>These sections of the Bill have been deleted as going beyond the issues of eligibility for election to the Parliament.</p>

<u>BILL</u>	<u>AMENDED BILL</u>	<u>NOTES</u>
<p>(e) becomes of unsound mind; or</p> <p>(f) 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</p> <p>(g) fails to give his attendance in the House of which he is a member for one entire session thereof without the permission of the House entered upon its journals, his seat shall thereupon become vacant.</p>		<p>These sections of the Bill have been deleted as going beyond the issues of eligibility for election to the Parliament.</p>



<u>BILL</u>	<u>AMENDED BILL</u>	<u>NOTES</u>
<p><b>Provision for relief</b>  <b>174H.</b> (1) This section applies to any case where a person has, or it is alleged that a person has, at any time (in this section called “<b>the material time</b>”) become the holder of an office or place —</p> <p>(a) specified in Part 1 or 2 of Schedule 4; or</p> <p>(b) as a member of any commission, council, board, committee, authority, trust or other body specified in Part 3 of Schedule 4; or</p> <p>(c) referred to in section 174E (1),</p> <p>and, at the material time, that person was a member of the Legislature.</p>		<p>These sections of the Bill have been deleted as going beyond the issues of eligibility for election to the Parliament.</p>
<p>(2) If, in a case to which this section applies, it appears to the Legislature that the person concerned has, since the material time, resigned from or otherwise ceased to hold the office or place in question, and that it is otherwise proper so to do, the Legislature may, by resolution passed by both Houses, according to its tenor.</p>		<p>This section of the Bill has been deleted as going beyond the issues of eligibility for election to the Parliament.</p>

<u><b>BILL</b></u>	<u><b>AMENDED BILL</b></u>	<u><b>NOTES</b></u>
<p>(3) A resolution may be made under subsection (2), and a resolution made under that subsection shall have effect, notwithstanding that proceedings may have been commenced in the Supreme Court under section 40 of the <i>Constitution of Western Australia</i> and notwithstanding any declaration made by the Supreme Court under that section.</p> <p>(4) The provisions of sections 67 (2) and (3) and 156B (2) and (3) of the <i>Electoral Act 1907</i> do not apply to or in relation to any vacancy occurring by operation of section 174G in a case to which this section applies.</p> <p>[39A, 39B, 39C. Repealed by No. 78 of 1984 s.12.]</p>		<p>These sections of the Bill have been deleted as going beyond the issues of eligibility for election to the Parliament.</p>
<p><b>Power to amend Schedule 4.</b></p> <p><b>174I</b> (1) Subject to subsection (2), the Governor may, by Order in Council, amend Schedule 4.</p> <p>(2) An Order in Council shall be made under this section if and only if the making of that Order has been recommended by resolution passed by both Houses of the Legislature.</p> <p>(3) An Order in Council made under this section shall take and have effect —</p>		<p>These sections of the Bill have been deleted as going beyond the issues of eligibility for election to the Parliament.</p>

<u>BILL</u>	<u>AMENDED BILL</u>	<u>NOTES</u>
<p>(a) In the case of an Order adding an office to Part 1 of Schedule 4, or adding an office or place to Part 2 of Schedule 4 or adding a commission, council, board, committee, authority, trust or other body to Part 3 of Schedule 4 — at and from the expiration of 30 days from the day on which the Order is published in the <i>Gazette</i>; or</p> <p>(b) in the case of any other Order — on and from the day on which the Order is published in the <i>Gazette</i>.</p> <p>(4) The Clerk of the Parliaments shall keep in his custody a copy of every Order in Council made under this section.”.</p>		<p>These sections of the Bill have been deleted as going beyond the issues of eligibility for election to the Parliament.</p>
<p><b>Schedule 4 inserted</b></p> <p>5. After Schedule 3 of the principal Act the following Schedule is inserted</p> <p>[Inserts new Schedule 4 Part 1, Part 2 and Part 3 – refer to Bill (No 66 – 1) for text].</p>		<p>Clause 5 of the Bill was an exact replication of Schedule V of the 1899 Act. The matters dealt with in Parts 2 and 3 of that Schedule are related to Sections 37 and 39 of the 1899 Act, which are now not proposed to be moved to the <i>Electoral Act 1907</i>. The provisions in Part 1 of Section V of the 1899 Act dealing with this issue, consisted of a long list of public offices. The proposed Part 1 of Schedule 4 of the Bill is replaced by 174D(1)(a) being a general definition of offices which are so senior that holders of those public offices should not stand for election. The process of definition is by relationship to dismissal: a relevant office holder will be one who can only be dismissed by one or both Houses of Parliament,</p>

<u><b>BILL</b></u>	<u><b>AMENDED BILL</b></u>	<u><b>NOTES</b></u>
		<p>or by the Governor on the advice of the Executive Council.</p> <p>The formula has now been placed within proposed section 174D in the Amended Bill, and Schedule 4 has consequently been deleted.</p>
	<p><b>PART 3 – AMENDMENTS TO THE CONSTITUTION ACTS AMENDMENT ACT 1899</b></p>	<p>This Part provides for consequential amendments to the 1899 Act, as large portions of the Bill have been proposed to be deleted, leaving the content of those provisions still in the 1899 Act, but requiring a relationship between provisions still in the 1899 Act and provisions proposed to be excised from that Act and placed in the <i>Electoral Act 1907</i>.</p>
	<p><b>Principal Act</b>  <b>6.</b> In this Part, the <i>Constitution Acts Amendment Act 1899</i> is referred to as the principal Act</p>	<p>Machinery provisions referring to the 1899 Act.</p>
	<p><b>Deletions from the principal Act</b>  <b>7.</b> Delete sections 7, 20, 32, 34 and 35 and Part 1 of Schedule V of the principal Act.</p>	<p>Identifying provisions of the 1899 Act to be removed from that Act (and placed in the <i>Electoral Act 1907</i>).</p>
	<p><b>Amendment of section 33 of the principal Act</b>  <b>8.</b> Section 33 of the principal Act is amended by inserting after the words “by the succeeding sections of this Part” the words “or in Part VA of the <i>Electoral Act 1907</i>”.</p>	<p>Change internal reference in the 1899 Act to the proposed Part VA of the <i>Electoral Act 1907</i> where referring to provisions formerly in the 1899 Act and now moved.</p>

<u><b>BILL</b></u>	<u><b>AMENDED BILL</b></u>	<u><b>NOTES</b></u>
	<p><b>Amendment of section 37 of the principal Act 9.</b> Section 37 of the principal Act is amended by deleting the words “mentioned in Part 1 of Schedule V ” and replacing them with the words “referred to in section 174D of the <i>Electoral Act 1907</i>”.</p>	<p>Reference in the 1899 Act to Part 1 of Schedule V of that Act now to be altered to the proposed cognate provision of Schedule 4 of the <i>Electoral Act 1907</i>.</p>
	<p><b>Amendment of section 40 of the principal Act 10.</b> Section 40 of the principal Act is amended by:  deleting from (a) the words “section 7 or section 20”and replacing them with the words “section 174B of the <i>Electoral Act 1907</i>”; and deleting from (b) the words “section 32 or section 34”and replacing them with the words “section 174C and section 174D of the <i>Electoral Act 1907</i>”.</p>	<p>References in the 1899 Act to sections of that Act to be deleted and moved to the <i>Electoral Act 1907</i> to be amended to refer to the proposed cognate sections in the <i>Electoral Act 1907</i>.</p>
	<p><b>Amendment of section 41 of the principal Act 11.</b> Section 41 of the principal Act is amended by:  deleting from (a) in subsection (1) the number “35” and replacing it with the words “174E of the <i>Electoral Act 1907</i>”.</p>	<p>Same as for clause 10.</p>