



Electoral (Improving Representation) and Another Act Amendment Bill 2015

Report No. 16, 55th Parliament
Legal Affairs and Community Safety Committee
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Legal Affairs and Community Safety Committee

Chair	Mr Mark Furner MP, Member for Ferny Grove
Deputy Chair	Mrs Tarnya Smith MP, Member for Mount Ommaney
Members	Mr Jon Krause MP, Member for Beaudesert Mr Jim Madden MP, Member for Ipswich West Mr Tony Perrett MP, Member for Gympie Mr Mark Ryan MP, Member for Morayfield
Staff	Ms Bernice Watson, Research Director Mrs Kelli Longworth, Principal Research Officer Mr Gregory Thomson, Principal Research Officer Ms Lorraine Bowden, Executive Assistant
Technical Scrutiny Secretariat	Ms Renée Easten, Research Director Mr Michael Gorringe, Principal Research Officer Ms Kellie Moule, Principal Research Officer (part-time) Ms Tamara Vitale, Executive Assistant
Contact details	Legal Affairs and Community Safety Committee Parliament House George Street Brisbane Qld 4000
Telephone	+61 7 3553 6641
Fax	+61 7 3553 6699
Email	lacsc@parliament.qld.gov.au
Web	www.parliament.qld.gov.au/lacsc

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Abbreviations

Bill	Electoral (Improving Representation) and Another Act Amendment Bill 2015
EARC	Electoral Administration Review Commission
ECQ	Electoral Commission of Queensland
Electoral Act	Electoral Act 1992
FLP	fundamental legislative principle
LSA	Legislative Standards Act 1992
previous Bill	Electoral (Redistribution Commission) and Another Act Amendment Bill 2015
QRC	Queensland Redistribution Commission

Chair's foreword

This Report details the examination by the Legal Affairs and Community Safety Committee of the Electoral (Improving Representation) and Another Act Amendment Bill 2015, a private member's bill introduced by Mr Robbie Katter MP, Member for Mount Isa.

The committee's task was to consider the policy outcomes to be achieved by the legislation, as well as the application of fundamental legislative principles – that is, to consider whether the Bill had sufficient regard to the rights and liberties of individuals, and to the institution of Parliament in accordance with section 4 of the *Legislative Standards Act 1991*.

The committee was unable to reach a majority decision to recommend that the Bill be passed.

This report presents the views of submitters to the inquiry, and draws attention to aspects of the committee's report no. 6, 55th Parliament, Electoral (Redistribution Commission) and Another Act Amendment Bill 2015.

On behalf of the committee, I thank those who lodged written submissions on this Bill.

I commend this report to the House.



Mark Furner MP

Chair

1. Introduction

1.1 Role of the committee

The Legal Affairs and Community Safety Committee (the committee) is a portfolio committee of the Legislative Assembly which commenced on 27 March 2015 under the *Parliament of Queensland Act 2001* and the Standing Rules and Orders of the Legislative Assembly.¹

The committee's primary areas of responsibility include:

- Justice and Attorney-General
- Police Service
- Fire and Emergency Services
- Training and Skills.

Section 93(1) of the *Parliament of Queensland Act 2001* provides that a portfolio committee is responsible for examining each bill and item of subordinate legislation in its portfolio areas to consider:

- the policy to be given effect by the legislation
- the application of fundamental legislative principles
- for subordinate legislation – its lawfulness.

1.2 Inquiry process

On 12 November 2015, Mr Robbie Katter MP, Member for Mount Isa, introduced the Electoral (Improving Representation) and Another Act Amendment Bill (the Bill) into the Legislative Assembly. In accordance with Standing Order 131 of the Standing Rules and Orders of the Legislative Assembly, the Bill was then referred to the committee for detailed consideration. By motion of the Legislative Assembly the committee was required to report to the Parliament by 30 November 2015.

The committee invited written submissions to be received by 4.00 pm on 23 November 2015.

The committee received five submissions (see Appendix A for a list of submitters).²

1.3 Policy objectives of the Electoral (Improving Representation) and Another Act Amendment Bill 2015

Objectives of the Bill

The Explanatory Notes advise that the Bill seeks to achieve the following:

- Change the number of electoral districts for Queensland from 89 to 93 in order to improve representation
- Improve the establishment of an Electoral Commission of Queensland (ECQ) by requiring bipartisan support of a parliamentary committee
- Improve redistribution of electoral districts by appointing a non-judicial appointee to the Commission who has qualifications and experience in applied demography, in place of the current requirement for a chief executive of a state government department.

¹ *Parliament of Queensland Act 2001*, section 88 and Standing Order 194.

² View Submissions:

<http://www.parliament.qld.gov.au/work-of-committees/committees/LACSC/inquiries/current-inquiries>

Reasons for the Bill

In introducing the Bill, the Member for Mount Isa advised that the Bill would ensure that Queenslanders will have more equitable and improved access to representation. He indicated that the Bill would address issues of population density and distance which are seen to limit the effectiveness of representation in the Queensland Parliament for people in large and lightly populated electoral districts in Queensland.

The Explanatory Notes to the Bill advise that its proposed requirement that there be bipartisan support of a parliamentary committee for establishment of the Electoral Commission '*will effectively enhance the prevention of bias, instilling greater public confidence in the process, and thereby improving democracy in Queensland*'.³

1.4 Background

The objectives of the Bill are similar to those of the Electoral (Redistribution Commission) and Another Act Amendment Bill 2015 (the previous Bill), a private member's bill debated and defeated in the Legislative Assembly on 28 October 2015.

The committee refers readers to its Report no. 6, 55th Parliament, *Electoral (Redistribution Commission) and Another Act Amendment Bill 2015*, for a lengthy discussion of the background to electoral distribution issues in Queensland.

This Bill is more limited in its scope than the previous Bill:

- It seeks to increase the number of electoral districts to a specific number (93, from the current 89) by an Act of Parliament rather than delegating that decision to the Commission as the previous Bill, and the Electoral Administration Review Commission (EARC) in 1990, had proposed (though 'to an independent electoral authority' rather than the Electoral Commission specifically).⁴
- It would see the Commission appointed with bipartisan support of a Parliamentary Committee, instead of the current situation whereby the government must consult with the leader of each political party represented in the Parliament about a proposed appointment, and with the parliamentary committee about the selection process and the proposed appointment. The previous Bill had proposed requiring approval by (not just consultation with) the leaders of all parties represented in the Parliament for such appointments.
- The appointment of the Electoral Commissioner would retain the current requirement of consultation with leaders of all parties represented in the Parliament about the appointment, consultation with the committee about the selection process and the appointment, as well as requiring bipartisan support of the committee.
- Like the previous Bill, it seeks to appoint a non-judicial member of the Electoral Commission with qualifications in applied demography, but here, the appointment would be instead of the position designated for a department CEO, rather than in addition to that position, as was proposed in the previous Bill. The total number of members of the commission would remain at three, rather than increase to five as proposed in the previous Bill.
- The Bill does not seek to make any changes to the additional large district number system, which currently applies 'weightings' to electoral districts with large geographic areas and

³ Explanatory Notes, p 2.

⁴ Electoral and Administrative Review Commission, November 1990. Report on Queensland Legislative Assembly Electoral System, Volume 1 – the Report. Rec 7.64.

relatively small populations. The previous Bill had proposed allowing the Commission discretion to increase the weighting of 2 per cent up to a maximum of 4 per cent.

1.5 Consultation on the Bill

The explanatory notes advise that there has been no consultation on the Bill. Nor was there consultation undertaken on the previous Bill. The committee's Inquiry process should not be taken as a substitute for consultation undertaken as part of a government or other policy development process.

1.6 Outcome of committee considerations

Standing Order 132(1)(a) requires that the committee after examining the Bill determine whether to recommend that the Bill be passed. In this instance the committee was not able to reach a majority decision on a motion to recommend that the Bill be passed and, therefore, in accordance with section 91C (7) of the *Parliament of Queensland Act 2001*, the question on the motion failed.

2. Examination of the Electoral (Improving Representation) and Another Act Amendment Bill 2015

In this section the specific proposals of the Bill are considered in the context of evidence received during the course of this inquiry, and where relevant the committee's Inquiry on the previous Bill. It should be noted at the outset that there has been a very limited timeframe to conduct this inquiry, and it is not dissimilar in substance to the previous Bill: both factors which may have impacted on the significantly lower number of submissions received (five) this time, compared with the previous Inquiry (13).

2.1 Increasing the number of electoral districts from 89 to 93 (clauses 4, 7, 10, 11)

The Bill would legislate to increase the number of electoral districts to 93, from the current 89. In introducing the Bill, Mr Katter MP indicated that the Bill would address issues of population density and distance which are seen to limit the effectiveness of representation in the Queensland Parliament for people in large and lightly populated electoral districts in Queensland. Mr Katter stated:

Unless this bill is passed, the next redistribution due in 2016 will most likely result in more rural and regional seats being lost to South-East Queensland. Whilst it is acknowledged that there is a legitimate need to provide for representation in South-East Queensland due to the increasing population, we must also maintain and improve representation in rural and regional electoral districts. Rural and regional electoral districts really are where the engine room of Queensland's economy is situated. On this point, the bill is also about ensuring the Queensland parliament does not become South-East Queensland centric.⁵

The Crime and Corruption Commission (CCC) submission to this Inquiry focussed on the elements of the Bill which are 'relevant to the purpose of reducing the incidence of corruption in the public sector'.⁶

In particular, the 1989 Fitzgerald Report is used as a benchmark for the CCC comments. It points out that 'the [Fitzgerald] Inquiry identified the need for fairness in the electoral process to achieve legitimate political authority for government' and that increasing the number of Queensland electoral districts is consistent with that principle of fairness.

Further, the CCC submits that:

It is respectfully submitted that increased electoral representation of the kind advocated by clause 7 may strengthen the principle of equal representation by increasing potential for constituents to have direct personal access to their elected representatives.⁷

It also notes the potential for the increased access to elected representatives to afford a marginal strengthening of protection against corruption.⁸

Submitter Mr Tony Wnuczynski, in reference to the difficulties expressed by Mr Katter and other members in respect of providing representation as expressed during the committee's inquiry into, and the Parliament's debate on, the previous Bill considers that:

All members of parliament are voluntary members who nominated themselves to represent their given electorate knowing fully the size and workload and travel required. Please do not increase the number of members in the current QLD parliament.⁹

⁵ Hansard transcript, 12 November 2015, p 2848.

⁶ Submission no. 5, p 1.

⁷ Submission no. 5, p 3.

⁸ Submission no. 5, p 3.

⁹ Submission no. 3, p 1.

Mr Wnuczynski argues for the return of an upper House in Queensland as the most appropriate means of improving representation and transparency.

During the previous inquiry, while observing that there was no evidence of any groundswell of support for an increase in the number of electoral districts, the committee did note advice from the Clerk of the Parliament, Mr Neil Laurie, that there should be an increase in the number of electoral districts. Mr Laurie then advised:

I ask all members to resist the automatic temptation to reject such legislation on the basis that 'the public does not want more members of parliament'...

It is inevitable that if the number of members is not increased there will be pressure for more resources to assist members who will increasingly struggle to service their electorates and perform their other duties.

Extra resources for existing members are likely to cost much more than extra members.¹⁰

Professor Graeme Orr in his submission to this Inquiry, reiterated his view that:

The fairest and surest method of ensuring Parliament grows as the population grows, and to minimise partisanship over the question, is to anchor a quota in legislation. For example, to set a quota in the form of an average number of electors per seat, which when reached (or if reviewed say every 6 years), would trigger an increase and redistribution.¹¹

Professor Orr notes that the Bill does not explain how or why the Bill proposes to legislate specifically for an increase of four seats. He also observes that he can only speculate as to whether doing so might have any impact on the issues identified by Mr Katter in introducing the Bill, and by the proponents of the previous Bill, in relation to limitations on representation in large remote districts. If it did have an impact, he observes, this may be on a 'short-term, stop-gap' basis.¹²

Professor Orr's submission goes on to outline a number of measures which might offer improved representation in the large, remote electorates without diluting the 'one vote, one value' principle, such as 'pairs' of members. This option was discussed further by the committee in its report on the previous Bill.¹³

This option, or a variation thereof, is supported by the Greens:

...the proposed changes will not address the fundamental issue of lack of representation or proportionality in the Queensland parliament. Moving to a system of Mixed Member Proportional (MMP), or, less ideally, restoring the Legislative Council, would go a lot further to meeting the goals of making parliament more responsive to the public while at the same time allowing for local representatives supported with list allocated MPs who can support their colleagues in regional areas.¹⁴

Mrs Joyce Newton points to electoral responses to population increases in other Australian jurisdictions, advising:

It has been almost 30 years since the last increase in the Queensland Legislative Assembly, with the seats rising from 82 to 89, serving a population of 2.5 million. Today there are over 4.8 million Queenslanders.

NSW by comparison has 93 electoral districts in the lower house and an upper house of 42 members, a total of 135 elected members. Victoria has 88 electoral districts but an upper

¹⁰ Previous Inquiry, Submission 13, p 6.

¹¹ Submission no. 1, p 1.

¹² Submission no. 1, p 1.

¹³ Legal Affairs and Community Safety Committee, Report no. 6, 55th Parliament, pp 33-34.

¹⁴ Submission no. 4, p 3.

house of 40 members, a total of 128 elected members. Neither New South Wales nor Victoria has the huge land mass and huge distances that we have here in Queensland.

The proportionate increase in major urban areas have led to an expansion in many rural seats which can least afford it.¹⁵

The Queensland Greens have provided to the committee some modelling which shows that an increase in electoral districts by four will result in *a relatively tiny move in the quota percentage for Mt Isa, the seat that is most in question.*¹⁶ Based on that same modelling, the Queensland Greens argue that:

it's at least questionable if the bill will meet its goal of improving representation in large districts. It is quite likely that Mt Isa and to a lesser extent Gregory could continue to grow in land area significantly as coastal areas and greater south east Queensland far outstrip the growth rate of these seats. If we are to reach the goals intended by this bill without always facing the political contentions of adding extra parliamentarians, the introduction of a formula to be applied at the same time as the redistribution would be appropriate.¹⁷

The Queensland Greens submission provides an example of a formula, and of how it would work to change the size of the Parliament over time.

The advantage of using a formula such as this is that it removes political influence from the frame and allows parliament to expand at a consistent rate without politicians needing to be concerned about the perceptions to do with increasing the number of electorates. The major drawback of such a method is that the expansion of parliament would be independent of the ability of parties and communities to find suitable candidates for all of the positions on offer.

We are not directly advocating for a specific formula, but that the committee consider making a recommendation to include such a formula in the legislation to avoid situations like those described in the explanatory notes where inaction has led to electorates that would be difficult for a single politician to represent effectively the electors in the district.

Committee comment

Population growth may warrant increasing the number of seats in the Queensland Parliament. We note that the Bill proposes no change with regard to the protection of the one vote one value principle offered by the large district number formula. It is unclear how legislating for an increase in electoral districts by four will achieve any improved representation for the existing large, remote electorates in the short term; or, without embedding any quota in legislation, into the future.

2.2 Bipartisan support for appointments to Electoral Commission (clauses 8 – 9)

The Bill proposes that bipartisan support of a parliamentary committee would be required for appointments of the three members of the Electoral Commission. This would, according to Mr Katter, effectively enhance the prevention of bias, instilling greater public confidence in the process, and thereby improving democracy in Queensland.¹⁸

At present, the government must consult with the leader of each political party represented in the Parliament about a proposed appointment, and with the parliamentary committee about the selection process and the proposed appointment. There is no requirement for bipartisan support.

¹⁵ Submission no. 2, p 1.

¹⁶ Submission no. 4, p 4.

¹⁷ Submission no. 4, pp 4-5.

¹⁸ Explanatory Notes, p 2.

However the Bill proposes that appointment specifically to the Electoral Commissioner position, in addition to bipartisan support of the parliamentary committee, would also continue to require consultation with the leader of each political party represented in the Parliament, and with the parliamentary committee about the selection process.

Bipartisan support would mean either:

- a) *Support of the members of the parliamentary committee unanimously; or*
- b) *Support of a majority of the members, other than a majority consisting wholly of members of the political party of parties in government in the Legislative Assembly.*¹⁹

The CCC notes that:

*The [Fitzgerald] Inquiry also identified the need for existing electoral boundaries to be examined by open, independent inquiry to promote social cohesion, public accountability and respect for authority. The Inquiry stated that such an examination should appropriately be conducted by a person or group of people of undoubted integrity whose judgment will be acceptable to all political parties and the general community.*²⁰

It considers that the Bill's proposals

*...may be seen to provide strengthening of protections against corruption by continuing to require that ECQ/QRC membership be comprised by persons of undoubted integrity but with the additional field of relevant expertise. In this regard it is noted that the QRC must consider demographic trends with a view to minimising the need for another electoral redistribution on grounds other than regular mandatory review periods. The proposal may also be seen to strengthen protections against corruption by removing grounds for any perception that the nonjudicial appointee might be beholden to the government of the day.*²¹

Professor Orr believes that:

*The principle of bipartisanship in key appointments to fundamental integrity bodies like the Electoral Commission is laudable...if nothing else it ensures the appearance of integrity, inhibits oppositions from later complaining about an appointment they sanctioned, and may introduce some multi-partisan deliberation into appointments that historically have been under executive fiat.*²²

Similarly, Mrs Joyce Newton states that:

*Moving the Electoral Commission of Queensland to an independent body that is appointed with the approval of all political parties provides the transparency and accountability that the Fitzgerald Inquiry report and subsequent EARC process – demanded.*²³

The Queensland Greens reiterate the concerns they made to the committee in respect of the previous Bill, which is that it leaves 'nonparliamentary parties which also have a stake in the operations of the electoral system without any effective means of having their concerns addressed'.²⁴

¹⁹ Bill, Clause 6.

²⁰ Submission no. 5, p 2.

²¹ Submission no. 5, p 2.

²² Submission no. 1, p 3.

²³ Submission no. 2, p 1.

²⁴ Submission no. 4, p 7.

In effect the Greens consider the amendment, compared with the current situation, is 'inconsequential'.²⁵

The CCC identifies a potential issue in respect of the upcoming 2016 electoral distribution, in the event that the Bill passes. It relates to timeframes for appointment of an Electoral Commission which is constituted in the manner proposed by the Bill, and the potential for a delay in appointments according to the Act to cast doubt on the validity of the Commission undertaking the 2016 redistribution:

*The proposals, if enacted, may create uncertainty about the validity of the existing appointments of the members of the ECQ/QRC. Currently Commissioner appointments do not require the bipartisan support of the Parliamentary Committee. Commissioners hold office, subject to the Electoral Act 1992, part 2 for the term specified in their instrument of appointment". Whilst the current Commissioner appointments may continue by virtue of s 20B of the Acts Interpretation Act 1954, the CCC considers the preferable course would be to enact appropriate transitional arrangements continuing the existing membership of the ECQ/QRC until such time that the ECQ/QRC is comprised by members appointed with the bipartisan support of the Parliamentary committee. This would prevent legal challenges and potential delay to the 2016 electoral distribution on grounds that it was not being conducted by a properly constituted QRC.*²⁶

Committee comment

The committee invites Mr Katter to explain what arrangements would be in place to ensure the validity of the 2016 electoral redistribution undertaken by the existing Commission, who will not have been appointed with formalised bipartisan support.

2.3 Appointment of a member of the Commission with qualifications and experience in applied demography (clause 8)

Like the previous Bill, the Bill seeks to appoint a non-judicial member of the Electoral Commission with qualifications in applied demography. It would not be an additional position on the Commission: it would be instead of the position currently designated in the Electoral Act for a CEO of a government department.²⁷ The total number of members of the commission would remain at three, rather than increase to five as had been proposed in the previous Bill.

The Bill would specifically require that the appointment:

*...be a person with qualifications and experience in applied demography relevant to contemporary electoral redistributions.*²⁸

Mrs Joyce Newton suggests that the proposal would enhance the resources available to the Commission in undertaking its redistribution functions.

Professor Orr, noting that demographics capacity was traditionally implied in such appointments, cautions that 'parliament should be careful about the language used ... lest it unduly limits the pool of people who can be nominated to that role.' By way of example, he suggests that (well-known psephologist) Mr Antony Green would be unlikely to qualify under the proposed wording, 'yet few people would have his breadth of knowledge of statistics, computing and electoral redistributions!'²⁹

²⁵ Submission no. 4, p 11.

²⁶ Submission no. 5, p 3.

²⁷ Electoral Act 1992, s 6(6).

²⁸ Bill, clause 8.

²⁹ Submission no. 1, p 3.

The Queensland Greens, too, suggest that the skills are implied anyway:

*On the basis of our experiences with the ECQ in the preparation of materials and statistical data in the past, we are satisfied that they are meeting the expectations that we would hold for any electoral commission. We are just not sure what if anything the changes of appointment are meant to achieve.*³⁰

The Queensland Greens see that this amendment, like the requirement for bipartisan support for appointments, is essentially 'inconsequential'.³¹

Committee comment

Under the current Bill, in 2016 the Commission would be required to define four additional electoral districts in the context of the limitations set by the Parliament in the Electoral Act (the maximum number of seats, the requirement for an average number of electors into each of those seats, and the ALDN formula). Unless the Electoral Act were amended again after the 2016 redistribution, the functions of the commission would remain as they are at present.

³⁰ Submission no. 4, p 8.

³¹ Submission no. 4, p 11.

3. Compliance with the Legislative Standards Act 1992

3.1 Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* (LSA) states that ‘fundamental legislative principles’ (FLPs) are the ‘principles relating to legislation that underlie a parliamentary democracy based on the rule of law’. The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals, and
- the institution of parliament.

The committee has examined the Bill and identified no issues of fundamental legislative principle.

3.2 Explanatory notes

Part 4 of the LSA relates to explanatory notes. It requires that an explanatory note be circulated when a Bill is introduced into the Legislative Assembly, and sets out the information an explanatory note should contain.

Explanatory notes were tabled with the introduction of the Bill. The notes contain the information required by Part 4 and a sufficient level of background information and commentary to facilitate understanding of the Bill’s aims and origins.

Appendix A – List of Submissions

- 001 Professor Graeme Orr
- 002 Mrs Joyce Newton
- 003 Mr Tony Wnuczynski
- 004 Queensland Greens
- 005 Crime and Corruption Commission