

# Electoral Act Amendment (Fixed Terms) Bill 2004

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Western Australia

LEGISLATIVE ASSEMBLY

*(Introduced by Mr L. Graham MLA)*

**Electoral Act Amendment (Fixed Terms) Bill  
2004**

**A Bill for**

**An Act to make amendments to the *Electoral Act 1907*, the  
*Constitution Acts Amendment Act 1899* and the *Salaries and  
Allowances Act 1975* in relation to the dates for general elections.**

The Parliament of Western Australia enacts as follows:

## **Part 1 — Preliminary**

**1. Short title**

This Act may be cited as the *Electoral Act Amendment (Fixed Terms) Act 2004*.

5 **2. Commencement**

This Act comes into operation on the day on which it receives the Royal Assent.

## **Part 2 — Amendments about fixed election dates**

### **Division 1 — *Electoral Act 1907* amended**

#### **3. The Act amended**

The amendments in this Division are to the *Electoral Act 1907*.

#### 5 **4. Section 4 amended**

(1) Section 4(1) is amended in the definition of “general election” as follows —

(a) in paragraph (a) by deleting “64(1)” and inserting instead —

10 “ 64(2) or (3) ”;

(b) in paragraph (b) by deleting “64(2)” and inserting instead —

“ 64(4) ”.

15 (2) Section 4(1) is amended by inserting in the appropriate alphabetical positions the following definitions —

“

“**election year**”, in relation to a periodic election, means the year in which the writ for the periodic election is issued;

20 “**periodic election**” means —

(a) a general election for the Assembly the writ for which is issued under section 64(3); or

(b) any general election for the Council;

”.

**5. Section 64 replaced**

Section 64 is repealed and the following section is inserted instead —

“

5 **64. Issue of writs for general election**

(1) In this section —

“**expiry year**” of an Assembly means the year in which that Assembly, if it is not previously dissolved, will expire by effluxion of time.

10 (2) If an Assembly is dissolved before 1 November last preceding its expiry year, the Governor shall cause a writ for elections in all the districts to be issued not later than 10 days after the dissolution.

15 (3) If an Assembly is not dissolved before 1 November last preceding its expiry year, the Governor shall cause a writ for elections in all the districts to be issued on the third Wednesday of January in the expiry year.

20 (4) In order to fill seats in the Council that are to be vacated by effluxion of time at the end of 21 March in a year, the Governor shall cause a writ for elections in all the regions to be issued on the third Wednesday of January last preceding that 21 March.

”.

**6. Section 70 amended**

25 (1) Section 70 is amended by inserting before “The” the subsection designation “(1)”.

(2) At the end of section 70 the following subsection is inserted —

“

30 (2) In the case of a periodic election the date fixed as the last day for the nomination of candidates shall be the second Friday following the date of the writ.

”.

**7. Section 71 amended**

After section 71(3) the following subsections are inserted —

“

- 5 (4) In the case of a periodic election the date fixed for the polling shall be the third Saturday of February in the election year.
- (5) If the third Saturday of February in an election year is an excluded day, the date fixed for the polling shall be the fourth Saturday of February in the election year.
- 10 (6) In subsection (5) —
- “**excluded day**” means a day appointed as polling day for an election of the Senate or a general election of the House of Representatives or as the voting day for a referendum as defined in section 3 of the
- 15 *Referendum (Machinery Provisions) Act 1984* of the Commonwealth.

”.

**8. Section 72 amended**

After section 72(1) the following subsection is inserted —

20

“

- (2) In the case of a periodic election the date fixed as the last day for the return of the writ shall not be later than 21 March after polling day.

”.

25 **9. Section 76 amended**

Section 76(3) is amended by deleting “the time prescribed by the *Constitution Acts Amendment Act 1899*.” and inserting instead —

“ 21 March after polling day. ”.

**10. Section 156E amended**

Section 156E(2) is repealed and the following subsections are inserted instead —

“

5 (2) A writ shall not be issued under subsection (1) on or after 1 November last preceding the expiry year and, in that case, the vacancy is taken for the purposes of section 64(4) and section 10 of the *Constitution Acts Amendment Act 1899* to occur by effluxion of time at  
10 the end of 21 March in the expiry year.

(3) In subsection (2) —

“**expiry year**” means the year in which the term of service of the member whose seat has been vacated would have expired.

15

”.

**Division 2 — *Constitution Acts Amendment Act 1899* amended**

**11. The Act amended**

The amendments in this Division are to the *Constitution Acts Amendment Act 1899*.

20 **12. Section 8 amended and transitional provisions**

(1) Section 8(2) and (3) are each amended by deleting “May” and inserting instead —

“ March ”.

25 (2) Section 8(4) is repealed and the following subsection is inserted instead —

“

30 (4) Where an election held as part of a general election fails wholly or partially or is declared to be absolutely void, the seat of a member elected at an election held by reason of that failure or declaration shall become



vacant at the expiration of the period of 4 years  
beginning on 22 March next following that general  
election.

”.

- 5       (3) Section 8(5) is amended by deleting “(4)(a)” and inserting  
instead —  
“ (4) ”.
- (4) Section 8(6) is repealed.
- 10       (5) If a person who is a member of the Legislative Council on  
21 March 2005 is no longer a member on 22 March 2005, the  
*Salaries and Allowances Act 1975* and parliamentary  
superannuation arrangements continue to apply in relation to  
that person in the same way as they would have if —
- 15           (a) 21 May 2005 had continued to be the day at the end of  
which the person’s seat became vacant by effluxion of  
time; and
- (b) the person had continued during the subtracted period to  
hold any higher office that the person held on 21 March  
2005.
- 20       (6) In subsection (5) —  
“**higher office**” means the office of —
- (a) President of the Legislative Council; or
- (b) Chairman or Deputy Chairman of Committees in the  
Legislative Council;
- 25       “**parliamentary superannuation arrangements**” means  
contribution, entitlement and other superannuation  
arrangements in respect of —
- 30           (a) a person by or for whom contributions are being  
made as at 21 March 2005 to the scheme as defined  
in section 5 of the *Parliamentary Superannuation Act*  
*1970*; or

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- (b) a person for whom contributions are being made as at 21 March 2005 under section 29 of the *Parliamentary Superannuation Act 1970*;

**“subtracted period”** means the period —

- 5 (a) beginning on 22 March 2005; and
- (b) ending on 21 May 2005 or, if the person dies before then, on death.

**13. Section 10 amended**

10 Section 10(3)(b) is amended by deleting “May” and inserting instead —

“ March ”.

**14. Section 21 amended**

(1) Section 21(1) is amended as follows:

- 15 (a) by inserting before “Provided” the subsection designation “(2)”;
- (b) by deleting paragraphs (a) and (b) and “and” after paragraph (a) and inserting instead —

“

- 20 (a) whenever any Legislative Assembly would expire by effluxion of time on or after 1 September of any year but before the third Wednesday of January next following, that Legislative Assembly shall continue up to and including the day next preceding that third
- 25 Wednesday of January and no longer; and

5 (b) whenever any Legislative Assembly would  
expire by effluxion of time on or after the third  
Wednesday of January of any year but before  
1 September of that year, that Legislative  
Assembly shall cease and determine on the day  
next preceding that third Wednesday of  
January.

”.

(2) Section 21(2) is repealed.

10 **15. Section 36 amended**

Section 36(9) is amended by deleting “May” and inserting  
instead —

“ March ”.

**Division 3 — *Salaries and Allowances Act 1975* amended**

15 **16. The Act amended**

The amendments in this Division are to the *Salaries and  
Allowances Act 1975*.

**17. Section 6 amended**

20 Section 6(5b) is repealed and the following subsection is  
inserted instead —

“

25 (5b) Notwithstanding any other provision of this Act or any  
determination, a person elected as a member of the  
Legislative Council at a general election shall not be  
entitled to any remuneration as such a member in  
respect of any period before 22 March next following  
the general election unless that person —

(a) was a member of the Legislative Council  
immediately before the general election; or

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**s. 17**

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- (b) is declared elected under section 156D of the *Electoral Act 1907* to complete the unexpired portion of a term of office ending immediately before that 22 March.

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