

Electoral and Constitution Amendment Bill 2011

Explanatory Memorandum

General Information

This Bill will amend the *Electoral Act 1907* and the *Constitution Acts Amendment Act 1899* so that State general elections will be held on the second Saturday in March every four years beginning in 2013.

Clause 1 – Short title

The short title of this Bill is the *Electoral and Constitution Amendment Act 2011*.

Clause 2 – Commencement

Part 1 comes into operation on the day this Bill receives Royal Assent. All other amendments come into operation on a day fixed by proclamation.

Clause 3

States the *Electoral Act 1907* (the Act) is being amended.

Clause 4

The definitions in section 4 of the Act are amended and modified to incorporate new terms that deal with a fixed date election. Importantly, the State general election that is to occur on the second Saturday in March every four years is defined as a periodic election.

Clause 5

Section 64 of the Act is deleted and a new section 64 is inserted. Section 64 deals with the issue of the writs for a general election.

The new section 64 states that for a periodic election (a State general election) the issue of the writs for the Legislative Assembly and the Legislative Council shall be issued on the first Wednesday in February of the election year. However, if the Legislative Assembly is dissolved before 1 November in the year before a periodic election is due; the Governor shall issue a writ for all districts in the Legislative Assembly not later than 10 days after the dissolution.

Clause 6

Section 70 of the Act is deleted and a new section 70 is inserted. Section 70 deals with the date of nomination by candidates.

The date for close of nominations for a periodic election is set as the second Friday following the issue of the writ. However, for all other elections (such as a by-election) the date for nominations remains unchanged. For these elections candidates can nominate between 7 and 45 days after the issue of the writ, subject to the dates fixed in the writ.

Clause 7

Section 71 of the Act is deleted and a new section 71 is inserted. Section 71 deals with the date of polling.

The new section 71 states that the date for a periodic election is the second Saturday in March in the election year. However, if the periodic election date is an excluded day then the election must be held on the first succeeding Saturday that is available. An excluded day is defined as a day that clashes

with a Commonwealth general election, Easter Saturday or the Saturday immediately before or after Easter Saturday.

If for some reason there are exceptional circumstances why the periodic election cannot be held, the Premier after discussing the matter with the Leader of the Opposition can recommend to the Governor that the periodic election be held on the next available day where polling is practicable. Importantly, section 71 states that polling for the Legislative Council should not be postponed to such an extent that the writ could not be returned before 21 May of the election year. This ensures the writ is returned before the new Legislative Council commences on 22 May.

For elections that are not periodic elections (such as a by-election) the date of polling remains unchanged. For these elections the date of polling can be between 21 and 45 days after the date of nomination by candidates, subject to the dates fixed in the writ.

Clause 8

A new subsection 72 (1) is inserted. This subsection states that the last day for the return of the writ for a Legislative Council general election is 21 May after polling day. This ensures the writ is returned before the new Legislative Council commences on 22 May.

Clause 9

Subsection 76(3) of the Act is deleted and a new subsection 76(3) is inserted. This new subsection states that for a general election to the Legislative Council, the nomination of candidates, the taking of the poll and the return of the writ shall not be extended so that the writ cannot be returned beyond 21 May in the election year. This ensures the writ is returned before the new Legislative Council commences on 22 May.

Clause 10

This amendment states that a writ for a fresh election in a Legislative Council region shall not be issued if the vacancy occurs on or after 1 January in an election year.

Clause 11

States the *Constitution Acts Amendment Act 1899* is being amended.

Clause 12

Section 8(6) of the *Constitution Acts Amendment Act 1899* is deleted. Section 8(6) stated that the issue of the writ for a Legislative Council general election had to be issued before 10 April in an election year and the writ returned before 21 May in that election year. If this Bill is passed, the writ for Legislative Council general elections will be issued on the first Wednesday in February in an election year and the writ will still have to be returned before 21 May in that election year.