

1999

THE LEGISLATIVE ASSEMBLY

OF

QUEENSLAND

COMMUNITY-BASED REFERENDUM BILL 1999

Explanatory Memorandum

Presented to the Legislative Assembly of Queensland to accompany the tabling of the Community-Based Referendum Bill 1999.

Important Note:

These Explanatory Notes substantially reflect the Explanatory Memorandum for the *Community Referendum Bill 1998* of the Australian Capital Territory, with the following changes:

- to reflect the status of Queensland as a sovereign State as confirmed by the Australia Act 1986;
- to recognise the size and diversity of Queensland - evidenced by the requirement of a majority of electoral divisions of the State (compared with the compactness and commonality of interests of the ACT).
- the addition of further checks and balances to ensure the integrity of the process, from initial presentation to the Electoral Commission, and to ensure that the provisions of the Rule of Law and of the Legislative Standards Act will not be contravened.

OUTLINE

The purpose of the Bill is to provide a mechanism for the electors of Queensland to initiate changes to laws of Queensland.

This bill makes the rights of the electors of Queensland exercisable without unreasonable restrictions. The passage of the bill will be a significant step to remedying the democratic deficit we suffer compared with many other places in the world where these rights are exercised, with the strong support of the people of those places. These rights have not in any of those places been removed by the people, who understand their value.

The bill contains numerous safeguards. No proposal that contravenes *the Rule of Law, the Rules of Natural Justice*, the prohibitions and requirements of the *Legislative Standards Act*, or of further specific provisions of this Bill is to be accepted by the Electoral Commission.

All Bills are to be properly prepared and certified by the Parliamentary Counsel to be tabled in the Legislative Assembly. On tabling the Scrutiny of Legislation Committee will examine it in the same way as the Committee examines any other bill, drawing attention to any provisions which might be improved, as a preliminary to its Second Reading in the Assembly. This will provide an opportunity for any necessary re-drafting and re-certification by the Parliamentary Counsel and tabling of an amended Bill which replaces the previous tabled Bill. As a consequence of the Second Reading in the Assembly, further amendments may be indicated, and these may also be addressed if necessary by amendment and re-tabling of the Bill if necessary, to ensure the best possible Bill.

If experience in Switzerland is a guide, 60% of all legislative proposals are taken on and enacted by the Swiss Parliament to address the cause of the community concern, and in such case, no referendum is required, and the legislative proposal being satisfied, is required to be withdrawn.

This Bill will achieve the same beneficial results for Queensland as T J Ryan's *Popular Initiative and Referendum Bill of 1917-1919* as passed would have secured for the people of Queensland. This Bill was prepared by the Attorney-General who then provided the functions now provided by the Parliamentary Counsel. T J Ryan is the only Premier of Queensland to have a public statute erected to him for his integrity and his service to the people of Queensland. To not pass this Bill would be to deny that heritage of democracy, and to deny the exercise of fundamental and inalienable human, civil and political rights to the people of Queensland.

The steps set out in the Bill to enable electors to initiate and vote on legislation are as follows:

Step 1 — establishment notice

A sponsoring committee of 12 electors is established for the purpose of initiating a request to make or change a law. The sponsoring committee registers its establishment notice with the Electoral Commission, including the names and addresses of the members of the committee, the

name of the committee's contact officer and a description, in no more than 100 words, of what the legislative proposal is to achieve.

Step 2 — registration of proposal

Once the sponsoring committee has submitted the names, addresses and signatures of 400 or more electors who support the proposal, the commission registers the legislative proposal and publishes notice in the Gazette.

Step 3— support by 2% or 5 % of electors

After registration, the sponsoring committee has 12 months in which to gather the support of electors to have the legislative proposal submitted to the people for decision at a referendum. The contact officer may submit only those signatories whom the contact officer believes by reference to the electoral roll are electors, and must certify on a monthly basis only such numbers as the contact officer can so certify. If the commission is satisfied (after checking a random sample of such certified signatures of electors) that more than 2% of the number of electors eligible to vote at the last State election, and at least 2% of the number of electors on the electoral roll in each of a majority of electoral districts have indicated support of the proposal being put to referendum, the commission must publish a notice in the Gazette advising that the registered proposal may be put to a referendum. If the Commission is satisfied that a proposal so supported is supported by at least 5% of the number of electors eligible to vote at the previous Legislative Assembly election, the commission must publish a further notice in the Gazette advising that the registered legislative proposal has become a qualified legislative proposal (which may be put to a referendum at an earlier time — see step 6).

Step 4 — development of proposed law

The sponsoring committee may then begin the task of presenting instructions for legislation to give effect to the registered proposal. The Parliamentary Counsel must make available the services of a drafting officer to enable the committee to prepare the proposed law. The drafting of the proposed law is to take into account the requirements of the Legislative Standards Act and the principles of the Rule of Law, and of the Rules of Natural Justice which must not be contravened.

Once the proposed law is drafted, the sponsoring committee may apply to the Parliamentary Counsel for certification that the proposed law is consistent with the registered legislative proposal sponsored by the committee, complies with the requirements of the Legislative Standards Act, does not contravene the Rule of Law or the Rules of Natural Justice, and is suitable for presentation to the Legislative Assembly.

Step 5 — presentation of the proposed law to the Legislative Assembly

The sponsoring committee may give the proposed law, a clear and concise explanation of the purpose and intended operation of each clause of a Bill, to the Legislative Assembly. If so, the Speaker must table the proposed law, clause by clause explanatory notes and certificate before

the Assembly and request the relevant Minister to estimate the costs or savings of the proposal. The Assembly may decide to pass the same law, or enact its own law to give effect to the intentions of the proposed law, in which case there is no need for a referendum. Alternatively, the Legislative Assembly may decide to refer the proposed law to a referendum. If the Assembly does nothing, the proposed law goes to referendum anyway. The Bill tabled in the Assembly is scrutinised by the Scrutiny of Legislation Committee, the same way as every Bill is. The sponsoring committee may upon consideration of any recommendations and submissions prepare an amended proposed law which on tabling replaces the proposed law earlier presented. This ensures the same ability to amend the bill as any other bill presented in the Parliament which may be improved by amendment.

Step 6 — a referendum

In the usual case, once a proposed law giving effect to a legislative proposal is tabled in the Assembly, a referendum will be held in conjunction with the next general election of the Legislative Assembly, or the first State referendum, whichever first occurs. This keeps costs to a bare minimum. The day of the referendum is called a community consultation day. Referendums are to be conducted by the Electoral Commission under the provisions of this Bill, which call up the general provisions of the Referendums Act. “For” and “Against” cases are to be published in a newspaper circulating throughout the State, as part of the referendum process.

However, where a proposal has not later than 6 months before the term of the Parliament by expiration of its term, become a qualified legislative proposal by gaining the approval of more than 5% of the electors, (being a legislative proposal which already has obtained the support of the number of electors required in a majority of electoral districts and of the State to be submitted to referendum), the proposal will be put to referendum at a special community consultation day within 3 months after it becomes a qualified legislative proposal. Should that occur, any other proposals that are eligible to be considered at the next ordinary community consultation day will also be put to referendum on the special community consultation day. An example of a special community consultation day was the referendum held to determine approval or disapproval of ‘daylight saving’ in Queensland, very properly and wisely submitted under the Goss premiership to the electors of Queensland. It enabled that particular issue not to affect the outcome of the following election and in addition, it enabled the electors of Queensland the opportunity to exercise their democratic rights on an issue they considered very important, whether they were in support of continuance or discontinuance of ‘daylight saving’.

Step 7 — presentation of referendum result to the Governor for assent

Where a majority of electors voting and a majority of electors voting in a majority of electoral districts approve a new law or a change to an existing law, it is approved by the electors. If the purpose and intended operation of the proposed law is the repeal of an existing law or provision of an existing law, then the approval for repeal of that law or provision is a majority of electors voting or a majority of electors voting in a majority of electoral districts of the State.

A proposed law approved by the electors may be presented to the Governor for assent on the

advice of the Premier. The Premier is not required to give such advice or to present a bill approved by the electors until the electors first approve an amendment of the Constitution Act to require the Premier to do so.

A law assented to by the Governor, becomes a law of Queensland which may be amended in the same way as any other Act of the Parliament.

If it is proposed that a provision of a proposed law require the approval of the electors to any amendment or repeal, those provisions have no effect unless the electors have first approved the “entrenchment” of such provisions pursuant to this Act, and then a separate question with respect to entrenchment must be put on the ballot paper, separate to the question of whether to approve the proposed law.

FINANCIAL IMPLICATIONS

The cost of implementing this Bill will depend on the extent to which the community makes use of the facility to initiate referendums. Where a referendum is held in conjunction with an election or State referendum, whichever first occurs, the cost will be minimal, as the mandatory election notices will merely insert the fact that referendums on the proposed law is to be held on the same date. The cost of publishing in a newspaper circulating throughout the State of “for” and “against” cases of 2,000 words respectively, together with a statement of costs and benefits, and the Auditor-General’s certification of the methodology being correct for any assessments, are relatively small costs. Likewise, the cost of printing the ballot papers to be handed out simultaneously with the election ballot papers is relatively insignificant. The submission of a bill to the electors on a special community consultation day would entail considerable cost, but less than the cost of an election. The likelihood of any Parliament not addressing a matter of such demonstrated concern would be a matter in itself of grave community concern in a democracy. This is really an “emergency” clause, and requires numbers of genuine electors on the electoral roll which may never be attained. However this provision ensures a credibility that the community may wish to have in place. If they do not want it, then nothing will make them sign the additional and exponentially difficult number of signatures of genuine electors on the electoral roll to require a special community consultation day. It is pointed out that the argument of cost of holding a referendum on a special community consultation day was not seen as a significant argument in the ‘daylight saving’ referendum. However given the ability of the Parliament to address an issue with such a necessary demonstration of community support as a community issue, it is very unlikely that any genuine concern of the community would not be addressed, so as not to spill over into the following election. The ‘daylight saving’ referendum has proved the wisdom of recognising the right of the people to address an issue they feel very important. It is a matter of history that the Goss administration was returned in the election held shortly afterwards, a consequence in no small part of the issue having been already democratically specifically addressed separately - an issue of such urgency that it was proper to address it promptly.

DETAILED EXPLANATION

PART 1 — PRELIMINARY

Formal Clause

Clause 1 is a formal requirement. It refers to the short title of the Bill. The Bill is to commence on the day on which it is notified in the Government Gazette, with the exception of provisions which cannot take effect until approved by the electors of Queensland as a prerequisite to the Governor giving assent.

Dictionary

Clause 2 applies the definitions of various terms used generally in the Bill. These terms are set out in Schedule 4.

Words used in this Act and in the Referendums Act

Clause 3 says that words used in the Bill have the same meaning as words used in the Referendum Act 1997 unless the context indicates otherwise, or unless the words are otherwise defined in the Dictionary.

Multiple proposals sponsored by the same committee

Clause 4 provides that where one sponsoring committee is responsible for lodging more than one legislative proposal, that sponsoring committee will be treated as a separate committee for each proposal lodged.

Function of the commission

Clause 5 says that the electoral commission is responsible for making appropriate administrative arrangements for the Act.

PART 2 — LEGISLATIVE PROPOSALS

Division 1 — Gaining Community Support

Establishment of sponsoring committee

Clause 6 provides for 12 electors to form themselves into a “sponsoring committee”. The sponsoring committee is established when it lodges an establishment notice providing the details of its members and its legislative proposal with the electoral commission, and the commission accepts the lodgment by publishing a notice in the Government Gazette. Before accepting the lodgment, the commission is required to ensure that the form meets the requirements of the Act and that the objective of the legislative proposal are capable of being implemented by law.

If the commission refuses to accept lodgment of an establishment notice, that decision is an administratively reviewable decision.

Where the commission refuses to accept lodgment of an establishment notice on the grounds that

the proposed law would contravene *the Rule of Law*, or *the Rules of Natural Justice*, or the provisions of the *Legislative Standards Act*, the sponsoring committee would need to obtain a declaration from the Supreme Court that there was no such prospective contravention before the commission would be obliged to entertain the legislative proposal. This ensures a thorough screening of proposals which could not constitutionally become a law, as they would not be laws for the peace, order or good government of the State.

Submission of initiating request

Clause 7 provides that the contact officer of the sponsoring committee may submit an initiating request to the commissioner for registration of a legislative proposal. An initiating request is in effect a petition calling for registration of the legislative proposal.

Approval of initiating request

Clause 8 provides that a sponsoring committee has to gather the signatures of not less than 400 electors on an initiating request in support of its legislative proposal before the proposal can proceed further. In explanation of why 400 electors, it is more desirable that electors have the opportunity of addressing matters which may be of community concern to ascertain from themselves, the community, and the members of the Legislative Assembly whether there is evidence of any particular concern which may warrant addressing legislatively. At present, the only alternative is the creation of splinter political parties which can be easily registered for negative protest purposes. This process instead enables a positive solution to be presented for testing in the community, and for tabling in the Legislative Assembly for addressing, and if not there addressed, for decision of the whole body of electors of the State at a referendum.

Under this clause, the Commission may approve an initiating request submitted under clause 7 if the request relates to the same legislative proposal referred to in the establishment notice lodged by the sponsoring committee, provided each page of the request contains the registered description of that proposal, the names and addresses of the members of the committee, and the request includes the names, addresses, dates of birth and signatures of no less than 400 electors.

If the commission decides not to approve an initiating request, the commission is required to provide a statement of reasons about the decision, and the decision is a reviewable decision.

Registration of proposal

Clause 9 provides, that, on approval of an initiating request, the commissioner must register the proposal and publish notice in the Government Gazette in the form set out at Schedule 1.

Form of popular request

Clause 10 provides for submission of popular requests to the commission seeking to put a legislative proposal to referendum. Popular requests are in effect petitions calling for the holding of a referendum on a legislative proposal. Popular requests must be substantially in accordance with the form at Schedule 2.

Submission of popular request

Clause 11 provides that a popular request may be signed by electors within 12 clear months after registration of the relevant legislative proposal in the Gazette. Popular requests received after the last day of the following month are disregarded.

Requirements of popular request

Clause 12 provides for process to determine whether a sufficient number of signatures has been received by the commission on popular requests to require the holding of a referendum.

If the commission is satisfied that not less than 2% of the number of electors eligible to vote at the last general election of the Legislative Assembly, including at least 2% of the number of electors in each of a majority of electoral districts, have signed popular requests in support of a legislative proposal, the proposal becomes *registered legislative proposal*, which means that a referendum could be held on that proposal on the next available ordinary community consultation day. If the commission is satisfied that not less than 5% of electors eligible to vote at the last general election have signed a proposal which has become a registered legislative proposal, the legislative proposal becomes a *qualified legislative proposal*, which means that a referendum could be held on the next available special community consultation day.

In order to be satisfied that the specified numbers of electors have signed a popular request, the commission is required to verify the signatures of a sample of at least 1000 of the signatories certified by the sponsoring committee as being electors. The commission must be satisfied that the proportion of signatories in the sample who are electors is such that, if it were applied to the number of signatories, not less than the required number would be electors. It is envisaged that the commission would apply an appropriate statistical model to this process to ensure that there was a high probability (of the order of around 99%) that the sample results indicated that at least the required number of electors had signed the initiating request.

If the commission is not satisfied that the required number of signatures of electors have been submitted, the commission is to cancel registration of the legislative proposal.

If the commission decides to cancel registration of a legislative proposal, that decision is a decision which may be administratively reviewed.

Cancellation of registration on cessation of committee

Clause 13 allows the commission to cancel the registration of a proposal, before a proposed law is given to the Speaker, if it believes that the relevant sponsoring committee no longer exists. The commission may be satisfied that the sponsoring committee has ceased to exist if it writes to the contact office and to every other member of the committee notifying its intention to cancel the registration and receives no response within month or receives a response indicating that the committee has ceased to exist. This decision is a decision which may be administratively reviewed.

Division 2 — Proposed laws

Preparation of proposed laws

Clause 14 provides for a sponsoring committee to prepare a proposed law once a popular request has become a registered legislative proposal. The Parliamentary Counsel must make available a drafting officer to assist with this.

Parliamentary Counsel's certificate

Clause 15 provides that a sponsoring committee may apply to the Parliamentary Counsel for a certificate stating that the proposed law is consistent with the registered legislative proposal and is in a form suitable for presentation to electors at a referendum.

The Parliamentary Counsel is not to issue this certificate unless satisfied that the proposed law is consistent with the registered legislative proposal and does not contravene the Rule of Law or the Rules of Natural Justice, and is in a form suitable for presentation to the Legislative Assembly.

Presentation to the Legislative Assembly

Clause 16 provides that once the Parliamentary Counsel gives a certificate under clause 15, the contact officer for the sponsoring committee may give the certificate and copy of the proposed law to the Speaker. The Speaker will then lay these before the Legislative Assembly on the next sitting day, advise the commission, and give it a copy of the certificate and proposed law, and give a copy of the proposed law to the relevant Minister responsible for the administration of that area of law, requesting that costs or savings be determined.

Failure to prepare proposed law

Clause 17 provides that where a proposed law has not been presented to the Legislative Assembly before the holding of a general election of the Assembly that occurs after the proposal became registered legislative proposal, registration of the proposal is to be cancelled.

Amendments

Clause 18 allows the sponsoring committee to prepare, with the assistance of a drafting officer provided by the Parliamentary Counsel, amendments to a proposed law and for the Parliamentary Counsel to issue a replacement certificate for the proposed law so amended. The sponsoring committee may give the replacement certificate and a copy of the amended proposed law to the Speaker.

This provision enables the Scrutiny of Legislation Committee and other submissions to be taken into consideration for the purpose of improving the proposed legislation in the same manner that any other tabled bill may be amended. The Speaker will then present these to the Assembly on the next sitting day, advise the commission and give it a copy of the certificate and proposed law, and give copy of the proposed law to the relevant minister requesting that costings be determined. The proposed law is amended when the Speaker tables the amended bill before the Assembly.

Submission to referendum

Clause 19 provides that the commission must (with the following proviso) put a proposed law presented to the Legislative Assembly to a referendum on the next available community consultation day. The commission must not put a proposed law to a referendum if the Attorney-General advises that a law already exists that gives effect to the objects of the proposed law.

Assembly may refer proposed law to referendum

Clause 20 provides for the Assembly to decide, before passing a law other than a community initiated proposed law, to refer that proposed law to a referendum. Such a proposed law would then be treated as if it were a law arising from a registered legislative proposal and would be put to referendum at the next community consultation day after the law has been tabled in the Assembly.

Such a referendum would not be held if the Assembly rescinded the relevant resolution or if the Attorney-General advised the commission that a law already exists that gives effect to the objects of the proposed law. This latter provision enables the Parliament to enact such a law.

Estimates of costs

Clause 21 provides that, after receiving a copy of proposed law from the Speaker, the relevant Minister (who is the Treasurer, or the Minister administering the relevant area of legislation) and the contact officer must respectively prepare estimates of the anticipated net costs or savings resulting from implementation of the proposed law over three financial years, together with a statement of the material assumptions made and the reasons for the conclusions reached. The relevant Minister and the contact officer are required to provide a copy of these estimates and statements to the Auditor-General. Where possible these estimates may be prepared jointly following consultation with each other.

Auditor-General's report

Clause 22 provides that, after receiving a copy of an estimate and accompanying explanatory statement from the relevant Minister on the costs or savings of a proposed law, the Auditor-General shall prepare a report on the estimate and statement. That report is intended to be an independent assessment of the accuracy of the relevant Minister's estimate.

Publication of estimates and reports

Clause 23 requires the commission to publish in the Gazette the latest statements prepared under section 21 and the report prepared under clause 22. This ensures openness and an opportunity for examination and consideration of these reports by the community.

Special community consultation days

Clause 24 provides that, where a proposed law has been registered as a qualified proposed law that is, it has the support of not less than 5% of the number of electors enrolled to vote at the previous election, and of at least 2% of the electors in each of a majority of electoral districts of

the State) and that proposed law has been tabled in the Legislative Assembly at least 6 months before the expiration of the term of the Parliament, a referendum would be held on a special community consultation day.

That day must be a Saturday within 3 months of the proposed law becoming a qualified proposed law, not being a date of an election of senators or members of the House of Representatives of the Commonwealth. There is no need of a referendum if the Parliament has before the date of the special community consultation day, enacted a law which gives effect to the legislative proposal.

PART 3 — REFERENDUMS

Arguments for and against proposals

Clause 25 allows for the preparation of 'for' and 'against' arguments to be prepared on the subject of a proposed law. Within 2 months after the tabling of a proposed law before the Legislative Assembly, the sponsoring committee may prepare and submit a case of not more than 2,000 words in favour of the proposal to the electoral commission.

Similarly, within 2 months after a resolution of the Assembly to refer a proposed law to referendum, a member of the Assembly may submit a case of not more than 2,000 words in favour of the proposal to the commission. This case must be authorised by a majority of members who voted in favour of the resolution.

A member of the Assembly may also submit to the electoral commission a case of not more than 2,000 words against a proposal. The case against must be authorised by a majority of the Assembly members who are against the proposed law or who voted against the referral of the proposed law to a referendum.

The 'for' and 'against' cases would be published in a newspaper circulating throughout the State.

Dissemination of estimates of costs and publication of arguments

Clause 26 requires the commission to publish within 14 days before a community consultation day, in a newspaper circulating throughout the State, the arguments about the proposed law, and a copy of the estimates of costs and auditor-general's certificate.

Appointment of scrutineers

Clause 27 provides that the relevant sponsoring committee and the persons who prepared the arguments may appoint scrutineers for the purposes of a referendum held under this Bill. This provision is in addition to the rights to appoint scrutineers included in the Referendum Act.

Form of ballot paper

Clause 28 provides that ballot papers to be used for referendums under this Bill are to be substantially in the form included in Schedule 3. Where two or more referendums are held on the

same day, the ballot papers of each referendum may be printed on the once piece of paper. Schedule 3 includes alternative forms of the ballot paper to cater for the case where there is only question on each ballot paper and the case where there are to or more questions on each ballot paper.

This clause further provides that the form of the ballot paper may be altered by regulations. This has the effect of allowing ballot paper design to be improved from time to time by regulations without the need of amending the parent Act, while at the same time ensuring that the “default” ballot paper set out in this Bill will operate in the absence of any regulations.

This clause also provides special rules for the formality of ballot papers in addition to those rules set out in the Referendum Act. Where a tick or a one has been used to mark an elector’s vote in or near the box, that is to be treated as a ‘yes’ or first preference formal vote. Where a cross has been used, that is treated as if it was an informal vote. Any writing on a ballot paper other than the above must be disregarded unless it renders the elector’s intention unclear.

Recounts

Clause 29 provides that any of the following persons may request a recount - the relevant sponsoring committee, and a person who has prepared an argument published by the commission with respect to the proposed law.

Result of referendum

Clause 30 provides that a proposed law that has been put to a referendum is taken to have been approved if more than one-half of the formal votes cast on the question, which must be also cast in a majority of electoral districts, are in favour of it. It further provides that if where a proposed law provides only for the repeal of an existing law or provision of an existing law, and if more than one-half of the formal votes cast on the question or in a majority of electoral districts are in favour of the repeal, that law or legislative provision is approved to be repealed.

Declaration of result of referendum

Clause 31 provides that if two or more referendums are held on the same day, where practicable the results of those referendums should be declared on the same day and the results must be published in the same issue of the Gazette.

PART 4 — ENACTMENT OF LAWS

Enactment of proposed law

Clause 32 provides that (after the expiration of the period allowed for disputing a referendum result and taking into account the outcome of any such dispute) if a proposed law has been approved at a referendum, it may be submitted for the Governor’s assent. If more than one proposed law is approved by the electors as provided by this Bill, the proposed law and provisions of a law approved by the greatest number of electors prevails and the provisions of another approved proposed law.

A proposed law approved by the electors may be submitted by the Premier to the Governor for assent, but there is no requirement for the Premier to do so under this Bill until the electors at referendum have first approved an amendment to the Constitution Act requiring the wishes of the electors of the State to direct the Premier to advise the Governor to assent to a proposed law approved at referendum.

PART 5 — OFFENCES

Harassment

Clause 33 makes it an offence to intimidate or cause violence to a person to induce the other person to sign or not sign an initiating request or a popular request.

Misrepresenting sponsoring committee

Clause 34 makes it an offence to publish, or seek another person's signature to, a document that is or is represented to be an initiating request or a popular request, unless the name and address of each member of the sponsoring committee is set out in the document.

Misrepresentation

Clause 35 is intended to penalise attempts to gather support or to stymie the gathering of support for legislative proposals through misrepresentation. This clause makes it an offence to falsely represent that a document is, or is part of, an initiating request or a popular request, for the purpose of obtaining another person's signature to it.

This clause makes it an offence to falsely represent the nature or main objects of a proposal for the purpose of inducing a person to sign an initiating request or a popular request. This clause also makes it an offence to falsely represent that a legislative proposal, or a form of words that resembles a legislative proposal, is a registered proposal

Improper use of information on popular requests

Clause 36 makes it an offence to use or to be knowingly concerned in the use of information obtained from a popular request or to permit the use of information obtained from a popular request for other than the purpose of this Bill. This clause also makes it an offence for a person to misrepresent that he or she is authorised by a sponsoring committee when this is not the case. Persons who are in possession of a popular request must ensure that it is received by the contact officer by the last day of each calendar month.

Offences relating to initiating requests and popular requests.

Clause 37 makes it an offence to sign another person's name to an initiating request or to a popular request. It also makes it an offence to offer inducements in connection with signing or not signing such request an offence. It is an offence to hinder or obstruct a person from collecting signatures, or to threaten offer or suggest, or inflict or cause the inflicting of any injury, loss or disadvantage to a person in connection with the signing or not signing of an initiating request or a

popular request. It also provides for personal responsibility of certain persons who may be officers of incorporated bodies in relation to offences of corporations in which they were able to exercise control.

PART 6 — ADMINISTRATIVE PROVISIONS

Division 1 — Review

Review of decisions

Clause 38 applies administrative review to the following decisions of the commission:

- a decision to refuse to accept lodgment of an establishment notice under clause 6;
- a decision not to approve an initiating request under clause 8;
- a decision to cancel the registration of a legislative proposal under clause 12; and
- a decision to cancel the registration of a registered legislative proposal under clause 13.

The *Judicial Review Act 1991* applies to a review of decisions referred to above.

Supreme Court to deal with matters

Clause 39 confers jurisdiction to deal with matters or objections of a legal nature as opposed to those of an administrative nature, and would deal with all matters involving consideration of whether a proposed law or provision of a proposed law contravened the Rule of Law, or the Rules of Natural Justice, and ensures the legal propriety of the processes. that justice. decision to which the review of decisions of an administrative natural for the purposes of the

Division 2 — Sponsoring committees

Changes in membership

Clause 40 provides for the rules governing changes in membership of a sponsoring committee. A member ceases to be member if he or she resigns by writing to the contact officer, cease to be an elector or die. A sponsoring committee may agree to admit other electors to membership to replace members who have ceased to be members. The contact officer must advise the commission of any additions or deletions to the membership.

Procedures

Clause 41 provides for the sponsoring committee to determine its own procedures for operation

Cessation of existence

Clause 42 sets out the circumstances in which a sponsoring committee ceases to exist. A sponsoring committee ceases to exist if it resolves to dissolve itself, or it has only one member, or if it has no members, or the registration of the relevant legislative proposal is cancelled. The person who was the contact officer must notify the commission if it ceases to exist for any of the first three reasons.

Contact officer

Clause 43 provide that a sponsoring committee shall have a contact officer who must be a member of the committee and whose actions will be taken to have the committee's endorsement.

Vacancy in office of contact officer

Clause 44 allows a contact officer to resign, leave the committee or be removed by the committee. The committee must replace its contact officer within 14 days of a vacancy in the position.

Notice of contact officer's appointment or change of address

Clause 45 states that a person appointed as contact officer of a sponsoring committee must notify the commission of a change of contact officer within one month, by submitting a notice signed by a majority of the members of the committee. If the contact officer changes address, he or she must also notify the commission within one month.

Division 3 — Popular request circulators and processing popular requests

Appointment and functions of popular request circulators

Clause 46 provides for a sponsoring committee to appoint popular request circulators to assist in obtaining support for the legislative proposal. The circulators must be given a certificate of identification which will ensure their proper identification to persons requiring confirmation of their appointment and role.

Functions of popular request circulators

Clause 47 sets out the various functions and duties of the circulators which are calculated to ensure the integrity of the process with which they are concerned.

Counting of signatories to popular requests

Clause 48 provides for a power of control and supervision by the electoral commission and the contact officers by the power to require production of all signed popular requests at the end of each month. The clause also requires monthly reporting to the commission of the number of signatories who appear to be electors by reference to the electoral roll, and for certain administrative arrangements to facilitate the identification and checking process. The purpose of this provision is to enable accurate information which will be available at the office of the commission. The primary responsibility for ensuring that only signatories who are electors resides with the contact officer of the sponsoring committee.

Division 4 — Register

Register

Clause 49 provides that the commission must keep a register of registered legislative proposals and proposed laws that are to be put to referendum containing details about the terms of the proposal, the sponsoring committee and the date and number of the relevant Gazettes. Details of

cancelled proposals must also be kept in the register. The register must also hold details of proposed law that have been enacted by the Assembly and the results and statistics pertaining to referendums held under this Bill.

PART 7 — MISCELLANEOUS

Electoral commissioner may take legal advice

Clause 50 enables the electoral commissioner to take legal advice the commissioner considers appropriate for the purpose of assistance in discharging the commissioner's functions under the Bill.

Substantial compliance with some time requirements sufficient

Clause 51 provides that, where the Speaker or the relevant Minister is required to discharge a duty on a specified day, and it is impracticable to discharge it on that day, the requirement is to be taken to be satisfied if the duty is discharged as soon as practicable.

Expenditure of public money

Clause 52 prohibits the use of public moneys for campaigning for or against a proposed law. The purpose of this is to ensure that there is no abuse of public moneys by being diverted away from being applied to the purposes for which they were intended to be used.

Proceedings for offences

Clause 53 provides that any proceedings for offences are to be dealt with by a Magistrates Court.

Property in popular requests

Clause 54 clarifies to put beyond controversy that upon coming into existence the property in popular requests resides with the sponsoring committee. Proof of ownership is necessary to establish certain offences such as wilful destruction of property etc through unlawful destruction of popular requests signed by electors.

Effect of this Act and proposed law approved by the electors

Clause 55 provides that a proposed law approved by the electors takes effect as if it were an Act of the Parliament. Such a proposed law would be made pursuant to this Act but with the proof of approval of the electors of the State, and can be lawfully made in the same manner as if it were a special kind of subordinate legislation. It also sets out provisions which are not binding without prior approval of the electors to amendment of the Constitution to provide for entrenchment.

This section can be enacted, but not commenced until after an Act amending the constitution as set out in Part 8 has commenced.

Application of the Referendums Act 1997

Clause 56 provides that the general provisions of the *Referendums Act 1997* apply to voting and the conduct of referendums, disputed returns, enforcement and the holding of referendums generally, in the absence of any specific provisions of this Bill.

Approval of forms

Clause 57 confers on the electoral commissioner approval of forms to be used for the purpose of this Bill.

Regulation making power

Clause 58 provides for the making of regulations for the purposes of the Act.

PART 8 — AMENDMENT OF CONSTITUTION ACT 1867

Act amended

Clause 59 provides that this part amends the *Constitution Act 1867*.

(This Part does not have effect unless and until it is submitted to and is approved by the electors of Queensland.)

Amendment of section 2

Clause 60 recognises the fundamental and inalienable rights of the electors in a democracy to participatory democracy the exercise of which is provided for in this Bill.

Amendment of section 2A

Clause 51 provides that the Queen, in effect the Governor, has the power to assent to proposed laws approved by the electors pursuant to this Bill, for their enactment as laws of the State, thus enlarging the expression of Parliament to include the Queen and the electors of Queensland.

Amendment of section 53

Clause 64 provides a consequential amendment to facilitate the preceding amendments.

Insertion of new heading and new section 53A

Clause 63 provides a specific amendment to the Constitution Act to explicitly recognise the right of electors of the State to initiate referendums on proposed under this Bill. It provides that a proposed law approved by the electors must be presented to the Governor for the royal assent, and that the approved and assented bill is to be taken to be an Act properly enacted by the Legislature of Queensland. It contains provisions resolving any inconsistencies, and provides that certain provisions may not be amended without the approval of the electors at a referendum.

Until this part has been approved by the electors, there is no statutory power to compel the submission of a law approved by the electors of Queensland to the Governor for assent, or to advise that the Governor assent to the proposed law approved by the electors.. However there is

no impediment to the Premier advising the Governor to give the royal assent to the approved law, and it is expected that a convention to this effect would be recognised.

The vital provisions of the Bill setting out the required number of electors to sign an initiating request to require its submission to referendum, the number of electors required for approval of a proposed law at referendum, and the matters which may not be submitted to referendum will remain unentrenched until the electors approve legislation to make these provision unamendable without the consent of the electors. The Bill may operate without the entrenchment of these provisions.