

**LOCAL GOVERNMENT
AMENDMENT (ELECTIONS)
ACT 1994**

No. 70 of 1994

AN ACT to amend the —

- *Local Government Act 1960*; and
- *City of Perth Restructuring Act 1993*,

to provide for an optional system of biennial elections for members of councils and to amend the *City of Perth Restructuring Act 1993* to enable certain elections to be conducted by postal voting.

[Assented to 9 December 1994.]

The Parliament of Western Australia enacts as follows:

PART 1 — PRELIMINARY

Short title

1. This Act may be cited as the *Local Government Amendment (Elections) Act 1994*.

Commencement

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

Principal Act

3. In Part 2 the *Local Government Act 1960** is referred to as the principal Act.

[* *Reprint approved 24 June 1983.*
*For subsequent amendments see 1993 Index to
Legislation of Western Australia, Table 1, pp. 123-5,
and Acts Nos. 40 of 1993 and 6 and 27 of 1994.]*

PART 2 — LOCAL GOVERNMENT ACT 1960

Section 6 amended

4. Section 6 (1) of the principal Act is amended —

- (a) by deleting the definition of “annual election day”; and
- (b) by inserting after the definition of “Order” the following definition —

“

“ordinary election” has the meaning
given by section 73 (2);

”.

Sections 72A and 72B inserted

5. After section 72 of the principal Act the following sections are inserted —

“

Council may change the frequency of ordinary elections

72A. (1) Subject to section 72B, a municipality may, by resolution of the council passed by an absolute majority —

- (a) if it is under the annual election system, choose to be under the biennial election system; and
- (b) if it is under the biennial election system, choose to be under the annual election system,

for its ordinary elections during the year specified in the resolution.

(2) If a resolution is passed under subsection (1), the municipality is to be regarded, for the purposes of this Act, as being under the election system specified

in the resolution for the ordinary elections mentioned in subsection (1) and from then on until a resolution under subsection (1) choosing the other system takes effect.

(3) A municipality that has never made a choice under subsection (1) is to be regarded, for the purposes of this Act, as being under the annual election system.

Frequency of elections cannot be changed in some circumstances

72B. (1) A resolution under section 72A (1) has no effect if it is passed less than 48 days before the nomination day (as defined in section 81) for the ordinary elections of the municipality during the year specified in the resolution.

(2) A resolution under section 72A (1) by which a municipality chooses to be under the biennial election system has no effect if the year before the year specified in the resolution was a biennial election year.

(3) In subsection (2), "**biennial election year**" means a year during which any municipality under the biennial election system held ordinary elections.

(4) A resolution under section 72A (1) by which a municipality chooses to be under the annual election system has no effect if the year specified in the resolution is less than 4 years after the year specified in a resolution which has effect and by which the municipality chose to be under the biennial election system.

(5) A resolution under section 72A (1) which contains the provision referred to in section

139A (2) (b) has no effect unless it is approved by the Minister.

”

Section 73 repealed and a section substituted

6. Section 73 of the principal Act is repealed and the following section is substituted —

“

Ordinary elections (annual or biennial)

73. (1) A vacancy that occurs through effluxion of time in the office of councillor, or the office of mayor or president where the mode of election is by the electors, is to be filled by the election of a person to that office by the electors.

(2) The election (which is called an “**ordinary election**”) is to be held in May of the year in which the vacancy occurs.

(3) Unless some other day is appointed under subsection (4), the first Saturday in May is appointed for the holding of ordinary elections.

(4) Where the first Saturday in May is —

- (a) a day appointed as polling day for an election of either House of the Parliament of the State or for a referendum conducted by the State;
- (b) a day appointed as polling day for an election of the Senate or a general election of the House of Representatives of the Parliament of the Commonwealth;

- (c) a day fixed for the taking of the votes of electors upon a proposed law for the alteration of the Constitution of the Commonwealth of Australia; or
- (d) a public holiday,

the Governor may, by Order, appoint another Saturday in May for the holding of ordinary elections.

(5) Where another day is appointed for the holding of ordinary elections under this section, the Governor may, by the same or another Order, give directions for extending, shortening or otherwise altering or adjusting any time or period fixed by this Act for the implementation of any procedure in connection with the holding of the elections and those directions have effect.

”

Section 139 amended

7. (1) Section 139 (1) of the principal Act is repealed and the following subsection is substituted —

“

(1) Subject to this section, the term of office for which a person is elected to the office of councillor, or the office of mayor or president where the mode of election is by the electors, is —

- (a) 3 years where the municipality is under the annual election system; or
- (b) 4 years where the municipality is under the biennial election system.

”

(2) Section 139 (5) of the principal Act is repealed and the following subsections are substituted —

“

(5) Where, by an election other than an ordinary election or an election to fill an extraordinary vacancy, a person is elected to an office of member of a council —

- (a) not more than the prescribed period before the first Saturday in May in an election year; or
- (b) less than the prescribed period after the first Saturday in May in an election year,

the term of office for which the person is elected is regarded, for the purpose of determining the date of the person's retirement from office, as commencing or having commenced, as the case requires, on the first Sunday after that first Saturday in May.

(5a) In subsection (5) —

“election year” means a year during which ordinary elections for the municipality are required to be held;

“the prescribed period” means —

- (a) 6 months where the election is held while the municipality is under the annual election system; or
- (b) one year where the election is held while the municipality is under the biennial election system.

”.

(3) Section 139 (8) (a) to (d) of the principal Act are deleted and the following paragraphs are substituted —

“

- (a) where the municipality is under the annual election system, as near as practicable to one-third of the total number of councillors as the returning officer determines are to retire each year;
- (aa) where the municipality is under the biennial election system, as near as practicable to one-half of the total number of councillors as the returning officer determines are to retire every second year;
- (b) subject to paragraph (c), where the district is divided into wards and the municipality is under the annual election system, as near as practicable to one-third of the councillors representing each ward as the returning officer determines are to retire each year;
- (bb) subject to paragraph (c), where the district is divided into wards and the municipality is under the biennial election system, as near as practicable to one-half of the councillors representing each ward as the returning officer determines are to retire every second year;
- (c) if, for any reason, it is not practicable for —
 - (i) paragraph (b) to operate consistently with paragraph (a); or
 - (ii) paragraph (bb) to operate consistently with paragraph (aa),

paragraph (a) or (aa) prevails to the extent of any inconsistency;

- (d) in determining the order of retirement from office under this subsection the returning officer is to ensure, so far as is practicable, that each councillor has a term of —
- (i) 3 years where the municipality is under the annual election system; or
 - (ii) 4 years where the municipality is under the biennial election system,

but in order to apply paragraphs (a) to (c), the returning officer may fix a term of one or 2 years under the annual election system or 2 years under the biennial election system;

”.

Sections 139A and 139B inserted

8. After section 139 of the principal Act the following sections are inserted —

“

Transition from annual to biennial election system

139A. (1) This section applies where a municipality that has been under the annual election system chooses, by resolution under section 72A (1), to be under the biennial election system.

(2) The resolution may include —

- (a) a provision specifying that the terms of office of each councillor, and the mayor or

president where the mode of election is by the electors, will expire on the first Saturday in May in the year specified in the resolution and, in that case, any of those terms of office that would, but for this section, continue beyond that day is, by operation of this section, reduced to the extent necessary to make it expire on that day; or

- (b) a provision specifying that the terms of office of each councillor, and the mayor or president where the mode of election is by the electors, will continue unaffected by this section and, in that case —
 - (i) the term of office of a councillor, or mayor or president, where the mode of election is by the electors, elected to fill an office that becomes vacant on the first Saturday in May in the year specified in the resolution, is 4 years;
 - (ii) the term of office of a mayor or president, where the mode of election is by the electors, elected to fill an office that becomes vacant on the first Saturday in May in the first year after the year specified in the resolution, is 3 years; and
 - (iii) a term of office of either one year or 3 years shall be fixed by the returning officer for any councillor elected to fill an office

that becomes vacant on the first Saturday in May in the first year after the year specified in the resolution so as to give effect to section 139 (8) (aa) or (bb) in relation to the second and fourth years after the year specified in the resolution.

(3) If the resolution contains neither of the provisions referred to in subsection (2) —

- (a) the term of office of a councillor, or the mayor or president where the mode of election is by the electors, that would, but for this section, expire in the year after the year specified in the resolution is, by operation of this section, reduced by one year;
- (b) the term of office of a councillor, or the mayor or president where the mode of election is by the electors, that expires in the second year after the year specified in the resolution continues unaffected by this section; and
- (c) without limiting section 139 (8) (d), a term of office of 2 years may be fixed for a councillor or councillors elected at the ordinary elections held during the year specified in the resolution so as to give effect to section 139 (8) (aa) or (bb) in relation to the second year after the year specified in the resolution.

Transition from biennial to annual election system

139B. (1) This section applies where a municipality that has been under the biennial election system chooses, by resolution under section 72A (1), to be under the annual election system.

(2) If the term of office of a councillor, or the mayor or president where the mode of election is by the electors, would, but for this section, continue beyond the first Saturday in May in the year specified in the resolution, that term of office is, by operation of this section, reduced to the extent necessary to make it expire on that day.

”

Section 141 amended

9. Section 141 (1) (h) of the principal Act is deleted and the following paragraph is substituted —

“

(h) subject to this subsection, the term of office of a mayor or president elected or appointed in accordance with this section is —

(i) one year where the municipality is under the annual election system; or

(ii) 2 years where the municipality is under the biennial election system;

”

Consequential and related amendments

10. The principal Act is amended as set out in the Table to this section.

TABLE

<i>Provision amended</i>	<i>Amendment</i>
s.28 (b) (ii)	Delete “appointed for the next annual municipal elections; or”, substitute — “ fixed by the Minister and specified in the notice, ”.
s.28 (b) (iii)	Delete.
s.35	Delete the definition of “annual election day”. In the definition of “election” delete “annual”, substitute — “ ordinary ”. Delete the definition of “election day”, substitute — “ “election day” , in relation to a municipality, means the first Saturday in May in a year during which ordinary elections for the municipality are required to be held or the day appointed under this Act for the holding of an inaugural election, extraordinary election or section 20 election for the municipality; ”.

- s.75 (1) Delete “annual election day next following the occurrence of the vacancy”, substitute —
“ day in that year appointed by or under section 73 for the holding of ordinary elections ”.
- s.75 After subsection (1) insert —
“ (1a) In subsection (1) “**election year**” means a year during which ordinary elections for the municipality are required to be held. ”.
- s.80A (1) Delete “annual”, substitute —
“ ordinary ”.
- s.110 (3) (a) Delete “subsection (2) of section 73”, substitute —
“ section 73 (4) ”.
- s.139 (2) (a) Delete “annual”, substitute —
“ ordinary ”.
- s.139 (3) Delete “annual”, substitute —
“ ordinary ”.
- s.139 (4) Delete “the annual”, substitute —
“ an ordinary ”.
- s.141 (1) (a) Delete “annual election day”, substitute —
“ holding of its ordinary elections ”.

s.141 (1) (b) Delete, substitute —

“ (b) the day, time and place of the first meeting of the council held after the holding of its ordinary elections are —

 (i) such as the outgoing council appoints; or

 (ii) if an appointment has not been made under subparagraph (i) such as the Minister appoints by notice in writing delivered to the clerk;

 (ba) the day, time and place of the first meeting of the council of a newly constituted municipality are such as the Minister appoints by notice in writing delivered to the clerk;

”.

s.141 (1) (i) Delete, substitute —

“ (i) a person who, having been elected or appointed to the office of mayor or president in accordance with this section, holds that office until his term of office expires through effluxion of time is to continue to hold that office after his term expires (whether or not he ceases to hold the office of councillor) until a person is elected or appointed to the office of mayor or president or until the council is dismissed in accordance with this subsection;

”.

- s.141 (3) (b) Delete “annual” where it first occurs,
substitute —
“ ordinary ”.
Delete “the annual election”, substitute —
“ one or more ordinary elections ”.
- s.143 (1) Delete “annual election day”, substitute —
“ holding of its ordinary elections ”.
- s.143 (2) Delete “annual election day”, substitute —
“ holding of its ordinary elections ”.
Insert after “councillor” —
“ at those elections ”.
- s.182 (2b) (a) Delete “the annual election”, substitute —
“ ordinary elections ”.
Delete “that takes place”, substitute —
“ is made ”.
- s.182 (4) Delete “the annual election”, substitute —
“ ordinary elections ”.
- s.611 (4) Repeal.
- s.692 After subsection (2) insert —
“ (3) Without limiting subsection
(2) the regulations may provide for

No. 70] *Local Government Amendment (Elections)*
Act 1994

the electoral rolls that are to be used,
or compiled and used, for those polls
and referenda.

”.

**PART 3 — CITY OF PERTH RESTRUCTURING
ACT 1993**

Section 3 amended

11. Section 3 (1) of the *City of Perth Restructuring Act 1993** is amended in the definition of “election day” by deleting “the annual” and substituting the following —

“ ordinary ”.

[* *Act No. 38 of 1993.*]

Sections 12A and 12B inserted

12. After section 12 of the *City of Perth Restructuring Act 1993* the following sections are inserted —

“

Election system

12A. (1) In this section —

“**first elections**” means the elections held as required by section 12;

“**municipality**” means the City of Perth or a new town.

(2) The commission may decide that a municipality will be under the biennial election system for its first elections.

(3) If a decision is made under subsection (1) in relation to a municipality —

- (a) the municipality is to be regarded, for the purposes of the principal Act, as being under the biennial election system for its first elections and from then on until a resolution under section 72A (1) of the principal Act choosing the annual election system takes effect; and
- (b) section 72A (3) of the principal Act does not apply to the municipality.

(4) A decision under subsection (1) has no effect if it is made less than 48 days before the nomination day (as defined in section 81 of the principal Act) for the first elections.

(5) The first elections are to be regarded as ordinary elections for the purposes of section 72B (2) of the principal Act.

(6) If a decision is made under subsection (1) in relation to a municipality, a resolution under section 72A (1) of the principal Act by which the municipality chooses to be under the annual election system has no effect if the year specified in the resolution is earlier than 1999.

Method of voting

12B. (1) In this section —

“**Electoral Commissioner**” means the Electoral Commissioner appointed under the *Electoral Act 1907*;

“first elections” means the elections held as required by section 12;

“municipality” means the City of Perth or a new town;

“postal election” means an election at which the principal method of casting votes is by post but at which votes can also be cast in person on or before the election day for the election in prescribed circumstances;

“subsequent election” means an election for a municipality held after its first elections.

(2) The commission may decide that the first elections of a municipality will be conducted as postal elections.

(3) A municipality may, by resolution of its council passed by an absolute majority, decide that a subsequent election will be conducted as a postal election.

(4) Subject to subsection (5) a decision under subsection (2) or (3) has effect.

(5) A decision can be made under subsection (2) or (3) before, on or after nomination day, but has no effect if it is made after notice of the elections or election has been published under section 89 (4) of the principal Act.

(6) Regulations may be made under section 32 in relation to the conduct of postal elections.

(7) The Minister may appoint a person nominated by the Electoral Commissioner to be the returning officer of a municipality to conduct a postal election.

(8) If a person is so appointed —

- (a) the Electoral Commissioner is responsible for the conduct of the postal election;
- (b) the person so appointed is to conduct the postal election for and under the direction of the Electoral Commissioner and may perform all the functions of the returning officer; and
- (c) the municipality concerned is to meet the expenses incurred by the person in conducting the postal election to the extent required by the regulations.

(9) For the purposes of section 12 and the principal Act an election is to be regarded as having been held on the election day for the election even though it is conducted as a postal election.

”.