

Constitution (Fixed Term Parliament) Referendum Bill 2015

Explanatory Notes

FOR

Amendments To Be Moved During Consideration In Detail By The Honourable Yvette D'Ath MP, Attorney-General and Minister for Justice and Minister for Training and Skills.

Constitution (Fixed Term Parliament) Referendum Bill 2015

Title of the Bill

Constitution (Fixed Term Parliament) Referendum Bill 2015

Objectives of the amendments

The proposed amendments address recommendations 11 and 12 of the Finance and Administration Committee's 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 and give effect to additional amendments identified by the Electoral Commission Queensland (commission) to facilitate the conduct of referendums in Queensland.

Recommendation 11 proposed amendments to the *Referendums Act 1997* (Referendums Act) to enable pre-polling and declaration (postal) voting at any referendum (on parliamentary terms). Recommendation 12 provided that, in the event that the Bills are passed, the Legislative Assembly agree to the words of both the 'for' and 'against' arguments to be published by the commission. This recommendation would also apply to any other Bill(s) with similar intent which are introduced. The Committee report noted that in the event the proposed Constitution (Fixed Term Parliament) Amendment Bill 2015 passes the Legislative Assembly unanimously there may not be authority (under section 11 of the Referendums Act) for the publication of an argument against the Bill and that this may not be in the interests of public transparency and accountability.

Achievement of the Objectives

The policy objectives are achieved by amending the Referendums Act to:

- facilitate pre-poll voting, enable greater access to declaration (postal) voting and make electronically assisted voting available at a referendum consistent with the *Electoral Act 1992* (Electoral Act) and *Local Government Electoral Act 2011* (LGEA);
- provide that, if a Bill (or question) that requires the consent of the electors is unanimously supported by the members of the Legislative Assembly who voted, a majority of the members can agree to the arguments both “for” and “against” the Bill (or question) to be published by the commission;
- extend the application of Part 7 of the Referendums Act to provide for the holding of a referendum in conjunction with local government elections and enable a referendum to be conducted by full postal ballot in those local government areas which have been approved for a full postal election under the LGEA; and
- make minor and technical amendments.

Alternative Ways of Achieving Policy Objectives

The policy objectives can only be achieved through legislative amendment.

Estimated Cost for Government Implementation

The proposed amendments are primarily procedural provisions to facilitate the effective conduct of referendums in Queensland.

Consistency with Fundamental Legislative Principles

Proposed new sections 32A, 32B and 32E provide for a delegation of legislative power. These amendments, which are consistent with existing equivalent provisions contained in the Electoral Act (sections 121A, 121B and 121E) and LGEA (sections 75A, 75B and 75D), enable:

- a regulation to be made to prescribe other suitable categories of voters who can utilise electronically assisted voting (i.e. proposed section 32A of the Referendums Act provides that electors who can not vote without assistance because of an impairment or insufficient level of literacy can utilise electronically assisted voting for referendums and that additional categories may be prescribed by regulation);
- the commission to make procedures for electronically assisted voting; and
- the Electoral Commissioner to decide that electronically assisted voting is not to be used for a particular referendum, or by a class of electors at a particular referendum.

Any concerns regarding the delegation of legislative power have been mitigated by outlining in the section the information which is to be included in procedures made by the commission, and providing that the procedures do not take effect until approved by regulation, and must be tabled with the regulation and published on the commission website.

The amendments will also create new offence provisions. It will be an offence for a person to disclose any source code or other computer software related to electronically assisted voting, unless authorised to do so (maximum penalty of 40 penalty units or 6 months imprisonment). It will also be an offence to destroy or interfere with any computer program, data file or electronic device used for or in connection with electronically assisted voting (maximum penalty of 100 penalty units or 2 years imprisonment). The maximum penalty for this offence reflects the gravity of a person deliberately destroying information technology used to conduct referendums in Queensland. Both offences are consistent with the equivalent offence provisions of the Electoral Act (sections 121D(1) and (2)) and the LGEA (sections 75C(1) and (2)).

Consultation

The commission was consulted during the development of these amendments.

NOTES ON PROVISIONS

Amendment 1 inserts a new heading before clause 1, Part 1 Preliminary.

Amendment 2 inserts a new heading before clause 2, Part 2 Submitting Bill to electors for voting.

Amendment 3 replaces clause 3 (How vote is to be taken), and omits subclauses (2) and (3). The inclusion of these subclauses is unnecessary and undesirable as they impose legal requirements in relation to matters that are provided for under the *Constitution Act Amendment Act 1934*.

Amendment 4 inserts Part 3 Amendment of Acts, Division 1 Amendment of this Act. This part contains new clauses 4 to 41.

Clause 4 provides that this division amends this Act.

Clause 5 amends the long title of the Act.

Clause 6 provides that this division amends the *Referendums Act 1997* (Referendums Act).

Clause 7 amends incorrect cross-referencing in the editor's note of section 3 (Function of the commission).

Clause 8 amends section 6 (Form and content of writs) to amend the return date for the writ to not more than 84 days, consistent with the Electoral Act.

Clause 9 amends section 8 (Commission to publish writ and prepare for referendum) to insert the word "electoral" before commissioner.

Clause 10 amends section 11 (When must an argument in favour of or against the Bill or question be published) to provide that arguments for and against the Bill (or question) can be authorised by a majority of members who wish to forward the arguments to the commission, in cases where all members voting, vote for the Bill (or 'yes' answer).

Clause 11 amends section 12 (How an argument for or against the Bill or question is distributed or published) to amend the publication requirements to require the commission to publish the arguments twice in one newspaper circulating throughout the State before polling day, and on the commission's website. This replaces the current requirement that the arguments be published twice in two newspapers circulating throughout the state before polling day. This clause also provides that newspaper and website publication is to occur, regardless of whether members ask the commission to post the arguments to each elector. Currently the publication requirements are alternatives.

Clause 12 amends section 13 (More than 1 referendum on the same day) to reflect the new requirement in section 12 that publication of arguments is only required in one newspaper.

Clause 13 amends section 16 (Kinds of polling booths) to provide that pre-poll voting offices for electoral districts are an additional type of polling booth for the purposes of the Act.

Clause 14 amends section 18 (Supply of ballot papers and electoral rolls) to make provision for electronically assisted voting.

Clause 15 amends section 19 (Scrutineers) to provide when scrutineers are entitled to be present for the purposes of pre-poll voting and electronically assisted voting.

Clause 16 extends section 21 (Who may vote) to include persons who are not enrolled on the electoral roll for any district, but are entitled to be so enrolled, and who give a notice to the commission or electoral registrar for the district under section 65 of the Electoral Act within the requisite time period. This amendment brings section 21 into line with the corresponding section 106(1)(d) of the Electoral Act and section 64(1)(c) of the LGEA.

Clause 17 amends section 22 (Procedure for voting) to exclude persons who make a pre-poll ordinary vote under new section 24C from the requirements of this section.

Clause 18 inserts a new part 4, division 3, subdivision 1A (Pre-poll ordinary voting) to provide for pre-poll ordinary voting in referendums. This new subdivision mirrors the provisions in part 7, division 5, subdivision 2 of the Electoral Act.

Clause 19 amends section 25 (Who may make a declaration vote) to insert a new section 25(1)(a) to provide that an 'ordinary postal voter', being an elector who wishes to make a declaration vote before the polling day for a referendum, may make a declaration vote and clarify the interaction of the provision with the Electoral Act.

Clause 20 amends section 26 (Who must make a declaration vote) to require persons who comply with section 21(1)(d) (i.e. persons who are entitled to enrol but are not enrolled by the cut-off day but who give the required notice by no later than 6p.m. on the day before polling day) to make a declaration vote.

Clause 21 amends section 30 (Making a declaration vote using posted referendum papers) to provide that an elector who is an ordinary postal voter can request a ballot paper and

declaration envelope by completing an approved form and giving it to the commission or returning officer for the electoral district for which the elector is enrolled, by no later than 7p.m. on the Wednesday before the polling day for the referendum, to align with the Electoral Act and the LGEA. This amendment simplifies the current requirements for requesting a declaration vote.

Clause 22 amends section 31 (Electoral visitor voting) to provide that an elector can request to vote as an electoral visitor voter by completing an approved form and giving it to the commission or returning officer for the electoral district for which the elector is enrolled, by no later than 7p.m. on the Wednesday before the polling day for the referendum, to align with the Electoral Act and the LGEA. This amendment simplifies the current requirements for requesting to vote as an electoral visitor voter.

Clause 23 replaces section 32(1) and (2) (Making a declaration vote in cases of uncertain identity) with a provision that requires the issuing officer to give a person a declaration envelope if section 22(7) or new section 24C(7) apply (i.e. in the case of ordinary voting or pre-poll ordinary voting if an issuing officer suspects that a person claiming to be a particular elector is not the elector), and updates cross references.

Clause 24 inserts a new part 4, division 3, subdivision 2A (Electronically assisted voting) to provide for electronically assisted voting in referendums. New part 4 is modelled on part 7, division 5, subdivision 3A of the Electoral Act and Part 4, Division 5, subdivision 2A of the LGEA. Consistent with these Acts, the amendments provide that an elector may make an electronically assisted vote if the elector can not vote without assistance because of an impairment or an insufficient level of literacy or is a member of a class of elector prescribed by regulation.

Clause 25 amends section 33 (How electors must vote) to make provision for electronically assisted voting.

Clause 26 amends section 36 (Preliminary processing of declaration envelopes and ballot papers) to omit the requirement for a person examining the declaration envelope to be satisfied that the signature on the envelope corresponds with the signature in the request.

Clause 27 amends section 38 (Preliminary counting of ordinary votes) to provide that the commission's staff in charge of a polling booth must identify and keep in a separate parcel all declaration envelopes and all ballot papers printed for electronically assisted votes, and to extend its application to pre-poll ordinary votes, and votes received under section 36.

Clause 28 amends section 39 (Official counting of votes) to include ballot papers printed for electronically assisted votes in the first stage of the procedure for the official counting of votes.

Clause 29 amends section 83 (Failure to post, fax or deliver documents for someone else) to reflect that requests under section 30 or 31 are now required to be in the approved form.

Clause 30 replaces the heading to part 7 (Referendum held in conjunction with election under Electoral Act 1992) to also cover referendums held in conjunction with local government elections.

Clause 31 amends section 88 (Extension of time) to amend an incorrect cross-reference.

Clause 32 amends section 89 (Cut-off date for electoral rolls for an election and a referendum) to make two technical drafting corrections.

Clause 33 amends section 90 (Pre-poll voting - making a declaration vote at a commission office) to amend an incorrect cross-reference.

Clause 34 amends section 92 (Mobile polling booths) to amend an incorrect cross-reference.

Clause 35 amends section 94 (Applications, declarations, ballot papers and references) to amend a number of incorrect cross-references, and to extend the application of section 94(b) and (c) to new section 24D(3) (i.e. if an elector can not enter a pre-poll voting office because of illness, disability or advanced pregnancy but can come close to the pre-poll voting office).

Clause 36 amends section 95 (Record of ordinary votes) to amend an incorrect cross-reference.

Clause 37 amends section 96 (Adjournment at both referendum and election) to amend an incorrect cross-reference.

Clause 38 inserts a new part 7 division 2 (Referendum held with local government election).

New section 96AA (Application of division) provides that this division applies if the polling day for a referendum is the same day as the polling day for a local government election.

New section 96AB (Definitions for division) defines terms used in the division.

New section 96AC (Application of division 1) outlines how division 1 of part 7 (other than section 89, 90 and 94) will be applied to ensure that if this division 2 applies, relevant processes related to the holding of the local government election and the referendum are aligned.

New section 96AD (Cut-off day for electoral rolls) provides that if the cut-off day for electoral rolls stated in the writ for the referendum is a day before the cut-off day for voters rolls under the LGEA, the cut-off day for the electoral rolls is extended to the local cut-off day.

New section 96AE (Particular applications, declarations, ballot papers and references) provides that certain applications and declarations made under the LGEA are taken to be applications and declarations made under the nominated sections of this Act (and vice versa). This section also provides that a ballot paper given to an elector under sections 28 or 30 of this Act, (i.e. given to persons making a declaration vote at a polling booth or who are ordinary postal voters), may be enclosed in the same declaration envelope as a ballot paper given to an elector under sections 70, 72 or 79 of the LGEA (i.e. for casting an ordinary or pre-poll vote, or a postal vote whether or not it is a postal ballot election).

New section 96AF (Holding postal ballot election) provides that if a poll for the local government election is to be conducted by a postal ballot election under the LGEA an elector who must cast such a postal vote for the local government election must also cast a postal vote for the referendum. This section provides that: as soon as practicable after the issue of the writ for the referendum the commission must post a ballot paper and

declaration envelope to each elector who is entitled to cast a vote in the postal ballot election; the ballot paper may be included in the same declaration envelope as the ballot paper given to the elector under the LGEA; and that returning officers and the commission must keep a record of all ballot papers and declaration envelopes which are posted or given under this section.

New section 96AG (Pre-poll voting) provides that despite new section 24C(1) an elector will only be able to make a pre-poll ordinary vote at a pre-polling booth in the local government area during voting hours for the booth under the LGEA.

New Section 96AH (Ballot papers) provides that the ballot paper for the referendum may include the name of an electoral district.

New section 96AI (Application of particular provisions of the LGEA) provides that subject to the Act, if a referendum and local government election are held on the same polling day, provisions of the LGEA which deal with matters about procedures for conducting a local government election apply with necessary changes.

Clause 39 inserts a new part 9 heading (Transitional provisions) and part 9, division 1 heading (Transitional provision for Electoral and Other Acts Amendment Act 2001).

Clause 40 inserts a new part 9 Division 2 (Transitional provision for Constitution (Fixed Term Parliament) Referendum Act 2015). New section 102 provides that for a referendum held for the purpose of section 2 of the Constitution (Fixed Term Parliament) Referendum Act 2015 a reference in section 11(1)(c) to ‘within 4 weeks after the passage of the Bill’, is taken to be a reference to be at least 25 days before the polling day for the referendum.

Clause 41 amends schedule 3 (Dictionary) to define, or re-define, the following terms: ‘cut-off day for electoral rolls’, ‘deputy electoral commissioner’, ‘electoral commissioner’, ‘issuing officer’, ‘LGEA’, ‘local government election’, ‘pre-poll ordinary vote’ and ‘pre-poll voting office’.

This clause also updates the numbering of the provisions of the Act that define the terms ‘electoral visitor voter’, and ‘ordinary postal voter’; extends the definition of ‘polling booth’ to include a mobile polling booth or a pre-poll voting office; and amends a number of incorrect cross-references.

Amendment 5 amends the Long Title.