

## Chapter 9 The Parliamentary Calendar and Elections

### 9.1 “Parliaments”

The period of a Parliament is prescribed by the *Constitution Act 1902* as four years. Section 24 states that, unless sooner dissolved, an Assembly shall expire on the Friday before the first Saturday in March in the fourth calendar year in which the return of the writs for choosing that Assembly occurred. Under the provisions of section 24A polling day will usually be the fourth Saturday in March following the expiry of the Legislative Assembly.

Provision is also made for situations where the Legislative Assembly is dissolved prior to its expiration. Under section 24B the Assembly *may* be dissolved by the Governor by proclamation if:

- (1) a no confidence motion in the Government is passed by the Legislative Assembly (after three days notice is given); and
- (2) within eight clear days after passage of such a no confidence motion a motion of confidence in the then Government has not been passed. The House cannot be prorogued before the end of the eight-day period and may not be adjourned for a period beyond that eight-day period, unless the confidence motion has been passed.

The Assembly may also be dissolved by the Governor if it rejects an appropriation bill for the ordinary annual services of the Government (this does not apply to the Parliamentary Appropriation Bill) or fails to pass such a bill before the time the Governor considers that the appropriation is required.

Subsection 24B(4) states that the Assembly may be dissolved within two months before it is due to expire if the general election would otherwise be required to be held during the same period as a Commonwealth election, during a holiday period or at any other inconvenient time.

Subsection 24B(5) retains the Governor’s discretion to dissolve the Assembly "in accordance with established constitutional conventions" (despite any advice of the Premier or Executive Council).

Subsection 24B(6) requires the Governor, in deciding whether the Assembly should be dissolved, "to consider whether a viable alternative Government can be formed without a dissolution".

In cases where the Assembly is dissolved prior to its expiration section 24A provides that the polling day for the general election is to be a day not later than the fortieth day from the date of the issue of the writs.

An amendment to the *Constitution Act 1902* in 2011 provides that the Premier or Executive Council cannot advise the Governor to prorogue the Parliament prior to 26 January in the calendar year in which the Legislative Assembly is due to expire (subsection 10A). This amendment was introduced to prevent a Government from proroguing Parliament in the lead up to a General election.

## 9.2 What happens after the Parliament expires or is dissolved?

Section 68 of the *Parliamentary Electorates and Elections Act 1912* states that:

All writs for Assembly general elections shall be issued within four clear days after the publication in the Gazette of the proclamation dissolving the Assembly, or after the Assembly has been allowed to expire by effluxion of time, and every such writ shall be made returnable on a day not later than the sixtieth clear day after the date of the issue thereof or on such later day as the Governor may by proclamation in the Gazette direct.

A writ is a document which is in the form of a command in the name of the Sovereign, State, court etc. issued to an official or other person directing that person to act or abstain from acting in some way. In the case of general elections, the writs are prepared by The Cabinet Office, signed by the Governor and the Premier and addressed to the Returning Officer in each Electorate District. One writ is issued for the 21 vacancies to be filled in the Legislative Council. The Speaker issues writs for casual vacancies in the Assembly.

Under the *Parliamentary Electorates and Elections Act 1912* the Electoral Commissioner is responsible for the conduct and administration of Assembly general elections and by-elections and is appointed to conduct periodic Council elections as Council returning officer. The Electoral Commissioner may appoint returning officers for each electoral district to assist in the administration of elections (s. 21AE). The Returning Officer:

- is responsible to the Electoral Commissioner for the administration of all elections within the district to which appointed (s. 75 and 76).
- may, with the Electoral Commissioner's delegated authority, appoint polling place managers or election assistants (s. 21AM).
- must be enrolled as an elector (s. 21AE).

The writ itself contains all the information necessary for the Electoral Commissioner and Returning Officer to arrange the poll to be conducted in the Electoral District. It contains:

- the last day for nomination (by candidates).
- the polling day.
- the date the writs are to be returned.

Section 74D of the *Parliamentary Electorates and Elections Act 1912* outlines the duties of the Electoral Commissioner when a writ for an election is received. They include such actions as advertising the purpose of the writ; the relevant dates; and information about receiving the nomination papers. Section 81 specifies that the Electoral Commissioner must publicly advertise in the electoral district as soon as practicable after the close of nominations the names and addresses (i.e. the suburb, town or locality) of the candidates, the date of the poll, and a list of polling places for each district. Under s. 87 the Returning Officer must appoint a polling place manager to preside at each polling place. A Returning Officer may, if authorised by the Electoral Commissioner, preside over and take the poll at one polling place.

The Returning Officer and polling place managers, after the close of the poll, count the votes (pre-poll, postal, absent, those cast at polling places). Once the votes have been counted and the result ascertained the Returning Officer is to notify the Electoral Commissioner who then announces the result. The Electoral

Commissioner endorses the name of the person so elected on the writ which is returned to the Governor or Speaker (if a by-election) within the time specified.

The ballot papers for the Assembly (enclosed in separate packets containing used ballot papers; unused ballot papers; electoral rolls, books, other papers) are then forwarded to the Electoral Commissioner who keeps them secure until the period has expired during which the election can be disputed in the Supreme Court (acting as the Court of Disputed Returns) i.e. within 40 days of the return of the writ or, if a petition has been filed, the Court of Disputed Returns has made a determination or, the period of 6 months after the day of polling has expired.<sup>1</sup> Prior to 2006 all ballot papers for Legislative Assembly general elections were forwarded to the Clerk of the Legislative Assembly and petitions were received against the election of certain members requiring the House to authorise the Clerk to provide the court with all envelopes containing ballot papers to enable the Court of Disputed Returns to investigate before coming to a decision as to whether the election of a member was void.<sup>2</sup>

### **9.3 When does the new Parliament meet?**

Under s. 69 of the Parliamentary Electorates and Elections Act, the Governor must issue a proclamation calling the Parliament together to meet on a day not later than the 7th clear day after the return of the writs for the Assembly general election or the date for the return of the writ for the periodic Council election, whichever is the later. If the counting of votes is delayed the Governor may issue a proclamation extending the date for the return of the writs for either the Legislative Assembly or the Legislative Council.

### **9.4 Key events/dates for general elections**

<u>Expiry of Parliament</u>	- Friday before the first Saturday in March four years after the previous Assembly elected.
<u>Issue of the Writs</u>	- within four clear days after above date.
<u>Polling Day</u>	- Assembly expired – fourth Saturday in March next following the expiry. Assembly dissolved – not later than the 40th day from the date of the issue of the writs.
<u>Declaration of the Poll</u>	- Announcement made by the Electoral Commissioner after the votes are counted.
<u>Return of the Writs</u>	- within 60 days of issue or as the Governor directs.
<u>Meeting of new Parliament</u>	- within seven clear days of the date the writs are returnable, unless the date for the return of the writs is extended by the Governor.

### **9.5 Administrative arrangements**

Although the Parliament has been dissolved and members are therefore unable to meet collectively, they still undertake their duties and responsibilities as members in their electorates until midnight the day prior to polling day.

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<sup>1</sup> Section 127 and 129H of the *Parliamentary Electorates and Elections Act 1912*.

<sup>2</sup> For example, in 1991, following investigation, the Court of Disputed Returns ordered that the election of R.L. Graham to the electorate of The Entrance be declared void and the House agreed to a motion declaring the seat vacant VP 27/08/1991, pp. 93-4; VP 10/09/1991, p. 122 and VP 11/12/1991, pp. 471-2.

This is reflected in the fact that members continue to receive a salary and most of their entitlements/allowances up to the day preceding polling day. Under the *Parliamentary Remuneration Act 1989*, for the purposes of that Act, a person elected as a member of the Legislative Assembly is deemed to become a member on the date of election (that is, polling day) and ceases to be a member if not elected, from polling day. An unopposed member is deemed to be a member from the date of election (i.e. day of nomination).

In the case of the Premier and Ministers, after a general election, they act in a caretaker capacity and continue to exercise the duties and responsibilities of their offices until the Ministry is reconstructed or until the Premier resigns (an action which automatically involves the resignation of all other Ministers). There is no written law compelling the Premier to resign if the government is defeated. However, the convention that a government defeated at the polls must resign is clear cut and well observed. A defeated Ministry continues to function until the new majority party is in a position to take over government. The Premier then submits his resignation to the Governor and the Leader of the majority party is invited to form a government. If a government is returned at the elections the Ministry is usually "reconstructed" before Parliament meets in a manner recommended by the Premier to the Governor (a reconstruction may involve changes in portfolios, changes in the seniority of Ministers, the replacement of Ministers and the appointment of new Ministers).

## **9.6 Sessions**

The duration of a Parliament may be divided into sitting periods called sessions. A session begins when the Parliament meets in accordance with a proclamation issued by the Governor and ends when the Parliament is prorogued by the Governor by proclamation (Const. Act s. 10A) or when the Assembly is dissolved.

It is mandatory for a session to be held once at least in every year so that a period of 12 months does not intervene between sittings (Const. Act s. 11). During a session the Assembly of its own motion may adjourn from one sitting day to the next.

There is no requirement for a four-year term of a Parliament to be divided into sessions. For example, the 54<sup>th</sup> Parliament from 2007 to 2011 comprised only one session.

## **9.7 Sittings**

There are usually two distinct sitting periods during the course of a year. The Autumn sittings are usually held between late February and June and the Spring sittings from August to December. The House does not normally sit during school holiday periods.

Standing order 34 provides that the House may appoint, on the motion of a Minister at any time, without notice, the days and the times of meeting and adjournment.

Towards the end of a calendar year, recent practice has been for the House to consider and agree to a motion setting the days of meeting for the next calendar year.

Under the current standing orders the routine of business (S.O. 97) sets the following meeting times:

Tuesdays	1.00 pm – 7.30 pm
Wednesday	10.00 am – 7.30 pm
Thursday	10.00 am – 6.30 pm

The conduct of Friday sittings is set out in standing order 98, which provides:

On any Friday upon which the House sits, whether as a continuation of the sitting of the previous day or as a separate sitting day the following routine of business will apply:

- (1) Notices of Motions for Government Business
- (2) Notices of Motions (General Notices)
- (3) Petitions
- (4) General Business Notices of Motions for Bills (concluding not later than 10.30 am)
- (5) From 10.30 am Government Business shall have precedence of all other business in the routine of business.
- (6) No quorums shall be called and any divisions called shall be deferred, set down as orders of the day for the next sitting day and determined after Question Time.
- (7) At 1.00 pm Business before the House is interrupted for consideration of committee reports presented or the next item of business shall be called. Any interrupted item of Government Business shall stand as an order of the day for tomorrow.
- (8) At 1.30 pm Private Members' Statements, after which the House shall adjourn without motion moved until the next sitting day.

Friday sitting days provide a time when non-contentious issues can be considered such as the Address in Reply debate and the Budget debate. This enables the House to make more effective use of its time. It also means that members who are not listed to speak on Fridays do not have to be present in the House.

The sitting times of the Legislative Assembly have been varied by sessional order for the current (55<sup>th</sup>) Parliament. The routine of business, as amended by sessional order, now sets a sitting scheduled based on a three day sitting week: Tuesday, Wednesday and Thursday. Accordingly, the standing order regarding Friday sittings has been suspended for the current Parliament and sessional orders set the following meeting times:

Tuesday	12.00 pm – 7.45 pm (or at the conclusion of the matter of public importance if earlier)
Wednesday	10.00 am – 10.00 pm (or at the conclusion of the matter of public importance if earlier)
Thursday	10.00 am – until the conclusion of private members' statements (approx. 6.30 pm).

## 9.8 Prorogation

A House of Parliament is prorogued by the Governor issuing a proclamation terminating a session. Section 10A of the *Constitution Act 1902* provides for the proroguing of the Parliament. It states:

*(1) The Governor may, by proclamation, prorogue the Legislative Council and Assembly whenever the Governor considers it expedient to do so (subject to this section and section 24B).*

*(2) The Premier or Executive Council may not advise the Governor to prorogue the Legislative Council and Assembly on a date that is before 26 January in the calendar year in which the Legislative Assembly is due to expire and that is after the fourth Saturday in the preceding September<sup>3</sup>*

While the Governor generally acts on the advice of the Premier or Executive Council, there are times when the Governor may exercise discretion by proroguing the Parliament without advice or by refusing to prorogue the Parliament. For instance, in 1911, the McGowen Labor Government lost the support of the House when a number of Government members refused to support the legislation before the House and resigned from Parliament. Acting Premier Holman requested that the Lieutenant-Governor prorogue the Parliament. This was however, refused and the Government resigned. The Opposition, after being asked to form a Government by the Lieutenant-Governor, agreed to do so on the condition that if they did not have control of the business of the House that they would be granted a dissolution. This was also refused which resulted in the resignations of the McGowen Government being withdrawn and the prorogation of the House as originally sought.<sup>4</sup>

From 1856 to 1893 it was the usual practice for the Governor to attend the Legislative Council in person and, after summoning the members of the Legislative Assembly, to read a speech proroguing the Parliament. Since 1893 the Parliament of New South Wales has been prorogued by proclamation. In 1904<sup>5</sup> and again in 1908,<sup>6</sup> a proclamation proroguing the Parliament was issued whilst the Legislative Assembly was still sitting. In these instances, the proclamation was handed to the Speaker in the Chair who then announced that he had received a document proroguing the Parliament and left the Chair.

The House is said to be “in recess” after it is prorogued. It is generally accepted (no specific provision exists) that all parliamentary business is brought to an end by prorogation. Exceptions to this are provided by a Parliamentary Committees Enabling Act that is usually passed at the end of each session (to allow committees to continue operating)<sup>7</sup> and standing order 315 which purports to authorise standing committees to sit during the currency of the Parliament in which they are appointed.

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<sup>3</sup> Available authority suggests that it is not possible to prorogue only one House of Parliament – hence the reference to proroguing both the Legislative Council and the Legislative Assembly rather than either/or.

<sup>4</sup> *The People's Choice, Electoral Politics in 20th Century New South Wales*, Volume 1 1901 to 1927, edited by Michael Hogan and David Clune, 2001, pp. 119-21.

<sup>5</sup> VP 21/01/1904, p. 15.

<sup>6</sup> VP 10/04/1908, p. 72.

<sup>7</sup> Committees enabling legislation will be passed if there is to be a significant length of time between the prorogation and when the House resumes. For example, in May 2006 the Parliament was prorogued on Friday 19 May and the House resumed on Monday 22 May and it was considered that there was no need for enabling legislation to be passed.

(For more information on the effect of prorogation on parliamentary committees see section 26.13 of Part One).

Whilst prorogation brings all business before the House to an end, it does not have any effect on legislation that has passed through the Parliament but is awaiting assent when the Parliament is prorogued. This was recently considered in *Attorney-General (WA) v Marquet* where it was held that proroguing the Houses of Parliament would have no effect on bills already passed by the Parliament in that they could be lawfully presented for and receive assent. In coming to this decision the majority of the High Court argued that:

*When it is said that prorogation wipes the parliamentary slate clean, what is meant is that proceedings then pending in the House that has been prorogued must be begun again unless there is some contrary provision made by statute or standing order. (Here, the standing orders of each House provided for proceedings to be taken up after prorogation at the point they had reached when the House was prorogued.) But here, if the Bills had been passed by both Houses, there was no proceeding then pending in either House. Each House would have completed its consideration of the Bills.<sup>8</sup>*

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<sup>8</sup> (2003) HCA 67 at paragraph 85.