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FOREWORD

This guide is issued by the Western Australian Electoral Commission (the Commission) to assist prospective and nominated candidates.

Please read this guide in conjunction with provisions of the *Electoral Act 1907* (E), the *Electoral Regulations 1996* (R), the *Constitution Act 1889* (CA), the *Constitution Acts Amendment Act 1899* (CAA), the *Public Sector Management Act 1994* (PSM) and the *Commonwealth Broadcasting Services Act 1992* referred to in this guide. Copies of the legislation are available from the State Law Publisher www.slp.wa.gov.au. Candidates should check for any subsequent amendments.

The Commission can assist you by providing information, but cannot provide legal advice to candidates. If any doubt arises regarding your legal position, seek advice from your own legal adviser.



Warwick Gately AM

ELECTORAL COMMISSIONER

August 2008

1 LEGISLATIVE COUNCIL – THE ELECTION PROCESS

Members of the Legislative Council are elected for a four-year term commencing on 22 May and expiring on 21 May, four years hence. Writs for a general election shall be issued before 10 April in the year that the term expires but not more than one year before the vacancies occur and shall be returnable no later than 90 days from the day of issue but not later than 21 May next following that 10 April (refer *Constitution Act 1889* and *Constitution Acts Amendment Act 1899*).

2 WRIT

When an election is required, the Governor causes a writ to be issued. It directs the Electoral Commissioner to proceed with an election in a region and states:

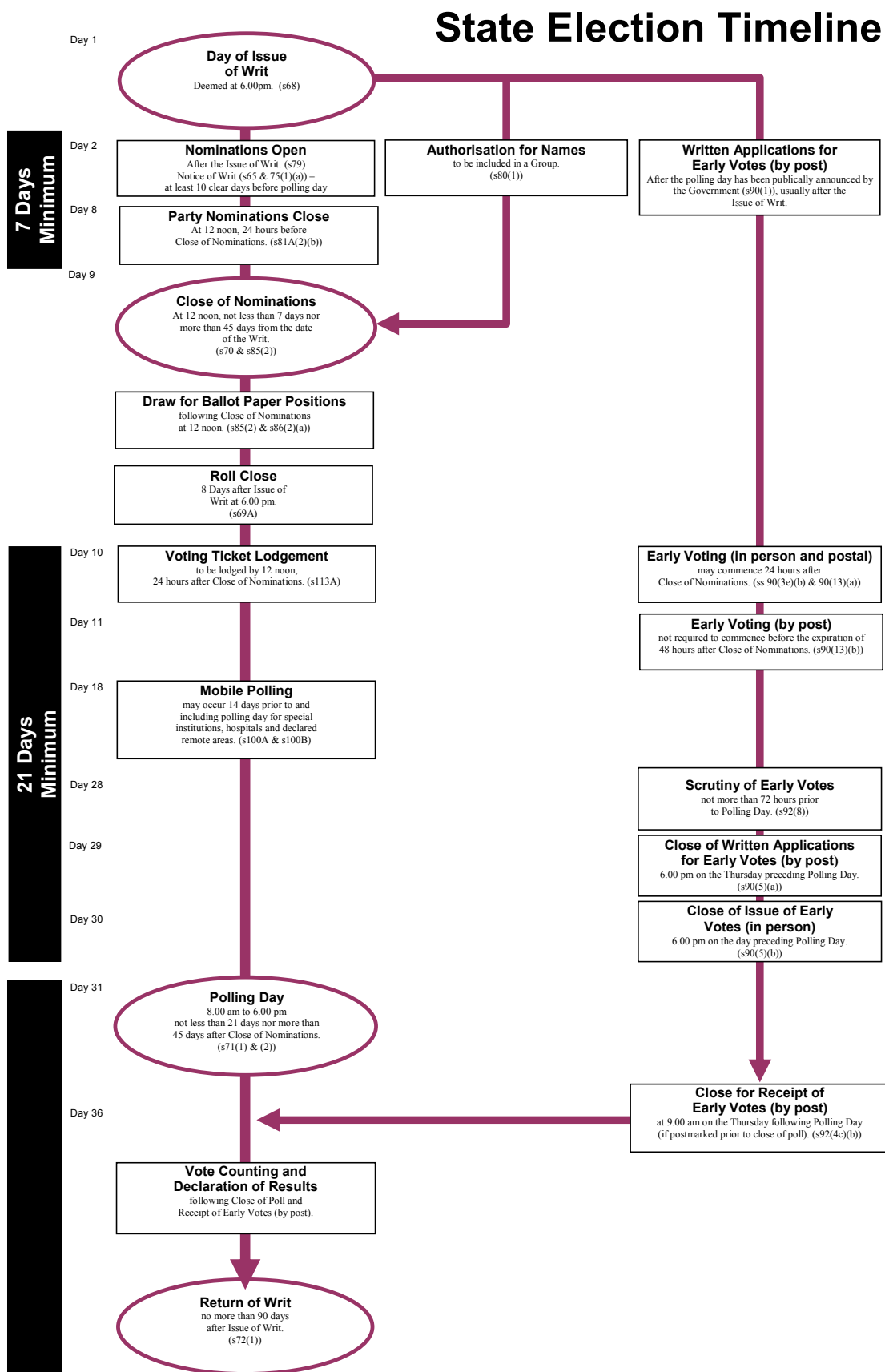
- nomination close date;
- polling date; and
- date for the return of the writ by the Electoral Commissioner.

3 RETURNING OFFICERS

The Electoral Commissioner appoints Returning Officers who are responsible for the organisation and conduct of elections in their respective regions.

The names and contact details of Regional Returning Officers are available from the Commission and on the Commission's web site, www.waec.wa.gov.au.

3.1 State Election Timeline



4 REGISTERED POLITICAL PARTIES

Eligible political parties may apply to be registered by the Electoral Commissioner. Registration enables the use of a party name or abbreviation on the ballot paper. Unregistered parties cannot use a party name on ballot papers. Registered political parties may lodge nomination forms for their candidates directly with the Commission.

4.1 Application for Registration of a Political Party

An application for registration of a political party must be submitted in an approved form to the Electoral Commissioner by the secretary of the party. Processing of applications ceases when the writ for an election is issued.

See Appendix 1 – Registration of Political Parties, for further information.

5 STANDING FOR ELECTION – LEGISLATIVE COUNCIL

5.1 Eligibility

People shall be capable of being elected at an election if they duly nominate and are qualified to be elected and not otherwise disqualified from being elected to the position they are seeking.

5.1.1 Qualifications

Any person is qualified to be elected as a member if he or she:

- has reached the age of 18; and
- is not subject to any legal incapacity; and
- is an Australian citizen; and
- has resided in Western Australia for one year; and
- is an elector entitled to vote at an election in a district.

5.1.2 Disqualifications

A person cannot nominate as a candidate in an election if, prior to and until the hour of nomination, he or she is, either by the *Electoral Act 1907* or any other Act, disqualified from being elected at that election as a member of the House of Parliament for which the election is being held.

A booklet, *Eligibility for Membership of State Parliament*, summarising qualifications and disqualifications is available from the Returning Officer, the Commission, or downloaded from the Commission's web site at www.waec.gov.au.

A person may not nominate for more than one region at an election. The penalty for nominating when a candidate is not qualified is \$1000.

5.1.3 Public Employees Standing for Election

A member of the Judiciary or a Parliament of the Commonwealth or another State or Territory must resign his or her office in order to nominate. Holders of certain other senior positions must also resign in order to nominate.

State public sector employees may nominate but must take leave of absence for the election period commencing on the first working day after nomination. The Electoral Regulations authorise public employees to apply for and take leave and for public employers to grant leave for this period.

A State employee may be required to resign, by other legislation, before nominating for election. Subject to some conditions, a State employee may be entitled to re-enter public sector employment should he or she not be elected.

6 HOW TO NOMINATE

A nomination must be submitted on a form which can be obtained by contacting the Returning Officer for a region or the Electoral Commission.

Nominations may be received at any time after 6.00 pm on the day of issue of the writ and before 12.00 noon on the day that nominations close.

6.1 Candidates of Registered Political Parties

For candidates of a registered political party, the party may hand its nominations to the Electoral Commissioner up to 24 hours before the close of nominations. The party secretary is responsible for this process.

6.2 Candidates Not Endorsed by Registered Political Parties

The Returning Officer will take nominations by arrangement during the period nominations are open and will also take nominations at the place of declaration of nominations from 11.00 am to 12.00 noon on the date of the close of nominations.

6.3 Candidate's Name on Legislative Council Ballot Papers

The form of a candidate's name to appear on the ballot paper is specified on the nomination form. It must include the candidate's surname and may include one or more of the candidate's given names which may be stated as one of the following:

- the given name;
- an initial standing for the given name; or
- a commonly accepted variation of the given name (including an abbreviation or truncation of the name or an alternative form of the name).

Be very clear about indicating names such as van de Klashorst, de Bono, l'Estrange as to what is the exact form and punctuation of the surname. The candidate's surname must be in full. It cannot be abbreviated or shortened.

Where two or more candidates' names are similar and are likely to cause confusion, the names of those candidates may be arranged with such description or addition as to distinguish them from one another by the Returning Officer.

6.4 Use of Registered Political Party Name on a Ballot Paper

Only candidates or groups representing a registered political party may apply on the nomination form to have the name of that party printed underneath their name(s) on the ballot paper. The use of this political party name must be authorised by the secretary of the party or, in the case of a composite name of two registered political parties, by the secretaries of both parties, by endorsement on the form HO 3 *Centralised Nominations Lodgement Form and Receipt*, or the form RO 20A *Authorisation for a Registered Political Party Name to Appear on a Ballot Paper*.

Names are printed on ballot papers in the following format:

SMITH, Lee

Purple Party

6.5 Application for the Word *Independent* to Appear on the Ballot Paper

A candidate or group may apply to have the word *Independent* printed on the ballot paper by completing the section on the form RO 20 *Supplementary Nomination Details for Candidates and Groups*.

This will be shown on the ballot papers as:

SMITH, Lee

Independent

Candidates who are neither eligible to use a registered political party name, nor wish to be designated *Independent* on the ballot paper, will have no designation printed on the ballot paper.

This will be shown on the ballot paper as:

SMITH, Lee

7 DEPOSIT

Nominations are not valid unless a deposit of \$250 is paid before the close of nominations. Payments can **only** be made in money (including money order) or by a cheque drawn by a financial institution upon itself, made payable to the Electoral Commissioner.

A personal cheque is **not** acceptable.

The deposit is returned:

- if the total number of first preference votes polled by the candidate (or the candidate's group) is more than 4% of the total number of first preference votes polled by all the candidates; or
- on the death of a candidate either before polling day or on polling day before the close of the poll.

Deposits not returned are forfeited to the Crown.

8 WITHDRAWAL OF NOMINATIONS

A candidate may withdraw a nomination up to the hour of close of nominations by notice in writing to the Returning Officer. A candidate included in a group may not withdraw his or her nomination except with the consent of the other candidates in that group. A candidate may not withdraw a nomination after the close of nominations.

Upon withdrawal of nominations, the deposit is forfeited to the Crown.

9 REJECTION OF NOMINATIONS

No nomination paper shall be rejected by the Returning Officer because of any defect or error, if the Returning Officer is satisfied that the provisions of the Act have been substantially complied with.

10 CLOSE OF NOMINATIONS

The date and place for the close of nominations will be published in *The West Australian* following the issue of the writ. Information will also be available from the Returning Officer or the Commission and on the Commission's web site www.waec.wa.gov.au.

The Returning Officer will be available at the place of declaration of nominations between 11.00 am and 12.00 noon on the day of close of nominations.

11 GROUPING OF CANDIDATES

Two or more candidates may make a request to the Electoral Commissioner to be included as a group on the ballot paper.

The names of the candidates in the group must be listed in the order in which they are to appear on the ballot paper and be accompanied by the signature of each candidate.

The claim for the grouping should be made on form RO 20 *Supplementary Nomination Details for Candidates and Groups* available from the Commission or the Returning Officer, and must be received by the Electoral Commissioner or the Returning Officer before the close of nominations.

It is advisable to submit a claim for the grouping of candidates as early as possible so that it can be checked by the Returning Officer for compliance with the legislation. This claim for grouping may be withdrawn before the close of nominations. This must be done using a form approved by the Commission.

A candidate who has been included in a group and who wishes to withdraw his or her nomination, cannot do so except with the consent of the other member(s) of the group.

If a nomination is withdrawn by any member of a group, the original claim for grouping is rendered invalid. A new claim for grouping must be made for the remaining members to stand as a group. This claim must be received by the Electoral Commissioner or Returning Officer **before** the close of nominations.

12 VOTING TICKETS

A voting ticket is a statement of a particular order of candidate preferences, provided by a group or candidate in a Legislative Council election. Electors may use a ticket vote as an alternative to expressing a preference for each candidate in numerical order. The voter only has to place the numeral 1 in the candidate or group voting ticket square on the left side of the ballot paper. The ballot paper is then counted according to the preference expressed on the voting ticket submitted by that candidate or group.

12.1 Authorisation to Lodge a Voting Ticket

Candidates or groups who wish to authorise another person to lodge a voting ticket on their behalf must complete a written authorisation for this person to do so. This authorisation is included in form RO 20 *Supplementary Nomination Details for Candidates and Groups*, the same form as the claim for grouping. Accurate contact details for the authorised agent are extremely important due to the limited time available between the close of nominations and the deadline for the lodgement of voting tickets.

This completed authorisation must be lodged with either the Electoral Commissioner or the Returning Officer **before** the close of nominations.

Individual candidates wishing to lodge their own voting ticket need not complete this authorisation, but should note that no other person can then lodge a voting ticket on their behalf.

12.2 Lodgement of Voting Ticket

Voting ticket preferences are to be marked on a form which will be available from the Commission, at a time and place to be advised, as soon as possible after the close of nominations. Names of candidates will be pre-printed in ballot paper order with a box beside each one.

The preference sequence must be numbered from 1 up to the total number of candidates on the ballot paper. There must be no repeated numbers and no gaps.

A voting ticket must show a preference for the candidate or group (in ballot paper order) for which the voting ticket has been lodged, over all the other candidates in the election.

The completed voting ticket must be lodged with the Electoral Commissioner **within 24 hours of the close of nominations**.

It is advisable to submit **all** forms relating to voting tickets as early as possible.

13 DEATH OF A CANDIDATE

13.1 Death of Candidate after Nomination

If a candidate dies after nomination day and before or on polling day, that is, before the hour of closing of the poll, the election is void. The deceased candidate's deposit shall be returned to his or her legal representative.

13.2 Death of Candidate on Polling Day

Should it become known that a candidate has died on polling day, the Returning Officer shall immediately:

- close the poll for the election in the region but keep the polling place(s) open for early and absent votes for candidates for any other elections being held i.e. The Legislative Assembly or other regions in the Legislative Council; and
- report the fact of the death and the time and close of the poll to the Electoral Commissioner.

13.3 Death of Candidate after Close of Poll

If, after the close of the poll on polling day and before the counting of votes has been completed, a candidate dies, and on completion of the count of votes it is found that this candidate would have been elected, no candidate shall be returned as elected at the election. A new writ shall forthwith be issued for a supplementary election.

The candidates who had nominated for the election that has failed shall be deemed to have been duly nominated for the new election and shall not be required to re-nominate.

14 SUMMARY OF FORMS REQUIRED IN NOMINATION PROCESS

The following is a summary of the various forms that may be required by candidates in the nomination process:

Nomination with Returning Officer

RO 19 Nomination Form and Receipt – Legislative Council

RO 20 Supplementary Nomination Details for Candidates and Groups – Legislative Council

RO 20A Authorisation for a Registered Political Party Name to Appear on the Ballot Paper

Centralised Registered Political Party Nominations

HO 3 Centralised Nominations Lodgement Form and Receipt – Legislative Council

RO 19A Centralised Nomination Form – Legislative Council

RO 20 Supplementary Nomination Details for Candidates and Groups – Legislative Council

RO 21 Withdrawal of Claim for Grouping of Candidates – Legislative Council

RO 22 Voting Ticket Preferences – Legislative Council

15 DRAW FOR POSITION ON BALLOT PAPER (GROUPED THEN UNGROUPED)

A draw to determine the order of groups and candidates on the ballot paper is conducted by the Returning Officer at the designated place of declaration of nominations immediately after the close of nominations.

In the draw the Returning Officer:

- places a slip for each group bearing the names of all candidates in that group, in separate hollow opaque spheres, places all spheres in a ballot box, and securely fastens it;
- shakes and rotates the ballot box and permits any other person present to do likewise;
- opens the ballot box;

- takes out and opens one of the spheres to remove the slip enclosed and records the name(s); and
- repeats the procedure until all spheres have been removed.

The Returning Officer repeats this process for the order of ungrouped candidates.

The order of groups and candidates derived from this process becomes the order in which they appear on the ballot paper.

Candidates and other interested persons are invited to observe this process.

16 FUNDING AND DISCLOSURE REQUIREMENTS

All political parties, associated entities, individual candidates, groups and other persons are required to provide the Electoral Commissioner with details of gifts, other income and expenditure incurred for electoral and/or political purposes. In addition, since December 2006 candidates and political parties are entitled to public funding under the provisions of Part VI of the *Electoral Act 1907*.

A *Funding and Disclosure in Western Australia Guidelines* can be obtained separately from the Commission or downloaded from the Commission's web site. See Appendix 2 – Political Finance Legislation for more information.

16.1 Summary of Forms for Funding and Disclosure

Agents

PA 01 *Notice of Appointment of an Agent by a Political Party*

PA 02 *Notice of Appointment of an Agent by a Candidate*

PA 03 *Notice of Appointment of an Agent by a Legislative Council Group*

Annual Returns

PD 01 *Annual Return by a Political Party*

PD 02 *Annual Return by an Associated Entity*

Disclosure

PD 03 *Disclosure of Gifts and Expenditure by a Candidate*

PD 04 *Disclosure of Gifts and Expenditure by a Group in the Legislative Council*

PD 05 *Disclosure of Gifts and Expenditure by Other Persons*

PE 01 *Disclosure of Expenditure by a Political Party*

Funding Claims

PF 01 *Political Party Funding Claim*

PF 02 *Candidate Funding Claim*

PF 03 *Group Funding Claim*

17 SCRUTINEERS

Candidates may appoint scrutineers to represent them at polling places during polling day and at the scrutiny and count of votes at each place where the scrutiny and count are conducted.

The appointment of scrutineers is to be made in writing to the Returning Officer or Polling Place Manager and be signed by the candidate or any candidate in the group. The names and addresses of the scrutineers must also be given in written notice. A form is available from the Returning Officer or the Polling Place Manager for this purpose.

A Guide for Scrutineers is also available from the Returning Officer or the Commission.

Every scrutineer **must complete** a declaration in **the presence** of the Returning Officer or Polling Place Manager. A form is available from the Returning Officer or the Polling Place Manager.

No more than one scrutineer at a time is allowed to represent each group, and not more than one scrutineer at a time is allowed to represent each candidate who is not included in any group, at each polling place during the polling. Different limits apply during the scrutiny and count. The Returning Officer can advise on local arrangements.

18 ELECTORAL ADVERTISING AND PUBLICATIONS

18.1 Authorisation of Electoral Advertisements and Publications

Any publication of any electoral advertisement, handbill, pamphlet or electoral notice (other than an advertisement in a newspaper announcing the holding of a meeting), that appears during the relevant period (issue of the writ to 6.00 pm on polling day), must have at the end of it, the name and address of the person authorising it.

If the material is printed, then it must include the name and place of business of the printer at the foot, unless the advertisement is in a newspaper announcing the holding of a meeting.

If advertising material is produced and printed, say on a home computer by one person, then the legislation provisions are satisfied by adding ‘Authorised and printed by (name) (address)’ at the end of it.

Certain small items of a candidate or party promotional nature are exempt from the requirement to carry the authorisation and addresses.

These include:

- T-shirts, lapel buttons, lapel badges, pens, pencils or balloons;
- business or visiting cards that promote the candidacy of any person in an election;
- letters and cards:
 - that bear the name and address of the sender; and
 - that do not contain a representation or purported representation of a ballot paper for use in an election; or
 - any other articles prescribed by regulations.

18.2 Polling Places

Any advertising on the Internet must also be authorised in order to prevent any mischief that may arise from anonymous advertising.

The following activities are prohibited within 6 metres of the entrance to a polling place:

- canvassing for votes;
- soliciting the vote of any elector;
- inducing any elector not to vote for a particular candidate; and
- inducing any elector not to vote at the election.

A polling place may have several entrances, or an obvious entrance may be subject to local hazards. The declared entrance may not be the same at every election.

Candidates should ensure that party workers contact the Polling Place Manager of each polling place during the week before an election for information on the exact entrance, so that workers can then position themselves and their advertising correctly on polling day. The Returning Officer has a list of the names of Polling Place Managers.

18.3 Size of Advertisements

Although the *Electoral Act 1907* has no limitations on the size of advertisements, candidates should consult with the local governments concerned on any by-laws relating to advertising. Many local governments have by-laws in place which preclude electoral advertising or limit the size of advertisements or restrict or control their placement.

18.4 Misleading or Deceptive Publications

A person must not during the relevant period in relation to an election print, publish or distribute or cause, permit or authorise to be printed, published or distributed:

- any matter or thing that is likely to mislead or deceive an elector in relation to the casting of the elector's vote; and
- an advertisement, handbill, pamphlet or notice that contains a representation of a ballot paper for use in that election that is likely to induce an elector to mark a ballot paper otherwise than in accordance with the directions on the ballot paper.

Publish

Includes publish by radio, television or other electronic means.

Relevant Period

Means the period commencing when the notice of the issue of the writ is published in the *Government Gazette* and ending at the latest time on polling day at which an elector can enter a polling place to cast a vote.

18.5 Broadcasting or Televising of Election Advertisements

The Australian Broadcasting Authority is responsible for the administration of the *Commonwealth Broadcasting Services Act 1992* and provides specific guidelines for broadcasting or televising election advertisements. The Authority should be contacted for further details.

19 PERSONS PERMITTED IN A POLLING PLACE DURING POLLING

Only the Electoral Commissioner or an officer deputed by him or her, polling and electoral officials, scrutineers, any member of the police force on duty at a polling place and electors voting or about to vote, are permitted to enter or remain in the polling place during polling day.

Candidates are not permitted in polling places other than for the purpose of casting their own vote.

20 ELECTORAL OFFENCES

All candidates should read carefully Part VII of the *Electoral Act 1907* which describes in detail offences which are prohibited.

The Electoral Act is available from the State Law Publisher, Ground Floor, 10 William Street, Perth or their web site www.slp.wa.gov.au.

21 COUNTING

Preliminary vote counting takes place at polling places and at the Counting Centre in Perth. The final count takes place once the Returning Officer has received all absent, provisional and early votes. The result of the poll is declared by the Returning Officer.

The counting process is described at Appendix 3. The legislation relating to the counting process is at Appendix 4.

Candidates may appoint, in writing, a scrutineer to represent them at the count in the polling place and at the Counting Centre.

21.1 Counting at Polling Places

Legislative Council ballot papers are sorted into ticket, non-ticket and informal votes. Ticket votes and the first preferences of non-ticket votes are counted at polling places on election night after the close of the poll at 6.00 pm under the supervision of a Polling Place Manager. The results are transmitted to the Tally Room as ticket and non-ticket votes for the various groups and candidates.

21.2 Checking Declaration Certificates for Early Votes (in person and by post)

The check of declaration certificates for early votes received in advance of election day may commence three days before polling day at the Commission's Counting Centre.

The declarations are validated then separated from the ballot papers. The envelopes are opened and Legislative Assembly and Legislative Council ballot papers are separated but not inspected. The Legislative Council ballot papers are placed in sealed ballot boxes until the commencement of the count at 6.00 pm on election day.

The check of declarations including absent and provisional votes made in polling places on polling day continues until the Thursday after the election.

The latest time for the receipt of early votes (by post) after polling day is Thursday at 9.00 am. Early Votes (by post) must be postmarked on or before polling day.

21.3 Counting at the Counting Centre on Election Night

At 6.00 pm on election night the ballot boxes with early Legislative Council ballot papers which have been processed and held at the Counting Centre are opened. The ballot papers are sorted into ticket and non-ticket votes. The ticket votes are counted for each group and the first preferences of non-ticket votes are recorded. The results are transmitted to the Tally Room regularly during the evening.

21.4 Results on Internet

You will be able to view progressive results by connecting to the Commission's web site at www.waec.wa.gov.au or www.electionswa.com after 6.00 pm on election night.

Results of ticket and non-ticket votes by region will be updated every few minutes up to the close of counting on election night.

21.5 Counting at the Counting Centre after Polling Day

Legislative Council ballot papers from polling places are taken to the Counting Centre by district Returning Officers the day after polling day. These include all absent and provisional votes in envelopes. Ballot papers are couriered by express from country districts.

Outstanding early votes also continue to arrive at the Counting Centre. Declarations are checked and valid votes are admitted to the count.

Ticket votes are counted manually. This process is completed in the week after the election. Full preferences from the non-ticket votes are entered into a computer program. These non-ticket votes are then entered into the computer program again by a different operator for verification. This process takes approximately 7–10 days. The ticket vote results are added to the full preference results and the final result determined.

The Regional Returning Officer then declares the poll and completes a Statement endorsed with the name of the elected Members of the Legislative Council and returns it to the Electoral Commissioner.

22 RE-COUNTS

A re-count may be conducted if the election result is very close.

At any time before the declaration of the result of the election the Returning Officer may, on the written request of any candidate setting forth the reasons for the request or by his own volition, re-count the votes on the ballot papers.

The decision to conduct a re-count lies with the Returning Officer, who is under no obligation to respond to any requests for a re-count.

Note: Returning Officer when conducting a re-count has the same powers as if the re-count was the original scrutiny and may reverse any decision to allow or disallow any ballot paper.

23 DISPUTED RETURNS

The validity of any election or return may be disputed by petition. The petition must be addressed to the Court of Disputed Returns.

A petition disputing an election or return shall:

- set out the facts;
- be in the format required by the Act;
- be signed by a candidate at the election in dispute;
- be signed by two witnesses;
- be filed in the Central Office of the Supreme Court within 40 days after the return of the writ; and
- include a deposit of \$100 lodged with the Principal Registrar of the Supreme Court as security for costs.

24 COMPLAINTS AND QUERIES

Candidate complaints or queries should be directed to the Returning Officer in the first instance.

If you are not satisfied with the response from the Returning Officer you may seek a review of the decision. You should put your concerns in writing addressed to the Electoral Commissioner or follow the feedback links on the Commission's web site www.waec.wa.gov.au. If your concern relates to electoral material, you will need to supply original examples of those documents with your complaint.

During the election period the Commission will also have information on its web site www.waec.wa.gov.au.

APPENDIX 1

Registration of Political Parties

1 REGISTRATION OF POLITICAL PARTIES

1.1 Background

Legislation for the registration of political parties is contained in Part IIIA of the *Electoral Act 1907*. Eligible political parties may now become registered by the Electoral Commissioner, enabling the use of a party name or abbreviation on the ballot paper. Unregistered parties will not be able to use a party name on ballot papers.

During an election period i.e. from the day of the issue of the writ until the last day for the return of the writ, no action will be taken on the registration of political parties.

1.2 Eligibility for Registration

Any new political parties are eligible for registration if they have at least 500 members who are electors and have a constitution that specifies the promotion of the election to the Parliament of the state of an endorsed candidate or candidates. Members include members of related parties when one is a part of the other or both are parts of the same political party.

1.3 Names of Political Parties

The name must not be more than six words, be obscene or offensive, an existing party name or nearly resemble a party name, include the words ‘royal’ or ‘independent’ or otherwise cause confusion if registered. The name must not be a public body name, or nearly resemble a public body name.

1.4 Applications for Registration

An application for registration is to be submitted on the approved form by the secretary of the party to the Electoral Commissioner. The application is to include the following information:

- the name of the political party;
- if desired, an abbreviation of the party name for use on ballot papers;
- the name and address of the secretary;

- the names and addresses of at least 500 members who are electors;
- a copy of the party's constitution; and
- any other prescribed information.

Applications for registration will be determined in the order in which they are received.

Details of the application will be published by the Electoral Commissioner in a notice in the *Government Gazette* and a newspaper circulating in the State inviting electors to submit any reasons for objection to the registration. Objections are to be submitted within one month after the day of publication of the *Government Gazette* notice.

1.5 Registration

If the Electoral Commissioner is satisfied that the application complies with the requirements of the Act after considering all relevant information and public submissions, the party will be registered, by entering the details in the Register of Political Parties. The party's registration will be notified in the *Government Gazette* and the party secretary will be notified in writing. If the application is refused, the Electoral Commissioner will give the party secretary written notice of the reasons for the refusal.

1.6 Public Access to the Register

Public inspection of the register is available without fee at the office of the Electoral Commissioner. The names and addresses of the 500 members will not be entered in the register and will not be subject to public inspection.

As soon as practicable after the issue of the writ for an election, the Electoral Commissioner is required to publish in the *Government Gazette* the names of all political parties and their secretaries included in the Register.

1.7 Amendments to the Register

The secretary of a registered political party may make an application to the Electoral Commissioner to amend the information or replace documents in the register. However this still has to be in accordance with the provisions of the Act.

1.8 Cancellation of Registration

The Electoral Commissioner may cancel the registration of a political party at the written request of the secretary or for any of the following reasons:

- the party no longer exists;
- it is not a parliamentary party and does not have at least 500 members who are electors;
- a registered party has failed to endorse a candidate in a general election subsequent to registration;
- registration was obtained by fraud or misrepresentation; or
- a return required under Part VI (political finance) by the agent for that party has been outstanding for more than 12 months.

The Electoral Commissioner is required to give written notice of the intention to cancel registration (other than if obtained by fraud or misrepresentation) to the secretary of the political party and also publish a notice in the *Government Gazette* and a newspaper circulating in the State. Persons may, within 14 days after the *Government Gazette* notice, object to the proposed cancellation in writing.

The Electoral Commissioner is to consider any objection before taking further action on the cancellation.

1.9 Review of decisions

Any person affected by the Electoral Commissioner's decision on registration, refusal of registration, cancellation of a registration or amendment of registration may apply in writing to the Supreme Court for a review of the decision. This must be within one month of the Electoral Commissioner's decision.

The Supreme Court will review the decision and make an order either confirming or directing the Electoral Commissioner to vary the decision or set it aside and substitute another.

APPENDIX 2

Political Finance Legislation

1. POLITICAL FINANCE LEGISLATION

1.1 Guidelines Available

The Commission has produced a political finance booklet entitled *Funding and Disclosure in Western Australia Guidelines*. This is available from the Commission's web site www.waec.wa.gov.au. A copy is also available from the Returning Officer on nomination.

A summary of the funding and disclosure responsibilities appears below.

1.2 Background and Relevant Legislation

Political Finance legislation came into force in Western Australia on 9 November 1996 as Part VI of the *Electoral Act 1907*. Part VI of the *Electoral Act 1907* requires all political parties, associated entities, individual candidates, groups and other persons to submit a return to the Electoral Commissioner disclosing details of gifts and/or income received and electoral expenditure incurred for electoral and political purposes. This Part was amended in 2006 to allow for funding of electoral expenditure incurred by eligible political parties and candidates at State elections.

The six divisions of Part VI cover the following areas:

- definitions and references;
- agents;
- electoral funding;
- disclosure of gifts and other income;
- disclosure of electoral expenditure; and
- offences, investigations and miscellaneous provisions.

The *Electoral (Political Finance) Regulations 1996* set out how records and other information should be recorded and kept.

1.3 Agents

All political parties must appoint an agent. Individual candidates, non-party groups and other persons may appoint an agent or accept responsibility for compliance with the Act themselves.

1.4 Gifts

Acceptance of donations from unidentified persons or sources equal to or more than \$1,800 is prohibited under the Act. Gifts of \$1,800 or more must be detailed.

1.5 Annual Returns

All party agents for political parties and financial controllers of associated entities are required to lodge a return annually by 30 November, disclosing all gifts and other income received for the previous financial year.

1.6 Election-Related Returns

After an election, the agent of a political party must lodge a return setting out details of specified electoral expenditure in relation to an election which was incurred with the authority of the political party. Associated entities are not required to disclose expenditure incurred in an election.

Candidate and group agents are required to complete a return setting out all election-related gifts received during the disclosure period, and expenditure incurred in relation to the election, whether or not incurred during the election period. This ends 30 days after polling day, and for previous candidates, commences 30 days after polling day in the previous election, or for new candidates from one year prior to the day of nomination in the present election. For groups it commences from the hour of nomination.

Should no expenditure be incurred, a return must nevertheless be lodged with a nil or similar statement against the relevant items.

Persons other than political parties, associated entities, candidates and groups who incur expenditure for political purposes, are required to disclose all gifts received and expenditure incurred during the disclosure period for the election. This is the same period as for previous candidates above. If the total amount of expenditure does not exceed \$500, a return is not required.

Election returns must be sent to the Electoral Commissioner within 15 weeks after polling day. A penalty is prescribed for non-compliance.

1.7 Electoral Funding

Public funding of candidates and political parties was introduced in 2006 to provide for reimbursement of electoral expenditure at State election events.

The amount paid will be the amount spent by the party and/or candidate within the categories of electoral expenditure in relation to an election, or the entitled amount. The lesser amount of the two will be the amount paid.

Candidates and registered political parties can lodge claims with the Electoral Commissioner within 20 weeks of polling day in a form provided by the Commission. Candidates endorsed by registered political parties can only claim for funding through the party agent, and this amount is paid to the political party. Independent candidates or their agents can claim for funding on an individual basis.

1.8 The Role of the Western Australian Electoral Commission

The Electoral Commissioner is responsible for maintaining a register of political party agents and obtaining any relevant information from parties, associated entities, candidates, groups and other persons for the purposes of funding and disclosure.

The Electoral Commissioner is empowered to check all returns and claims, obtain any information relevant to funding and disclosure requirements and to interview people and scrutinise bank or other financial accounts where donations are deposited. This is part of the audit process to confirm compliance with the legislation. Audits are generally conducted for each financial year, and a sample of returns lodged during that year is chosen for audit.

The public may view returns free of charge at the Commission's offices. The returns are available four weeks after the required lodgement date. Annual returns are available the first working day after 28 December and election-related returns from 19 weeks after polling day.

APPENDIX 3

Count of Votes Proportional Representation

1. PROPORTIONAL REPRESENTATION

Proportional representation is a voting system used in multi-member electorates such as the Western Australian Parliament's Legislative Council regions. It is designed to ensure that the mix of successful candidates in a multi-member electorate reflects as closely as possible the proportional break-up of all the valid votes cast in an election. To be successful, a candidate is required to receive enough votes to reach a quota (not an absolute majority) which is based on the number of formal votes and the number of candidates to be elected. The method of proportional representation used in the Legislative Council elections is the Weighted Inclusive Gregory System.

In very general terms, under the notion of proportional representation, if a party or group of candidates receives 50% of the formal vote, that party or group will gain 50% of the seats in the parliament. Thus if a political party received 50% of the vote in the North Metropolitan region, it could expect to gain 3 of the 6 seats allocated to this region.

The quota required is calculated using the following formula:

$$\frac{\text{Number of formal votes per region}}{\text{Number of MLCs to be elected per region} + 1} + 1 = \text{quota required}$$

For example, at the 1996 State general election for the North Metropolitan region the formula gave the following result:

$$\frac{299,215}{7 + 1} + 1 = 37,402$$

In this case a candidate needed at least 37,402 votes to be elected.

Note: The fraction 299,215 / 8 is rounded down before the 1 is added to obtain the quota required - i.e. 37,402.

Surplus Votes

Candidates, who receive a number of votes equal to or greater than the quota, are elected immediately. Any votes of these elected candidates, which are surplus to the quota, are transferred to the remaining candidates at a reduced value known as a transfer value. The transfer value is calculated as follows:

$$\frac{\text{Candidate's number of surplus votes}}{\text{Total number of votes the candidate received}} = \text{transfer value}$$

Excluding Candidates

If at any stage there are no candidates with a surplus of votes and not all Council seats have been filled, the candidate with the fewest votes is excluded from the count.

The excluded candidate's ballot papers are distributed to the remaining candidates at the same vote value as they were received. In some counts this will mean ballot papers are transferred at the value of 1 while others will have various transfer values.

This process of distributing surplus votes from elected candidates and excluding the candidate with the fewest votes is continued until all vacancies are filled.

APPENDIX 4

Legislation Relating to the Count of Votes

Note: This is not an authorised version of this part of the *Electoral Act 1907*. The only authorised version is the hardcopy (printed) version published under authority of the Government Printer, available from the State Law Publisher, 10 William St, Perth WA 6000.

FROM ELECTORAL ACT 1907

Division (4b) — Scrutiny and Count (Council Elections)

146A. Application and construction

- (1) This Division applies only in relation to an election in a region and the poll taken for such an election.
- (2) Where in relation to an election in a region the relevant number is one and there are only 2 candidates, a reference in this Division and Schedule 1 to —
 - (a) the indication of an elector's first preference for a candidate, shall be read and construed as a reference to the indication of the candidate for whom the elector votes;
 - (b) first preference votes given for a candidate, shall be read and construed as a reference to votes given for the candidate.

Schedule 1

[Sections 146I, 156D]

COUNTING OF VOTES AT LEGISLATIVE COUNCIL ELECTIONS

1. The method of counting the votes to be used by the Returning Officer to ascertain the result of an election in a region shall be as provided in this Schedule.
2.
 - (1) In this Schedule “continuing candidate” means a candidate not already elected or not excluded from the count.
 - (2) A reference in this Schedule to votes of or obtained or received by a candidate includes votes obtained or received by the candidate on any transfer under this Schedule.
3. The number of first preference votes given for each candidate and the total number of all such votes shall be ascertained and a quota shall be determined by dividing the total number of first preference votes by one more than the number of candidates required to be elected and by increasing the quotient so obtained (disregarding any remainder) by one, and any candidate who has received a number of first preference votes equal to or greater than the quota shall be elected.
4. Unless all the vacancies have been filled, the number (if any) of votes in excess of the quota (in this Schedule referred to as “**surplus votes**”) of each elected candidate shall be transferred to the continuing candidates as follows —
 - (a) the number of surplus votes of the elected candidate shall be divided by the number of first preference votes received by him and the resulting fraction shall be the transfer value;

- (b) the total number of ballot papers of the elected candidate that express the first preference vote for him and the next available preference for a particular continuing candidate shall be multiplied by the transfer value, the number so obtained (disregarding any fraction) shall be added to the number of first preference votes of the continuing candidate and all those ballot papers shall be transferred to the continuing candidate,

and any continuing candidate who has received a number of votes equal to or greater than the quota on the completion of any such transfer shall be elected.

- 5. Unless all the vacancies have been filled, the surplus votes (if any) of any candidate elected under clause 4, or elected subsequently under this clause, shall be transferred to the continuing candidates as follows —
 - (a) the number of surplus votes of the elected candidate shall be divided by the number of votes received by him and the resulting fraction shall be the surplus fraction;
 - (b) in relation to any particular ballot papers for surplus votes of the elected candidate, the surplus fraction shall be multiplied by the transfer value at which those ballot papers were transferred to the elected candidate, or by one if they expressed first preference votes for the elected candidate, and the product shall be the continued transfer value of those particular ballot papers;
 - (c) the total number of ballot papers for surplus votes of the elected candidate that each —
 - (i) express the next available preference for a particular continuing candidate; and
 - (ii) have a particular continued transfer value,shall be multiplied by that transfer value, the number so obtained (disregarding any fraction) shall be added to the number of votes of the continuing candidate and all those ballot papers shall be transferred to the continuing candidate,

and if completion of the transfer of the surplus votes of the elected candidate to a particular continuing candidate that candidate has received a number of votes equal to or greater than the quota, that candidate shall be elected.

- 6. Where a continuing candidate has received a number of votes equal to or greater than the quota on the completion of a transfer under clause 4 or 5 of the surplus votes of a particular elected candidate, no votes of any other candidate shall be transferred to the continuing candidate.

[7. *Repealed*]

- 8. Where, after the counting of first preference votes or the transfer of surplus votes (if any) of elected candidates, no candidate has, or less than the number of candidates required to be elected have, received a number of votes equal to the quota, the candidate who has the fewest votes shall be excluded and all his votes shall be transferred to the continuing candidates as follows —
 - (a) the total number of ballot papers of the excluded candidate that express the first preference vote for him and the next available preference for a particular continuing candidate shall be transferred, each ballot paper at a transfer value of one, to the continuing candidate and added to the number of votes of the continuing candidate and all those ballot papers shall be transferred to the continuing candidate;

- (b) the total number (if any) of other votes obtained by the excluded candidate on transfers under this Schedule shall be transferred from the excluded candidate in the order of the transfers on which he obtained them, the votes obtained on the earliest transfer being transferred first, as follows —
 - (i) the total number of ballot papers transferred to the excluded candidate from a particular candidate and expressing the next available preference for a particular continuing candidate shall be multiplied by the transfer value at which the votes were so transferred to the excluded candidate;
 - (ii) the number so obtained (disregarding any fraction) shall be added to the number of votes of the continuing candidate;
 - (iii) all those ballot papers shall be transferred to the continuing candidate.
- 9. Any continuing candidate who has received a number of votes equal to or greater than the quota on the completion of a transfer under clause 8 or 10 of votes of an excluded candidate shall be elected, and, unless all the vacancies have been filled, the surplus votes (if any) of the candidate so elected shall be transferred in accordance with clause 5, except that, where the candidate so elected is elected before all the votes of the excluded candidate have been transferred, the surplus votes (if any) of the candidate so elected shall not be transferred until the remaining votes of the excluded candidate have been transferred in accordance with clause 8 (a) and (b) to continuing candidates.
- 10. Subject to clause 12, where, after the transfer of all the votes of an excluded candidate, no continuing candidate has received a number of votes greater than the quota, the continuing candidate who has the fewest votes shall be excluded and his votes shall be transferred in accordance with clause 8(a) and (b).
- 11. Where a candidate is elected as a result of a transfer of the first preference votes of an excluded candidate or a transfer of all the votes of an excluded candidate that were transferred to the excluded candidate from a particular candidate, no other votes of the excluded candidate shall be transferred to the candidate so elected.
- 12. In respect of the last vacancy for which 2 continuing candidates remain, the continuing candidate who has the larger number of votes shall be elected notwithstanding that that number is below the quota, and if those candidates have an equal number of votes —
 - (a) the Returning Officer shall make out in respect of each of those candidates, a slip bearing the name of the candidate, and deal with the slips in accordance with Schedule 2; and
 - (b) the candidate whose name is on the slip obtained by the Returning Officer in accordance with clause 5 of Schedule 2 shall be excluded and the other candidate shall be elected.
- 13. Notwithstanding any other provision of this Schedule, where the number of continuing candidates is equal to the number of remaining unfilled vacancies, those candidates shall be elected.

14. Subject to clauses 15 and 16, where, after any count or transfer under this Schedule, 2 or more candidates have surplus votes, the order of any transfers of the surplus votes of those candidates shall be in accordance with the relative sizes of the surpluses, the largest surplus being transferred first.
15. Subject to clause 16, where, after any count or transfer under this Schedule, 2 or more candidates have equal surpluses, the order of any transfers of the surplus votes of those candidates shall be in accordance with the relative numbers of votes of those candidates at the last count or transfer at which each of those candidates had a different number of votes, the surplus of the candidate with the largest number of votes at that count or transfer being transferred first, but if there has been no such count or transfer —
 - (a) the Returning Officer shall make out in respect of each of those candidates, a slip bearing the name of the candidate, and deal with the slips in accordance with Schedule 2; and
 - (b) the candidate whose name is on the slip obtained by the Returning Officer in accordance with clause 5 of Schedule 2 shall, as between those candidates, be deemed to have had the largest surplus.
16. Where, after any count or transfer under this Schedule, a candidate obtains surplus votes, those surplus votes shall not be transferred before the transfer of any surplus votes obtained by any other candidate on an earlier count or transfer.
17. Where the candidate who has the fewest votes is required to be excluded under clause 8 or 10, and 2 or more candidates (in this clause called the “**tied candidates**”) have an equal number of votes (each other candidate having a larger number of votes) whichever of the tied candidates had the fewest votes at the last count or transfer at which each of the tied candidates had a different number of votes shall be excluded, but if there has been no such count or transfer —
 - (a) the Returning Officer shall make out in respect of each of the tied candidates a slip bearing the name of the candidate, and deal with the slips in accordance with Schedule 2; and
 - (b) the candidate whose name is on the slip obtained by the Returning Officer in accordance with clause 5 of Schedule 2 shall be excluded.
18. Where a candidate is elected by reason that the number of first preference votes received by him, or the aggregate of first preference votes received by him and all other votes obtained by him on transfers under this Schedule, is equal to the quota, all the ballot papers expressing those votes shall be set aside as finally dealt with.
19. For the purposes of this Schedule, a transfer under clause 4, 5 or 9 of all the surplus votes of an elected candidate, a transfer in accordance with clause 8(a) of all first preference votes of an excluded candidate or a transfer in accordance with clause 8(b) of all the votes of an excluded candidate that were transferred to him from a particular candidate each constitutes a separate transfer.

APPENDIX 5

Material Available for Candidates

1. MATERIAL AVAILABLE FOR CANDIDATES

1.1 Prospective Candidates

Free of Charge

One copy of each of the following:

- publication *A Guide for Candidates – Legislative Council*; and
- a region map available from the Commission’s web site at www.waec.wa.gov.au or the Commission office.

1.2 Nominated Candidates

Free of Charge

One copy of each of the following:

- publication *Eligibility for Membership of State Parliament*;
- publication *A Guide for Candidates – Legislative Council*;
- publication *Scrutineers Guide*;
- publication *Formality of Ballot Papers Guide*;
- publication *Funding and Disclosure in Western Australia Guidelines*
- a map for the region being contested; and
- electoral roll (in print format and manipulable format) for the electorate that the candidate is contesting, on CD-ROM.

To receive the roll candidates must complete form RM 27C *Candidate/Registered Party Application for the Supply of Enrolment Information* available from the Returning Officer. Candidates can receive a copy of the latest print of the roll (available in 2 working days from the date the application is received) and/or the final roll (available 2 weeks before polling day).