

Constitution (Fixed-term Parliament) Amendment Bill 2009

Explanatory Notes

Objectives of the Bill

The purpose of the Bill is to provide, except in exceptional cases, for a fixed term for the Parliament – that is, for the Legislative Assembly. In normal circumstances general elections will be held every third year (in 2012 and every subsequent third year), on the second Saturday in March, if the Bill is passed. The exceptions allowed for are

- (i) that a general election can be postponed for up to 35 days, with the consent of the leader of the Opposition, if, for example, the normal date would clash with a Commonwealth election or polling would be affected by a widespread natural disaster, and
- (ii) that the Assembly could be dissolved short of the normal time if the government had lost the confidence of the Assembly and no other government commanding that confidence could be formed.

Reasons for the Bill

The ability of the Premier to advise dissolution of the Parliament at a time of her or his own choosing is derived from English practice, which is no longer appropriate in a modern democracy. Originally the monarch had unfettered power to summon and dissolve Parliaments – this was sometimes used to suppress attempts by the Parliament to control the monarch's abuses of power. When real governmental power passed from the monarch to the elected representatives, the power to advise a dissolution passed to the leader of those representatives – the Prime Minister, or, here, the Premier. It is perhaps subject to some little control under the monarch's 'reserve' powers, but it remains a largely arbitrary power.

The power to dissolve parliament early has been described by an English writer as the least creditable aspect of the constitution. It gives the executive government excessive power with respect to the legislature, and the governing party excessive power with respect to the opposition. It creates a climate of instability, where the media start to speculate about an early election up to a year before the end of the parliamentary term (and yet criticise the Premier when she does call an early election) and inhibits the power of business, government departments and parliamentary committees to make long-term plans.

Over the last decade, the Parliaments of New South Wales, Victoria and South Australia have all amended their *Constitution Acts* to provide for fixed parliamentary terms – with provisions for a small variation of the date in cases of necessity, and for early dissolution of the Parliament if the government loses the confidence of the lower house and no alternative government can be formed. In the last year, the Chief

Minister of the Northern Territory and the Premiers of Western Australia and Tasmania have announced their intention to introduce Bills for the same purpose. Fixed terms is an idea whose time appears to have come.

As to the choice of the date for elections, March seems the most appropriate. The current House has just been elected on the third Saturday in March, so fixing the future date for March will ensure that the proposed new system starts consistently, with this House having a 3-year term. An election in March means that the incoming government will have time to prepare a budget for presentation in May, in advance of the start of the new financial year in July, South Australia and New South Wales have their fixed-date elections on the third and fourth Saturdays of March respectively, but this means that they have to provide for variations in the date to avoid clashes with Easter. This cannot happen with the second Saturday in March.

Achievement of the Objectives

The Bill proposes to amend the *Constitution of Queensland 2001* to provide that in normal circumstances a parliament will be dissolved 26 days before the second Saturday in March in the third year after the previous election, and the general election will be held on the second Saturday in March. Consequential amendments will be made to the *Constitution Act Amendment Act 1890* and to the *Electoral Act 1992*. Details are shown below in the Notes on Provisions.

Constitutional Force of the proposed new Provisions

The Assembly is currently subject to a maximum term of 3 years, calculated from the date for the return of the writs for the election of the members of that Assembly. The maximum term is provided for by the *Constitution Act Amendment Act 1890*, section 2, which is “entrenched” by *Constitution Act Amendment Act 1934*, section 4 - ie, it cannot be amended unless the proposed amendment is approved by a majority of the electors voting at a referendum. This Bill has been drafted so that the 3 year duration will not be exceeded under any circumstances, and therefore does not need to be approved by referendum.

The Bill contains no proposal to “entrench” the proposed new sections of the *Constitution of Queensland 2001*, especially section 16A which will limit the government’s power to advise an early dissolution. Therefore the proposed new section 16A will not have “constitutional” force in the sense that it will override later inconsistent Acts of Parliament. However, it *will* be “constitutional” in the weaker sense that it is binding on the Governor, Premier, and all members of the executive government until repealed. If a government in the future wishes to have the Assembly dissolved early (supposing the conditions of proposed s 16B have not been met) it will not simply be able to tender that advice to the Governor; it will have to propose legislation for the repeal of s 16A and succeed in having it passed by the Assembly, then present the legislation to the Governor for signification of assent, and *then* tender advice for an early dissolution.

Estimated Cost for Government Implementation

The measure will cost nothing to implement. Over time it will most likely save money; under the current law the State has had 4 elections in a little less than 11 years (since June 1998), whereas under fixed terms that would be spread over 12 years.

Consistency with Fundamental Legislative Principles

The Bill will have no adverse effect on any of the FLPs. It may be seen to enhance the authority of the institution of Parliament over the executive government.

Notes on Provisions

Clause 1 provides for the short title of the Bill.

Clause 2 introduces Part 2, which amends the *Constitution of Queensland 2001*.

Clause 3 makes minor amendments to section 15 ((Summoning, proroguing and dissolving the Legislative Assembly) to avoid inconsistency with the proposed new sections 16A and 16B

Clause 4 inserts proposed new sections 16A and 16B.

In considering the proposed new sections, it should be noted that existing section 16, headed “Duration of the Legislative Assembly”, refers to the provision made by *Constitution Act Amendment Act 1890*, section 2, that the “duration”, ie, the maximum term before expiration, of the Assembly is 3 years. Since this section is referendum entrenched by *Constitution Act Amendment Act 1934*, section 4, the proposed new sections have been drafted so as to not be inconsistent with that maximum duration.

Proposed section 16A provides that general elections will be held on the second Saturday in March of every third year. It provides that the House will normally be dissolved, and the writs issued, 26 days before the election day; this is the same as the minimum period currently provided in the *Electoral Act 1992*, s 80 (but note the proposed change to the method of counting days, discussed below). However, it also makes provision for both the dissolution date and the election date to be postponed in exceptional circumstances – see sub-sections (2) and (6). Examples of such circumstances are when the normal election date would clash with a Commonwealth election (the *Commonwealth Electoral Act 1903*, s 394, provides that no State election may be held on a Commonwealth polling day), or when a natural disaster has affected such a wide area of the State that to conduct the election on the normal day would be impracticable. The latter circumstance is provided for out of caution, as it is unlikely to occur; postponement of the polling on a booth-by-booth basis when disaster has affected a specific area of the State is already provided for by *Electoral Act 1992*, s 95, which is expressly preserved by this Bill. The maximum extent of the postponement is 35 days. This period has been provided rather than the 21-day period allowed in South Australia (*Constitution Act 1934*, s 28(3)) to avoid any possible problem of a conflict with the Easter holiday period. Following the Victorian

precedent (*Constitution Act 1975*, s 38A), postponements can only be ordered with the agreement of the Leader of the Opposition.

Though it may seem unnecessary under a fixed-term regime, proposed section 16A preserves the distinction between the dissolution of the House and its expiry by effluxion of time. This is because the *Constitution Act Amendment Act 1890*, s 2 (which, as noted above, cannot be amended without a referendum) provides that the “duration” of a Legislative Assembly (meaning the maximum duration, at the end of which it necessarily expires) is to be 3 years from the day of the return of the writs for its election. This could become significant under the proposed amendments in 2 circumstances – when the dissolution has been postponed under proposed section 16A(6), or when the term of the assembly has commenced early in the year, 3 years ago, because of the workings of proposed section 16B. Subsections (5) and (7) are included in proposed section 16A to ensure that there is no conflict between its general provisions and the fact that the Assembly must expire on a certain date. However, in normal circumstances the House will be dissolved a few weeks before it is due to expire; this Assembly, for example, will be due to be dissolved on Monday 13th February 2012 with an election to be held on Saturday 10th March 2012, though it is not due to expire until 20th April 2012. In the absence of early dissolutions under proposed section 16B, this pattern will continue.

Proposed section 16B provides an exception to the fixity of the term, in the rare event that a government should lose the confidence of the House and no new government commanding that confidence can be formed. The section has a similar effect to *Constitution Act 1902 (NSW)* s 24B(2) and *Constitution Act 1975 (Vic)* s 8A(1), except that both of those sections require the proof that a new government cannot be formed to be in the shape of motions in the Legislative Assembly. This proposed section avoids the need for the Assembly to be kept sitting (a matter of some importance to members in a large State such as Queensland), by leaving the question whether a new government can be formed to the Governor’s opinion – which may be informed by resolutions or speeches in the House *or* statements outside the House.