

Electoral Act Amendment (Fixed Terms) Bill 2004

(Introduced by Mr L. Graham, MLA)

Explanatory Memorandum

General Information

The purpose of this Bill is to introduce fixed election dates.

Clause 1 – Short title

The short title of this amendment Act is the *Electoral Act Amendment (Fixed Terms) Act 2004*.

Clause 2 – Commencement

All amendments come into operation on the day on which the Act receives the Royal Assent.

Clause 3

The Act amends the *Electoral Act 1907*, the *Constitution Acts Amendment Act 1899* and the *Salaries and Allowances Act 1975*. Part 2 amendments are concerned with fixed election dates.

Clause 4

Section 4 of the Act is amended to modify or incorporate changes to definitions to facilitate the introduction of fixed election dates. The election that would ordinarily occur on a fixed election date is identified as a periodic election for the purposes of the Act.

Clause 5

Writs for the Assembly are now to be issued within 10 days of dissolution if an Assembly is dissolved before 1 November in the year before it was due to expire.

Otherwise, writs for the Assembly are to be issued on the third Wednesday in the year of expiry, leading to a fixed date election under section 71 (see clause 7).

Writs for the Council are to be issued on the third Wednesday in January in the year of expiry. This will ordinarily lead to a conjoint election where the writ for the Assembly is issued on the same day.

If the Assembly is dissolved, and a conjoint election is not held, there is the possibility that future periodic elections for the Assembly will be held in a different year from that of the Council. This would continue for a period until such time as the elections are again brought into line.

Clause 6

The date for close of nominations for a periodic election is set as the second Friday following the date of the writ. This is consistent with the current practice of setting the date for close of nominations. In the case of the Council, closing nominations on a Friday allows candidates and political parties to use the weekend to complete ticket voting preference forms.

Clause 7

The date for a periodic (fixed date) election is the third Saturday in February in the election year unless that day is excluded from being an election day. With the previous provisions this creates a standard election period. Excluded days include an election of the Senate, a general election for the House of Representatives or a Commonwealth referendum.

Clauses 8 and 9

The last day for the return of the writ for a periodic (fixed date) election is 21 March after polling day. This provides sufficient time for the return of the writ for the Assembly and Council, with the next term of the Council commencing on that 22 March. Bringing the date forward two months from the current date, means that the Assembly and Council will commence sitting at approximately the same time.

Clause 10

In certain circumstances under the Act, a vacancy in the Council may be filled by the conduct of a fresh election. A writ for such an election shall not now be issued on or after 1 November in the year before the term of office would have normally expired. In the case of such a vacancy, the position will remain unfilled and is considered to lapse on 21 March in the year when it would have ordinarily expired.

1 November in the year before the end of a Council term is the trigger for the issue of a writ in the following January. As this process will already be in place it is not considered necessary to run a similar process to fill a vacancy, the term of which will last less than five months at the most. The position for which the vacancy occurred would be subject to a general election on the third Saturday in February in any case.

Clause 11

The amendments in Division 2 are to the *Constitution Acts Amendment Act 1899*.

Clauses 12 to 15

These clauses apply to amendments to the *Constitution Acts Amendment Act 1899* about fixed election dates.

Clauses 12 and 13 amend this Act to change the term of office for members of the Council to cease on 21 March, where it was previously 22 May. Provision has been made for persons who are members of the Council on 21 March 2005 and continue to be a member of the Council on 22 March 2005, to continue to receive ordinary salary and superannuation entitlements as if they were a member until 21 May 2005.

Members of the Council holding the position of President of the Council or Chairman or Deputy Chairman of Committees in the Council also retain their entitlements for these positions until 21 May 2005, on the above basis.

Clause 5 provides for the writs for a periodic election to be issued on the third Wednesday in January in the year that the term is due to expire. Clause 14 ensures that the Assembly ceases and determines on the day before the issue of the writ.

Under section 36 of this Act, holders of certain offices or places are required to vacate their position before being entitled to take their seat as a member. The amendment in clause 15 confirms that the office for a member of the Council in such a situation becomes vacant on 22 March, instead of 22 May, unless they have resigned or otherwise ceased to hold such an office or place.

Clauses 16 and 17

These clauses amend the *Salaries and Allowances Act 1975* to ensure that anyone elected to the Council at the next general election will not be entitled to any payment before the new commencement date of 22 March next following the election unless they were a member of the Council immediately prior to the election or were declared elected following a re-count to fill a term that expired immediately before that 22 March.