

Issue to Members, etc. and Supply Stock

W. J. Johnson

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1959.

**A BILL**

To Amend the Constitution of Queensland by Making Further Provision in respect of the Constitution, Powers and Procedure of the Legislature, and to Provide for certain other Matters associated therewith, and thereby to Secure the Blessings of Liberty to our People and our Posterity.

[Initiated in Committee, 9th December, 1959; — Hon. G. F. R. Nicklin, appropriation recommended by message from His Excellency of the Governor.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

5 1. This Act may be cited as "The Constitution Short title. (Declaration of Rights) Act of 1959."

2. (1.) In this Act, unless the context otherwise Interpretation. indicates or requires, the following terms shall have the meanings respectively assigned to them, that is to say:—

10 "Amend"—In relation to any law includes any Amend. statutory modification or alteration of such law or its operation and also includes repeal thereof with substitution of a new law therefor;

Handwritten notes: "H. J. Johnson 475" and "63"

Elector.	“Elector”—A person enrolled for any electoral district ;	
Electoral district.	“Electoral district”—A part of the State for the time being appointed by law to return a member to the Legislative Assembly ;	5
Law.	“Law”—Any statute or other enactment purporting to have legal effect, including any regulation, rule, order, proclamation, notice, direction or other instrument made, issued or given in pursuance of the provisions of any statute or other enactment ;	10
Legislative Assembly.	“Legislative Assembly”—The Legislative Assembly of Queensland ;	
Parliament.	“Parliament”—The Legislature, being Her Majesty the Queen acting by and with the advice and consent of the Legislative Assembly in Parliament assembled ;	15
Referendum.	“Referendum”—The holding of a poll on any question or matter to be submitted to the whole of the electors ;	20
Roll.	“Roll”—In relation to an electoral district, the roll of electors entitled for the time being to vote at any poll for choosing a member of the Legislative Assembly for that electoral district ;	25
State.	“State”—The State of Queensland, and if the limits of the State shall at any time become altered by law, the State of Queensland with such altered limits.	

(2.) In this Act any reference to or citation of any other Act or of any provision of any other Act shall, unless the contrary is expressly provided, be a reference to or citation of that Act or provision as in force immediately prior to the commencement of this Act.

Constitution,  
powers and  
procedure  
of the  
Parliament.

**3.** The constitution, powers and procedure of the Parliament, as respectively established by the laws in force immediately prior to the commencement of this Act, shall from and after such commencement be and become subject to, and have operation and effect only in conformity with, the several provisions of this Act, but save as aforesaid shall continue in like force and effect as if this Act had not been passed.

4. (1.) No person or authority save—

Law-making  
power.

(a) Parliament; or

(b) A person or authority thereunto duly  
authorised by Parliament,

5 has power to make any law having any operation, force  
or effect within the State.

(2.) From and after the commencement of this Act  
and without in any way limiting the effect of any other  
provision thereof and in particular the operation and  
10 effect of section seventeen thereof, Parliament shall not  
have power to make any law—

15 (a) Having a purpose operation or effect of  
requiring that Parliament shall not repeal or  
amend, either such law itself or some other  
law, otherwise than by a law enacted in some  
specified or designated manner and form;

20 (b) Limiting or otherwise howsoever affecting  
the power of Parliament to enact, repeal or  
amend any law in the manner and form  
for the time being applicable to the making  
of laws generally by the Parliament; or

25 (c) Conferring authority to make any law the  
making of which by Parliament itself would  
be subject to the provisions of section  
seventeen of this Act unless the law conferring  
such authority is itself made in conformity  
with that section.

(3.) In this section the expression “ make any law ”  
includes repeal or amend any law.

30 (4.) The provisions of this section are subject to  
all laws of the Parliament of the United Kingdom or  
the Parliament of the Commonwealth now in force or  
hereafter made to the extent that such laws have valid  
operation within the State.

35 5. (1.) The Legislative Assembly shall be composed  
of members directly chosen by the electors of the State. <sup>Legislative  
Assembly.</sup>

(2.) The State shall at all times be and remain  
distributed into electoral districts and one member and  
no more of the Legislative Assembly shall be chosen for  
40 each electoral district.

Minimum  
number of  
electoral  
districts.

(3.) The number of electoral districts shall be not less than seventy-five.

(4.) A person not directly chosen for an electoral district by the electors thereof shall be incapable of being, or of sitting or voting as, a member of the Legislative Assembly. 5

(5.) For the purposes of this section, if only one person is duly nominated as a candidate at an election of a member of the Legislative Assembly for an electoral district he shall, without the taking of a poll, be deemed to be the member of the Legislative Assembly directly chosen by the electors of that electoral district at the election in question. 10

(6.) Subject to this section, Parliament may from time to time make laws providing for, or amending any existing statutory provision for, the distribution of the State into electoral districts. 15

(7.) In respect of any intended distribution of any part of the State into an electoral district the person for the time being discharging the functions of Principal Electoral Officer shall ascertain a quota of electors in the manner prescribed by this subsection and shall upon such ascertainment cause such quota to be published in the *Gazette*. 20

Such quota shall be the resultant quotient (disregarding any fraction) obtained by dividing the total number of electors on the thirty-first day of December next preceding the making of the distribution by the total number of electorates into which the whole State will be distributed when the distribution is made. 25 30

Such quota shall be the basis for the distribution in respect of which it is ascertained, subject to a margin of allowance by way of departure therefrom which shall not exceed one-third more or one-third less than the number of such quota. 35

This subsection applies to every distribution made after the commencement of this Act, whether for distributing the whole or part only of the State into electoral districts.

Membership  
of  
Legislative  
Assembly.

6. (1.) Any person who— 40

(a) Pursuant to section nine of this Act is entitled to be enrolled for an electoral district; and

- (b) Is not an undischarged bankrupt ; and  
(c) Is not a member of the Parliament of the Commonwealth ; and  
5 (d) Is not prevented from being elected as a member of the Legislative Assembly by any cause of disqualification not specified in this subsection which, having existed at the time of the commencement of this Act, exists also at the time of nomination ; and  
10 (e) Is nominated for any electoral district by not less than the prescribed number of electors,

shall be qualified, notwithstanding that he is not enrolled as an elector for that or any other electoral  
15 district, to be nominated as a candidate at any election and to be elected thereat a member of the Legislative Assembly for that electoral district.

For the purposes of this subsection, the prescribed number of electors shall be ten or, if a number of  
20 nominators less than ten is for the time being prescribed by law, the lesser number so prescribed.

(2.) From and after the commencement of this Act, Parliament shall not have power to make any law creating any ground of disqualification from sitting or  
25 voting as a member of the Legislative Assembly which is in substance additional to those existing under the law in force immediately prior to such commencement.

7. A member of the Legislative Assembly may be suspended from its service on any ground relating to  
30 his conduct as such member only if the suspension is for a period not exceeding fourteen days.

8. (1.) Any and every election of a member of the Legislative Assembly shall be held on some Saturday.  
Elections.

(2.) Enrolment by persons as electors for the  
35 several electoral districts shall be compulsory.

(3.) Voting at any election shall be by secret ballot.

(4.) An elector shall have only one vote at an election.

(5.) It shall be the duty of every elector to record his vote at each election.

Electors.

**9.** (1.) A person, male or female, who is not under the age of twenty-one years, and who is, or is deemed to be, a British subject under the provisions of the *Nationality and Citizenship Act 1948-1958* of the Commonwealth, and who has lived— 5

(a) Within the Commonwealth of Australia or its Territories for a continuous period of six months; and 10

(b) In an electoral district for a continuous period of three months,

immediately preceding the day on which he makes his claim to be enrolled as an elector, and who is not under any of the disqualifications prescribed by sections 15 eleven and 11A of "*The Elections Acts, 1915 to 1959*," shall be entitled to be enrolled as an elector for the electoral district mentioned in paragraph (b) of this subsection.

(2.) When and so often as the whole or any part of 20 the State is distributed into altered electoral districts every person to whom this section applies who, according to his enrolment as an elector, is living in any such altered electoral district shall, without making any claim for enrolment therefor, be entitled to be 25 enrolled as an elector for that altered electoral district, and shall be so enrolled accordingly.

Electoral laws.

**10.** (1.) From and after the commencement of this Act, Parliament shall not have power to make any law the provisions of which— 30

(a) Take away, dispense with, diminish or prejudicially affect—

(i.) The right of any person under and in accordance with the existing law to claim enrolment for an electoral district, to 35 become and remain so enrolled, or to vote as an elector;

(ii.) The right of any person aggrieved by any decision either refusing enrolment or removing his name from a roll to appeal 40 to a court of petty sessions against such decision;

5 (iii.) The operation of any provision of the existing law for ensuring or enabling the due and timely holding of elections and by-elections, and the fair and impartial conduct thereof;

(iv.) Liability of persons generally under the existing law to the imposition of penalties for failure to enrol or vote; or

10 (b) In so far as such provisions may purport to amend the existing law with respect to qualifications and disqualifications for enrolment as electors, operate to prevent any persons or class of persons who are or may become entitled to be enrolled under the existing law from remaining or becoming so  
15 entitled under the law as so amended.

(2.) Subject to this section, Parliament may from time to time make laws amending "*The Elections Acts, 1915 to 1959*," or any law made in substitution therefor.

20 (3.) In this section, the expression "the existing law" means the law as existing immediately after the commencement of this Act, and (subject, however, to all relevant statutory provisions) includes the common law.

25 **11.** (1.) Any and every referendum shall be held on <sup>Referendum.</sup> some Saturday.

(2.) It shall be the duty of every elector to record his vote at a referendum.

(3.) Voting at a referendum shall be by secret ballot.

30 (4.) An elector shall have only one vote at a referendum.

(5.) Subject to this section, Parliament may make laws from time to time making any provision whether as to procedure or otherwise which it is necessary or convenient to make with the object of ensuring that  
35 the opinion of the electors on any question or matter submitted to them by way of referendum will be truly and properly obtained.

Judges of  
the Supreme  
Court.

**12.** The Judges of the Supreme Court of Queensland—

- (a) Shall be appointed by the Governor in Council ;
- (b) Shall hold office during good behaviour, subject to compulsory retirement on 5 attaining the age of seventy years ;
- (c) Shall not be removed except by the Governor in Council, on an address from the Legislative Assembly praying for such removal on the ground of proved misbehaviour or incapacity ; 10 and
- (d) Shall receive such remuneration as Parliament may fix, but the remuneration shall not be diminished during their continuance in office.

Liberty of  
the subject.

**13.** From and after the commencement of this Act, 15 the power of Parliament shall not extend, nor shall any law whether made before or after such commencement have effect, so as to deprive a person who has been arrested or detained—

- (a) Of the right to be informed promptly of the 20 reason for his arrest or detention ;
- (b) Of the right to retain and instruct legal assistance without delay ; or
- (c) Of the remedy by way of *habeas corpus* for the determination of the validity of his detention 25 and for his release if the detention is not lawful.

Compulsory  
acquisition  
of property.

**14.** (1.) Subject to this section, and from and after the commencement of this Act, the power of Parliament shall not extend to authorise, by any law whether made 30 before or after such commencement, the compulsory acquisition of property otherwise than on just terms, and all laws in force at such commencement or thereafter made, purporting to confer on the Crown or any agency or instrumentality thereof, or, whether representing the 35 Crown or not, on any public or local authority or any corporation or person whatsoever the power directly or indirectly to acquire property compulsorily shall be construed and have effect subject to this section.

(2.) The compulsory acquisition in whole or part of the product of any primary industry shall not be deemed to be an acquisition of property within the meaning of this section.

5 In this subsection the expression "product of any primary industry" includes sugar and pearl-shell, and also includes any product of the pastoral, farming, dairying, agricultural, fruit-growing or fishing industries which, whether in its natural form or in an extracted,  
10 derived, adapted, prepared, or processed form, is used as a food or beverage whether for human consumption or otherwise.

(3.) In respect of the compulsory acquisition of land for any public purpose a law providing as a term of such  
15 acquisition that in the assessment of compensation—

(a) Regard shall be had to any enhancement in the value of any interest of the claimant for compensation in land adjoining the land acquired, arising from the execution or  
20 proposed execution of such public purpose ;  
or

(b) Regard shall not be had to any enhancement so arising in the value of the land being acquired,

25 shall not by reason of such provisions be deemed to be a law for the acquisition of property otherwise than on just terms.

(4.) If it appears to a Court in any legal proceedings that terms for the compulsory acquisition of property  
30 provided by any law are not just, such law shall not, nor shall any part of it, be deemed by reason thereof to be invalid but it shall be the duty of such Court to construe and apply such law as if it provided for just terms and to give judgment accordingly.

35 **15.** To the extent necessary to give full operation <sup>Other laws.</sup> and effect to the several enactments contained in this Act every other law, whether made before or after the commencement of this Act, shall be read subject thereto.

When  
Attorney-  
General may  
intervene.

**16.** The Attorney-General may intervene in any legal proceedings in which any question arises directly or indirectly involving the construction or application of any of the provisions of this Act.

Special  
provisions  
as to  
referendums.

**17. (1.)** No law—

5

(a) In any respect contrary to or inconsistent with this Act or any provision thereof, including this section, or contrary to or inconsistent with sections one, two or three of the "*Constitution Act of 1867*," (all hereinafter referred to as "the said provisions"); or

(b) Repealing or amending the said provisions or any of them; or

(c) Qualifying or otherwise altering, whether generally or in relation to any particular person, matter or thing, the full operation according to their tenor of the said provisions or any of them,

shall be made except in the manner and form provided by this section. 20

(2.) A Bill for a law for any purpose or having any operation or effect within subsection one of this section shall not be presented to the Governor for Her Majesty's assent, and may not validly or effectively be presented as a Bill for such assent, until the Bill has been approved by a majority of the electors voting at a referendum held in accordance with this Act. 25

(3.) The Legislative Assembly shall appoint a day, not being earlier than two months after the passage of the Bill through the Legislative Assembly, for taking the poll for the referendum. 30

(4.) If a majority of the electors voting at the referendum approve the Bill, it shall be presented to the Governor for Her Majesty's assent. 35

(5.) In any legal proceedings for declaratory or other relief founded upon alleged non-compliance, actual or threatened, with the provisions of this section, any elector shall be deemed to have a sufficient interest as plaintiff to maintain such proceedings. 40

18. (1.) Every law, whether made before or after the commencement of this Act, shall be read and construed so as to be consistent with the powers of Parliament as defined in this Act, to the intent that where any law or any provision of any law, but for this subsection, would be construed as being invalid by reason of inconsistency with this Act, it shall nevertheless be a valid law or, as the case may be, provision to the extent to which it is not so inconsistent.
- 5
- 10 (2.) A law which is no more than a consolidation of any existing legislative provisions, not altering the operation and effect thereof, shall not be deemed to be a law for a purpose or having an operation or effect within subsection one of section seventeen of this Act.
- 15 (3.) Nothing in this Act shall affect “ *The Constitution Act Amendment Act of 1934* ” or any provision thereof.