

Eligibility for Membership of State Parliament



This summary of qualifications and disqualifications is designed to assist you in determining whether you may need to seek advice on your eligibility for nomination or membership of either the Legislative Assembly or the Legislative Council.

The qualifications and disqualifications for membership of State Parliament are to be found in the following Western Australian Acts of Parliament:

Electoral Act 1907 (E)

Electoral Regulations 1996 (ER)

Constitution Acts Amendment Act 1899 (CAA)

Public Sector Management Act 1994 (PSM)

Certain other Acts under which candidates may be employed may stipulate the need to stand down or resign from a position prior to either nominating as a candidate or taking up a seat in either House of State Parliament.

Qualifications for Membership of State Parliament

To be eligible to take up a seat in the Legislative Assembly or Legislative Council, the following qualifications apply, **E, s 76A**:

- the candidate must have resided in Western Australia for one year
- the candidate must be 18 years or more
- the candidate must not be subject to any legal incapacity
- the candidate is an Australian citizen
- the candidate must be an elector entitled to vote at an election of a member of the Legislative Assembly.

Disqualifications for Membership of State Parliament

If any one of the following circumstances exists, a person will be disqualified from taking up a seat in either House of State Parliament:

- a person is an undischarged bankrupt, or a debtor against whose estate there is a subsisting receiving order in bankruptcy, **CAA, s 32(1)(a)**
- has been attainted of treason, **E, s 18(1)(b)**
- a person has been convicted on indictment of an offence for which the indictable penalty was or included imprisonment for life or imprisonment for more than 5 years, **CAA, s 32(1)(b)**
- a person is serving or is yet to serve a sentence or sentences of detention (imposed under the *Young Offenders Act 1994* or imprisonment, of one year or longer **E, s 18(1)(c)**
- a person is serving or is yet to serve indefinite imprisonment imposed under Part 14 of the *Sentencing Act 1995*, **E, s 18(1)(ca)**
- a person is subject to an order under section **279(5)(b)** of *The Criminal Code*, **E, s 18(1)(cb)**

- a person is subject to an order under repealed sections **19(6a)(a), 282(c)(iii) or (d)(ii), 653, 661, 662 or 693(4)** of *The Criminal Code E, s 18(1)(cc)*
- a person is, or is taken to be, a mentally impaired accused as defined in the *Criminal Law (Mentally Impaired Accused) Act 1996, E, s 18(1)(cd)*
- a person is a holder of any office specified in Part 1 of Schedule V of the *Constitution Acts Amendment Act 1899, CAA, s 34(1)(a)*
- a person is a member of the Commonwealth Parliament, a Territory Parliament or another State Parliament, **CAA, s 34(1)(b)**
- a person is a member of the other House of Western Australia's Parliament, **CAA, s 34(2)**
- a person 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 and that office or place has not been exempted under section 36 of the *Constitution Acts Amendment Act 1899, CAA, s 36(1)(a)*
- a person 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 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 and that office or place has not been exempted under section 36 of the *Constitution Acts Amendment Act 1899, CAA, s 36(1)(b)*
- a person is a holder of any office or place specified in Part 2 of Schedule V of the *Constitution Acts Amendment Act 1899* (not being an office also specified in Part 1 of Schedule V of the Act) and does not vacate the office or place upon his or her election to State Parliament (includes State Police, Teachers, Public Servants and various others), **CAA, s 37(1)(a), s 37(3)**
- a person is a member of any commission, council, board, committee, authority, trust or other body specified in Part 3 of Schedule V and does not vacate the office or place upon his or her election to State Parliament, **CAA, s 37(1)(b), s 37(3)**
- a person is of unsound mind, **E, s 18(1)(a) and CAA, s 38(e)**
- a person is the holder of a temporary entry permit for the purposes of the *Migration Act 1958*, of the Parliament of the Commonwealth as amended from time to time, or is a prohibited immigrant under that Act, **E, s 18(d)**.

Note: Holders of dual citizenship are not disqualified if they are otherwise qualified.

Public Employees Standing for Election

- 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, **ER, 28**.
- 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, **PSM, s 103, s 104**.
- It is recommended that public sector employees considering nominating as a candidate seek independent legal advice if at all unclear about their rights and obligations under their present employment.

This information is supplied for your convenience. The Western Australian Electoral Commission is however, unable to give advice on the interpretation of legislation. It is a candidate's responsibility to ensure that he or she is eligible to stand for membership of State Parliament.

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