

Constitution (Fixed Term Parliament) Amendment Bill 2015

Explanatory Notes

FOR

Amendments To Be Moved During Consideration In Detail By The Honourable Yvette D'Ath MP

Title of the Bill

Constitution (Fixed Term Parliament) Amendment Bill 2015

Objectives of the Amendments

On 17 September 2015, the Constitution (Fixed Term Parliament) Amendment Bill 2015 and the Constitution (Fixed Term Parliament) Referendum Bill 2015 were introduced into the Legislative Assembly by the Member for Mansfield, Mr Ian Walker MP. The Bills were referred to the Finance and Administration Committee (the Committee) for consideration.

On 9 November 2015, the Committee tabled its report (No. 16) on the inquiry into the introduction of four year terms for the Queensland Parliament, including consideration of the Constitution (Fixed Term Parliament) Amendment Bill 2015 and Constitution (Fixed Term Parliament) Referendum Bill 2015.

The objective of the amendments is to implement some of the recommendations of the Committee that relate to the Constitution (Fixed Term Parliament) Amendment Bill 2015, in line with the Government's response to the recommendations.

Achievement of the Objectives

The amendments achieve the objective of implementing some of the recommendations of the Committee by:

- simplifying the drafting to maximise the readability of the provisions;
- removing references to Acts of Parliament in provisions that are intended to be entrenched;
- including a commencement provision and simplifying the transitional provision of the Bill;

- amending the polling day provisions, to provide that ordinary general elections are to be held on the last Saturday in October;
- providing a mechanism to ensure the term of the Legislative Assembly does not exceed four years, if the Assembly is dissolved early during the fixed four-year term;
- specifying the circumstances in which the Governor may dissolve the Legislative Assembly early (extraordinary dissolution); and
- reduce the maximum days by which the polling day for an extraordinary election can be held, from not more than 56 days to not more than 40 days after the day of the issue of the writ by the Governor.

The amendments also make minor consequential changes to the Bill.

Alternative Ways of Achieving Policy Objectives

There are no alternative ways of achieving the policy objectives.

Estimated cost for government implementation

If the Constitution (Fixed Term Parliament) Amendment Bill 2015 and the Constitution (Fixed Term Parliament) Referendum Bill 2015 are passed by the Legislative Assembly, a referendum is to be held to submit the Constitution (Fixed Term Parliament) Amendment Bill 2015 to the electors for approval or otherwise.

The estimated cost of conducting a referendum on this matter in 2016 is \$16.6 million to \$24.1 million, depending on whether the referendum is held in conjunction with the local government elections in March 2016 or separately on a later date.

Consistency with Fundamental Legislative Principles

The amendments are consistent with fundamental legislative principles.

Consultation

No public consultation was undertaken in relation to the amendments. The amendments are in response to the Committee's recommendations on the Bill in its Report No. 16. The Committee's report was informed by several public forums, a public briefing and hearing, 45 written submissions, and an online survey.

Consistency with legislation of other jurisdictions

The Bill is specific to the State of Queensland.

Notes on Provisions

Amendment 1 After clause 1

Amendment 1 inserts a new clause 1A (Commencement) into the Bill to provide that the Bill commences on the date of the instrument by which the Governor summons the Legislative Assembly after the next general election. The Committee recommended (Recommendation 6) that the Act commence on a fixed date or the day the Legislative Assembly of the 55th Parliament is dissolved for a general election. These options are not considered suitable given the date of the next general election (and subsequently the next term of the Legislative Assembly) is unknown, and commencement on the dissolution day of the current Parliament could mean the next general election process would potentially abridge two legislative models.

The proposed commencement will ensure the new legislative model does not commence until after the entire process for the next general election is completed.

Amendment 2 After clause 2

Amendment 2 inserts a new clause 2A into the Bill to make minor consequential amendments to section 3 (Object) of the *Constitution of Queensland 2001* to remove reference to the *Constitution Act Amendment Act 1890* (1890 Act) and to section 4 of the *Constitution Act Amendment Act 1934* (1934 Act). The 1890 Act is to be repealed and section 4 of the 1934 Act is to be omitted by clauses 10 and 11 of the Bill.

Amendment 3 Clause 3 (Amendment of s 15 (Summoning, proroguing and dissolving the Legislative Assembly))

Amendment 3 amends clause 3, subclause (2) to omit the words ‘but only’ as these words are considered unnecessary given there are specific provisions that will provide for the Governor to dissolve the Legislative Assembly in specific circumstances and that will preserve the Governor’s reserve powers.

Amendment 4 Clause 5 (Amendment of s 17 (Continuation of Legislative Assembly despite end of Sovereign’s reign))

Amendment 4 amends clause 5 to replace ‘under section 15(3)’ with ‘by the Governor’. This is a minor drafting amendment to refer generally to dissolution by the Governor, rather than cross-reference a particular provision, in section 17 of the *Constitution of Queensland 2001*.

Amendment 5 Clause 6 (Insertion of new ch 2, pt 2A)

Amendment 5 replaces clause 6 of the Bill, which inserts a new Part 2A into the *Constitution of Queensland 2001* to provide for fixed four-year terms for the Legislative Assembly. Many of the amendments to clause 6 are in response to the Committee’s recommendations and maximise the readability of the provisions. Although this amendment replaces clause 6 in its entirety, aspects of the current clause are included in some form without substantial change in this amendment.

The title of Part 2A is amended to ‘Duration of the Legislative Assembly’ as it seems more appropriate in the context of the other part headings in Chapter 2 and given this part effectively replaces section 16 (Duration of Legislative Assembly).

New Part 2A is in response to the Committee's Recommendations 4, 7 and 8. These recommendations relate to the removal of references to Acts of Parliament in entrenched provisions, the polling day for general elections, the postponement of the polling day, and the extraordinary dissolution of the Legislative Assembly during the fixed four-year term.

New section 19A provides the definitions for new Part 2A, including the meaning of 'Assembly', 'extraordinary general election', 'general election', 'Leader of the Opposition', 'normal dissolution day', 'normal polling day', 'ordinary general election' and 'postponed polling day'. These definitions are required as a consequence of the replacement of new Part 2A.

In Recommendation 8, the Committee recommended the Bill provide that:

- If the previous general election was not an extraordinary general election, the general election is to be held on the last Saturday in October in the 4th calendar year after the year in which the previous general election was held (the *normal polling day*).
- If the previous general election was an extraordinary general election, the general election is to be held on the last Saturday in October in the 3rd calendar year after the year that the extraordinary general election was held (the *extraordinary polling day*).
- The Governor must dissolve the Legislative Assembly and issue a writ for a general election on the day that is 26 days before the normal polling day (the *normal dissolution day*).
- The Governor may at any time, by proclamation, order the polling day for a general election to be postponed to a Saturday not more than 35 days after the normal polling day (the *postponed polling day*) if there are exceptional circumstances.

New sections 19B to and including 19D implement this recommendation.

New section 19B provides for the normal polling day and for the postponed polling day for the general election of members of the Legislative Assembly. It essentially replaces current sections 19C and 19D(1) and (5) in the Bill.

Subsection (1) provides that the *normal polling day* for an ordinary general election is the last Saturday in October in the fourth calendar year after the calendar year in which the last general election was held, if the last general election was an *ordinary general election*. If the last general election was an *extraordinary general election*, the normal polling day is the last Saturday in October in the third calendar year after the calendar year in which the last general election was held. Holding a general election in the third calendar year, rather than the fourth calendar year after the calendar year in which an extraordinary general election is held will ensure the term of the Legislative Assembly will not exceed four years.

Subsection (2) provides that each ordinary general election must be held on the normal polling day unless the Governor postpones the polling day under subsection (3).

Subsection (3) provides that the Governor may order the polling day for an ordinary general election to be postponed to a Saturday not more than 35 days after the normal polling day (the postponed polling day) if-

- (a) there are exceptional circumstances; and
- (b) the Premier recommends, and the Leader of the Opposition agrees to, the postponement.

Examples of exceptional circumstances included in the subsection are:

- an election for members of the House of Representatives or the Senate of the Commonwealth Parliament is to be held on the normal polling day.
- a natural disaster has affected such a wide area of the State that the conduct of an election on the normal polling day would be impracticable.

Although the Committee's recommendation did not include subsection (3)(b), this additional criteria is currently included in the Bill and is proposed to be retained.

Subsection (4) prescribes how the postponed polling day under new section 19B(3) is calculated.

Subsection (5) states that subsection (3) does not affect the operation of any provision of another Act about adjourning a poll at a place because of an emergency. This meaning in effect replaces section 19D(5) of the Bill, in response to the Committee's Recommendation 4 that cross-referencing in entrenched provisions to non-entrenched Acts should not occur.

New section 19C provides for the normal dissolution day of the Legislative Assembly, as recommended by the Committee.

Subsection (1) provides that the *normal dissolution day* is the day that is 26 days before the normal polling day.

Subsection (2) states that on the normal dissolution day the Governor must dissolve the Assembly and issue a writ for a general election.

Subsection (3) is included to be clear that if the Governor has already extraordinarily dissolved the Legislative Assembly, or has postponed the dissolution of the Assembly, the requirement to dissolve the Assembly and issue a writ for a general election does not apply.

Subsection (4) prescribes how the normal dissolution day under new section 19C(1) is calculated. This in effect replaces section 19F(1) of the Bill.

New section 19D provides for the postponed dissolution of the Legislative Assembly.

Subsection (1) enables the Governor to postpone the dissolution of the Legislative Assembly and the issue of a writ for a general election if the Governor has postponed the polling day and the Premier recommends, and the Leader of the Opposition agrees to, the postponement.

Subsection (2) provides that the dissolution may not be postponed to a day later than the day that is 26 days before the postponed polling day, or to a day later than the day on which the Legislative Assembly would expire under new section 19H.

Subsection (3) provides that the proclamation by which the Governor postpones the dissolution of the Legislative Assembly must state the day to which the dissolution has been postponed; and that the Assembly is dissolved on that day.

Subsection (4) provides that on the day the Assembly is dissolved, the Governor must issue a writ for a general election.

While the Committee did not make any recommendation about providing for the postponement of the dissolution of the Legislative Assembly, it is considered necessary to retain these provisions of the Bill to ensure the period between the dissolution of the Assembly and the postponed polling day is not unnecessarily long. That is, if the postponed dissolution provision is not included, there could potentially be 61 days between dissolution of the Assembly and the polling day. New section 19D effectively replaces section 19D(2) to (4) currently in the Bill.

New sections 19E and 19F provide for the extraordinary dissolution of the Legislative Assembly during the fixed four-year term and for the preservation of the reserve powers of the Governor. Recommendation 7 of the Committee stated that the Bill should be amended to provide for an extraordinary dissolution and an extraordinary election in the following circumstances:

1. The Governor must dissolve the Legislative Assembly and on the same day issue a writ for a general election if, before the normal dissolution day-
 - a) Each of the following happens-
 - i. a motion in the Legislative Assembly in the form “That this House has no confidence in the government” is passed, or a motion in the form “That this House has confidence in the government” is defeated;
 - ii. at least eight days have passed after the passage or defeat of the motion above, without a motion in the form “That this House has confidence in the government” being passed;
 - iii. the Governor considers no government can be formed that will command the confidence of the majority of the Legislative Assembly;or
 - b) the Legislative Assembly rejects a Bill for an ordinary annual appropriation Act;
 - or
 - c) the Legislative Assembly fails to pass a Bill for an ordinary annual appropriation Act before the day notified by the Governor by message to the Legislative Assembly that the appropriation is required.
2. Nothing affects the Governor exercising the reserve powers in accordance with established constitutional conventions.
3. A writ issued for an extraordinary election, including a writ issued as a consequence of the exercise of the reserve powers, must state the polling day for the general election, which must be a Saturday not less than 26 days and not more than 40 days after the day of the issue of the writ.

New section 19E implements the first part of Recommendation 7. However, subsection (1) provides that the Governor may dissolve the Legislative Assembly and issue a writ for a general election if the specified circumstances happen, rather than states that the Governor must act under this section. This is to ensure the Governor retains an appropriate discretion in the exercise of this power. The provision is also consistent with other jurisdictions which use the word ‘may’ in similar provisions.

Subsection (2) provides that *confidence motion* means a motion in the form ‘That this House has confidence in the government’ and provides that *no confidence motion* means a motion in the form ‘That this House has no confidence in the government’.

This subsection also prescribes that *ordinary annual appropriation Act* means an Act that appropriates an amount from the consolidated fund for departments of government for a financial year. This meaning in effect replaces section 19E(4) of the Bill, in response to the

Committee's Recommendation 4 that cross-referencing in entrenched provisions to non-entrenched Acts should not occur.

New section 19F implements the third part of Recommendation 7, to provide that the polling day for an extraordinary general election must be a Saturday not less than 26 days and not more than 40 days after the day of the issue of the writ. This shortens the current time parameter in the Bill, which provides the polling day for an extraordinary general election must be a Saturday not less than 26 days and not more than 56 days after the day of the issue of the writ.

Subsection (1) provides that a writ for an extraordinary election must state the polling day for the election.

Subsection (2) provides that the stated polling day must be a Saturday not less than 26 days and not more than 40 days after the day of the issue of the writ.

Subsection (3) prescribes how the extraordinary polling day under new section 19F(2) is calculated.

New section 19G implements the second part of Recommendation 7. This section states that Part 2A does not affect the exercise of the Governor's reserve powers under established constitutional conventions. This is intended to be clear that even though new Part 2A specifies circumstances in which the Governor may dissolve the Legislative Assembly early, the Governor's reserve powers are retained.

New section 19H, subsection (1) provides that the Legislative Assembly expires on the day that is four years from the day the writ for the general election was returned for the Assembly if the Governor has not already dissolved the Assembly under Part 2A. Subsection (2) provides that if the Assembly expires, the Governor must immediately issue a writ for a general election. Under the new provisions, the Legislative Assembly should in actuality be dissolved prior to when it would otherwise expire. However, it is considered prudent to include an expiry provision, if in the extremely rare event the Assembly was not dissolved by the Governor.

New section 19I provides that Part 2A is entrenched, such that a Bill for an Act cannot amend or repeal a provision of the part unless the Bill has been passed by the Legislative Assembly and has then been approved by a majority of electors at a referendum. The current maximum three-year term of the Legislative Assembly is entrenched within section 2 of the *Constitution Act Amendment Act 1890* and by section 4 of the *Constitution Act Amendment Act 1934*. Section 19I will ensure that the fixed four-year term of the Legislative Assembly is also entrenched, so the Parliament itself cannot change the term by simply passing an amending Act of Parliament. The section is also drafted in a simpler style than the corresponding section (19G) currently in the Bill.

Amendment 6 Clause 7 (Insertion of new ch 9, pt 3)

Amendment 6 amends clause 7 which inserts a new Chapter 9, Part 3 transitional provision for the Constitution (Fixed Term Parliament) Amendment Act 2015. The amendment omits new section 94A and replaces it with a simplified transitional provision which provides that, for the purposes of Chapter 2, part 2A, the last general election held before the commencement of that part is taken to have been an extraordinary general election. This will provide that the next general election for members of the Legislative Assembly (i.e. for the 56th Legislative Assembly) will be treated as an 'extraordinary general election' under the new provisions. This

implements Recommendation 6 of the Committee which states that the Bill should provide that the next general election, following the dissolution of the 55th Legislative Assembly (i.e. the current Legislative Assembly), be treated as an extraordinary general election such that the next general election is to be held on the last Saturday in October in the 3rd calendar year after the year in which the extraordinary general election was held. This ensures that the next term of Parliament will not exceed four years.

Amendment 7 After clause 9

Amendment 7 inserts a new clause 9A to amend the preamble of the *Constitution Act Amendment Act 1934* to remove the paragraphs related to the *Constitution Act Amendment Act 1890* as this Act is to be repealed by the Bill. This is a consequential amendment that was not identified in the Bill.

Amendment 8 Long title

Amendment 8 amends the long title of the Bill to state that the Bill is an Act to provide for fixed four-year terms for the Legislative Assembly in Queensland. The long title of the Bill will form the question that will be put to the electors at a referendum, if the Bill is passed by the Legislative Assembly. It is therefore important that the long title is easy to understand and clearly states what the electors are being asked to approve.